

## **Title 6. Education**

### **Chapter III. Division of Public School Academic Facilities and Transportation, Department of Education**

#### **Subchapter A. Generally**

#### **Part 330. Self-Construction Projects by Public Education Entities**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "Regulatory authority. These rules shall be known as the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing Self-Construction Projects by Public Entities. The Commission's authority for promulgating these rules is pursuant to Ark. Code Ann. § 6-21-109, 6-21-301, 6-21-304, 17-25-101, 18-44-503, 18-44-507, 19-11-259, 22-9-101, 22-9-203, and 25-15-201 et seq."

#### **Subpart 1. Generally**

##### **6 CAR § 330-101. Purpose.**

The purpose of these rules is to establish how the Division of Public School Academic Facilities and Transportation will assess, identify, assist, monitor, and address public educational entities that self-construct.

**Authority.** Arkansas Code § 6-21-109.

##### **6 CAR § 330-102. Definitions.**

As used in this part:

(1) "Administrator" means a school entity superintendent, an educational cooperative director, the administrator, director, chairman, or president of a charter school, or other educational entity;

(2) "Commission" means the Commission for Arkansas Public School Academic Facilities and Transportation;

(3) "Commodities" means all supplies, goods, material, equipment, machinery, facilities, and personal property purchased for or on behalf of an entity;

(4) "Construction project" means:

(A) Making or forming an improvement by combining:

(i) Parts;

(ii) Labor; or

(iii) Materials; or

(B) The erection or alteration that exceeds a cost of thirty-five thousand dollars (\$35,000) of a structure or physical object under the supervision or ownership of a public educational entity;

(5)(A) "Design professional" means a person or firm who provides professional expertise in order to carry out a capital erection, repair, or improvement project.

(B) Design professionals may include, but may not be limited to, the following professionals:

(i) Planners (land, city, utilities, etc.);

(ii) Architects;

(iii) Landscape architects;

(iv) Surveyors (land); and

(v) Engineers (consulting and professional engineers providing expertise in various licensed fields such as civil, electrical, mechanical, structural, sanitary, etc.);

(6) "Division" means the Division of Public School Academic Facilities and Transportation;

(7) "Maintenance work" means the repair, but not the replacement or alteration, that exceeds a cost of thirty-five thousand dollars (\$35,000) of existing facilities when the size, capacity, and type of the existing facility or equipment is not thereby substantially changed or increased;

(8) "Open market purchases" means those purchases of commodities by any purchasing official in which competitive bidding is not required;

(9) "Public educational entities" means Arkansas:

- (A) Public school districts;
- (B) Charter schools;
- (C) Educational cooperatives; or
- (D) Any publicly-supported entity having supervision over public

educational entities; and

(10) "Self-construction" means any construction where the public educational entity:

- (A) Uses its own employees;
- (B) Acts as a general contractor;
- (C) Uses a construction manager while acting as a general contractor; or
- (D) Acts as its own construction manager using contracted construction

services.

**Authority.** Arkansas Code § 6-21-109.

**6 CAR § 330-103. Notification of intent.**

(a)(1)(A) If an entity board votes to self-construct, the administrator of the entity shall submit Parts A and B of the Construction Approval Form, which is attached as Appendix A to this part, to the Division of Public School Academic Facilities and Transportation indicating that the project is self-construction.

(B) The form may be found on the division website at:

<http://arkansasfacilities.arkansas.gov>.

(2) This submission must include all items required by Appendix A.

(b) The administrator of the entity also must submit the written assurance impact statement (see Item 3 of Part A in Appendix A) and the annual equity compliance report (see Item 4 of Part A in Appendix A) to the:

Department of Education  
LEA State Funding — Loans and Bonds  
4 Capitol Mall,

Little Rock, AR 72201.

(c) Upon receiving an entity's notification of intent to self-construct, the division shall review the entity's proposed self-construction project.

**Authority.** Arkansas Code § 6-21-109.

**6 CAR § 330-104. Approval procedures.**

(a) When an entity develops plans for a self-construction project to be submitted to the Division of Public School Academic Facilities and Transportation for approval, the entity shall ensure that the design and specifications satisfy all Arkansas legal requirements including, but not limited to, the following:

(1) All construction plans, specifications, and estimates shall be made by, and the construction executed under the observation of, an appropriate design professional (Arkansas Code § 22-9-101);

(2) If the total cumulative and fair market value of construction or capital improvement is greater than twenty-five thousand dollars (\$25,000), an engineer, registered or licensed in the State of Arkansas, shall provide the required engineering services (Arkansas Code § 22-9-101(b)(1)); and

(3) If the total cumulative and fair market value of construction or capital improvement is greater than one hundred thousand dollars (\$100,000), an architect, registered or licensed in the State of Arkansas, shall provide the required architectural services (Arkansas Code § 22-9-101(b)(2)).

(b) Upon review of the foregoing requirements, the division may approve or deny the self-construction project.

**Authority.** Arkansas Code § 6-21-109.

**6 CAR § 330-105. Bid, bond, and licensing requirements.**

(a) When an entity self-constructs, the entity shall ensure by written report to the Division of Public School Academic Facilities and Transportation compliance with all Arkansas laws, including but not limited to the following:

(1) Open market purchases may be made where the purchase price is less than the current amount set by the Commissioner of Elementary and Secondary Education establishing the maximum purchase amount for open-market purchases (Arkansas Code § 6-21-304);

(2) In each instance where the estimated purchase price shall equal or exceed the current amount set by the commissioner establishing the maximum purchase amount for open-market purchases, the commodity shall be procured by soliciting bids (Arkansas Code § 6-21-304);

(3) When all estimated construction costs do not exceed thirty-five thousand dollars (\$35,000), the contract shall be solicited according to local school board policy (Arkansas Code § 22-9-203); and

(4)(A) When all estimated construction costs exceed thirty-five thousand dollars (\$35,000), the entity shall publish public notice of intent to receive bids a minimum of one (1) time per week for two (2) consecutive weeks.

(B) The bids may be opened one (1) week after the last date of publication (Arkansas Code § 22-9-203);

(b)(1) When giving public notice of intent to receive bids for construction, an entity may include alternates in the bid specifications.

(2) If the entity includes alternates in the bid specifications:

(A) The alternates must be deductive;

(B) No more than three (3) alternates may be used; and

(C) The alternates must be set forth and considered in numerical order (Arkansas Code § 22-9-203).

(c) When advertising for bids for construction, an entity may negotiate a final contract amount with the successful bidder if:

(1) The low bid is within twenty-five percent (25%) of the amount appropriated for the project; and

(2) All alternates have been exhausted (Arkansas Code § 22-9-203).

(d)(1) An entity shall accept the lowest qualified bid from a firm resident in Arkansas.

(2) This bid shall be accepted only if:

(A) The bid does not exceed the lowest qualified bid from a nonresident firm by more than five percent (5%); and

(B) One (1) or more firms resident in Arkansas made written claim for a preference at the time bids were submitted (Arkansas Code § 19-11-259).

(e) A five percent (5%) corporate bid bond or certified check in the amount of five percent (5%) of the bid shall accompany all submitted bids on construction contracts that exceed thirty-five thousand dollars (\$35,000). (Arkansas Code § 22-9-203).

(f)(1) The successful bidder on construction that exceeds twenty thousand dollars (\$20,000) shall provide the owner a performance bond and payment equal to the contract amount.

(2) This bond must be filed with the clerk of the circuit court of the county where the work is being performed before authorization to proceed is granted (Arkansas Code §§18-44-503 and 18-44-507).

(g)(1) Any subtrades contractor doing work in areas such as electrical, plumbing, HVAC, etc. must hold the required trades' licenses from the State of Arkansas.

(2) This applies to entity personnel, as well as subtrades contractors employed by the entity.

(3) Any contractor who performs a job that exceeds fifty thousand dollars (\$50,000) must also hold an Arkansas contractor's license (Arkansas Code § 17-25-101(a)).

**Authority.** Arkansas Code § 6-21-109.

### **6 CAR § 330-106. Enforcement.**

Any entity administrator or certified employee that knowingly submits to the Commission for Arkansas Public School Academic Facilities and Transportation or the

Division of Public School Academic Facilities and Transportation a false report or false information required by Arkansas law or this part shall be subject to having his or her license revoked, suspended, or placed on probation pursuant to Arkansas Code § 6-17-410.

**Authority.** Arkansas Code § 6-21-109.