

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

A Bill

HOUSE BILL 1543

4
5 By: Representative Dangeau
6
7

For An Act To Be Entitled

8
9 AN ACT REQUIRING THAT PROFESSIONAL AND CONSULTANT
10 SERVICES CONTRACTS COMPLY WITH THE ARKANSAS
11 PROCUREMENT LAW AND THE GENERAL ACCOUNTING AND
12 BUDGETARY PROCEDURES LAW; AND FOR OTHER PURPOSES.
13

Subtitle

14
15 AN ACT REQUIRING THAT PROFESSIONAL AND
16 CONSULTANT SERVICES CONTRACTS COMPLY
17 WITH THE ARKANSAS PROCUREMENT LAW AND
18 THE GENERAL AND BUDGETARY PROCEDURES
19 LAW.
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 9-27-401(b)(2)(A), concerning contracts for
25 representing children in dependency-neglect cases, is amended to read as
26 follows:

27 (2)(A) Prior to employing or entering into a contract or
28 contracts, the Administrative Office of the Courts shall obtain approval from
29 the juvenile division judge or judges in each judicial district, in
30 accordance with the provisions of ~~§§ 19-4-1701—19-11-1713~~ §§ 19-11-1001 –
31 19-11-1013.
32

33 SECTION 2. Arkansas Code § 19-4-1415(e)(3), concerning state agency
34 projects exceeding five million dollars (\$5,000,000), is amended to read as
35 follows:

36 (3)(A) The final selection committee shall select or make a



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1 formal recommendation to its governing body of the professional or
2 professionals which it determines to be in the best interest of the state.

3 (B) Contracts for architectural, engineering and land
4 surveying professional consultant services shall be negotiated on the basis
5 of demonstrated competence and qualifications for the type of services
6 required and at fair and reasonable prices without the use of competitive
7 bidding, and no rule or regulation shall inhibit the agency's authority to
8 negotiate fees for the services.

9 (C) The final selection committee for the institutions of
10 higher education as stated in subdivision (b)(5) of this section shall make a
11 recommendation to its governing board or appropriate committee thereof of the
12 professional or professionals which it determines to be in the best interest
13 of the institution, and the governing board shall make the final decision and
14 authorize the contract or contracts to be negotiated and awarded, unless it
15 has delegated the action to a committee of the board

16

17 SECTION 3. Arkansas Code Title 19, Chapter 4, Subchapter 17 is
18 repealed.

19 ~~19-4-1701. Definitions.~~

20 ~~As used in this subchapter, unless the context otherwise~~
21 ~~requires:~~

22 ~~(1) "State agencies" means all departments, agencies, boards,~~
23 ~~commissions, and institutions of higher education of the State of Arkansas;~~

24 ~~(2)(A) "Contractor" means any person or organization which~~
25 ~~executes a contract with a state agency under which the person or~~
26 ~~organization agrees to provide professional services or consultant services~~
27 ~~to the agency and the individuals performing the services are not state~~
28 ~~employees occupying regular full time or part time or extra help positions~~
29 ~~provided by law; provided, however, that nothing herein shall be construed to~~
30 ~~prohibit an institution of higher education from executing a contract with a~~
31 ~~state agency under which services will be performed by employees of the~~
32 ~~institution of higher education. An employee or employees of an institution~~
33 ~~of higher education performing such services to a state agency may receive~~
34 ~~additional compensation provided:~~

35 ~~(i) The institution of higher education requests and~~
36 ~~receives written approval from the Chief Fiscal Officer of the State as to~~

1 ~~the amount of additional compensation to be paid to any employee; and~~
 2 ~~(ii) The total salary payments received from the~~
 3 ~~employee's regular salaried position and amounts received for services~~
 4 ~~performed under a professional services contract shall not exceed one hundred~~
 5 ~~twenty five percent (125%) of the maximum annual salary authorized by law for~~
 6 ~~the employee's position with the institution of higher education. No~~
 7 ~~director or any other department head of any agency of this state shall~~
 8 ~~receive additional compensation under this section.~~

9 ~~(B) The provisions of subdivision (2)(A) of this section shall~~
 10 ~~not be applicable to nursing services purchased by the Department of Humans~~
 11 ~~Services so long as the services conform to all applicable federal laws and~~
 12 ~~rules and to the ethical standards contained in §§ 19-11-704—19-11-713.~~

13
 14 ~~19-4-1702. Professional services contracts.~~

15 ~~(a) A professional services contract between a state agency and a~~
 16 ~~contractor is a contract in which the relationship between the contractor and~~
 17 ~~the agency is that of an independent contractor rather than that of an~~
 18 ~~employee. The services to be rendered consist of the personal services of an~~
 19 ~~individual which are professional in nature. Under such contracts, the agency~~
 20 ~~does not have direct managerial control over the day to day activities of the~~
 21 ~~individual providing the services, and the contract shall specify the results~~
 22 ~~expected from the rendering of the services rather than detailing the manner~~
 23 ~~in which the services shall be rendered. Services rendered under a~~
 24 ~~professional services contract may be rendered to the agency itself or to a~~
 25 ~~third party beneficiary.~~

26 ~~(b) Any contract under which the agency retains day to day managerial~~
 27 ~~control over the person performing the services or in which the relationship~~
 28 ~~between the contractor and the agency is that of employer and employee is not~~
 29 ~~a professional services contract is illegal and expressly prohibited.~~
 30 ~~However, the Department of Computer Services is authorized to employ persons~~
 31 ~~over which they exercise day to day managerial control as specified under §~~
 32 ~~25-4-112 for which such services as a professional services contract may be~~
 33 ~~utilized.~~

34
 35 ~~19-4-1703. Consultant services contracts.~~

36 ~~A consultant services contract is a contract between a state agency and~~

1 an individual or organization in which the service to be rendered to the
 2 agency or to a third party beneficiary under the contract is primarily the
 3 giving of advice by the contractor on a particular problem facing the agency
 4 or the third party beneficiary. The contractor shall have the relationship
 5 of an independent contractor with respect to the agency. The agency shall
 6 not exercise managerial control over the day to day activities of the
 7 contractor, but the contract shall specify the results expected from the
 8 services to be rendered by the contractor and the advice or assistance to be
 9 provided.

10
 11 ~~19-4-1704. Purpose of contracts.~~

12 ~~The principal purpose of a professional services contract or a~~
 13 ~~consultant services contract shall be the procurement of the services of an~~
 14 ~~individual by the state agency rather than the procurement of commodities.~~

15
 16 ~~19-4-1705. Contracts exempted.~~

17 ~~(a) The provisions of this subchapter shall not be applicable to the~~
 18 ~~contracts of the Arkansas State Highway and Transportation Department covered~~
 19 ~~by the technical work requirements and administrative controls of the Federal~~
 20 ~~Highway Administration, nor shall it be applicable to contracts let by the~~
 21 ~~Arkansas State Highway and Transportation Department wherein the cost and fee~~
 22 ~~are established by competitive bidding.~~

23 ~~(b) The provisions of this subchapter shall not be applicable to~~
 24 ~~contracts of institutions of higher education which:~~

25 ~~(1) Will be paid in total from funds generated from ticket sales~~
 26 ~~and call for no obligation by the contracting institution beyond the amount~~
 27 ~~received from such revenue source;~~

28 ~~(2) Are for services related to patents, copyrights, or~~
 29 ~~trademarks; or~~

30 ~~(3) Are for services related to workforce development, incumbent~~
 31 ~~workforce training, or specialized business or industry training.~~

32 ~~(c) The provisions of this subchapter do not apply to contracts~~
 33 ~~created pursuant to federally approved state plans for services reimbursed~~
 34 ~~under Title V or Title XIX of the federal Social Security Act, as it existed~~
 35 ~~on January 1, 2001, provided that those contracts and services conform to all~~
 36 ~~applicable federal laws and rules, and to the ethical standards, § 19-11-704.~~

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~~19-4-1706.—Conflicting legislation.~~

~~In the event that the General Assembly enacts identical legislation in appropriation acts which restrict the use of professional, personal, or consultant services contracts and the restrictions are in conflict with the provisions of this subchapter in regard to such contracts, then the provisions of this subchapter shall supersede and shall be in lieu of such contract restrictions.~~

~~19-4-1707.—Restrictions on contracts.~~

~~(a) In no case should any contract contemplated by this subchapter be utilized to avoid the purpose or the spirit of the Regular Salary Procedures and Restrictions Act, § 19-4-1601.~~

~~(b) No contract contemplated by this subchapter may be approved by the Chief Fiscal Officer of the State which requires the services of one (1) or more individuals on a regular full-time or part-time work week basis for longer than one (1) year. However, in the unusual event that the best interest of the state would be served by a contract which exceeds one (1) year, the Chief Fiscal Officer of the State may approve such contract, having first received the advice of the Legislative Council or the joint Budget Committee.~~

~~(c) In no event should any contract be approved which would be in violation of § 19-4-701 et seq. relating to expenditures.~~

~~(d) In no event shall any state agency engage in a professional services or consultant services contract with a part-time or full-time employee who occupies a position authorized to be paid from extra help or regular salaries for a state agency.~~

~~19-4-1708.—General guidelines and regulations.~~

~~The Chief Fiscal Officer of the State, after soliciting suggestions from state agencies and after seeking and receiving the advice of the Attorney General and of the Legislative Council, or the Joint Budget Committee if the General Assembly is in session, shall publish general guidelines for the procurement of the two (2) types of contracts specified in this subchapter and general regulations governing the use of each type of contract.~~

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~~19-4-1709. Standard contract forms.~~

~~(a)(1) The Chief Fiscal Officer of the State shall prescribe standard forms to be utilized by all state agencies in the execution of each of the two (2) contracts described in this subchapter.~~

~~(2) The Chief Fiscal Officer of the State shall refuse to permit payment of any vouchers under any contract in which a standard form is not utilized or in which all information required by the standard form is not supplied.~~

~~(b) The standard contract form shall include the following items plus such additional items as the Chief Fiscal Officer of the State shall deem desirable for the purposes of this subchapter:~~

~~(1) A section setting forth in reasonable detail the objectives and scope of the contractual agreement and the methods to be used to determine whether the objectives specified have been achieved;~~

~~(2) The rates of compensation, transportation, per diem, subsistence, out-of-pocket allowances, and all other items of costs contemplated to be paid the contractor by the agency;~~

~~(3) The method by which the rate of compensation and the total payment shall be calculated;~~

~~(4) The maximum number of dollars which the agency may be obligated to pay to the contractor under the terms of the contract, including all expenses and other items of costs, and the source of funding to be utilized;~~

~~(5) The term of the contract;~~

~~(6) The names and social security numbers of all individuals who will be supplying services to the agency or to third party beneficiaries under the terms of the contracts, so far as those names are known to the contractor at the time of the execution of the contract. If the names of all individuals supplying services under the contract are not available at the time of the execution of the contract, the contract shall contain a provision requiring the contractor to submit periodically the names and social security numbers of individuals supplying services as soon as the identity of those individuals is known to the contractor;~~

~~(7) Where the contractor is a business entity, the federal identification number of the business entity shall be listed on the contract~~

1 form;

2 (8)(A) A certification shall be included, signed by the
3 contractor, as follows:

4

5 (name) (title)

6 "I _____,

7 _____, certify under penalty of perjury that, to the best of my
8 knowledge and belief, no regular full-time or part-time employee of any state
9 agency of the State of Arkansas will receive any personal, direct, or
10 indirect monetary benefits which would be in violation of the law as a result
11 of the execution of this contract."

12 (B) For the purpose of this subdivision, it shall be
13 understood that where the contractor is a widely held public corporation, the
14 term "direct or indirect monetary benefit" shall not apply to any regular
15 corporate dividends paid to a stockholder of the corporation who is also a
16 state employee and who owns less than ten percent (10%) of the total
17 outstanding stock of the contracting corporation;

18 (9) For any contract in which the total compensation exclusive
19 of reimbursable expenses to be paid by the agency does not exceed five
20 thousand dollars (\$5,000), a purchase order may be utilized in lieu of the
21 standard form or forms prescribed by the Chief Fiscal Officer of the State.
22 However, should the agency enter into a subsequent contract with the same
23 individual or organization during the same fiscal year, regardless of the
24 nature of the contract, then the details of the original contract which
25 utilized a purchase order form and of all subsequent contracts, regardless of
26 amount or type, shall be promptly reported to the Chief Fiscal Officer of the
27 State. This reporting shall be done to allow him to determine whether the
28 agency is utilizing a series of contracts to avoid the use of the standard
29 form and to avoid the application of appropriate regulations;

30 (10) Standard contract forms in use by licensed practitioners
31 such as architects and engineers may be used to supplement the standard
32 contract forms; and

33 (11) All contracts in which the services of architects or
34 engineers are required for the construction, renovation, or repair of
35 buildings, facilities, or lands owned or operated by the State of Arkansas
36 shall contain the following clause:

1 ~~"In the event the State of Arkansas fails to appropriate funds or make~~
 2 ~~moneys available for any biennial period covered by the term of this contract~~
 3 ~~for the services to be provided by the contractor, this contract shall be~~
 4 ~~terminated on the last day of the last biennial period for which funds were~~
 5 ~~appropriated or moneys made available for such purposes.~~

6 ~~This provision shall not be construed to abridge any other right of~~
 7 ~~termination the agency may have."~~

8
 9 ~~19-4-1710. Submission of contracts required.~~

10 ~~(a)(1) Any contract for professional services or consultant services~~
 11 ~~requiring the services of an individual for regular full-time or part-time~~
 12 ~~weekly work where the total compensation exceeds ten thousand dollars~~
 13 ~~(\$10,000) must be presented to the Legislative Council or the Joint Budget~~
 14 ~~Committee by the Department of Finance and Administration prior to the~~
 15 ~~execution date of the contract.~~

16 ~~(2) The Legislative Council or the Joint Budget Committee shall~~
 17 ~~provide the Chief Fiscal Officer of the State with their advice as to the~~
 18 ~~propriety of the contract within thirty (30) days of the submission.~~

19 ~~(3) This contract shall not be submitted to the Legislative~~
 20 ~~Council or the Joint Budget Committee until the department has reviewed the~~
 21 ~~contract and provided the Legislative Council or the Joint Budget Committee~~
 22 ~~with a recommendation as to the legality of the contract.~~

23 ~~(b) The Legislative Council or the Joint Budget Committee may review~~
 24 ~~or exempt from review any contract or group of contracts contemplated by this~~
 25 ~~subchapter.~~

26 ~~(c) Funds from grants and contracts to any state institution of higher~~
 27 ~~education may be used for the purpose of subcontracting with institutions~~
 28 ~~under the performance conditions of the grants or contracts. Subcontracts~~
 29 ~~for research that are derived from grants and contracts to any state~~
 30 ~~institution of higher education shall require the prior approval of the Chief~~
 31 ~~Fiscal Officer of the State and a review by the Legislative Council.~~

32
 33 ~~19-4-1711. Review requirement.~~

34 ~~(a)(1) Every contract covered by this subchapter shall be filed with~~
 35 ~~the Office of Accounting of the Department of Finance and Administration~~
 36 ~~within five (5) working days of the execution date of the contract.~~

1 ~~(2) The execution date of all contracts shall be defined as the~~
2 ~~date upon which performance of the services to be rendered under the contract~~
3 ~~is to begin and not the date upon which the agreement was made.~~

4 ~~(b)(1) No voucher shall be paid if a copy of the contract under which~~
5 ~~the payment is being made has not previously been timely filed.~~

6 ~~(2) No payment shall be made covering services rendered prior to~~
7 ~~the execution date of the contract.~~

8 ~~(c) It is the intent of the General Assembly that this section be~~
9 ~~strictly construed and enforced. However, in the unusual event that an~~
10 ~~obligation has been incurred by a state agency under any contractual~~
11 ~~agreement or proposed contract prior to the approval of the contract, the~~
12 ~~Chief Fiscal Officer of the State may approve payment for such services after~~
13 ~~having first received the advice of the Legislative Council.~~

14
15 ~~19-4-1712. Certification by agency head.~~

16 ~~The head of every agency shall certify by his signature on each~~
17 ~~contract entered into by that agency that:~~

18 ~~(1) All information required by law and by regulations is~~
19 ~~supplied;~~

20 ~~(2) The proper contracting form is utilized;~~

21 ~~(3) All information contained in the contract is true and~~
22 ~~correct to the best of his knowledge and belief;~~

23 ~~(4) All general guidelines prescribed by the Chief Fiscal~~
24 ~~Officer of the State have been complied with;~~

25 ~~(5) The services proposed to be provided under the contract are~~
26 ~~necessary for operation of the state agency in fulfilling its legal~~
27 ~~responsibilities and cannot be provided by any existing state agency;~~

28 ~~(6) The contractor is fully qualified to perform the contract~~
29 ~~and has no vested interest in the subject matter of the contract which would~~
30 ~~constitute a conflict of interest and a bar to his providing services of a~~
31 ~~professional and disinterested quality; and~~

32 ~~(7) The contract terms are reasonable and the benefits to be~~
33 ~~derived sufficient to warrant the expenditure of the funds called for in the~~
34 ~~contract.~~

35
36 ~~19-4-1713. Approval or disapproval of contracts.~~

1 ~~(a) The Chief Fiscal Officer of the State may make whatever additional~~
 2 ~~inquiry he deems necessary and may require the supplying of additional~~
 3 ~~information should he have reason to believe that the contract should be~~
 4 ~~rejected because it does not comply with the provisions contained in this~~
 5 ~~subchapter.~~

6 ~~(b) It shall be the duty of the Chief Fiscal Officer of the State to~~
 7 ~~return as "disapproved" to the contracting state agency any contract which~~
 8 ~~fails to comply with the applicable laws and regulations governing the~~
 9 ~~contract and to approve any contract which does comply with the provisions~~
 10 ~~contained in this subchapter.~~

11 ~~(c) The Chief Fiscal Officer of the State shall immediately report to~~
 12 ~~the Legislative Council or the Joint Budget Committee the disapproval of any~~
 13 ~~contracts or payments thereunder and the reasons therefor. The agency~~
 14 ~~involved may then request a hearing before the Legislative Council or the~~
 15 ~~Joint Budget Committee.~~

16 ~~(d) The Legislative Council or the Joint Budget Committee, upon a~~
 17 ~~hearing of the facts, may:~~

18 ~~(1) Request the state agency to make certain changes in the~~
 19 ~~contract involved;~~

20 ~~(2) Request that the Chief Fiscal Officer of the State~~
 21 ~~reconsider his previous disapproval of the contract or payment; or~~

22 ~~(3) Notify the state agency that it concurs in the decision of~~
 23 ~~the Chief Fiscal Officer of the State.~~

24 ~~(e) The Chief Fiscal Officer of the State shall have final and~~
 25 ~~ultimate authority over the supervision and approval of all contracts~~
 26 ~~described in this subchapter. However, the Chief Fiscal Officer of the State~~
 27 ~~shall seek and receive the advice of the Legislative Council before approving~~
 28 ~~or disapproving any contract or class or group of contracts authorized under~~
 29 ~~the provisions of this subchapter, unless the Legislative Council or Joint~~
 30 ~~Budget Committee specifically exempts the contract or class or group of~~
 31 ~~contracts by formal committee action.~~

32
 33 ~~19-4-1714. Monthly report of contracts.~~

34 ~~(a) The Chief Fiscal Officer of the State shall design and prescribe a~~
 35 ~~standard monthly report form on which state agencies shall report and~~
 36 ~~describe all contracts executed during a calendar month, including, but not~~

1 ~~limited to, a description of the services to be provided and the rate of~~
 2 ~~compensation to be paid.~~

3 ~~(b) The Chief Fiscal Officer of the State shall verify the correctness~~
 4 ~~of each agency report and shall compile and submit a copy of such reports~~
 5 ~~monthly to the Legislative Council and the Legislative Joint Auditing~~
 6 ~~Committee for their information.~~

7
 8 ~~19-4-1715. Filing of contracts.~~

9 ~~Service contracts shall be governed by § 19-4-1109 relating to the~~
 10 ~~filing by state agencies of procurement contracts for services so as to be~~
 11 ~~available for public inspection and audit purposes.~~

12
 13 ~~19-4-1716. Development and use of performance based contracts.~~

14 ~~(a) The General Assembly finds that in the absence of adequate~~
 15 ~~attention to service quality, government programs often become wasteful,~~
 16 ~~ineffective, and unresponsive; that evaluating the quality of service~~
 17 ~~provided under state agency contracts for professional and consulting~~
 18 ~~services is necessary to protect the integrity of state funded programs; that~~
 19 ~~the State Hospital Board and the Department of Human Services enter into many~~
 20 ~~of these types of contracts that involve millions of dollars of public funds;~~
 21 ~~that requiring the inclusion of a performance evaluation provision in~~
 22 ~~professional service contracts and consulting services contracts entered into~~
 23 ~~by the State Hospital Board and the Department of Human Services will provide~~
 24 ~~a mechanism for evaluating the quality of service provided under those~~
 25 ~~contracts; and that requiring the State Hospital Board and the Department of~~
 26 ~~Human Services to report annually regarding performance evaluation to the~~
 27 ~~House and Senate Interim Committees on Public Health, Welfare, and Labor or~~
 28 ~~appropriate subcommittees thereof will encourage the State Hospital Board and~~
 29 ~~the Department of Human Services to conduct thorough performance evaluations,~~
 30 ~~which may provide information that can help improve the programs and services~~
 31 ~~they provide. Therefore, it is declared to be the intent of this General~~
 32 ~~Assembly to require the State Hospital Board and the Department of Human~~
 33 ~~Services to include performance evaluation provisions in contracts for~~
 34 ~~professional services and consulting services and to report at least annually~~
 35 ~~regarding the evaluation of each contract.~~

36 ~~(b) All new professional services contracts and consultant services~~

1 ~~contracts entered into by the State Hospital Board and the Department of~~
 2 ~~Human Services shall include a performance evaluation provision that outlines~~
 3 ~~a method for evaluating the service provided under the contract. The~~
 4 ~~provision shall identify the goals and performance indicators of the contract~~
 5 ~~and how the state agency intends to evaluate the service provided.~~

6 ~~(c) The State Hospital Board and the Department of Human Services~~
 7 ~~shall actively seek appropriate remedy when contract performance is less than~~
 8 ~~satisfactory.~~

9 ~~(d) The State Hospital Board and the Department of Human Services~~
 10 ~~shall report to the House and Senate Interim Committees on Public Health,~~
 11 ~~Welfare, and Labor or appropriate subcommittees thereof at least annually~~
 12 ~~regarding the performance evaluation of each professional services contract~~
 13 ~~and each consulting services contract. The House and Senate Interim~~
 14 ~~Committees on Public Health, Welfare, and Labor or appropriate subcommittees~~
 15 ~~thereof may refer contracts related to the Division of Youth Services of the~~
 16 ~~Department of Human Services to the Senate Interim Committee on Children and~~
 17 ~~Youth.~~

18 ~~(e) The State Hospital Board and the Department of Human Services~~
 19 ~~shall not extend or renew an existing professional services contract or~~
 20 ~~consultant services contract unless the contract includes a provision for~~
 21 ~~performance evaluation.~~

22 ~~(f) This section shall only apply to contracts required to be~~
 23 ~~submitted under § 19-4-1710 and shall not apply to architectural and~~
 24 ~~engineering services contracts.~~

25 ~~(g) The House and Senate Interim Committees on Public Health, Welfare,~~
 26 ~~and Labor or appropriate subcommittees thereof shall report to the other~~
 27 ~~interim committees and to the General Assembly on the success of including~~
 28 ~~performance evaluation provisions in professional services and consultant~~
 29 ~~services contracts with regard to the legislative intent of this section and~~
 30 ~~make recommendations with regard to the expansion, continuation, or~~
 31 ~~termination of the use of performance evaluation provisions in professional~~
 32 ~~services and consultant services contracts.~~

33
 34 ~~19-4-1717. Debarment or suspension.~~

35 ~~(a) This section applies to debarment for cause from consideration for~~
 36 ~~award of contracts or a suspension from such consideration during an~~

1 ~~investigation where there is probable cause for such a debarment.~~

2 ~~(b)(1)(A)(i) After reasonable notice to the contractor involved and~~
 3 ~~reasonable opportunity for that contractor to be heard, the Chief Fiscal~~
 4 ~~Officer of the State or the head of a purchasing agency shall have authority~~
 5 ~~to debar a contractor for cause from consideration for award of contracts,~~
 6 ~~provided that doing so is in the best interests of the state.~~

7 ~~(ii) The debarment shall not be for a period of more~~
 8 ~~than three (3) years.~~

9 ~~(B) The same officer shall have authority to suspend a~~
 10 ~~contractor from consideration for award of contracts, provided that doing so~~
 11 ~~is in the best interests of the state and there is probable cause for~~
 12 ~~debarment.~~

13 ~~(C) The suspension shall not be for a period exceeding~~
 14 ~~three (3) months.~~

15 ~~(2) The authority to debar or suspend shall be exercised in~~
 16 ~~accordance with regulations promulgated by the Chief Fiscal Officer of the~~
 17 ~~State.~~

18 ~~(e) The causes for debarment or suspension because of unsuitability~~
 19 ~~for award of a contract shall be set forth in regulations promulgated by the~~
 20 ~~Chief Fiscal Officer of the State.~~

21 ~~(d)(1) The Chief Fiscal Officer of the State or the head of a~~
 22 ~~purchasing agency shall issue a written decision to debar or suspend someone.~~

23 ~~(2) The decision shall state the reasons for the action taken.~~

24 ~~(e) A copy of the decision issued under subsection (d) of this section~~
 25 ~~shall be mailed or otherwise furnished within five (5) days after it is~~
 26 ~~written to the debarred or suspended contractor and any other party~~
 27 ~~intervening.~~

28 ~~(f) A decision issued under subsection (d) of this section shall be~~
 29 ~~final and conclusive.~~

30
 31 SECTION 4. Arkansas Code § 19-11-203(14)(U), which exempts commodities
 32 and services under the Arkansas Procurement Law, is repealed.

33 ~~(U) Professional and consultant services procured in~~
 34 ~~accordance with §19-4-101 et seq.;~~

35
 36 SECTION 5. Arkansas Code § 19-11-801 is amended to read as follows:

1 19-11-801. Policy.

2 (a) It is the policy of the State of Arkansas and political
 3 subdivisions that the state and political subdivisions shall ~~negotiate~~
 4 ~~contracts for professional services on the basis of demonstrated competence~~
 5 ~~and qualifications for the type of services required and at fair and~~
 6 ~~reasonable prices and to prohibit the use of competitive bidding for the~~
 7 ~~procurement of professional services.~~ follow the procedures stated in this
 8 section, except competitive bidding shall not be used for the procurement of
 9 architectural, engineering, and land surveying professional consultant
 10 services.

11 (b) Public school districts shall negotiate contracts for construction
 12 management in the same manner as set forth in subsection (a) of this section,
 13 except that a two-thirds vote of the board of directors of a public school
 14 district shall not be required for a school district to negotiate a contract
 15 for construction management.

16 ~~(c) For purposes of this subchapter, the term "professional services"~~
 17 ~~shall include legal, architectural, engineering, land surveying, and such~~
 18 ~~other consulting services as the political subdivision shall designate by~~
 19 ~~two-thirds vote of its governing body.~~

20
 21 SECTION 6. Arkansas Code § 19-11-802 (c), concerning annual statements
 22 of qualifications and performance data for persons offering professional
 23 services to political subdivisions of the State of Arkansas, is amended to
 24 read as follows:

25 (c) The political subdivision shall not use competitive bidding for
 26 the procurement of ~~professional services~~ architectural, engineering, and land
 27 surveying professional consulting services.

28
 29 SECTION 7. Arkansas Code Title 19, Chapter 11, is amended to add an
 30 additional subchapter to read as follows:

31 19-11-1001. Definitions.

32 As used in this subchapter:

33 (1) "Consultant services contract" means a contract between a
 34 state agency and an individual or organization in which:

35 (A) The service to be rendered to the agency or to a
 36 third-party beneficiary under the contract is primarily the giving of advice

1 by the contractor on a particular problem facing the agency or the third-
2 party beneficiary;

3 (B) The contractor is an independent contractor with
4 respect to the agency;

5 (C) The agency does not exercise managerial control over
6 the day-to-day activities of the contractor; and

7 (D) The contract specifies the results expected from the
8 services to be rendered by the contractor and the advice or assistance to be
9 provided;

10 (2) "Contractor" means any person or organization that executes
11 a contract with a state agency under which the person or organization agrees
12 to provide professional services or consultant services to the agency and the
13 individuals performing the services are not state employees occupying regular
14 full-time or part-time or extra help positions provided by law;

15 (3) "Director" means the State Procurement Director;

16 (4) "Employee" means an individual drawing a salary from a state
17 agency, whether elected or not, and any nonsalaried individual performing
18 professional services for any agency;

19 (5) "Professional services contract" means a contract between a
20 state agency and a contractor in which:

21 (A) The relationship between the contractor and the agency
22 is that of an independent contractor rather than that of an employee;

23 (B) The services to be rendered consist of the personal
24 services of an individual that are professional in nature;

25 (C) The agency does not have direct managerial control
26 over the day-to-day activities of the individual providing the services;

27 (D) The contract specifies the results expected from the
28 rendering of the services rather than detailing the manner in which the
29 services shall be rendered; and

30 (E) Services rendered under a professional services
31 contract are rendered to the agency itself or to a third-party beneficiary;
32 and

33 (6) "State agency" means any department, agency, board,
34 commission, or institution of higher education of the State of Arkansas.

35
36 19-11-1002. Purpose of contracts.

1 The principal purpose of a professional services contract or a
2 consultant services contract is the procurement of the services of an
3 individual by the state agency rather than the procurement of commodities.

4
5 19-11-1003. Contracts exempted.

6 (a) This subchapter shall not apply to the contracts of the Arkansas
7 State Highway and Transportation Department that are covered by the technical
8 work requirements and administrative controls of the Federal Highway
9 Administration, nor shall the provisions of this subchapter be applicable to
10 contracts entered into by the Arkansas State Highway and Transportation
11 Department in which the cost and fee are established by competitive bidding.

12 (b) This subchapter shall not apply to contracts of institutions of
13 higher education that:

14 (1) Will be paid in total from funds generated from ticket sales
15 and call for no obligation by the contracting institution beyond the amount
16 received from the revenue source; or

17 (2) Are for services related to patents, copyrights, or
18 trademarks.

19 (c) This subchapter does not apply to contracts created under
20 federally approved state plans for services reimbursed under Title V or Title
21 XIX of the federal Social Security Act, as it existed on January 1, 2001, if
22 those contracts and services conform to all applicable federal laws and
23 rules, and to the ethical standards provided for in § 19-11-704.

24
25 19-11-1004. Restrictions on contracts.

26 (a) No contract under this subchapter shall be used to avoid the
27 purpose or the spirit of the General Accounting and Budgetary Procedures Law
28 of Arkansas.

29 (b) No contract shall be approved that would be in violation of §§ 19-
30 4-701 through 19-4-711, relating to expenditures.

31 (c)(1) Except as provided in this subsection, no state agency shall
32 engage in a professional services or consultant services contract with a
33 part-time or full-time employee who occupies a position authorized to be paid
34 from extra help or regular salaries for a state agency, except as provided in
35 § 21-1-403.

36 (2) However, this subsection does not prohibit an institution of

1 higher education from executing a contract with a state agency under which
2 professional or consulting services will be performed by employees of the
3 institution of higher education.

4 (3) An employee of an institution of higher education performing
5 professional or consulting services to a state agency may receive additional
6 compensation if:

7 (A) The institution of higher education requests and
8 receives written approval from the State Procurement Director concerning the
9 amount of additional compensation to be paid to any employee; and

10 (B) The total salary payments received from the employee's
11 regular salaried position and amounts received for services performed under a
12 professional services contract do not exceed one hundred twenty-five percent
13 (125%) of the maximum annual salary authorized by law for the employee's
14 position with the institution of higher education.

15 (d) No director or any other department head of any agency of this
16 state shall receive additional compensation under this subchapter.

17 (e)(1) Any contract under which an agency retains day-to-day
18 managerial control over the person performing the services or in which the
19 relationship between the contractor and the agency is that of employer and
20 employee is not a professional services contract and is prohibited.

21 (2) However, the Department of Information Services may employ
22 persons over whom they exercise day-to-day managerial control for those
23 services under § 25-4-112 for which professional services contracts may be
24 used.

25
26 19-11-1005. General guidelines and regulations.

27 The State Procurement Director, after soliciting suggestions from state
28 agencies and after seeking and receiving the advice of the Attorney General
29 and of the Legislative Council, or of the Joint Budget Committee if the
30 General Assembly is in session, shall publish general guidelines for the
31 procurement of professional and consultant services contracts and general
32 regulations governing the use of each type of contract.

33
34 19-11-1006. Submission of contracts required.

35 (a)(1) All contracts for professional services or consultant services,
36 except for those which are specifically exempt from review, requiring the

1 services of an individual for regular full-time or part-time weekly work
2 where the total compensation exceeds twenty-five thousand dollars (\$25,000),
3 must be presented to the Legislative Council, or to the Joint Budget
4 Committee if the General Assembly is in session, before the execution date of
5 the contract.

6 (2) The Legislative Council or the Joint Budget Committee shall
7 provide the State Procurement Director with their advice as to the propriety
8 of the contract within thirty (30) days after receipt of the proposed
9 contract.

10 (3) The contract shall not be submitted to the Legislative
11 Council or to the Joint Budget Committee until the department has reviewed
12 the contract and provided the Legislative Council or the Joint Budget
13 Committee with a recommendation regarding the legality of the contract.

14 (b) The Legislative Council or the Joint Budget Committee may review
15 or exempt from review any contract or group of contracts contemplated by this
16 subchapter.

17 (c)(1) Funds from grants and contracts to any state institution of
18 higher education may be used for the purpose of subcontracting with
19 institutions under the performance conditions of the grants or contracts.

20 (2) Subcontracts for research that are derived from grants and
21 contracts to any state institution of higher education require the prior
22 approval of the State Procurement Director and a review by the Legislative
23 Council or by the Joint Budget Committee.

24
25 19-11-1007. Certification by agency head.

26 The head of every agency shall certify by his or her signature on each
27 contract entered into by that agency that:

28 (1) All information required by law and by regulations is
29 supplied;

30 (2) The proper contracting form is utilized;

31 (3) All information contained in the contract is true and
32 correct to the best of his or her knowledge and belief;

33 (4) All general guidelines prescribed by the State Procurement
34 Director have been complied with;

35 (5) The services proposed to be provided under the contract are
36 necessary for operation of the state agency in fulfilling its legal

1 responsibilities and cannot be provided by any existing state agency;

2 (6) The contractor is fully qualified to perform the contract
3 and has no vested interest in the subject matter of the contract that would
4 constitute a conflict of interest and a bar to the contractor providing
5 services of a professional and disinterested quality; and

6 (7) The contract terms are reasonable and the benefits to be
7 derived are sufficient to warrant the expenditure of the funds called for in
8 the contract.

9
10 19-11-1008. Approval or disapproval of contracts.

11 (a) The State Procurement Director may make whatever additional
12 inquiry he or she deems necessary and may require that additional information
13 be supplied if he or she has reason to believe that the contract should be
14 rejected because it does not comply with this subchapter.

15 (b) The director shall return to the contracting state agency any
16 contract which fails to comply with the applicable laws and regulations
17 governing the contract and shall approve any contract that complies with this
18 subchapter.

19 (c)(1) The director shall immediately report to the Legislative
20 Council, or to the Joint Budget Committee, if the General Assembly is in
21 session, the disapproval of any contracts or payments and the reasons for the
22 disapproval.

23 (2) After the director reports the disapproval, the agency
24 involved may then request a hearing before the Legislative Council or the
25 Joint Budget Committee.

26 (d) The Legislative Council or the Joint Budget Committee, upon a
27 hearing of the facts, may:

28 (1) Request that the state agency make certain changes in the
29 contract involved;

30 (2) Request that the director reconsider his or her prior
31 disapproval of the contract or payment; or

32 (3) Notify the state agency that it concurs in the decision of
33 the director.

34 (e)(1) The director shall have final and ultimate authority over the
35 supervision and approval of all contracts described in this subchapter.

36 (2) However, the State Procurement Director shall seek and

1 receive the advice of the Legislative Council or the Joint Budget Committee
 2 before approving or disapproving any contract or class or group of contracts
 3 authorized under this subchapter, unless the Legislative Council or Joint
 4 Budget Committee specifically exempts the contract or class or group of
 5 contracts by formal committee action.

6
 7 19-11-1009. Filing of contracts.

8 Service contracts filed with a state agency under § 19-4-1106 shall be
 9 available for public inspection and auditing purposes.

10
 11 19-11-1010. Development and use of performance based contracts.

12 (a) Performance based contracts provide an effective, efficient method
 13 of monitoring and evaluating the overall quality of services provided.

14 (b) The practice of including benchmark objectives that the provider
 15 must attain at specific intervals during the term of the contract is an
 16 essential requirement for measuring performance.

17 (c) Under regulations promulgated by the State Procurement Director,
 18 all state agencies, boards, commissions, and institutions of higher education
 19 shall use performance based standards in professional and consultant service
 20 contracts.

21
 22 SECTION 8. Arkansas Code § 21-1-403(c), which exempts constitutional
 23 officers from competitive bidding requirements when entering into a lease
 24 agreement, contract, or grant with any state agency, is amended to read as
 25 follows:

26 ~~(c)(1) This section is not intended to require competitive bidding for~~
 27 ~~architectural, engineering, medical, or legal services or other professional~~
 28 ~~services under § 19-4-1701 et seq. Constitutional officers shall not enter~~
 29 ~~into professional and consultant services contracts with state agencies~~
 30 ~~subject to §§19-11-1001 through 19-11-1011.~~

31 (2) ~~Such~~ Any professional and consultant services contracts
 32 obtained by constitutional officers or their spouses with any state agency
 33 exempt from §§ 19-11-1001 through 19-11-1011, must receive prior approval of
 34 the Joint Budget Committee during legislative sessions, the Legislative
 35 Council between legislative sessions, and the Governor.

1 SECTION 9. EMERGENCY CLAUSE. It is found and determined by the
 2 General Assembly of the State of Arkansas that professional and consultant
 3 services contracts are exempt from the competitive bidding requirements of
 4 the Arkansas Procurement Law; that the competitive bidding requirements of
 5 the Arkansas Procurement Law should apply to professional and consultant
 6 services contracts to reduce costs in the state procurement process by
 7 fostering economic competition; and that this act is immediately necessary
 8 because unnecessary costs are being incurred in the state procurement
 9 process. Therefore, an emergency is declared to exist and this act being
 10 immediately necessary for the preservation of the public peace, health, and
 11 safety shall become effective on:

- 12 (1) The date of its approval by the Governor;
- 13 (2) If the bill is neither approved nor vetoed by the Governor,
 14 the expiration of the period of time during which the Governor may veto the
 15 bill; or
- 16 (3) If the bill is vetoed by the Governor and the veto is
 17 overridden, the date the last house overrides the veto.

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