

Title 22. Public Property

Chapter XVII. Building Authority Division, Department of Shared Administrative Services

Subchapter B. Building Authority Minimum Standards and Criteria

Part 112. Construction Section

Subpart 1. Introduction

22 CAR § 112-101. Introduction to construction generally.

(a)(1) Arkansas Code § 22-2-101 et seq., provides authority to the Building Authority Division to promulgate reasonable rules and procedures as may be required to carry out its duties consistent with the purposes of the Building Authority Division Act, Arkansas Code § 22-2-101 et seq.

(2) The Construction Section provides a review of all applicable legal restraints and requirements to ensure compliance with all laws pertaining to the contracting of capital improvements, which includes but is not limited to:

(A) Arkansas Code § 19-4-1401 et seq. (accounting and budgetary procedures); and

(B) Arkansas Code § 22-9-101 et seq., (Public Works Law).

(b) This part has been adopted in the interest of uniform application of all laws, encouraging a maximum of competition and participation among those interested in doing business with the state and, above all, establishing a climate which produces the greatest return for the taxpayers' dollars in the contracting of capital improvements.

(c) Any reference to the words "the section" within this part shall mean the Construction Section.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-102. Capital improvements.

(a) Whenever a department intends to construct buildings and facilities or to make repairs or additions and improvements to existing buildings and facilities, the procedures as outlined in this part shall be followed.

(b)(1) Capital improvement projects fifty thousand dollars (\$50,000) or less shall be exempt from Construction Section and Design Review Section oversight.

(2) Capital improvement projects in the amount of twenty-five thousand dollars (\$25,000) or less may be bid or made by the open market.

(3) These projects shall be known as a "small order".

(c)(1) Capital improvement projects more than twenty-five thousand dollars (\$25,000) but less than fifty thousand dollars (\$50,000) (between twenty-five thousand dollars and one cent (\$25,000.01) and fifty thousand dollars (\$50,000)) shall be contracted by contacting and requesting a minimum of three (3) bona fide bidders to bid the work.

(2) These projects shall be known as a "quote bid".

(d) See 22 CAR § 112-409(e) for guidance pertaining to change orders which increases the contract above the exempt amount.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-103. Department officials.

(a) All contracts, unless exempted, shall be processed and approved by the Construction Section.

(b) Upon sufficient justification, bid openings may be performed by persons other than the Construction Section.

(c) Justification may include a health or safety related emergency.

(d) Under such circumstances, department procurement staff shall be responsible for adhering to all laws and rules, including processing of bid protests.

Authority. Arkansas Code § 22-2-108.

Subpart 2. Capital Improvement Requests — General Requirements

22 CAR § 112-201. Capital improvement requests generally.

(a)(1) Unless specifically exempted from oversight, when a department requests a capital improvement, the department shall submit to the Design Review Section a cover letter identifying the capital improvement (see 22 CAR pt. 111) with sufficient plans and specifications necessary to describe what is required for formal bidding.

(2)(A) When a department requests capital improvements on nonstate-owned facilities, they must consult with the Real Estate Services Section before proceeding.

(B) See also 22 CAR § 114-104(m).

(C)(i) The project manual shall be based on the CSI (Construction Specification Institute) format.

(ii) All items, equipment, materials, etc., shall be specified under each of the appropriate master format divisions.

(D) The original specifications shall be submitted using a standard size paper of eight and one-half inches by eleven inches (8 1/2" x 11") with a minimum of one-inch left side margin to be used for binding.

(E) Prior to approval by the Design Review Section of the project plans and specifications, departments must complete and return the Project General Information and Project Disclosure Statement forms to the Design Review Section.

(b)(1) Upon Design Review Section approval of the plans and specifications, the Construction Section shall notify the design professional to submit the Divisions "00" and "01" documents electronically to the Construction Section for review and approval.

(2) The Construction Section will coordinate with the design professional to:

(A) Set the bid date;

(B) Place legal advertising; and

(C) Receive and open bids.

(3) Billing for legal advertising will be sent to the requesting department.

(4) Bid dates shall not be set until the invitation to bid, bid forms, and Divisions "00" and "01" documents have been initially reviewed by the Construction Section.

(5) Bid openings shall not take place until the final set of bid documents have been approved by the Construction Section.

(6) The Construction Section shall furnish the department with the bid results.

(7) Upon the department's selection of a contractor, the department shall notify the Construction Section within the time frame established by the Construction Section in order to award the contract.

(8) A request for rebid may be approved upon sufficient justification.

(9) Bids shall expire as provided within the bid documents unless an extension of time is agreed upon by the lowest responsible bidder and the department.

(c) Intent to award.

(1) Once the Construction Section receives the department's selection of the responsible contractor, a contract will be prepared by the design professional (or by the department if the design professional is not under contract to perform such services) and submitted with the intent to award to the contractor.

(2) This enables the contractor to acquire the performance and payment bond and the applicable insurance policies/certificates and disclosure statements.

(3) The Building Authority Division will not approve a contract or change order until these documents are received by the Building Authority Division.

(d) Notice to proceed.

(1) Upon approval by the Construction Section, the Building Authority Division will retain the original contract documents and an electronic copy will be forwarded to the department official for disbursement, to the contractor and to the design professional.

(2) Design professionals who are responsible for contract administration shall:

(A) Coordinate the issuance of the notice to proceed; and

(B) Provide a copy to the Construction Section and department.

(e) Unless exempted, capital improvement contracts shall be awarded to the lowest responsible bidder.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-202. Contracts.

(a) Contracts for capital improvement, regardless of the source of funds involved, shall be issued in accordance with 22 CAR § 112-401 et seq.

(b) Capital improvement contracts for projects exceeding fifty thousand dollars (\$50,000) shall be approved by the Construction Section prior to the start of work and must specify the exact dollar amount to be paid.

(c) The dollar amount of the capital improvement contracts shall include, but is not limited to all:

- (1) Taxes;
- (2) Insurance;
- (3) Bonds; and
- (4) Freight costs.

(d) All contracts must include the:

- (1) Original contract document;
- (2) Insurance documents;
- (3) Executive Order 98-04 forms and any necessary approvals;
- (4) Illegal Immigrant Contract Disclosure form;
- (5) Israel Boycott Restriction Certification;
- (6) Proof of advertising (if placed by a non-Building Authority Division staff);

and

- (7) Original performance and payment bonds.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-203. Emergency contracting.

(a) Capital improvement contracting may be made pursuant to Arkansas Code § 22-9-201 where unforeseen or unavoidable circumstances occur, such as:

(1) When human life, health, safety, or state property is in jeopardy;

(2) To reconstruct facilities or construct new facilities and related site work due to fire, storm, riots, etc.;

(3) Construction or repairs to immediately needed equipment or facilities where delay would result in overall higher expenditures or cause the department to lose revenue due to not providing the service responsible for such as medical treatment, education, and military armories; or

(4) When unsuccessful bids (see 22 CAR § 112-331) occur and the Construction Section determines that additional advertising of bids would be futile.

(b)(1) The department shall invite a minimum of three (3) competitive bids, unless:

- (A) The emergency is critical (health, life, or safety);
- (B) An unfair advantage of exposed bid amounts has occurred; or
- (C) It involves a single source provider such as a public utility.

(2) In these instances, less than three (3) bids may be requested.

(3) If time does not allow, bids may be submitted via quote bid instead of sealed bids upon prior approval by the Construction Section.

(4) Prior to the invitation, departments shall provide the names of the proposed bidders to the Construction Section for verification of eligibility.

(5) Upon request by the Construction Section, departments shall provide justification on the merits of the invited bidder.

(6) Examples of justification may include:

(A) The contractor is familiar with the site or type of work due to previous work performed on the site;

(B) The contractor has completed several similar types of projects for the department;

(C) The contractor has sufficient resources to commit to the work to provide an immediate response;

(D) Due to the urgency and the scope of the emergency project, the contractor is geographically located close to the facility and will be able to provide a timely response;

(E) The contractor has the expertise necessary to complete the specialized scope for the emergency project;

(F) The department has sufficient favorable experience with the contractor; or

(G) Given the urgency of the project, the contractor has sufficient experience to obtain and coordinate the subcontractors necessary to expedite the work for a timely completion.

(c)(1) The Construction Section must be contacted in advance for prior written approval where time permits.

(2) Where time does not permit prior written approval, telephone, fax, or electronic mail approval must be obtained at the earliest practical date from the Construction Section.

(3) The Construction Section shall receive and record details on all telephone approvals.

(4) The Building Authority Division shall provide departments notice of its determination after a review of the department's justification is conducted.

(5) All project plans and specifications must be processed through the Design Review Section.

(6) Upon approval, the department, through coordination with the Construction Section, can process the bid and award the contract.

(7) Bids submitted by an uninvited bidder shall be rejected and returned unopened to the bidder.

(8) The following documentation is required when submitting an emergency contract for approval:

(A)(i) Written justification setting forth the circumstances of the emergency.

(ii) Departments may access emergency related documents on the division website;

(B) Bid security, if required in the bid documents;

(C) Insurance certificate;

(D)(i) Performance and payment bond issued in accordance with Arkansas laws and rules.

(ii) The bond must be filed in the county where the work is to be performed;

(E) List of subcontractors pursuant to Arkansas Code § 22-9-204;

(F) All other applicable documents required by law or rule;

(G) All drawings and the project manual on engineering projects which exceed fifty thousand dollars (\$50,000) and architectural projects which exceed one hundred thousand dollars (\$100,000) shall be stamped, sealed, and signed by the appropriate design professional; and

(H) One (1) original of the contract and related backup documentation.

(d) All contractors must be properly licensed with the Contractors Licensing Board (refer to Arkansas Code § 17-25-101 et seq.).

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-204. Sole source contracting.

(a)(1) Sole source on capital improvements will be approved only when there is a critical emergency involving imminent threat to health, life, or safety, or there are no other available sources to perform the required work.

(2) Sole source contracting may involve leases processed through the Real Estate Services Section in which the nonpublic lessor has the sole authority to approve contractors to perform work on nonstate property.

(3) Sole source contracting does not relieve the statutory requirements for license, insurance, and bonds, nor the requirement for processing all project plans and specifications through the Design Review Section.

(4) Departments shall submit a written request to the Construction Section setting forth the circumstances which justify their sole source request.

(5) If approved, the following documentation is required when submitting a contract for approval:

(A) A written request setting forth the circumstances which justify their sole source request;

(B) Bid security, if required by the bid documents;

(C) Insurance certificate;

(D)(i) Performance and payment bond issued in accordance with Arkansas laws and rules.

(ii) The bond must be filed in the county where the work is to be performed;

(E) List of subcontractors pursuant to Arkansas Code § 22-9-204;

(F) All other applicable documents required by law or rule;

(G) One (1) original of the contract and related backup documentation;
and

(H) All drawings and the project manual shall be stamped, sealed, and signed by the appropriate design professional.

(b) Departments may invite multiple bidders, as approved by the Building Authority Division, which involve proprietary specifications (as defined in 22 CAR § 110-106) because maximizing competition is the goal within the limited parameters of qualified sources.

(c) All contractors must be properly licensed with the Contractors Licensing Board (refer to Arkansas Code § 17-25-101 et seq.).

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-205. Split purchases.

(a) The Construction Section shall not condone splitting of purchases to avoid these listed bidding procedures.

(b) Notification shall be made to the Office of Internal Audit or other appropriate office whenever split purchases are determined to have been made.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-206. Capital improvements for leased premises (state and nonstate property).

See 22 CAR § 114-104 for department contracting of improvements when the state is not the owner of the leased premises.

Authority. Arkansas Code § 22-2-108.

Subpart 3. Bidding Rules

22 CAR § 112-301. Bidding rules generally.

(a) These bidding rules are applicable to all bids produced by the Building Authority Division, a design professional, or a department for state projects.

(b) In those instances where a department has not contracted for the administrative services of a design professional, the department is responsible for performing all administrative duties from project bidding through project closeout.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-302. Bidding prerequisites.

(a)(1) Before a department shall advertise for bids for construction, all requirements shall be met pursuant to the general accounting and budgeting laws and other applicable laws.

(2) Department officials (refer to 22 CAR § 112-103) shall follow these bidding rules when processing bids.

(b) Certification of project amount.

(1) Departments are responsible for ensuring they have sufficient appropriation and funding for the capital improvement project prior to the solicitation of bids.

(2) The amount certified on the project general information sheet is the amount appropriated defined in Arkansas Code § 22-9-203(h).

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-303. Plans and specifications.

(a)(1) Departments, through their design professional, shall ensure an adequate number of plans and specifications are made available to prospective bidders.

(2) One (1) set of specifications and half-sized drawings will be provided to the Construction Section within three (3) days of the first advertisement, or in the case of an emergency or sole source contract, prior to the issuance to bidders.

(3) Failure to do so may cause the delay or cancellation of the bid date.

(4) See 22 CAR § 111-1604 for plan disbursement requirements for the successful contractor at the award of contract.

(b)(1) All drawings and project manuals shall be stamped, sealed, and signed by the appropriate design professional.

(2) No drawing used for the construction project shall be allowed on the site stamped or otherwise marked as "Not for Construction" or any other similar term.

(3) The contractor will maintain a set of "Approved for Construction" drawings on the job site at all times.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-304. Advertising/prebid conference.

(a)(1) Once the plans and specifications have been given final approval by the Design Review Section, the capital improvement project shall be advertised pursuant to Arkansas Code § 22-9-201 et seq., and Arkansas Code § 19-4-1401 et seq.

(2) Proof of advertising shall be furnished to the Construction Section when the advertisement is not issued by the Building Authority Division.

(3) The department will be responsible for any advertising costs.

(b) Prebid conference/general.

(1) While prebid conferences are recommended, they are not mandatory unless so designated in the plans and specifications.

(2) Should a department determine that a prebid conference is to be conducted, it should be held at a time and place after the last advertisement has been published.

(3) Design professionals shall conduct the meeting and inform all prospective bidders on:

(A) The substantive elements regarding the project requirements;

(B) Special conditions; and

(C) Any other unique bidding requirements.

(4) Contact the Construction Section for additional prebid conference requirements or information.

(c) Mandatory prebid conference.

(1) Departments shall seek approval from the Construction Section by submitting justification as to the necessity of a mandatory prebid conference.

(2) Only those unique or special conditions shall warrant approval.

(3) Conditions which can be readily explained in the project manual, plans, or specifications, or all, shall not be sufficient justification for approval.

(4) Design professionals shall conduct the meeting and inform all prospective bidders on the substantive elements regarding:

(A) The project requirements;

(B) Special conditions; and

(C) Any other unique bidding requirements.

(5) Design professionals shall be responsible for establishing the official beginning of the meeting pursuant to the time stated in the bid documents.

(6) Failure to attend by the established official time and remaining until design professionals terminate the conference shall be grounds for bid rejection due to unresponsiveness for failure to attend the meeting in its entirety.

(7) However, should the mandatory conference fail to include for discussion the unique or special conditions approved for the mandatory prebid conference, then no bidders shall be rejected for failing to attend and the project shall be advertised for at least one (1) additional time and shall provide for a time and place for an additional prebid conference which shall not be mandatory.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-305. Bid announcements.

(a) Bid announcements and bid results are posted to the Building Authority Division website.

(b) Any interested bidder may sign up free-of-charge for email bid announcements by going to the division website.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-306. Bid date and location.

(a) Bid openings will be approved by the Construction Section only after receipt of the approval to bid letter from the Design Review Section.

(b) Bid openings are to be held on the premises of the Building Authority Division unless other locations are approved by the Construction Section.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-307. Sealed bids.

(a)(1) All bids shall be submitted in a sealed envelope.

(2) Bidders shall comply with Arkansas Code § 22-9-204 and the bid documents with respect to the listing of subcontractors.

(3) Every envelope should indicate the:

(A) Name of the bidder;

(B) Project;

(C) Project number; and

(D) Date and time of opening.

(4) Bidders utilizing a shipping courier such as FedEx, UPS, DHL, etc., should enclose the bid in an inner envelope with the above stated information listed.

(5) Upon receipt by the Construction Section or an approved alternate site, each bid shall be date and time stamped and held in a secure place until the bid opening.

(6) No bid may be surrendered to any person after it has been submitted except upon written request and authorization from that bidder.

(7) Refer to withdrawal of bids, 22 CAR § 112-324.

(b)(1) All capital improvement bids shall include all costs such as:

(A) Sales tax;

(B) Use tax;

(C) Permits; and

(D) Insurance.

(2) The contractor is responsible for determining these costs as part of its bid or any subsequent change order (if successful).

(3) The contractor's failure to determine these amounts correctly shall not be used as justification to increase the contract amount or change order.

(4) There are no provisions for a contractor to avoid taxes by using the tax-exempt number of any department.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-308. Authority for opening bids.

(a) The Building Authority Division is responsible for the supervision of opening bids unless the Construction Section has determined special justification exists, such as a critical emergency, allowing a department to open bids under 22 CAR § 112-103.

(b) The person authorized to read the bids shall first review the bid documents to determine if the bid is responsive.

(c) Items determining responsiveness include but are not limited to:

(1) Bid form is complete;

(2)(A) Applicable bid security is in the correct amount.

(B) If a bid bond is utilized as bid security, the agent's power of attorney as his or her authority shall be enclosed;

(3) Bid amount, numerically shown;

(4) Proper signatures;

(5) Addenda acknowledgement; and

(6) Applicable subcontractors are listed.

(d) Contractors submitting a bid must be licensed in accordance with the Contractors Licensing Board.

(e) If all documents appear to be properly submitted and executed, the official may proceed to read the bid.

(f) If any statutory formality is omitted, the bid should be declared nonresponsive and remain unread.

(g) Formalities other than statutory may be waived.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-309. Bid opening and recording.

(a)(1) Bids shall be opened and read by a representative of the Construction Section at the designated time and place.

(2) Representatives of the department are recommended to be present at the bid opening.

(3) The Construction Section representative is responsible for establishing the official expiration of time.

(4) In those instances where this is not practical or possible for the representative to attend the bid opening, the Construction Section may delegate this authority to a representative of the department.

(5) See 22 CAR §§ 112-306 – 112-308.

(b)(1) Bids may be opened in any order, but if listed on a prepared tabulation, they should be opened in such order.

(2) The review of licensure and bid security are the responsibility of the Construction Section or the department official depending upon which entity is conducting the bid opening (see 22 CAR § 112-103).

(3) The bid tabulation form must be sent to the Construction Section within two (2) working days of the bid opening.

(4) Refer to 22 CAR § 112-310 for bid tabulations.

(c)(1) After the bids are opened and reviewed, the Construction Section will send a letter to the department with the results of the bid opening along with the apparent low bidder's submission.

(2) The department must complete and return the Owner's Determination to Award form to the Construction Section designating one (1) of the following:

(A)(i) Bid acceptance.

(ii) The letter regarding the bid results must be completed and signed by the department.

(iii) The department shall return the original to the Construction Section;

(B)(i) Rejecting all bids and rebidding.

(ii) If the department wishes to reject all bids and rebid, it shall provide justification to the Construction Section.

(iii) Requests for rebids which contain revisions to the bid documents must be reviewed and approved by the Building Authority Division before a new bid date will be set;

(C)(i) Negotiation.

(ii) The Construction Section must be contacted before any negotiation can occur.

(iii) Unless the project was bid and awarded under the historic site laws, emergency contracting procedures, or the alternative delivery method, all negotiations shall be made pursuant to Arkansas Code § 22-9-203 and requirements under the minimum standards and criteria unless exempted by law; or

(D)(i) Bid or award cancellation.

(ii) Departments shall provide written justification to the Construction Section for cancellations of a bid opening or award of contract.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-310. Bid tabulation.

(a) If bids are opened by the department, all tabulations must be sent (faxed, mailed, or electronic mail) to the Construction Section within two (2) working days of the bid opening.

(b) Bid tabulations must contain the following information which includes but is not limited to:

- (1) The date and time of the bid opening;
- (2) The project number;
- (3) The amount of the bid;
- (4) The contractor names;
- (5) Whether a bid security was included along with the bid security amount;

and

- (6) The listing of any applicable subcontractors.

(c) The Construction Section will determine the responsiveness of all submitted bids.

(d)(1) Determination of the lowest responsible bidder is the responsibility of the department.

(2) The Construction Section will complete the official bid tabulation upon the determination.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-311. Scrivener errors.

(a) Rejection of a bid due to scrivener error may be made pursuant to Arkansas Code § 19-4-1405.

(b) The criteria under this law must be met before a bidder may receive relief including, but not limited to, serving written notice to the Director of the Building Authority Division any time after the bid opening, but no later than seventy-two (72) hours after receiving the intent to award, excluding Saturdays, Sundays, and holidays.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-312. Contractor's license.

(a) Pursuant to Arkansas Code § 17-25-101 et seq., for all state capital improvement projects including residential projects, each contractor, including commercial, residential, and residential remodeler, is required to be properly licensed with the Contractors Licensing Board and should indicate on the bid form the current license number as issued by the applicable licensing entity.

(b) The Construction Section is responsible for licensure verification as well as the department official performing the bid opening pursuant to 22 CAR § 112-103.

(c) Nothing in this section shall be construed to limit the authority of Arkansas Code § 17-25-315.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-313. Bid security.

(a)(1) All bids received shall be accompanied by a bid security for all bids exceeding fifty thousand dollars (\$50,000).

(2) Acknowledgement of the bid security shall be made verbally.

(3) The official reading of the bids shall indicate the bid security amount and the form of security as either a cashier's check or a bid bond.

(4) The official shall review and verify the bid security including without limitation:

(A) An approved surety listed on the current United States Department of the Treasury's Listings of Approved Sureties;

(B) An applicable agent licensure; and

(C) A power of attorney.

(5) Arkansas Code §§ 19-4-1405, 22-9-203, and Arkansas Code § 22-9-401 et seq., govern bid securities for capital improvements.

(b)(1) Failure to execute a contract, including all required documentation (see 22 CAR § 112-202), within the time specified in the bid documents following the issuance of the intent to award shall be just cause for the cancellation of the award and forfeiture of the bid security.

(2) Any forfeiture shall become the property of the department, not as a penalty but in liquidated damages sustained.

(3) Award may then be made to the next lowest responsible bidder or the work may be rebid and constructed under contract or otherwise as the state determines.

(4) The responsible low bidder who fails to execute the contract will not be considered for an award of contract on any subsequent bid of that project.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-314. Subcontractors' bids.

(a) The listing of subcontractors on the form of proposal shall be made pursuant to Arkansas Code § 22-9-204 and the bid documents.

(b) The designated official as stated in 22 CAR § 112-309 shall verify the licenses of the applicable subcontractors listed.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-315. Alternates.

State projects under Building Authority Division jurisdiction shall not include the use of deductive or additive alternates.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-316. Contract award.

(a)(1) Once the bid results are determined and the department has requested to enter into a contract, an intent to award a contract shall be prepared by the entity who has contract administration duties.

(2) A contract will not be issued until a performance and payment bond is received in accordance with Arkansas Code § 18-44-501 et seq., and Arkansas Code § 22-9-401 et seq., and other applicable documents are properly executed and received.

(b)(1) Contracts shall be awarded pursuant to all applicable laws including Arkansas Code § 19-4-1401 et seq., and Arkansas Code § 22-9-201 et seq.

(2) No capital improvement contract shall be awarded to other than the lowest responsible bidder.

(c)(1) The Construction Section shall retain the original of the contract.

(2) Copies of the contract, the performance and payment bond, certificates of insurance, and disclosure and certification statements will be forwarded to the department project coordinator upon Building Authority Division approval for disbursement.

(3) Upon approval, the design professional may issue the notice to proceed to the contractor.

(4) The Construction Section shall receive a copy of the notice.

(d) The state reserves the right to rescind the award of any contract at any time before the execution of the contract by the parties and approval of the division without any liability against the state.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-317. Davis-Bacon Act of 1931 (federal funds).

(a)(1) The Davis-Bacon Act of 1931, pursuant to 40 U.S.C. 276(a) et seq., grants to the United States Secretary of Labor the power to determine wage rates paid to laborers and mechanics of contractors and subcontractors engaged in any construction activities supported by federal funds.

(2) The Davis-Bacon Act of 1931 and related acts provide prevailing wage protection to workers on federally funded construction projects.

(3) These laws require the payment of locally prevailing wage rates and fringe benefits to employees of contractors or subcontractors performing work on federally financed or assisted construction projects valued at more than two thousand dollars (\$2,000).

(4) Under the provision of the Davis-Bacon Act of 1931, the contractor or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character.

(5) The Davis-Bacon Act of 1931 directs the United States Secretary of Labor to determine such locally prevailing wage rates.

(b) Departments are responsible for providing specific federal regulations, guidelines, and procedures as directed by their federal grantor or funding source to the design professional or any party that will publish work requiring the expenditures of federal funds.

(c) The advertisement of the notice for such projects and the invitations for bids shall state that federal funds are being used and that Davis-Bacon Act of 1931 wage rates will apply.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-318. [Reserved.]

22 CAR § 112-319. Contractor's insurance requirements.

(a)(1) Dollar amounts and types of coverage limits for all insurance policies shall be set by the department.

(2) Deviations from the types of insurance and amounts set less than what is stated below shall be documented by the department and maintained in the Construction Section project file.

(3) Before a department enters into a contract for the construction or alteration of facilities or repairs to existing buildings, grounds, or facilities, it shall ensure that the contractor has complied by showing proof that the following insurance requirements have been met.

(b) The contractor shall purchase and maintain such insurance as will protect him or her from claims set forth which may arise out of or result from the contractor's operations under the contract, whether such operations be by himself or herself or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

(c) Builder's risk insurance.

(1) The contractor shall procure and maintain during the term of contract builder's risk insurance or installation floater insurance, and any extended coverage which shall cover damage for capital improvement projects.

(2) Perils to be insured are fire, lightning, vandalism, malicious mischief, explosion, riot and civil commotion, smoke, sprinkler leakage, water damage, windstorm, hail, and property theft on the insurable portion of the project on a one-hundred-percent completed value basis against damage to the equipment, structures, or materials.

(3) **Exception.** Contract documents which do not require coverage based upon inapplicable coverage (such as civil engineering projects, demolition, or abatement work).

(d) **General requirements.**

(1) While it is not a requirement, it is recommended departments accept policies issued by an insurer which has a claims paying ability rating of not less than "B+" or better as to claims paying ability by A.M. Best or not less than "A" by Standard and Poors rating service, or has an equivalent rating as established by one (1) other nationally recognized statistical rating organization satisfactory to the department.

(2) All policies shall contain a waiver of subrogation against the owner, owner's lenders ("lender"), and any designate agent of the representative of the owner ("owner's agent").

(e) **Cancellation/notification provisions.** Each insurance policy shall contain a clause providing that it shall not be canceled by the insurance company without written notice to the owner of intention to cancel that is in accordance with Arkansas Code § 23-66-206.

(f) **Proof of insurance.**

(1) Building Authority Division approval of contract shall be conditional upon the contractor providing proof of insurance to the owner.

(2) The contractor shall be financially responsible for all deductibles or self-insured retentions.

(g) **Equipment and materials.** The contractor shall be responsible for any loss, damage, or destruction of its own property or that of any subcontractor's equipment and materials used in conjunction with the work.

(h) **Subcontractors.**

(1) The contractor shall require all subcontractors to provide and maintain general liability, automobile, and workers' compensation insurance coverage substantially similar to those required of the contractor.

(2) The contractor shall require certificates of insurance from all subcontractors as evidence of coverage.

(3) The contractor will be the responsible party for all claims by subcontractors if a subcontractor fails to have appropriate insurance.

(i) **Contractor's insurance requirements.**

(1) **Commercial general liability.**

(A) The contractor shall, at the contractor's expense, obtain and keep in effect during the term of the contract commercial general liability insurance covering bodily injury and property damage containing minimum limits of one million dollars (\$1,000,000) written on a per-occurrence form with a two-million-dollar aggregate limit.

(B) This insurance shall include personal injury coverage with employment exclusion deleted and contractual liability.

(C) Such coverage shall include products and completed operations and shall not be excluded under the commercial general liability insurance.

(D) Nothing shall prohibit a department from requiring increased amounts than stated herein.

(2) **Umbrella liability.**

(A) The contractor shall be required to furnish and keep in effect during the term of the contract umbrella liability coverage which provides excess limits over the primary coverages.

(B) Departments must refer to the recommendation of the Risk Management Division of the State Insurance Department on the minimum amount of coverage.

(3) **Automobile liability.** The contractor shall obtain, at the contractor's expense and keep in effect during the term of the contract, automobile liability insurance including hired and nonowned coverage in minimum amounts of one million dollars (\$1,000,000) per occurrence.

(4) **Workers' compensation and employers' liability.** The contractor, its subcontractors, and all employees providing work, labor, or materials used in connection with this work.

(5) **Contractor's equipment.**

(A) The contractor shall be responsible for any loss, damage, or destruction of its own property or that of any subcontractor's equipment and materials used in connection with this work.

(B) The contractor shall purchase, at the contractor's sole cost and expense, insurance necessary to cover the contractor's owned property.

(C) The contractor shall provide waiver of subrogation to the owner.

(6) Pollution liability.

(A) If requested by the owner at any time, the contractor shall, at the contractor's sole cost and expense, obtain and maintain for the term of the contract pollution liability insurance covering losses caused by pollution conditions resulting from performance of the contract.

(B) This requirement also applies to any consultant or subcontractor engaged by the contractor or performing construction, geotechnical, well drilling, abatement activities, or contractor services.

(C)(i) Pollution liability insurance shall cover owner costs and liabilities attributable to:

(a) Bodily injury;

(b) Property damage, including loss of use of damaged property or of property that has not been physically injured;

(c) Cleanup cost; and

(d) Defenses, including costs and expenses (including attorney's fees) incurred in the investigation, defense, or settlement of claims.

(ii) The contractor shall maintain such insurance in an amount of at least two million dollars (\$2,000,000) per loss with an annual aggregate of at least five million dollars (\$5,000,000).

(iii) Nothing shall prohibit departments from increasing this insurance limit.

(7) If coverage is written on a claims-made basis, the contractor represents that any retroactive dates applicable to coverage under the policy precedes the effective date of the letter, and that continuous coverage will be maintained, or an

extended discovery period will be exercised for a period of three (3) years or as required by law beginning from the time that services under the contract are completed.

(8)(A) If the scope of work as defined in this contract includes the disposal of any hazardous or nonhazardous materials from the project site, the contractor must furnish the owner with evidence of pollution liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this contract.

(B) Such coverage must be maintained in amounts conforming to applicable:

- (i) Laws;
- (ii) Rules; and
- (iii) Regulations.

(9) Remediation.

(A) A remediation contractor shall provide liability insurance for the removal or remediation of asbestos, including the transportation and disposals of asbestos waste materials from the project site.

(B) Limits of insurance shall be not less than those required under the commercial general liability policy.

(C) Depending on the nature and amount of asbestos to be removed/abated, the owner may request higher limits than those required by the commercial general liability policy.

(10) **Additional requirements.** All policies shall be provided by insurers qualified to write the respective insurance in the State of Arkansas and be in such form and include such provisions as are generally considered standard provisions for the type of insurance involved.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-320. Acknowledgement of addenda.

(a)(1) Every effort should be exerted to eliminate bid addenda.

(2) If addenda are necessary, they should be issued as soon as possible but no later than twenty-four (24) hours before receiving bids.

(b) Upon approval by the Construction Section, an addendum which only sets a later bid date may be issued any time before time has been called for the opening of bids.

(c)(1) In the event an addendum requires changes in the scope of the project, an appropriate extension of the bidding period should be granted.

(2) Changes in the scope of the work or specifications shall require review and approval by the Design Review Section.

(d)(1) Design professionals are responsible for the issuance, not receipt, of any addenda and related documentation.

(2) Issuance shall be by fax, hand delivered, electronic notification, or picked up by potential bidders who received plans and specifications from the official plan distribution entity.

(e) No addenda shall be issued without the prior approval of the Construction Section.

(f) Any addenda must be acknowledged on the bid form and the acknowledgment shall be stated during the reading of the bids.

(g) Failure by the bidder to acknowledge all addenda shall be considered a nonresponsive bid.

(h) While failure to acknowledge all addenda renders a bid nonresponsive, failure to acknowledge addenda which only sets a later bid date or time, or both, shall not be deemed to be nonresponsive.

(i) Bidders are responsible for verifying whether any addenda were issued prior to submitting a bid.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-321. Contract time.

(a) The period of time allocated for the substantial completion of the work shall be stated as a calendar date or as a specific number of calendar days.

(b) The department, with input from the design professional, shall decide on the liquidated damages for failure to meet the substantial completion deadline.

(c)(1) The liquidated damages shall be included in the project specifications.

(2) Refer to 22 CAR § 112-404.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-322. Late bids.

(a) All bids received shall be recorded by date and time on the sealed bid envelope.

(b) The recorded date and time shall be determinative regarding issues of lateness.

(c) Bids received at the office designated in the invitation to bid, but after the time has been called for receipt, will not be considered, unless it is determined that the late receipt was due solely to mishandling by the state after receipt at the state office designated in the invitation.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-323. Modification of bids.

(a) Bidders may submit written modifications to their bid at any time prior to the exact time set for receipt of bids.

(b) Modifications may be made on the bidder's envelope.

(c) No modifications made shall show the base bid amount.

(d) The bidder must sign any bid modification.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-324. Withdrawal of bids.

(a) Withdrawal of bids is authorized by fax to the Construction Section, but only if the withdrawal is made prior to the exact time set for receipt of bids.

(b) A bid may also be withdrawn in person by a bidder, or bidder representative, provided the bidder's identity is made known and a receipt for the bid is signed by the bidder or bidder representative, but only if the withdrawal is made prior to the exact time set for receipt of bids.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-325. Qualifications of contractors.

(a) Prebid.

(1) Pursuant to Arkansas Code § 22-9-105, contractors who have an existing contract shall not bid on additional state capital improvement contracts with state departments if the state department determines that the contractor has one (1) or more material issues in an existing contract and has provided written notification of their determination to the contractor.

(2)(A) Material issues include, but are not limited to having one (1) or more projects in which:

(i) The commencement of the project is delayed thirty (30) or more calendar days beyond the department's notice to proceed and the delay is due to the contractor's acts or omissions;

(ii) The completion of the project is delayed ten percent (10%) or sixty (60) calendar days beyond the completion date, whichever is less, and the delay is due to the contractor's acts or omissions;

(iii) The contractor has falsified or destroyed documents relating to the contract including without limitation falsification of invoices, making false representations to state department officials, or making false statements about any payment or payments;

(iv) The contractor has failed to replace inferior or defective work or materials after notification by the state department to which such services or materials have been provided or delivered;

(v) The contractor has failed to make appropriate and timely payments to their subcontractor;

(vi) The department has provided formal notice to the surety to take action on a project;

(vii) The contractor has failed to meet the completion date for the project which has caused material harm, whether financial or operational, to the department when the delay is due to the contractor's acts or omissions;

(viii) The contractor fails to adequately complete the project punch list within one hundred twenty (120) calendar days from substantial completion and the delay is due to the contractor's acts or omissions; or

(ix) The contractor fails to respond to warranty issues or latent defects within ten (10) calendar days after being notified by the department in writing.

(B)(i) Appeals of material issues determinations by state departments shall be made to the State Procurement Director or his or her designee.

(ii) **Substantive requirements.** An appeal must set forth facts showing that the appellant is a firm that has an existing state contract with a state department and the factual basis for appealing the material issues determination by the state department.

(iii) **Formal requirements.**

(a) An appeal must be submitted in writing to the director.

(b) To expedite handling of appeals, if delivered by mail, the envelope containing an appeal should be clearly labeled "Appeal of Material Issues Determination".

(c) Appeals delivered by email should be identified as an "Appeal of Material Issues Determination" in the subject line and marked as important.

(d) An appeal shall include as a minimum the following:

(1) The name and address of the appellant (or the appellant's attorney);

(2) Appropriate identification of the contract by reference to its number if a number has been assigned; and

(3) Unless good cause is shown for its absence, a copy of any documents or supporting evidence upon which the appeal is based attached to or enclosed with the appeal as an exhibit.

(e) Where such documents or supporting evidence substantiating any claims made in an appeal are believed or known to exist but are not available with reasonable diligence to include as an exhibit within the time for submitting a protest, the anticipated documents must be described in the protest to explain how they are expected to support the appeal and when the appellant reasonably anticipates they will be available, if ever.

(f) Failure to provide such supporting exhibits without good cause or within a reasonable time may result in the appeal being denied.

(iv) **Timeliness.** To be timely, an appeal must be submitted in writing to the director within fourteen (14) calendar days after the written determination was delivered to the contractor pursuant to subdivision (a)(2)(C) of this section, below.

(v) **Burden of supporting an appeal and supplying requested information.**

(a) A contractor submitting an appeal has the burden of stating facts showing that the appellant has a factual basis for the appeal.

(b) In determining an appeal, the director may, but has no duty to, request an appellant or other interested party to submit documentation or information relevant to the appeal.

(c) Failure of any person to comply expeditiously with a request for documents or information by the director when determining an appeal may result in the appeal being determined without consideration of the requested information.

(d) Delivery of requested documents or information after three (3) business days from the request is generally not considered expeditious, but the director may allow additional time for good cause.

(vi) **Claims of damages or questions of law.**

(a) When an appeal claims damages or questions of law, the contractor should submit a claim through the State Claims Commission.

(b) The commission regulates the procedure by which such claims are submitted and determined.

(vii) **Decisions.**

(a) The decision of the director regarding an appeal under this part is final and conclusive.

(b) Decisions shall be issued by the director in writing, state the reasons for the decision, and be mailed or otherwise furnished to the appellant and interested parties.

(C)(i) The state departments under the jurisdiction of the Building Authority Division shall promptly notify and provide their written determination to the contractor and provide a written copy to the Construction Administrator.

(ii) State departments shall provide written notification to the Building Authority Division if an appeal in subdivision (a)(2)(B) of this section, above, is not timely filed or if the appeal is overruled in favor of the contractor.

(iii) Upon receipt of this notification, the Construction Section shall place the name of the prohibited bidder on the Building Authority Division website.

(iv) The prohibition shall not be for a period of more than three (3) years and shall remain effective until the state department's written notification to the Building Authority Division that the material issue or issues affecting the existing contract is no longer a concern for the state department or the contract has been terminated or closed out, whichever is sooner.

(D)(i) Institutions of higher education shall promptly notify and provide a written determination to the contractor and copy the Division of Higher Education.

(ii) Institutions of higher education shall provide written notification to the Division of Higher Education if an appeal in subdivision(a)(2)(B) of this section, above, is not timely filed or if the appeal is overruled in favor of the contractor.

(iii) Upon receipt of this notification, the Division of Higher Education shall place the name of the prohibited bidder on its website.

(iv) The prohibition shall not be for a period of more than three (3) years and shall remain effective until the institution of higher education's written notification to the Division of Higher Education that the material issue or issues affecting the existing contract is no longer a concern for the institution of higher education or the contract has been terminated or closed out, whichever is sooner.

(b) Post-bid.

(1) Contract awards should be made to the lowest responsible bidder.

(2) Breaches of responsibility may include without limitation:

(A) Conviction of a criminal offense in connection with obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(B) Conviction under federal or state law of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity;

(C) Conviction under federal or state antitrust;

(D) Violation of contract provisions, as set forth below:

(i) Failure to perform in accordance with the specifications or within the time limit provided in the state capital improvement contract; or

(ii) Failure to perform or unsatisfactory performance in accordance with the terms of one (1) or more contracts;

(E) Failure to post bid or performance bonds as required by laws or rules;

(F)(i) Substitution of work or materials without the prior written approval of the department and the design professional.

(ii) However, these approvals shall not in any manner diminish the Construction Section's approval of change orders;

(G) Failure to replace inferior or defective work or materials after notification by the department or the Construction Section to which such services or materials has been provided or delivered;

(H) Refusal to accept a contract awarded pursuant to the terms and conditions of the contractor's bid;

(I) Falsifying invoices or making false representations to any department or state official or untrue statements about any payment under a contract or to procure award of a contract or to induce a modification in the price or the terms of a contract to the contractor's advantage;

(J) Collusion or collaboration with another contractor or contractors in the submission of a bid or bids that results in, or could result in, lessening or reducing competition for a bid;

(K) Falsifying information in the submission of any document in any process related to the capital improvement project;

(L) Failure to make appropriate and timely payments to their subcontractors; or

(M) Any other act or omission the department determines to demonstrate that the contractor cannot act in a responsible manner, including but not limited to suspension or debarment by any other governmental entity for any cause, which may include but is not limited to contractors who are suspended or debarred by the Department of Labor and Licensing or deemed unqualified by the Contractors Licensing Board.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-326. Obligations of bidders.

(a) Each bidder will be presumed to have read and be thoroughly familiar with the plans and contract documents, including all addenda.

(b) Failure to do so is solely at the bidder's risk.

(c) The failure or omission of any bidder to examine any form, instrument, or document shall in no way relieve the bidder from any obligation in respect to the bid.

(d) Capital improvement projects are not tax exempt.

(e) Failure of the successful bidder to determine the applicable taxes shall not be justification to increase the contract amount.

(f) See also 22 CAR § 112-307(b).

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-327. Additions to or deletion from the documents.

(a) All deletions, changes, additions, or alterations of the bid documents will be acknowledged and read aloud.

(b) If such modifications are not waived, the bid shall be declared nonresponsive and rejected.

(c) Corrections or change of figures must be noted and, unless initialed by authorized officials, shall be sufficient grounds for rejection.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-328. Announcing low bidder.

(a) Until such time as the bids have been reviewed and certified, any announcement or reference to the low bidder will use the phrase "apparent low bidder".

(b) Contract awards should not be made on the day of bid opening except in special cases and approved by the Construction Section.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-329. Protests.

(a)(1) Any actual or prospective bidder who is aggrieved in connection with the project documents or award of a capital improvement contract has the right to protest

to the Construction Section Administrator or the department that opened and read the bid pursuant to 22 CAR § 112-103.

(2) The protest shall be submitted in writing within five (5) business days after the bid opening.

(3) In the event a bidder is declared nonresponsive or rejected after the five-day period, the bidder shall have three (3) business days from the declaration to submit a protest.

(4) All protests shall identify the project by bid number or with sufficient detail to identify the project and shall, with specificity, set forth the allegations of the acts or omissions related to the protest.

(5) Since time is of the essence in award of all capital improvement contracts, protests and their resolutions shall be resolved promptly.

(6) The Building Authority Division shall be informed of protests to department officials and of their responses.

(7) Subcontractors or suppliers are not considered bidders under this section.

(8) Only official representatives of the actual or prospective bidder may submit a protest.

(9) 22 CAR § 112-301 et seq., shall not be construed as a waiver of the state's right to reject any or all bids and to waive any formalities.

(b)(1) Any and all protests regarding the department determination of the lowest responsible bidder shall be made to the department with a copy to the division in the timeframe stated above and in accordance with 22 CAR § 112-330.

(2) Protests involving prohibited bidders shall be made pursuant to 22 CAR § 112-325.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-330. Resolution of protest.

The Construction Section Administrator and the department official performing the bid opening or a designee shall have authority to settle or resolve a protest of an

aggrieved actual or prospective bidder concerning the project bid documents, solicitation, or award of a contract.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-331. Unsuccessful bid.

In the event no responsive bids are received or the bidders are deemed not responsible, and it is determined by the Construction Section that further solicitation of bids would be futile, the contract may be awarded to any available qualified contractor only after obtaining the approval of the Construction Section Administrator or designee.

Authority. Arkansas Code § 22-2-108.

Subpart 4. Contract Administration

22 CAR § 112-401. Contract administration generally.

22 CAR § 112-401 et seq., is applicable to all department capital improvement projects regardless of whether a design professional has contract administration duties or not.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-402. Construction observations.

(a)(1) The Construction Section has the responsibility of periodic construction observations on all projects unless exempted.

(2) If the department has capital improvement project issues which need to be addressed involving the contractor or the project, the department should immediately notify the Construction Section.

(3) Preconstruction meetings should include Building Authority Division personnel.

(4) Notification of preconstruction meetings shall be provided to the Construction Section five (5) calendar days prior to the meeting.

(b)(1) When the project is presumed to be complete, the Construction Section shall be notified by the design professional so that the certification of final completion may be signed by the parties, including the division.

(2) Notification shall be provided to the Construction Section five (5) calendar days prior to the certification of final completion.

(3) Final pay requests and release of retainage will not be approved by the Construction Section until all closeout procedures have been completed.

(4) See 22 CAR §§ 112-501 – 112-505.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-403. Invoice/pay request.

(a)(1) All invoices and pay requests shall be submitted to the department and processed in accordance with Arkansas Code § 19-4-1401 et seq., and Arkansas Code § 22-9-201 et seq.

(2) If the invoice or pay request is for partial pay, then the amount of retainage pursuant to Arkansas Code § 22-9-601 et seq., shall be withheld and shown on the invoice or pay request.

(3) No amount of the retainage shall be released until the conditions under the law are met.

(4) If the invoice or pay request is for full payment, no retainage is withheld.

(b) The following shall accompany any partial releases of retainage for phased work as well as the final pay request:

(1)(A) An affidavit from the contractor stating that other than those noted written exceptions, no existing debts are owed and that all payments due to subcontractors or suppliers have been made regarding the capital improvement project.

(B) The contractor shall submit a copy with the final invoice or pay request to the department.

- (C) The agency shall then submit a copy to the Construction Section;
- (2) Approval of the surety company for final payment to the contractor shall not relieve the surety company of any of its obligations;
- (3) Retainage release pay request package prepared by the appropriate entity and submitted to the Construction Section, including:
 - (A) Final invoice or pay request indicating retainage release executed by the:
 - (i) Contractor;
 - (ii) Design professional; and
 - (iii) Department;
 - (B) One (1) copy of the certificate of substantial completion or approved phased substantial completion; and
 - (C) Letter from the design professional verifying that all punch list items have been completed by the contractor, and approving the following, if applicable:
 - (i) Commencement date of the contractor's warranty period shall become effective on the date of substantial completion and shall not be less than one (1) year;
 - (ii) Roof installer's or roofs installers' warranty and the manufacturer's warranty, if specified;
 - (iii) Termite inspection certificate;
 - (iv) Operational and maintenance manuals;
 - (v) Certificate of air balance; and
 - (vi) As-built markup prints and shop drawings provided by the contractor for use by the design professional in the preparation of record drawings (not required for phased completions); and
- (4)(A) Certification of final completion.
 - (B) Certification of final completion will occur when the contractor, design professional, owner, and the Building Authority Division have signed and certified that the project meets final completion which includes all phases of the work, closeout documentation has been provided, and punch list items are complete.

(C) A meeting with representatives from the parties above shall occur on site prior to any project final certification (not required for phased or intermittent completions which do not require release of retainage).

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-404. Liquidated damages.

(a) Any liquidated damages owed by the contractor to the department for delay in project completion will be calculated by multiplying the amount per day of liquidated damages specified in the contract documents by the number of days which occur between the contract completion date (as amended by applicable change orders) and the date of issue of the certificate of substantial completion.

(b) Deductions for liquidated damages may be deducted from the final pay request.

(c) Prior to final payment approval and retainage release, the department shall provide to the Construction Section written documentation and justification regarding any assessment of liquidated damages.

(d) The final payment will be reflective of such actions.

(e) The department, with input from the design professional, shall decide on the amount of liquidated damages and the amount of such damages to be included in the project specifications.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-405. Design professional contract administration responsibilities.

(a)(1) After the design professional has received written approval from the Building Authority Division that the project has been approved for bid, the Construction Section shall set a bid opening date, time, and place prior to advertising for bids.

(2) Department officials, pursuant to 22 CAR § 112-103, shall coordinate bid dates with the Construction Section.

(3) Bids shall be solicited for the project in accordance with Arkansas laws and rules (refer to 22 CAR § 112-201(b)).

(b)(1) One (1) copy of half-size plans and specifications shall be provided to the Construction Section within three (3) business days after the first advertisement or plan/specification disbursement.

(2) Failure to do so may cause a delay or cancellation of the bid opening.

(3) Any addenda to the plans and specifications must be reviewed and approved by the Construction Section prior to issuance.

(4) Design professionals shall submit addenda requiring a change in the scope of work in sufficient time to allow for appropriate division review and comment.

(c)(1) If the bid plans and specifications have been modified during negotiations (after the bid opening but prior to the award of contract), then one (1) set of the modified plans and specifications shall be furnished to the Design Review Section for review and approval.

(2) Upon approval, a set of the final construction documents issued shall be provided to the Construction Section.

(3) Additionally, any modifications to the plans and specifications after the award of contract shall be submitted to the Design Review Section for review and approval.

(4) Upon approval, a set of plans and specifications shall be furnished to the Construction Section.

(d)(1) Detailed instructions for design professionals can be found in 22 CAR § 111-101 et seq.

(2) The Construction Section will not approve bid opening time, place, or date without final plan review and approval from the Design Review Section.

(3) Observation reports shall be submitted by the design professional (refer to 22 CAR §§ 111-202, 111-207, and 111-1606).

(4) For payment of professional services, see 22 CAR § 111-309.

(e) Design professionals will complete all other contract administrative duties and responsibilities as noted in this subchapter and all other standard services and responsibilities pursuant to their professional services contract.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-406. Award of contract.

(a)(1) After the lowest responsible bidder has been determined, a letter of intent to award a contract may be issued by the design professional.

(2) Once issued, a contract is to be submitted to the Construction Section for approval with one (1) complete set of contracted plans and specifications (see 22 CAR § 112-407).

(3) A notice to proceed shall not be issued nor shall any work commence unless the contract has been approved by the Construction Section.

(b)(1) No capital improvement contract shall be awarded to other than the lowest responsible bidder.

(2) If the apparent low bidder is not determined to be the lowest responsible bidder, agencies should contact the Construction Section.

(3) Refer also to 22 CAR § 112-316.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-407. Construction contracts.

(a)(1) The design professional will prepare the construction contract and, after execution by the contractor and agency, the one (1) original along with the appropriate documents shall be forwarded to the Construction Section for review and approval.

(2)(A) The following information shall be submitted.

(B) Bonds, insurance certificates, proof of advertising (if placed by the department or design professional), Executive Order 98-04 forms and any necessary

approvals, Immigrant Contract Disclosure form, and the Boycott Restriction Certification shall accompany the contract.

(3) The Construction Section will review and approve or disapprove all construction contracts.

(4) The Building Authority Division contract number shall be used in pay requests, payments, correspondence, etc., pertaining to the contract.

(b)(1) The Construction Section will retain the original set of documents and an electronic copy will be forwarded to the:

- (A) Department project coordinator for disbursement;
- (B) Contractor; and
- (C) Design professional.

(2) The design professional shall issue a notice to proceed.

(3) Within ten (10) business days after the notice to proceed, the contractor shall submit a complete breakdown of the project cost (schedule of values) and project schedule to the design professional who shall provide a copy to the department and the Construction Section.

(4) No payment shall be made to the contractor until the breakdown of project costs and project schedule are provided.

(5) The contractor shall deliver to the owner and the Construction Section a copy of the required disclosure forms along with a statement of the listed subcontractors' contract amounts and the subcontractors' required disclosure forms.

(c)(1) The division construction project file shall contain:

- (A) Copies of bonds;
- (B) Contracts;
- (C) Certified bid tabulation;
- (D) Insurance certificates;
- (E) Design professional agreements;
- (F) Proof of advertising;
- (G) Change orders;
- (H) Observation reports;

- (I) Processing of final payment requests; and
- (J) The applicable disclosure forms and documents.

(2) Documentation reflecting justification and approval shall also be contained in the project file if the contract was made pursuant to:

- (A) Historic preservation;
- (B) Alternative delivery;
- (C) Sole source; or
- (D) Emergency procedures.

(d)(1) Refer also to 22 CAR §§ 112-316 and 112-504.

(2) Refer to 22 CAR § 112-409 for information regarding contract change orders.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-408. Preconstruction conferences.

(a) A member of the Construction Section may be available for preconstruction conferences.

(b) All notices of conferences specifying the time, date, and location shall be delivered to the Building Authority Division no later than five (5) working days before the scheduled conference date.

(c) Conferences shall be conducted at a location convenient to the site (department decision) with all parties (division, department project coordinator, contractor, and design professional) involved.

(d) All information significant to the project should be made available for discussion such as:

- (1) Subcontractors;
- (2) Applications for payments;
- (3) Payment procedures;
- (4) Change order process;
- (5) Construction time schedule;

- (6) Project superintendent or superintendents; and
- (7) Safety procedures.

(e) The design professional shall provide the minutes of these proceedings to the parties involved.

(f) The design professional shall deliver a copy of the minutes including the sign-in sheet to the Construction Section within five (5) business days of the meeting.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-409. Change orders.

(a)(1) A change order is an amendment to the original contract that may include, but is not limited to, changes in the dollar value of the contract or the time for completion.

(2) Change orders shall be submitted for approval to the Construction Section after an agreement regarding the change is reached by the:

- (A) Department;
- (B) Design professional; and
- (C) Contractor.

(3) A change order is not effective until approved by the Construction Section.

(4) Emergency change orders may be effective by following the same rules as emergency contracts.

(5) The distribution of change orders will be the same as the original contract.

(b)(1) Along with the change order form, the department or authorized representative must submit documentation outlining all changes including:

- (A) The work to be accomplished or deleted;
- (B) Any revisions to the contract time; and
- (C) The exact dollar amount.

(2) In addition to the Construction Section's review and approval of the change order, the Design Review Section shall review and approve any changes regarding the scope of the project within its jurisdiction.

(3) Submittals shall be with one (1) original along with the appropriate supporting documentation.

(c)(1) The design professional shall prepare the change order and coordinate execution by the:

- (A) Contractor;
- (B) Department; and
- (C) Design professional.

(2) After the signatures have been received, the Construction Section will determine if the documentation is in order and approve the change order accordingly and provide an electronic copy to the department project coordinator for disbursement to the contractor and to the design professional.

(3) The Construction Section shall maintain the original change order.

(4) If proper documentation is not provided, the change order will be returned to the sender.

(d) Change orders shall be approved by the Construction Section before work is done unless prior approval by the Construction Section has been granted.

(e)(1) The Construction Section shall not be responsible for the review or approval of change orders on exempt contracts (refer to 22 CAR § 112-102) unless the change order increases the total contract amount to more than the exempt amount.

(2) If the exempt contract is increased to more than the exempt amount by a change order, the department shall seek approval from the Construction Section by submitting the original contract or purchase order along with justification for the increase.

(3) Under no circumstances shall an agency abuse this process to subvert any law or rule relating to capital improvements.

(f) All drawings pertaining to the work referenced within the change order shall be stamped, sealed, and signed by the appropriate design professional prior to submission to the Building Authority Division.

(g)(1) The documentation for change orders shall include any applicable copies of all requests for pricing from the design professional and responses from the contractor and the subcontractors.

(2) Pricing and supporting documentation must comply with the contract documents.

Authority. Arkansas Code § 22-2-108.

Subpart 5. Project Closeout

22 CAR § 112-501. Project closeout generally.

(a) Substantial completion.

(1) The contractor shall notify all parties involved of the date upon which he or she will be ready for substantial completion at least five (5) calendar days in advance.

(2) The project architect or engineer, a representative of the Building Authority Division, and the department will schedule and perform the observation to verify if the construction meets substantial completion status.

(3) No statement of substantial completion shall be effective without the Construction Section's approval.

(4) The department or design professional shall submit one (1) original and applicable documents to the Construction Section for review and approval.

(5) The Construction Section will retain the original and an electronic copy will be forwarded to the:

- (A) Department project coordinator;
- (B) Contractor; and
- (C) Design professional.

(b)(1) Upon completion of the punch list items, the contractor may submit a request for final payment.

(2) The division shall be provided all necessary approvals including:

- (A) Consent of surety;

- (B) Release of claims;
- (C) Certificate of final completion;
- (D) Payment document for final payment from the contractor; and
- (E) The department's request for final payment.

(3) The contractor shall furnish copies of all maintenance manuals and warranty items to the design professional prior to the request for final payment.

(4) See 22 CAR § 113-403 for required documentation.

(c) Project closeout finals.

(1) The contractor shall notify the design professional when they are ready for a final review at least five (5) calendar days in advance, at which time the design professional, with the department and representatives of the division, will conduct a final review (walk through) and, if acceptable, accept the facility.

(2) All mechanical, HVACR, plumbing, electrical, and other building systems shall be checked and inspected completely at the time of final review prior to project final acceptance.

(3) The mechanical system should be balanced once per each major seasonal change by the contractor under the administration of the design professional during the first-year warranty period per the project specifications.

(4) Written instructions concerning seasonal adjustment should be issued to the department/owner for use by the applicable department building maintenance staff.

(5) The design professional shall provide the division with a letter stating that all systems have been inspected and deficiencies listed have been corrected.

(6) Upon completion of the project, a certification of final completion shall be signed by the:

- (A) Contractor;
- (B) Design professional;
- (C) Department; and
- (D) Division.

(d)(1) When the project has reached final completion, the design professional shall provide to the Construction Section and department representative a CD/DVD with the following information:

(A) Contractor as-built drawings combined into a complete and concise set of project drawings;

(B) Substantive correspondence relating to the project;

(C) Complete pay applications and design professional inspection reports and photos;

(D) Manuals/specification books;

(E) All contractor warranty and equipment warranty documents;

(F) Inspection and permit documents issued by federal or state entities with approvals and/acceptance of work;

(G) All record documents; and

(H) All equipment and system inspection and acceptance documents.

(2) The CD/DVD shall be in a division-approved readable format (MS-Word, MS-Excel, PDF, JPG, and TIF files are acceptable).

(3) Failure to provide the above items may cause delay in the design professional's final payment.

(4) The information must be organized within folders for easy discovery.

(5) Upon request of the design professional, the division will provide additional instructions on the required formatting or placement of documents or other requirements.

Authority. Arkansas Code § 22-2-108.

Codification Notes. "CD/DVD" means compact disc/digital video disc.

"HVACR" means heating, ventilation, air conditioning, and refrigeration.

22 CAR § 112-502. Record drawings.

(a) During the progress of the work, the contractor shall keep an accurate record of all changes and corrections from the layouts shown on the drawings.

(b) All changes must be accurately marked on a set of prints during the progress of the job.

(c) Exact locations of all underground utility service entrances and their connections to utility mains, as well as all valves, etc., which will be concealed in the finish work shall be accurately indicated on the drawings by measured distances.

(d) Depths and horizontal distances shall be indicated.

(e) Upon completion of the work and prior to final payments, the contractor shall furnish to the design professional one (1) set of record reproducible prints legibly and accurately drawn to indicate all changes, additions, deletions, etc., from the contract drawings.

(f) The design professional shall verify and add any additional information required before transmitting these reproducible prints to the department.

(g) On Building Authority Division owned property, the Design Review Section shall receive the copy of the record drawings of reproducible prints or CD/DVD copies for record keeping.

Authority. Arkansas Code § 22-2-108.

Codification Notes. "CD/DVD" means compact disc/digital video disc.

22 CAR § 512-503. Delivery of guarantees, bonds, maintenance manuals.

Upon completion of the work and before final payment will be authorized, the contractor shall furnish to the design professional the contractor's one-year acceptance warranty, bonds, roof warranties, termite inspection, maintenance and operation manuals and operation training, air balance data, shop drawings, catalog data, as-built record reproducible prints, and other documents called for in the specifications for review and approval prior to the transmission to the department.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-504. Completion certificates, affidavits.

Before final payment, the contractor shall furnish to the design professional one (1) executed copy of the required documents which shall be attached to the contractor's request for final payment.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-505. Duties of design professionals on state projects.

(a)(1) The design professional shall maintain up-to-date files on each project which shall include:

- (A) Project plans and specifications;
- (B) Shop drawings;
- (C) Record drawings; and
- (D) Observation and inspection reports.

(2) The design professional shall provide to the Building Authority Division all applicable contracted medium regarding the project prior to the final payment.

(3)(A) All drawings are the property of the design professional.

(B) However, the state retains the right to obtain copies of all drawings upon request and payment of direct reproduction costs.

(4) Drawings produced for state projects shall not be used or incorporated into any other projects unless permission to do so is provided in writing from the division and the design professional.

(5) Refer to 22 CAR § 111-1606 for design professional project observation requirements.

(b) Design professionals shall be responsible for reviewing all closeout documents, manuals, and warranty items for approval and compliance with the contract documents.

Authority. Arkansas Code § 22-2-108.

Subpart 6. Payment Requests

22 CAR § 112-601. Payment requests generally.

(a) Requests for payments from capital improvement funds shall be made using a payment document using the general accounting procedures pursuant to Arkansas Administrative Statewide Information System.

(b)(1) Each payment document shall indicate the Building Authority Division project number and be supported by the design professional's certification of the contractor's estimates.

(2) Estimates must be broken down by units of work normally used to calculate the work accomplished during the invoicing period.

(c)(1) The design professional shall conduct site visits to determine the responsibility and performance required by the contract documents.

(2) Refer to 22 CAR § 111-1606 for design professional's project observation requirements.

(3) Observations shall concur with the contractor's payment request and shall be submitted in written form with the pay request.

(d)(1) Observation reports by design professionals are required once a month at a minimum.

(2) The use of the standard AIA Document G-711 "Architect Field Report" or other approved form is acceptable.

(3) Reports are to be maintained on file by the design professional and shall be provided to the owner/department and the Construction Section monthly.

(4) Minimal observation reports shall include, but are not limited to the following phases of construction:

- (A) Foundation;
- (B) Roof deck;
- (C) Roofing and insulation;
- (D) Mechanical equipment installation;

(E) Electrical equipment installation;

(F) Prior to installation of interior wall, backfilling trenches, laying concrete, and ceiling finishes concealing the work, i.e., plumbing, electrical, and HVACR, shall be observed; and

(G) Plumbing equipment and fixtures installation.

(e)(1) Contractor final pay requests must be approved by the design professional.

(2) Payment requests shall be submitted by the contractor in one (1) original.

Authority. Arkansas Code § 22-2-108.

Codification Notes. "HVACR" means heating, ventilation, air conditioning, and refrigeration.

22 CAR § 112-602. Payments.

(a)(1) For contracts in which a payment and performance bond was issued, a copy of all payment documents including labor and material costs shall be sent to the department for approval prior to any payment being released.

(2) Where a payment document is supported by two (2) or more invoices, the contractor shall provide documentation clearly evidencing the total to be paid.

(3) Failure to provide documentation shall result in return of the payment document to the contractor.

(b) If pay estimates are not approved, the contractor shall promptly be notified in writing of the reasons for nonapproval.

(c) Late payment penalties may be assessed pursuant to Arkansas Code §§ 19-4-1411 and 22-9-205.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-603. Final payments.

The following shall accompany the final payment document for contracts:

- (1) Contractor's invoice;
- (2) Certificate of final completion;
- (3) Contractor's release of claims;
- (4) Consent of surety;
- (5) Department request for final payment; and
- (6) The design professional's acceptance and certification letter.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-604. Delay in processing payment documents.

Any penalties for the delay in processing of payments may be processed in accordance with Arkansas Code §§ 19-4-1411 and 22-9-205.

Authority. Arkansas Code § 22-2-108.

Subpart 7. Capital Improvement Alternative Delivery Methods

22 CAR § 112-701. Capital improvement alternative delivery methods generally.

(a) Pursuant to Arkansas Code § 19-4-1415, the Building Authority Division, unless exempted by law, has authority to approve and administer contracts (contractor, construction manager, architect, or engineer) for projects that exceed five million dollars (\$5,000,000) which are awarded through negotiations instead of a bid process.

(b) This type of alternative delivery method of contract shall be referred to as "negotiated work".

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-702. Project criteria.

(a) Departments may utilize negotiated work for projects when:

- (1) A project's programming requires fast tracking;
 - (2) The traditional design-bid-build process is less fiscally advantageous than negotiated work; or
 - (3) Negotiated work is more practical for the project needs.
- (b)(1) Prior to utilization of negotiated work, departments shall make a written request and provide justification to the Director of the Building Authority Division for the use of alternative methods pursuant to subsection (a) of this section.
- (2) The director may approve the request after reviewing the documents submitted.
 - (3) The department shall cooperate with the division if more information is requested.
 - (4) If approved by the director, the department shall then submit the project for review by the Legislative Council.
 - (5) No contract shall be awarded without the approval of the division and council review.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-703. Selections and contract award process.

- (a)(1) All selection processes involving the design professional, contractor, or contract manager shall be made in accordance with 22 CAR § 112-701 et seq.
 - (2) See also 22 CAR §§ 111-1703 and 111-1704 for the design professional selection process.
- (b)(1) The preselection committee shall consist of five (5) members.
 - (2) The Director of the Building Authority Division shall determine the two (2) members from the Building Authority Division and the department secretary shall determine the three (3) members of the department.
 - (3) Under no circumstances shall the agency preselection or selection committee members consist of a supervisor (direct or indirect) of another member on the selection committee.

(4)(A) Additionally, supervisors shall not attend any preselection or selection meetings.

(B)(i) A request for proposals (RFP) shall be made in accordance with 22 CAR § 112-701 et seq.

(ii) The department shall prepare all RFPs.

(iii) The Building Authority Division shall approve the draft of the RFP prior to its publication.

(iv) RFPs for contractor's services shall have a statement if the federal prevailing wage applies.

(C)(i) The preselection team shall meet at a designated time and place to review the proposals.

(ii) No more than five (5) applicants shall be selected for interview.

(iii) The department may interview less than five (5) applicants only if there are less than five (5) responsive proposals.

(iv) If less than five (5) responsive proposals are received, the department should interview all responsive applicants.

(v) The department shall notify the finalists within five (5) business days of the selection determination.

(c)(1) The final selection committee shall consist of three (3) members of the department as determined by the department secretary.

(2) The department shall notify the Building Authority Division and the finalists of the time and date the final selection interviews will be held.

(3) The department shall notify the successful finalist within five (5) business days.

(4) The Building Authority Division may attend the final selection meeting but may not vote in the matter.

(d) The state reserves the right to reject any and all proposals and to waive any formality in the negotiation and award process.

(e)(1) Once the final selection is determined, the department may begin to enter final negotiations with the successful finalist.

(2) Nothing shall prohibit the agency from entering into negotiations with other finalists if final negotiations are not successful.

(f) Before the Building Authority Division may approve any contracts:

(1) The contractor, engineer, architect, or construction manager shall be licensed in accordance with 22 CAR § 111-105 and 22 CAR § 112-701;

(2) Contract documents shall be reviewed in accordance with all related laws and rules and the Building Authority Division Division 00 requirements and 22 CAR § 111-707;

(3) The contractor or contract manager (refer to 22 CAR § 112-316) shall submit a performance and payment bond or bonds;

(4) Insurance amounts and procedures shall be in accordance with 22 CAR § 112-319; and

(5) All disclosure statements and certifications required by Arkansas law and rule must be received.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-704. Contract oversight.

(a) The Construction Section has contract oversight and responsibility.

(b)(1) The design professional shall provide the Construction Section current approved-for-construction plans and specifications.

(2) The plans will be in half size.

(3) A copy of the plans and specifications that the GMP is established on will be provided to the Construction Section, the Design Review Section, department official, and contractor, and the plans and specifications will be stamped or noted as "Guaranteed Maximum Price" and "Approved for Construction" with the date and signature or seal of the design professional.

(4) For additional design professional requirements, see 22 CAR § 111-1707.

(c) **Phased fast track projects.**

(1) A notice to proceed will be issued to the contractor for each approved-for-construction phase of the work.

(2) No work may commence on any phase of work without Building Authority Division approval.

Authority. Arkansas Code § 22-2-108.

Codification Notes. "GMP" means guaranteed maximum price.

Subpart 8. Capital Improvement Historic Sites

22 CAR § 112-801. Capital improvement historic sites generally.

Pursuant to Arkansas Code §§ 22-9-208 – 22-9-211, the Building Authority Division, unless exempted by law, has authority to approve and administer contracts for projects awarded pursuant to the historic site laws.

Authority. Arkansas Code § 22-2-108.

22 CAR § 112-802. Project criteria.

(a) Departments requesting to utilize the historic site method of contracting shall send written request and justification to the Director of the Building Authority Division for approval.

(b) Upon approval, the request may be forwarded for review by the Legislative Council and approval by the Chief Fiscal Officer of the State.

(c) Nothing shall prohibit a department from applying for council review prior to receiving approval from the director or the Chief Fiscal Officer of the State.

Authority. Arkansas Code § 22-2-108.