

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 *As Engrossed: H2/19/03 H3/13/03 H3/21/03 H3/25/03*

2 84th General Assembly

A Bill

3 Regular Session, 2003

HOUSE BILL 1543

4

5 By: Representative Dangeau

6 *By: Senator Baker*

7

8

9

For An Act To Be Entitled

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

14

15

Subtitle

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

21

22

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

24

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

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

33

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



1 (3)(A) The final selection committee shall select or make a
2 formal recommendation to its governing body of the professional or
3 professionals which it determines to be in the best interest of the state.

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

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

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

20 ~~19-4-1701. Definitions.~~

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

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

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

36 ~~(i) The institution of higher education requests and~~

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

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

14
15 19-4-1702. Professional services contracts.

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

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

35
36 19-4-1703. Consultant services contracts.

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

11
12 ~~19-4-1704. Purpose of contracts.~~

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

16
17 ~~19-4-1705. Contracts exempted.~~

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

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

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

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

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

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

1 ~~applicable federal laws and rules, and to the ethical standards, § 19-11-704,~~

2
3 ~~19-4-1706.—Conflicting legislation.~~

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

10
11 ~~19-4-1707.—Restrictions on contracts.~~

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

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

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

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

29
30 ~~19-4-1708.—General guidelines and regulations.~~

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

1 ~~contract.~~

2
3 ~~19-4-1709. Standard contract forms.~~

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

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

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

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

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

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

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

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

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

36 ~~(7) Where the contractor is a business entity, the federal~~

1 identification number of the business entity shall be listed on the contract
2 form;

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

5
6 (name) (title)

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

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

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

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

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

1 ~~shall contain the following clause:~~

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

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

9

10 ~~19-4-1710. Submission of contracts required.~~

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

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

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

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

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

33

34 ~~19-4-1711. Review requirement.~~

35 ~~(a)(1) Every contract covered by this subchapter shall be filed with~~
36 ~~the Office of Accounting of the Department of Finance and Administration~~

1 within five ~~(5)~~ working days of the execution date of the contract.

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

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

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

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

15
16 ~~19-4-1712. Certification by agency head.~~

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

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

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

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

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

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

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

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

36

1 ~~19-4-1713. Approval or disapproval of contracts.~~

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

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

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

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

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

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

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

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

33
34 ~~19-4-1714. Monthly report of contracts.~~

35 ~~(a) The Chief Fiscal Officer of the State shall design and prescribe a~~
36 ~~standard monthly report form on which state agencies shall report and~~

1 ~~describe all contracts executed during a calendar month, including, but not~~
2 ~~limited to, a description of the services to be provided and the rate of~~
3 ~~compensation to be paid.~~

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

8
9 ~~19-4-1715. Filing of contracts.~~

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

13
14 ~~19-4-1716. Development and use of performance based contracts.~~

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

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

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

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

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

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

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

34
35 ~~19-4-1717. Debarment or suspension.~~

36 ~~(a) This section applies to debarment for cause from consideration for~~

1 ~~award of contracts or a suspension from such consideration during an~~
2 ~~investigation where there is probable cause for such a debarment.~~

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

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

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

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

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

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

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

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

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

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

31
32 *SECTION 4. Arkansas Code § 19-11-203(13), concerning the definition of*
33 *exempt agencies, is amended to read as follows:*

34 *(13) "Exempt agencies" means the constitutional departments of*
35 *the state, the elected constitutional offices of the state, the general*
36 *assembly, including the Legislative Council and the Legislative Joint*

1 Auditing Committee and supporting agencies and bureaus thereof, the Supreme
2 Court, the Court of Appeals, circuit courts, prosecuting attorneys, and
3 Administrative Office of the Courts;

4 SECTION 5. Arkansas Code § 19-11-203(14)(U), which exempts commodities
5 and services under the Arkansas Procurement Law, is repealed.

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

8
9 SECTION 6. Arkansas Code § 19-11-203(14), concerning the definition of
10 exempt commodities and services as it relates to Arkansas purchasing law, is
11 amended to add an additional subdivision read as follows:

12 (BB) Services related to work force development, incumbent
13 work force training, or specialized business or industry training.

14
15 SECTION 7. Arkansas Code § 19-11-203(30), concerning the definition of
16 state agency, is amended to read as follows:

17 (30)(A) ~~"State agency" means any office, department, commission,~~
18 ~~council, board, bureau, committee, institution, legislative body, agency,~~
19 ~~government corporation, or other establishment or official of the executive,~~
20 ~~judicial, or legislative branch of this state, except exempt agencies in~~
21 ~~their procurement of items not subject to Arkansas Constitution, Amendment 54~~
22 all agencies, institutions, authorities, departments, boards, commissions,
23 bureaus, councils, or other agencies of the state supported by appropriation
24 of state or federal funds, except exempt agencies pursuant to § 19-11-
25 203(13).

26 (B) "State agency" includes exempt agencies when any
27 agency or exempt agency procures any item subject to Arkansas Constitution,
28 Amendment 54;

29
30 SECTION 8. Arkansas Code § 19-11-801 is amended to read as follows:
31 19-11-801. Policy.

32 (a) It is the policy of the State of Arkansas and political
33 subdivisions that the state agencies and political subdivisions shall
34 ~~negotiate contracts for professional services on the basis of demonstrated~~
35 ~~competence and qualifications for the type of services required and at fair~~
36 ~~and reasonable prices and to prohibit the use of competitive bidding for the~~

1 ~~procurement of professional services.~~ follow the procedures stated in this
2 section, except competitive bidding shall not be used for the procurement of
3 legal, architectural, engineering, construction management, and land
4 surveying professional consultant services, if:

5 (1) State agencies, not exempt from review and approval of the
6 Arkansas State Building Services, shall follow procedures established by the
7 Arkansas State Building Services for the procurement of architectural,
8 engineering, land surveying and construction management services; and

9 (2) Institutions of higher education exempt from review and
10 approval of the Arkansas State Building Services shall follow procedures
11 established by their governing boards for the procurement of architectural,
12 engineering, land surveying and construction management professional
13 consultant services.

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

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

23
24 SECTION 9. Arkansas Code § 19-11-802 is amended to read as follows:

25 19-11-802. Annual statements of qualifications and performance data -
26 Restrictions on competitive bidding.

27 (a) In the procurement of professional services, a state agency or
28 political subdivision which utilizes such services may encourage firms
29 engaged in the lawful practice of these professions to submit annual
30 statements of qualifications and performance data to the political
31 subdivision or may request such information as needed for a particular public
32 project.

33 (b) The state agency or political subdivision shall evaluate current
34 statements of qualifications and performance data of firms on file or may
35 request such information as needed for a particular public project whenever a
36 project requiring professional services is proposed.

1 (c) The political subdivision shall not use competitive bidding for
2 the procurement of ~~professional services~~ legal, architectural, engineering,
3 construction management, and land surveying professional consulting services.

4 (d)(1) A public school district that utilizes construction management
5 services shall encourage construction management firms to submit to the
6 school district annual statements of qualifications and performance data or
7 may request such information as needed for a particular public project.

8 (2) The public school district shall evaluate current statements
9 of qualifications and performance data on file with the school district or
10 when submitted as requested whenever a project requiring professional
11 services of a construction manager is proposed.

12 (3) The public school district shall not use competitive bidding
13 for the procurement of professional services of a construction manager.

14
15 SECTION 10. Arkansas Code § 19-11-803 is amended to read as follows:
16 19-11-803. Evaluation of qualifications.

17 In evaluating the qualifications of each firm, the state agency or
18 political subdivision shall consider:

19 (1) The specialized experience and technical competence of the
20 firm with respect to the type of professional services required;

21 (2) The capacity and capability of the firm to perform the work
22 in question, including specialized services, within the time limitations
23 fixed for the completion of the project;

24 (3) The past record of performance of the firm with respect to
25 such factors as control of costs, quality of work, and ability to meet
26 schedules and deadlines; and

27 (4) The firm's proximity to and familiarity with the area in
28 which the project is located.

29
30 SECTION 11. Arkansas Code § 19-11-804 is amended to read as follows:
31 19-11-804. Selection.

32 The state agency or political subdivision shall select three (3)
33 qualified firms. The state agency or political subdivision shall then select
34 the firm considered the best-qualified and capable of performing the desired
35 work and negotiate a contract for the project with the firm selected.

36

1 SECTION 12. Arkansas Code § 19-11-805 is amended to read as follows:
2 19-11-805. Negotiation of contracts.

3 (a) For the basis of negotiations, the state agency or political
4 subdivisions and the selected firm shall jointly prepare a detailed, written
5 description of the scope of the proposed services.

6 (b) If the state agency or political subdivision is unable to
7 negotiate a satisfactory contract with the firm selected, negotiations with
8 that firm shall be terminated. The state agency or political subdivision
9 shall then undertake negotiations with another of the qualified firms
10 selected. If there is a failing of accord with the second firm, negotiations
11 with such firm shall be terminated. The state agency or political subdivision
12 shall undertake negotiations with the third qualified firm.

13 (c) If the state agency or political subdivision is unable to
14 negotiate a contract with any of the selected firms, the agency shall
15 reevaluate the necessary professional services, including the scope and
16 reasonable fee requirements, again compile a list of qualified firms, and
17 proceed in accordance with the provisions of this subchapter.

18 (d) When unable to negotiate a contract for construction management, a
19 public school district shall also perform a reevaluation of services in
20 accordance with subsection (c) of this section.

21
22 SECTION 13. Arkansas Code Title 19, Chapter 11, is amended to add an
23 additional subchapter to read as follows:

24 19-11-1001. Definitions.

25 As used in this subchapter:

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

28 (A) The service to be rendered to the agency or to a
29 third-party beneficiary under the contract is primarily the giving of advice
30 by the contractor on a particular problem facing the agency or the third-
31 party beneficiary;

32 (B) The contractor is an independent contractor with
33 respect to the agency;

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

36 (D) The contract specifies the results expected from the

1 services to be rendered by the contractor and the advice or assistance to be
2 provided;

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

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

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

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

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

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

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

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

23 (E) Services rendered under a professional services
24 contract are rendered to the agency itself or to a third-party beneficiary;
25 and

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

28
29 19-11-1002. Purpose of contracts.

30 The principal purpose of a professional services contract or a
31 consultant services contract is the procurement of the services of an
32 individual by the state agency rather than the procurement of commodities.

33
34 19-11-1003. Contracts exempted.

35 (a) This subchapter shall not apply to the contracts of the Arkansas
36 State Highway and Transportation Department that are covered by the technical

1 work requirements and administrative controls of the Federal Highway
2 Administration, nor shall the provisions of this subchapter be applicable to
3 contracts entered into by the Arkansas State Highway and Transportation
4 Department in which the cost and fee are established by competitive bidding.

5 (b) This subchapter shall not apply to contracts of institutions of
6 higher education that are for services related to patents, copyrights, or
7 trademarks.

8
9 (c) This subchapter does not apply to contracts created under
10 federally approved state plans for services reimbursed under Title V or Title
11 XIX of the federal Social Security Act, as it existed on January 1, 2001, if
12 those contracts and services conform to all applicable federal laws and
13 rules, and to the ethical standards provided for in § 19-11-704.

14
15 19-11-1004. Restrictions on contracts.

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

19 (b) No contract shall be approved that would be in violation of §§ 19-
20 4-701 through 19-4-711, relating to expenditures.

21 (c)(1) Except as provided in this subsection, no state agency shall
22 engage in a professional services or consultant services contract with a
23 part-time or full-time employee who occupies a position authorized to be paid
24 from extra help or regular salaries for a state agency, except as provided in
25 § 21-1-403.

26 (2) However, this subsection does not prohibit an institution of
27 higher education from executing a contract with a state agency under which
28 professional or consulting services will be performed by employees of the
29 institution of higher education.

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

33 (A) The institution of higher education requests and
34 receives written approval from the Office of Personnel Management concerning
35 the amount of additional compensation to be paid to any employee; and

36 (B) The total salary payments received from the employee's

1 regular salaried position and amounts received for services performed under a
2 professional services contract do not exceed one hundred twenty-five percent
3 (125%) of the maximum annual salary authorized by law for the employee's
4 position with the institution of higher education.

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

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

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

15
16 19-11-1005. General guidelines and regulations.

17 The State Procurement Director, after soliciting suggestions from state
18 agencies and after seeking and receiving the advice of the Attorney General
19 and review by the Legislative Council, or by the Joint Budget Committee if
20 the General Assembly is in session, shall publish general guidelines for the
21 procurement of professional and consultant services contracts and general
22 regulations governing the use of each type of contract.

23
24 19-11-1006. Submission of contracts required.

25 (a)(1) All contracts for professional services or consultant services,
26 except for those which are specifically exempt from review, requiring the
27 services of an individual for regular full-time or part-time weekly work
28 where the total contract amount exceeds twenty-five thousand dollars
29 (\$25,000), must be presented to the Legislative Council, or to the Joint
30 Budget Committee if the General Assembly is in session, before the execution
31 date of the contract.

32 (2) The Legislative Council or the Joint Budget Committee shall
33 provide the State Procurement Director with their review as to the propriety
34 of the contract within thirty (30) days after receipt of the proposed
35 contract.

36 (3) The contract shall not be submitted to the Legislative

1 Council or to the Joint Budget Committee until the department has reviewed
2 the contract and provided the Legislative Council or the Joint Budget
3 Committee with a recommendation regarding the legality of the contract.

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

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

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

14
15 19-11-1007. Certification by agency head.

16 The head of every agency shall certify by his or her 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 or her knowledge and belief;

23 (4) All general guidelines prescribed by the State Procurement
24 Director 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 that would
30 constitute a conflict of interest and a bar to the contractor providing
31 services of a professional and disinterested quality; and

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

35
36 19-11-1008. Approval or disapproval of contracts.

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

5 (b) The director shall return to the contracting state agency any
6 contract which fails to comply with the applicable laws and regulations
7 governing the contract and shall approve any contract that complies with this
8 subchapter.

9
10 (c)(1) The director shall have final and ultimate authority over the
11 supervision and approval of all contracts described in this subchapter.

12 (2) However, the State Procurement Director shall seek review of
13 the Legislative Council or the Joint Budget Committee before approving or
14 disapproving any contract or class or group of contracts authorized under
15 this subchapter, unless the Legislative Council or Joint Budget Committee
16 specifically exempts the contract or class or group of contracts by formal
17 committee action.

18
19 19-11-1009. Filing of contracts.

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

22
23 19-11-1010. Development and use of performance based contracts.

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

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

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

33
34 19-11-1011. Review requirement.

35 (a)(1) Every contract covered by this subchapter shall be filed with
36 the Office of State Procurement of the Department of Finance and

1 Administration.

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

5 (b)(1) No purchase order shall be paid if a copy of the contract under
6 which the payment is being made has not previously been filed with the Office
7 of State Procurement of the Department of Finance and Administration. .

8 (2) No payment shall be made covering services rendered prior to
9 the execution date of the contract.

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

16
17 19-11-1012. Standard contract forms.

18 (a) The Director of the Office of State Procurement shall prescribe
19 standard forms to be utilized by all state agencies.

20 (b) The standard contract form shall include the following items plus
21 such additional items as the Director of the Office of State Procurement
22 shall deem desirable for the purposes of this subchapter:

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

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

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

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

35 (5) The term of the contract;

36 (6) The names and social security numbers of all individuals who

1 will be supplying services to the agency or to third-party beneficiaries
2 under the terms of the contracts, so far as those names are known to the
3 contractor at the time of the execution of the contract. If the names of all
4 individuals supplying services under the contract are not available at the
5 time of the execution of the contract, the contract shall contain a provision
6 requiring the contractor to submit periodically the names and social security
7 numbers of individuals supplying services as soon as the identity of those
8 individuals is known to the contractor;

9 (7) Where the contractor is a business entity, the federal
10 identification number of the business entity shall be listed on the contract
11 form;

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

14 (name) (title)

15 "I,
16, certify under penalty of perjury that, to the best of my
17 knowledge and belief, no regular full-time or part-time employee of any state
18 agency of the State of Arkansas will receive any personal, direct, or
19 indirect monetary benefits which would be in violation of the law as a result
20 of the execution of this contract."

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

27 (9) For any contract in which the total compensation exclusive of
28 reimbursable expenses to be paid by the agency does not exceed twenty-five
29 thousand dollars (\$25,000), a purchase order may be utilized in lieu of the
30 standard form or forms prescribed by the Director of the Office of State
31 Procurement. However, should the agency enter into a subsequent contract with
32 the same individual or organization during the same fiscal year, regardless
33 of the nature of the contract, then the details of the original contract
34 which utilized a purchase order form and of all subsequent contracts,
35 regardless of amount or type, shall be promptly reported to the Director of
36 the Office of State Procurement. This reporting shall be done to allow him to

1 determine whether the agency is utilizing a series of contracts to avoid the
2 use of the standard form and to avoid the application of appropriate
3 regulations;

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

7 (11) All professional consultant services contracts shall contain the
8 following clause:

9 "In the event the State of Arkansas fails to appropriate funds or make moneys
10 available for any biennial period covered by the term of this contract for
11 the services to be provided by the contractor, this contract shall be
12 terminated on the last day of the last biennial period for which funds were
13 appropriated or moneys made available for such purposes.

14
15 This provision shall not be construed to abridge any other right of
16 termination the agency may have."

17 SECTION 14. Arkansas Code § 21-1-403(c), is amended to read as
18 follows:

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

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

29
30 /s/ Dangeau
31
32
33
34
35
36