

## **SUPPLEMENTAL AGENDA**

Suspension of the Rules Request  
ALC/Review Subcommittee

Tuesday July 21, 2020

### A. Contract Review

1. Henderson State University with Collegiate Solutions, LLC
2. DFA with The Center for Toxicology and Environmental Health

SUMMARY SCHEDULE OF STATE AGENCY CONTRACTS  
FOR ARKANSAS LEGISLATIVE COUNCIL REVIEW  
*Out-of-State Contracts*

H1

---

<b>1. Agency:</b> Henderson State University		<b>Contractor:</b> COLLEGIATE ENTERPRISE SOLUTIONS, LLC: DBA: THE REGISTRY	
		<b>Location:</b> Peabody	<b>State:</b> MA
<b>Service Type:</b> Professional Consultant Services (PCS)			
<b>Total Authorized:</b>		\$0.00	<b>Org. Term:</b> 07/25/2020 06/30/2021 <b>Procurement:</b> SP
<b>Total After Review:</b>		\$317,900.00	<b>Funding:</b> Cash - 100% - [ ]
<b>Total Projected:</b>		\$635,800.00	<b>MOF:</b> <b>Contract Number:</b> RA 549
<u>Org/Amt:</u>	<u>Amount</u>	<u>Paid To Date</u>	<u>Objective:</u> <u>New Exp Date</u>
Original:	317,900.00		To help all constituencies of HSU complete a successful transition to the institution's new status as a member of the ASU System, and to facilitate the governance transition from the previous board to oversight and control by the ASU system; To complete the process of achieving full accreditation and approval by the HLC of the substantive changes to HSU's new status; To nurture and inculcate cultural changes; To improve internal Communications throughout the Institution; To exercise diligent oversight of the financial conditions of the University" To support and implement the University's Covid-19 plan and strategy to reopen the campus for the fall semester; To implement a program review process; and to develop contingency plans for a declaration of financial exigency; Taking full advantage of the opportunities provided by the ASU System for collaboration and shared services.



July 14, 2020

The Honorable Scott Flippo, Chair  
The Honorable Andy Davis, Chair  
Arkansas Legislative Council – Review Subcommittee  
State Capitol Building  
Little Rock, AR 72201

Dear Senator Flippo and Representative Davis:

Henderson State University requests the suspension of the Committee Rules for Supplemental Agenda Item requiring submission in advance of a committee meeting to review the attached Professional Consultant Services contract between HSU and the Registry for an Interim Chancellor.

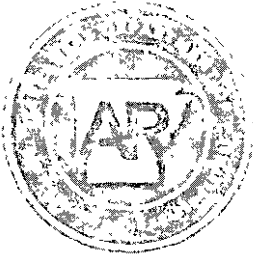
The request to review this PCS contract is needed due to a calendar entry error that delayed in returning the Illegal Immigrant Policy compliance certification back to HSU, narrowly missing the necessary time frame. Hiring a long-term interim early in the new school year, rather than later, is significant for a successful term.

Your favorable response would be appreciated.

Sincerely,

*Tim L. Jones*

Tim L. Jones  
Director of Purchasing  
870-230-5117  
jonest@hsu.edu



Department of Transformation and Shared Services

Governor Asa Hutchinson

Secretary Amy Fecher

Director Edward Armstrong

**SPECIAL PROCUREMENT DETERMINATION**

**From:** Edward R. Armstrong,  
Director, Office of State Procurement

**To:** Brad Phelps  
ASU, General Counsel

**Date:** June 30, 2020

**Subject:** Special Procurement Request by Arkansas State University  
on behalf of Henderson State University

---

Dear Mr. Phelps, Esq,

Thank you for your email, dated June 30, 2020, requesting special procurement authority on behalf of Henderson State University ("HSU") to contract with the Registry of College and University Presidents ("Registry") for the personal services of Jim Borsig as the interim President of HSU. For ease of reference, I have included a copy of the email with this determination.

**Special Procurement Authority**

Pursuant to Ark. Code Ann. § 19-11-263(a), the Director of the Office of State Procurement may initiate a special procurement when he or she determines that an unusual or unique situation exists that makes applying the requirements of competitive bidding, competitive sealed bidding, or competitive proposals contrary to the public interest. A determination made by the Director must be in writing and explain the basis for the special procurement and for the selection of the particular contractor required.

**Determination**

In light of the information that has been provided to me, an unusual and unique situation exists that makes applying the requirements of competitive bidding, competitive sealed bidding, or competitive proposals to hiring an interim university president for HSU contrary to the public interest. HSU needs a President and HSU needs a President quickly. The President needs to be qualified. Universities typically do not recruit university presidents by taking bids and offering the job to the lowest qualified bidder. Although a request for proposals might be an appropriate and suitable method for seeking a qualified candidate, several months are typically needed to conduct such a process from start to finish, and Arkansas State University System ("ASU") advises me that time is now of the essence. ASU has already been conducting a search for several months that was led by ASU System President Dr. Charles Welch. You noted that Dr. Welch utilized multiple methods in seeking a long-term interim. He consulted with colleagues around the nation, including from the American Association of State Colleges and Universities, of which he serves as Board Chair. He also consulted with the Registry, which ASU

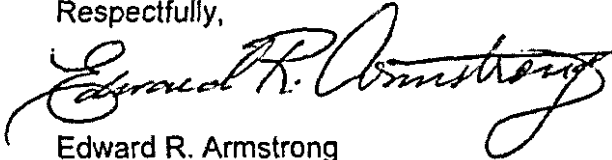
Office of State Procurement

1509 West 7th Street, Suite 300 • Little Rock, AR 72201 • 501.324.9316

TRANSFORM.AR.GOV

informs me is frequently recognized as the leading organization in higher education for assisting with placement of interim administrators. ASU contacted multiple candidates, checked their credentials, interviewed them, and, after several months of effort, eventually selected the candidate that it determined to be best suited for the position. To discard all of the efforts of ASU and resources expended in screening and evaluating the different candidates that it considered would make all of those efforts wasted efforts. It would be contrary to the best interests of the State to waste its resources in such an extravagant fashion, especially given the unique financial challenges that HSU is currently facing. Accordingly, I authorize ASU to use special procurement authority to contract with the Registry for the personal services of Jim Borsig as the interim President of HSU, subject to compliance with all other applicable laws, including specifically, but without limitation, submission of this contract for legislative review pursuant to Ark. Code Ann. § 19-11-265. The Registry is named as the entity with which to contract because ASU has identified it as the entity with the contractual right to contract for the services of Mr. Borsig.

Respectfully,



Edward R. Armstrong  
Director, Office of State Procurement

Cc: Secretary Amy Fecher  
Chief of Staff Ann Purvis

**Edward Armstrong OSP**

---

**From:** Bradford Phelps <bphelps@asusystem.edu>  
**Sent:** Tuesday, June 30, 2020 11:56 AM  
**To:** Edward Armstrong OSP  
**Cc:** Bradford Phelps  
**Subject:** Special Procurement Request for Henderson State University  
**Attachments:** DRAFT Agreement with Henderson State University.Chancellor.2020.docx

---

Dear Mr. Armstrong,

I write on behalf of Henderson State University ("HSU"). As you know, HSU has been seeking to attempt to fill their President position since the resignation of Dr. Glen Jones. Pursuant to an agreement between HSU and the Arkansas State University System, that search was led by ASU System President Dr. Charles Welch.

The search formally began in January 2020, with a goal of hiring a person to fill the President role on a permanent, rather than an interim basis. After the search began, it became apparent that primarily due to COVID-19, the possibility of attracting a permanent leader for the campus would not be successful. Like many other universities around the country, the search committee decided in March to postpone the search for a permanent leader and seek to hire a long-term interim from outside the university.

Dr. Welch utilized multiple methods in seeking a long-term interim. He consulted with colleagues around the nation, including from the American Association of State Colleges and Universities, of which he serves as Board Chair. He also consulted with the Registry of College and University Presidents ("Registry"), which is frequently recognized as the leading organization in higher education for assisting with placement of interim administrators. After contacting the Registry, HSU was supplied with ten prospective candidates who met the criteria HSU was looking for in an Interim President. Dr. Welch reviewed all candidates, conducted preliminary interviews, and ultimately recommended a candidate to the full search committee for consideration. Dr. Welch conducted similar reviews of non-Registry candidates and recommended one candidate from that method as well. At the end of those meetings, the search committee recommended to Dr. Welch that he hire one of the two candidates. Following extensive reference checking, Dr. Welch chose the Registry candidate.

After informing the successful candidate of the committee's decision, Dr. Welch began the process of contracting to hire the successful candidate. The Registry operates under a consulting agreement between the university and the organization. Thus, the contract for the candidate's services would be between HSU and the Registry. Because of a personal contractual arrangement between the candidate and the Registry, the candidate is unable to execute an employment agreement directly with HSU.

This proposed contractual relationship between HSU and the Registry triggered an inquiry into existing Arkansas law. It appears that the proposed HSU/Registry agreement would be covered under Ark Code Ann. §19-11-203 (B)(i) as an agreement for "consulting services" which would require a competitive bid process. This is in contrast to employment agreements, which are routinely used among Arkansas institutions of higher education and certain employees, and which are expressly exempt from this process by law (See Ark. Code Ann. §19-11-203 (C)).

Because of the unique circumstances affecting HSU, due to their diminished fiscal position and because the best person to serve in this capacity is contractually bound to the Registry, we seek your permission to proceed under the Special Procurement statute found at Ark Code Ann. §19-11-263.

We base this request on the following. First, the successful candidate is highly recommended and has experience leading a similar institution of higher education in another State. Second, the unique financial challenges that are present at HSU require a person with significant higher education executive leadership experience. Finally and most importantly, this person will not be a candidate to be a permanent leader of HSU, which will enable him to tackle the difficult challenges that currently exist on that campus over the next year without fear of the impact of those decisions on his future employment processes at HSU. The kinds of considerations to place a person in the top position at an institution of higher education simply do not lend themselves to a competitive procurement situation.

I have attached the proposed agreement between HSU and the Registry. I note that some minor modifications will need to be made to this agreement to comply with Arkansas law. HSU has funding to pay this amount. The total cost to HSU is \$305,900. This amount reflects the salary payable to the interim President, as well as the fee payable to the Registry. I would note that Registry candidates are not allowed to accept fringe benefits from the university, and the Registry fee is similar to what fringe benefits costs would be to an employee at that salary who receives benefits. Thus, the total cost to HSU would be very close to the cost of hiring outside of the Registry. I would also note that the salary is comparable to the salary paid to the prior HSU President and is the lowest of the ten public university CEOs in Arkansas.

The proposed agreement between HSU and the Registry will run through June 30, 2021 unless terminated sooner by either party.

I am happy to answer any questions that you may have in the interim. As you might imagine, time is of the essence for HSU to fill this position and continue down the path of restoring this institution to fiscal stability.

Thank you.

Brad

Brad Phelps  
General Counsel  
Arkansas State University System  
(501) 660-1008 (office)  
(501) 218-6861 (cell)

## H2





STATE OF ARKANSAS  
**Department of Finance  
and Administration**

**OFFICE OF THE SECRETARY**  
1509 West Seventh Street, Suite 401  
Post Office Box 3278  
Little Rock, Arkansas 72203-3278  
Phone: (501) 682-2242  
Fax: (501) 682-1029  
[www.arkansas.gov/dfa](http://www.arkansas.gov/dfa)

July 21, 2020

Senator Scott Flipppo, Co-Chair  
Representative Andy Davis, Co-Chair  
Arkansas Legislative Council – Review Subcommittee  
State Capitol Building, Room 315  
Little Rock, AR 72201

Dear Senator Flipppo and Representative Davis:

The COVID-19 pandemic has presented the State with a historically unique and unusual set of circumstances. On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act to provide financial aid to families and businesses impacted by the COVID-19 Pandemic.

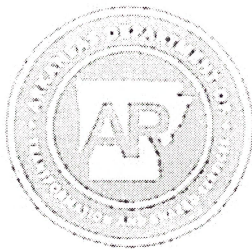
Under the CARES Act, \$1.25 billion was allocated to the State of Arkansas to be disbursed to individuals, businesses and governmental entities. Subsequent federal legislation issued additional funding to Arkansas directly to State agencies and grantees. Under these circumstances, the Arkansas Department of Finance and Administration (DFA) has been tasked with not only developing a strategy for the use of these funds, but to see that they are all properly distributed before the end of the calendar year. CARES Act and other federal funds at issues must be returned to the federal government if they are not properly disbursed to assist the citizens of Arkansas by December 30, 2020.

DFA requested approval for a special procurement that was approved by the DTSS – Office of State Procurement on July 20, 2020. Offers from three vendors were assessed based on information received by the DFA Office of Accounting. Each of the vendors outlined their expertise in the field of Disaster Recovery and the systems used for that purpose. All vendors demonstrated a similar level of expertise. Each vendor had a respective list of qualified staff to address the issues we have in Arkansas in a complete and competent manner. The deciding factor was the pricing for the project. DFA would like to award to this vendor as soon as reasonably possible to increase the likelihood that all of the CARES Act funding is properly disbursed and accounted for by the end of 2020.

DFA is requesting placement on a Supplemental Agenda for the contract to be reviewed at the meeting scheduled July 21, 2020.

Sincerely,

A handwritten signature in cursive script that reads 'Larry W. Walther'.  
Larry W. Walther  
Cabinet Secretary



Department of Transformation and Shared Services

Governor Asa Hutchinson  
Secretary Amy Fecher  
Director Edward Armstrong

**SPECIAL PROCUREMENT DETERMINATION**

**From:** Edward R. Armstrong, Director, Office of State Procurement  
**Date:** July 20, 2020  
**Subject:** Special Procurement for the Department of Finance and Administration

---

**Special Procurement Authority** Pursuant to Ark. Code Ann. § 19-11-263, the State Procurement Director or the head of a procurement agency may initiate a special procurement when he or she determines that an unusual or unique situation exists that makes applying the requirements of competitive bidding, competitive sealed bidding, or competitive sealed proposals contrary to the public interest. Ark. Code Ann. § 19-11-263(a). This determination must be in writing and explain the basis for the special procurement and for the selection of the particular contractor.

**Department Request** The COVID-19 pandemic has presented the State with a historically unique and unusual set of circumstances. On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act to provide financial aid to families and businesses impacted by the COVID-19 Pandemic. Under the CARES Act, \$1.25 billion was allocated to the State of Arkansas to be disbursed to individuals, businesses and governmental entities. Subsequent federal legislation issued additional funding to Arkansas directly to State agencies and grantees. Under these circumstances, the Arkansas Department of Finance and Administration (DFA) has been tasked with not only developing a strategy for the use of these funds, but to see that they are all properly distributed before the end of the calendar year. CARES Act and other federal funds at issues must be returned to the federal government if they are not properly disbursed to assist the citizens of Arkansas by December 30, 2020. DFA advises that it does not have enough time for a full-blown procurement cycle. However, it did consider offers from three vendors that were assessed based on information provided by the DFA Office of Accounting. Each of the vendors outlined their expertise in the field of Disaster Recovery and the systems used for that purpose. All vendors demonstrated a similar level of expertise. Each vendor had a respective list of qualified staff to address the issues we have in Arkansas in a complete and competent manner. The deciding factor was the pricing for the project. The lowest bid, by CTEH, was \$5 million lower than the next lowest bidder. DFA would like to award to this vendor as soon as reasonably possible to increase the likelihood that all of the CARES Act funding is properly disbursed and accounted for by the end of 2020.

**Determination** Based on the information that TSS has provided, it would be contrary to the best interests of the State to require it to engage in a competitive sealed bid or a request for proposals at this point because the need is a present one and the amount of time needed to conduct a full procurement through the standard process would hurt the chances of the State getting all of the CARES Act funding properly disbursed and accounted for. Accordingly, DFA is authorized to initial the special procurement of a contract with CTEH, subject to review by the legislature prior to execution.

Respectfully,

  
Edward R. Armstrong  
Director, Office of State Procurement