

Southern Arkansas University

Capital Construction

Policies and Procedures

April 2008

Included herein is the necessary information and forms (see Appendices) needed to complete documentation for Capital Construction Projects. If further information or clarification is needed, please contact the Office of Financial Services.

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I. Project Approval

Construction of new facilities and any renovation/remodeling or other improvement projects which require the services of an architect or engineer, require the approval of the President as set forth in Procedure for Capital Projects (Appendix 1) and Selection of Design Professional and General Contractor or Construction Manager (Appendix 2). Campus officials must submit a Capital Project Proposal (Appendix 3) and submit it to the President for review and guidance. To insure proper documentation, refer to Capital Construction Checklist (Appendix 4).

II. Project Funding

A. Sources of funding

Funds utilized for capital improvements may be from many sources including state appropriations, revenue bond issues, capital improvement funds from Arkansas Development Finance Authority, institutional reserves, gifts and grants.

B. Method of Finance (MOF)

A Request for Approval of Method of Financing (Appendix 5) shall be prepared in accordance with Method of Finance -Arkansas Code Annotated 19-4-1407 (Appendix 6).

The request for approval of the Request for Approval of Method of Financing (Appendix 5) shall be prepared by the University using estimates normally furnished by the design professional. Pertinent information on appropriations and fund codes, along with a concise description of the project must be accurately presented on the MOF before submission. Upon completion, the MOF is forwarded to the Vice President for Finance for review. It is then forwarded to the Arkansas Department of Higher Education and then to the Department of Finance and Administration Office of Accounting. When required, the Department of Finance and Administration will forward the MOF to the Legislative Council for review and approval.

C. Revisions to Method of Finance

Changes in project costs or changes in funding sources may require a revision to the Request for Approval of Method of Financing (Appendix 5). Contractor contracts, change orders, and amendments to professional service contracts cannot be approved, if sufficient funds are not available on the MOF. Revised MOF's shall be submitted, approved and distributed in the same manner as the initial MOF and shall reflect the same number as the original with a capital alpha suffix.

III. Engagement of Design Professionals

A. Consultant Selection Procedures

Prior to entering into an agreement with an architect or engineer the provisions of Selection of Design Professional and General Contractor or Construction Manager (Appendix 2), Procedure for Selection of Architects or Engineers (Appendix 7), and Procedure for Selection of On-Call Architects or Engineers (Appendix 8) must be satisfied. These policies governing the selection process for design professionals are in accordance with the Arkansas State Accounting Procedures Manual, Part II: Construction (Appendix 9).

B. Consultant Contracts

There are several kinds of contracts for design professional services that can be utilized as listed below:

1. Contract for a Specific Project

The fee is normally established as a percentage of the construction costs plus an allowance for reimbursables. The contract often will include a single agreement to provide all consultant services i.e.:

Planning/Programming, Architectural Design, Interior Design, Civil and Mechanical Engineering. The University may wish to contract with each discipline individually, requiring separate contract documents.

2. Contract for an On-Call Contractor or Requirements Contract

Under this type of contract, labor and material rates are established in the basic contract. The basic contract does not authorize a consultant to work, but when a requirement for services arises, a price is negotiated based upon the rates negotiated for the base contract, and the contractor proceeds with the work.

C. Process for Obtaining Design Professional or Professional Services Contract

Once approval has been obtained from the President to select an architect or engineer, the advertising and interview process may begin.

1. Advertisement (Appendix 10)

The requirement for architect/engineer services is advertised in a newspaper of general circulation for three (3) consecutive days. The advertisement briefly states the scope of required services, the project location and selection criteria in order of importance. In addition, it will

advise interested firms of necessary forms to submit, closing date of responses and address of the office to receive submissions.

2. Responses

Interested firms respond to the advertisement by submitting their intention to participate, a corporate resume that details their pertinent experience and qualifications.

3. Ad Hoc Selection Committee

The committee is made up of campus personnel selected by the President. The committee reviews the architect/engineer submissions and rates them against a locally established evaluation criterion. Some of the attributes that may be used for evaluation are listed below:

- Professional Qualifications
- Specialized Experience and Technical Competence
- Capacity of the Firm to Accomplish the Required Services on Schedule
- Past Performance
- Knowledge of the Campus and Surrounding Area
- Ability to Meet CADD Requirements

The committee chair then contacts the top three firms for telephone or in person interviews to determine if the firm's qualifications have changed or if they would like to add any information to that already submitted. All firms are notified of their selection status. Once all three firms are interviewed, the committee will make a recommendation to the President. Once the President has selected the architect or engineer for the project, the award process may begin.

D. Award

The selected firm is invited to submit a price proposal and enter into final negotiations with the University. If agreement on price is reached, a contract will be awarded. If not, the President may select another from those submitted for review. Specific aspects of the working agreement should be discussed, documented and implemented. At a minimum, the following tenants of the team should be delineated:

- Designate senior contact persons for the University and the Consulting Firm
- Establish channels of communication for each side
- Develop a roster of all participants that lists their contact information, project responsibilities and their authority levels
- Publish a proposed schedule for all design development meetings

- Establish a conflict resolution process

E. Contract Documents

The relationship with the selected firm must be finalized utilizing contract forms approved by the University's Legal Counsel.

F. Design Process Management

To insure the design process is conducted successfully, a design development management plan should be developed and followed. The management plan should have at least the following elements:

- Clear definition of the project scope
- Budget that identifies the funds available for each phase of the design process
- Design schedule that identifies all critical path elements
- Change order process to manage unanticipated deviations from project scope, budget or design schedule
- Schedule of design meetings and the process for recording and distributing meeting minutes
- Periodic milestone review process where the progress of the project can be reviewed for results according to plan

G. Plan Review

Based upon cost and complexity of the project, outside plan review services may be utilized. Based upon review of the Capital Project Proposal (Appendix 3), the President may discuss utilization of an independent plan review service. Cost of such review shall be considered in fee negotiations with the design professional.

IV. Design Standards

Projects must comply with the laws of the State of Arkansas governing design requirements and design reviews and approvals.

The President or Vice President for Finance shall designate the appropriate individual to serve as the University's representative responsible for managing consultant and construction contracts. Such designee may appoint a representative to provide day-to-day communication and coordination of a consultant's work and construction contracts.

Regardless of the location of higher education facilities within the State of Arkansas, all capital improvement projects must be designed to comply with the following:

A. Arkansas Fire Prevention Code

Arkansas Fire Prevention Code (based on Standard Building Code), including revisions thereto, as published by Southern Building Code Congress, 3617 8th Avenue South, Birmingham, Alabama, 35222. Arkansas State Laws shall have precedence over the Standard Building Code where they exceed the requirement of that code.

B. Americans with Disabilities Act

In certain instances, such as parking, where Arkansas State Law conflicts with the Americans with Disabilities Act, the more stringent requirements shall be met.

C. Earthquake Resistant Design for Public Structures Act

Following the Seismic Zones of Arkansas Map

D. Flood Plain Guidelines

Federal Register

E. Arkansas Economic Development Commission, Energy Division

1994 Arkansas Rules and Regulations for Energy Efficient Standards for New Building Construction, and ASHRAE/IES 90.1-1989

F. Institutional Design Guidelines

Available when an institution feels it necessary to so provide, and is based on the experiences of constructing, using and maintaining facilities, and when followed, will improve the institution maintenance and operations programs, as well as produce attractive facilities that will meet the long term needs of the intended community. Suggested departures from the Guidelines must be reviewed with and approved by the respective Associate Vice President for Facilities in advance of design action.

Design consultants are encouraged to work closely with local officials and fire chiefs throughout the planning stages. Such authorities should be given the opportunity to review such plans to coordinate any utility and fire department requirements (specific fire protection, building access, fire lane, etc. requirements). Special requirements may be needed according to available equipment and firefighting/emergency procedures.

V. Design Review and Approvals

Regulatory agencies have adopted design and/or construction standards and may require pre-construction plan review and approval. Design consultants should request copies of all acts, laws and adopted standards from individual agencies. Consultants shall be responsible for coordinating a project directly with all regulatory agencies as needed, allowing adequate time for plan review, approval, stamp, date, and signature before being authorized to bid.

A nonexclusive list of regulatory agencies below may have design authority over a capital improvement project. Other agencies not listed may, under special circumstance, exercise design authority. It is the design consultant's responsibility to insure that all appropriate and required regulatory agencies are provided opportunity to review plans and specifications before a project is bid. Reviewing agencies may include:

A. Department of Health

- Division of Plumbing and Natural Gas (plumbing systems domestic water, septic design, swimming pools, etc.)
- Division of Radiation Control and Emergency Management (X-ray, nuclear medicine, installation or safety evaluations)
- Division of Sanitation Services (kitchens, restaurants, etc.)
- Division of Engineering (waste water systems and districts, cemeteries, swimming pools, etc.)
- Division of Health Facility Services (hospitals, health units, etc.)

B. State Fire Marshall

Fire code review and life safety, etc.

C. Department of Labor

Elevator safety, including inclined stairway chairlifts and vertical wheelchair lifts, boiler inspection, industrial hygiene, and OSHA reviews, etc.

D. Arkansas Department of Environmental Quality

Resources Conservation and Recovery Act of 1976 when Federal funding exceed \$10,000, Storm Water Pollution Prevention Plan for disturbed sites in excess of 5 acres, and other required environmental reviews.

E. Licensing Agency for the Blind

Blind Concession Stand for State Owned Buildings

F. Highway and Transportation Department

Highway access, right-of-way design, etc. Contact local district headquarters' engineer.

G. Department of Human Services, Office of Long Term Care

Long term care facilities/nursing homes

H. Arkansas LP Gas Board

Review/inspect rural installation of LP storage tanks and gas meters

VI. Project Bidding and Award

The University's Procurement Official will be in charge of Capital Improvements Bidding and Contracting procedures. Project consultants may assist in the process.

A. Advertising and Award

Advertising and award procedure shall be according to Advertisement and Award - Arkansas Code Annotated 22-9-203 (Appendix 11) and Advertisement and Award – Arkansas Code Annotated 19-4-1402 (Appendix 12).

B. Competitive Quote Bid

Contracting capital improvements about \$5,000 and below \$20,000, regardless of the source of funds shall be competitive quote bid and a minimum of three (3) bonafide bidders shall be requested to bid.

C. Emergency Contracting

Capital improvement contracting may be made without following statutory bidding requirements where unforeseen or unavoidable circumstances occur:

- When human life, health or state property is in jeopardy
- To reconstruct facilities, construct new facilities and related site work due to fire, storm, riots, etc.
- Repairs to immediately-needed equipment or facilities where delay would result in higher expenditures or cause the University to lose revenue due to not providing the service responsible for, but not limited to, medical treatment, education, or military armories.

The following documentation is required when emergency contracting is utilized:

- A letter of justification setting forth the circumstances of the emergency
- Insurance Certificate
- 100 % Performance Bond issued by a licensed Arkansas agent, if \$20,000 or over. Bond must be filed in the county where the work is to be performed.
- List of subcontractors as required under Competitive Sealed Bids - Arkansas Code Annotated 22-9-204 (Appendix 13)
- Contractor must be licensed by the Arkansas Contractor's Licensing Board if dollar amount is \$20,000 or more

D. Sole Source

Sole source on capital improvements will only be approved when there are no other sources to perform the required work. This does not relieve the statutory

requirements for license, insurance and bonds. The following documentation is required when submitting a contract on capital improvements for approval:

- Letter of Justification
- Insurance Certificate
- 100 % Performance Bond issued by a licensed Arkansas resident agent, if \$20,000 or over. Bond must be filed in the county where the work is to be performed.
- List of subcontractors as required under Competitive Sealed Bids - Arkansas Code Annotated 22-9-204 (Appendix 13)
- Contractor must be licensed by the Arkansas Contractor's Licensing Board if dollar amount is \$20,000 or more

E. Competitive Sealed Bids

All bids shall be submitted in a sealed envelope. Prime contractors shall follow Competitive Sealed Bids - Arkansas Code Annotated 22-9-204 (Appendix 13) when a subcontractors' portion of the project is \$20,000 or more. A sample Bid Form (Appendix 14) is attached.

All capital improvement bids shall include all costs such as sales tax, use tax, permits, insurance, etc. The contractor on capital improvement projects where labor and materials are furnished is defined by the Arkansas Revenue Laws as the user and is responsible for the appropriate taxes. There are no provisions for a contractor to avoid taxes by using the tax exempt number of any state institution, board, commission, or institution.

1. Authority for Opening Bids

The responsibility for the supervision of opening bids is with the Procurement Official. The person authorized to read shall first check the bid documents to determine if the bid is totally responsive. Items to verify are: Form of Proposal, contractor's license number, bid bond (minimum of 5%), bid amount, signatures, addenda acknowledgement, corrections or changes initialed, and subcontractors listed. If all documents are properly submitted and executed, the official may proceed to read the bid. If any statutory item is omitted, the bid should be declared non-responsive and remain unread. Formalities other than statutory may be waived.

2. Bid Opening and Recording

Bids shall be opened and read by the Procurement Official at the designated time and place. The Procurement Official is responsible for establishing the official expiration of time. In those instances where it is not practical or possible to attend the bid opening, the Procurement Official may delegate this authority to a representative of the University.

Bids may be opened in any order, but if listed on a prepared tabulation, they should be opened in such order. On projects requiring the services of a design professional, he or she shall furnish, in writing, to the Procurement Official a certified tabulation of bids, and a certification of licensure for the contractor and subcontractor listed in the bid, prior to award on the contract. Tabulation of bids is the responsibility of the Procurement Official.

3. Scrivener Errors

Whenever it is obvious from examination of the bid document that it was the intent of the bidder to submit a responsive bid, and such bid, because of scrivener error such as transposition of figures, if accepted would create a serious financial loss to the bidder, the University reserves the right to relieve said bidder from responsibility under his bond and may reject his bid.

4. Contractor's License

Each contractor is required to have a contractor's license and shall indicate on his bid form his current license number as issued by the Contractor's Licensing Board. This license is only required on projects of \$20,000 or more. Failure to list a current contractor's license will be cause for rejection.

5. Alarm System License - Act 429 of 1977 (Appendix 15)

This license is required on all projects that require this type of work. For more information contact the Arkansas State Police at 501-221-8245.

6. Asbestos License/Certification – Act 394 of 1985 (Appendix 16)

This license is required on all projects that require this type of work. For more information contact the Arkansas Department of Environmental Quality Air Service Division at 501-562-7444.

7. Bid Bonds

Acknowledgement of bid bonds shall be made aloud. The Purchasing Official reading the bids shall indicate the bond amount (not less than 5% of base bid amount), the form of bond either cashier's check or bid bond. The Purchasing Official shall check the company or individual being bonded, the correct project designation, the Power of Attorney Supplement, and signatures of all parties. The bond shall be written by a surety company qualified and authorized to do business in the State of Arkansas.

8. Alternates

In the event that all bids submitted exceed the amount appropriated for the award of the contract, the University may negotiate an award with the apparent responsible low bidder if the low bid is within 25% of the amount appropriated.

F. Trench or Excavation Safety Systems

Institutions shall adhere to Trench or Excavation Safety - Arkansas Code Annotated 22-9-212 (Appendix 17) in regards to trench or excavation safety systems.

G. Davis-Bacon Act - Federal Funded Project Requirement

The Davis-Bacon Act, originally approved March 31, 1931, as amended, grants to the 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. The Davis-Bacon and related acts provide prevailing wage protection to workers on federal funded construction projects. 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 in excess of \$2,000.

1. Application to State Projects

The Davis-Bacon Act, as amended, requires that each contract over \$2,000 to which the United States is a party for the construction, alteration, or repair of public buildings or public works contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Under the provision of the Act, contractor or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wage and fringe benefits paid on projects of a similar character. The Davis-Bacon Act directs the Secretary of Labor to determine such local prevailing wage rates.

In addition to the Davis-Bacon Act itself, Congress has added prevailing wage provisions to approximately 60 statutes which assist construction projects through grants, loans, loan guarantees, and insurance. These “Related Acts” involve construction in such areas as health, housing, air and water pollution and transportation. If a construction project is funded or assisted under more than one Federal statute, the Davis-Bacon prevailing wage provisions may apply to the project if any of the applicable statutes requires payment of Davis-Bacon wage rates.

2. Procedures for Compliance with the Davis-Bacon Act

A “wage determination” is the listing of wage and fringe benefit rates for each classification of laborers and mechanics which the Administrator of the Wage and Hour Division of the Department of Labor has determined to be prevailing in a given area for a particular type of construction (e.g. building, heavy, highway, or residential). The Wage and Hour Division (the Division), issues two types of wage determinations: general determinations, also known as area determinations, and project determinations. The term “wage determinations” is defined as including not only the original decision but also any subsequent decision modifying, superseding, correcting, or otherwise changing the rates and scope of the original decision.

General Wage Determinations reflect those rates determined by the Division to be prevailing in a specific geographic area for the type of construction described. The general wage decision contains no expiration date and remains in effect until modified, superseded, or withdrawn. General wage determinations are usually issued whenever the wage matters for a given location, for a particular type of construction are well settled and it appears there will be a recurring need for determined rates. If a contracting institution has a proposed construction project to which a general determination would be applicable, the published determination may be used by the contracting institution without consulting the Department of Labor.

The Arkansas Department of Labor maintains a current file of the U.S. Department of Labor General Wage Determination issued under the Davis-Bacon and Related Acts and will provide them upon request. In a situation where this office cannot provide a General Wage Determination and it is necessary to have a Federal Wage Rate for your project, call the Purchasing Official for the correct procedure to follow. State Institutions are responsible for providing specific Federal regulations, guidelines and procedures as directed by their Federal Grantor/funding source to the Architect/Engineer or any party that will publish work requiring the expenditures of Federal funds.

In situations where the Davis-Bacon standards are applicable the following must occur:

- Each contractor or subcontractor must furnish the recipient institution, within seven days after the regular payment date of the weekly payroll period, a statement with respect to wages paid to the contractor's employees for contracts exceeding \$2,000. The statement may be contained on Form WH 348 "Statement of Compliance", or an identical form on the back of WH 347 Form "Payroll" (for contractor's optimal use) (Appendix 18).
- Keep the wage statement of the contractor on file in case of a violation inquiry.

Compliance with the Davis-Bacon Act procedures requires the recipient institution to police the contractor to insure that wages are paid to the employees as required by the Davis-Bacon Act. The contractor, not the recipient institution, however, is responsible for filing WH 347 Form "Payroll" (for contractor's optimal use) (Appendix 18) or WH 348. While union scale wages may often be similar with Davis-Bacon wage rates for a particular area, the two are not necessarily the same. The recipient government institution is not relieved from the legal obligations of insuring that Davis-Bacon Act rates are paid, just because the project is being constructed by employees paid at union scale wages.

The legal advertisement for this project and invitations for bids will state that federal funds are being used and that Davis-Bacon Wage Rates will apply.

H. Arkansas Department of Labor Prevailing Wage Rates

On state funded capital improvement projects where the project cost exceeds \$75,000, the provisions of Act 74 of 1969, as amended, on wage determinations shall be published in the specifications for the project. The legal advertisement and invitation for bids will state that State Wage Determinations will apply.

I. Acknowledgement of Addenda

Any or all addenda must be acknowledged on the proposal form and such acknowledgement shall be stated during the reading of the bids. Every effort should be exerted to eliminate addenda. If addenda are necessary they should be issued as soon as possible, but in any event not later than three (3) working days before receiving bids. However, an addendum which only moves the bid date may be issued any time before the receipt of bids. In the event an addendum requires major or extensive changes in the scope of the project, an appropriate extension of the bidding period should be granted.

J. Contract Time

The period of time allocated for the work shall be specified in the contract documents. The University and the design professional shall decide on the amount of liquidated damages and the amount of such damages is to be included in the project specifications.

K. Late Bids or Modifications

Any bid, received at the University designated in the solicitation, after the time specified for the receipt, will not be considered unless it was sent by registered or certified mail no later than the fifth calendar day prior to the date specified for receipt of bids, or unless, it is determined that the late receipt was due solely to mishandling by the University after receipt in the designated office on the invitation to bid.

The only acceptable evidence is:

- The date of mailing of a late bid, modification or withdrawal sent either by registered or certified mail indicated by the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the bid, modification or withdrawal shall be deemed to have been mailed late. The term “postmark” means a printed, stamped, or otherwise placed impression that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service.
- The time of receipt at the University is the time/date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the University.

Bidders may submit written modifications to their bid at any time prior to the expiration of the bidding time. No modifications made shall show the base bid amount.

L. Obligations of Bidders

At the time of opening of bids each bidder will be presumed to have read and to be thoroughly familiar with the plans and contract documents, including all addenda. The failure or omission of any bidder to examine any form instrument or documents shall in no way relieve any bidder from any obligation in respect to his bid.

Bidders on capital improvement projects are to be reminded of paragraphs GR-3-L and G5-21, Arkansas Gross Receipts Tax Regulations whereby bidders are deemed to be consumers. They are not tax exempt nor may they use the tax exempt status of a state institution to avoid sales or use tax for whom they are performing a capital improvement project.

M. Additions to or Deletions from the Documents

All deletions, changes, additions or alterations of the bid documents will be acknowledged and read aloud. If such modifications cannot be waived, the bid shall be declared non-responsive and rejected.

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

N. Announcing Low Bidder

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". Contract awards should not be made on the day of bid opening except in special cases.

O. Unsuccessful Bid

In the event no bids are received and it is apparent that further solicitation of bids would be futile, requested capital improvements may be contracted from any available qualified contract, upon approval by the University Purchasing Official.

P. Performance Bond

Payment and Performance Bonds are not required for bids \$20,000 or less. For work exceeding \$20,000, the bidder shall furnish a Payment and Performance Bond Appendix (19) in the amount equal to 100% of the contract price, on a form identical to the Payment and Performance Bond (Appendix 19) as security for faithful performance of the Contract and payment of all obligations arising thereunder within ten days after receipt of the Intent to Award. The bond shall be written by a surety company qualified and authorized to do business in the State of Arkansas. The bond shall be executed by a resident agent or non resident agent and shall be licensed by the Insurance Commissioner to represent the surety company executing the bond and filing with the bond the agent's Power of Attorney as his authority. The bond shall be written in favor of the University. Bidder shall file the bond with the Circuit Clerk in the county where the work is to be performed. Failure to deliver said bonds, as specified, shall be considered as having abandoned the Contract and the bid security will be retained as liquidated damages. The bidder shall include in the bid the Payment

and Performance Bond amount so that the bid represents the total cost to the University of all work included in the contract. All bonds shall be issued to Southern Arkansas University.

Q. Insurance

The University shall require the Contractor to provide the following insurance to cover the contractor's liability and protect the University, provided the University shall have the right to provide their own Builder's Risk Insurance (Appendix 20) excluding any applicable deductible for contracts as they deem appropriate.

The Contractor shall secure and maintain in force during this Contract such insurance as is specified within the Contract Documents, from an insurance company authorized to write the prescribed insurance in the jurisdiction where the Project is located as will protect the Contractor, his subcontractors, and the University from claims for bodily injury, death, or property damage which may arise from operations under this Contract. The Contractor shall not commence work under this Contract until he has obtained all the insurance required, has filed the Certificate of Insurance with the Owner, and the certificate has been approved by the Owner. All certificates shall identify Southern Arkansas University as the certificate holder. Each insurance policy shall contain a clause providing that it shall not be canceled by the insurance company without written notice to the University of intention to cancel.

1. Workers' Compensation and Employer's Liability Insurance

Workers' Compensation and Employer's Liability Insurance in statutory limits shall be secured and maintained as required by the laws of the State of Arkansas. This insurance shall cover all employees who have performed any of the obligations assumed by the Contractor under these Contract Documents including Employer's Liability Insurance. This insurance shall protect the Contractor against any and all claims resulting from injuries, sickness, disease, or death to employees engaged in work under this Contract.

2. Comprehensive General Liability Insurance
(including automobile and truck liability)

Prior to blasting, the Contractor shall furnish a Certificate of Insurance, which shall certify that damage caused by blasting is within the coverage of his Comprehensive General Liability Insurance to the full limits thereof. Hired and non-owned automobile insurance for automobiles and trucks shall include hired and non-owned automobile coverage.

3. Contractor's Protective Liability Insurance

The Contractor shall indemnify and save harmless the University from and against all losses and all suits, claims, demands, judgments, actions, and payments of every description and nature brought or recovered against him by reason of any omission or act of the Contractor, his agents, or employees in execution of the Work or in the guarding of it. The Contractor shall secure and maintain protective liability insurance in the name of the University and the Contractor covering them from contingent liability under this Contract.

4. Builder's Risk Insurance

The Contractor shall procure and maintain during the life of this Contract, Builder's Risk Insurance (Appendix 20), fire, lightning, extended coverage, vandalism, and property theft on the insurable portion of the Project on a 100 percent completed value basis against damage to the equipment, structures, or material. The University and the Contractor, as their interests may appear, shall be named as the Insured. If the project is small, this requirement of Builder's Risk Insurance (Appendix 20) may be waived in the Supplemental Conditions section of the Contract Documents. If the AIA Document A201-1997 Contract for Construction is used, paragraph document 11.4.1 must be deleted as the standard language in the General Conditions section of this document requires the University to purchase and maintain Builder's Risk Insurance (Appendix 20). A provision requiring the General Contractor to procure Builder's Risk Insurance (Appendix 20) should be inserted in the Supplemental Conditions portion of the Contract.

The Contractor shall maintain the insurance coverage required by this contract (see Supplemental Conditions) throughout the term of this contract, and shall furnish the University with certificates showing the type, amount, class of operations covered, effective dates and dates of expirations of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by the certificate will not be canceled, or materially altered except after fifteen (15) days prior written notice has been received by the University".

R. Qualification of Contractors

All contractors are subject to approval by the University. The University shall record violations of contracts, poor workmanship, and other serious breaches of responsibilities. Where a contractor has exhibited unsuitability in the professionalism of a contract, the University Purchasing Official shall thoroughly investigate all aspects of his alleged unsuitability and make a determination to suspend the contractor for cause not to exceed one (1) year. The contractor shall be notified in detail the results of the investigation and be afforded the opportunity to appeal his suspension. The decision shall be given to the contractor in writing. Suspension of a contractor for cause shall be reported to the Contractor's Licensing Board where applicable.

When it is necessary for the University to suspend a contractor twice in any twenty four month period, the suspension shall be automatically referred to the Contractor's Licensing Board with a recommendation that the contractor be debarred from bidding on any state-funded capital improvement projects.

VII. Award of Contract

No capital improvement contract shall be awarded to anyone other than the lowest responsible bidder for projects subject to competitive bid, or to the contractor selected in accordance with Selection of Design Professional and General Contractor or Construction Manager (Appendix 2) in excess of \$5 million. In any contract the following shall be included:

- Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of terms of this contract. Any regulation or policy shall be subject to all legal remedies available to the University.
- The contractor, prior to entering any agreement with any subcontractor, for which the total considerations is greater than \$25,000, require the subcontractor to complete a Contract and Grant Disclosure and Certification Form (Appendix 21). The contractor shall ensure that any agreement, current or future, between the contractor and subcontractor for which the total consideration is greater than \$25,000 contain the following: Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the term of the subcontract. The party who fails to make the required disclosure or who violates the rule, regulations, or policy shall be subject to all legal remedies available to the Contractor.
- The Contractor shall, within ten days of entering into any agreement with a subcontractor, transmit to the University a copy of the Contract and Grant Disclosure and Certification Form (Appendix 21) completed and signed by the subcontractor and a statement containing the dollar amount of the subcontractor.
- The terms and conditions regarding the failure to disclose and conditions which constitutes material breach of contract and rights of termination and remedies under the Governor's Executive Order 98-04 are hereby incorporated within.
- Act 157 of 2007 of the Arkansas Legislative Session requires that any business or person responding to a Request for Proposal (RFP) for professional services, technical and general services or any category of construction in which the total dollar value is \$25,000 or greater certify, *prior to the award of the contract*, that they do not employ or contract with illegal immigrants. The Illegal Immigrant Verification Form (Appendix 30) must be completed before the contract is awarded.

A. Notice to Proceed

The attached Notice to Proceed Form (Appendix 22) or similar form approved by the Office of the General Counsel shall be used.

B. Change Orders

A Change Order (Appendix 23) is a written instrument approved by the University and design professional stating their agreement upon the following, separately or in any combination thereof:

- Description and details of work
- Amount of the adjustment in the Contract Sum
- Extent of the adjustment in the Contract Time
- Terms and conditions of the Contract Documents

Change Orders (Appendix 23) shall be submitted for approval to the Vice President for Finance after agreement is reached by the University, design professional, and the contractor as to the change. A Change Order (Appendix 23) is not effective until approved by the Vice President for Finance. Emergency Change Orders may be effective by following the same rules as emergency contracts. The distribution of Change Orders (Appendix 23) will be the same as the original contract.

A revised Request for Approval of Method of Financing (Appendix 5) must be submitted where:

- A Change Order (Appendix 23) increases items 1 and/or 2 that cannot be absorbed by item 3.
- A Change Order (Appendix 23) affects item 7 increasing the total cost of the project.

Change Order (Appendix 23) requests by the Contractor shall be submitted in a complete itemized breakdown, acceptable to the University and design professional.

Where unit prices are stated in the Contract, the Contractor should submit an itemized breakdown showing each unit price and quantities of any changes in the Contract Amount. The value of all such additions and deductions shall then be computed as set forth in the following paragraphs:

The Contractor shall present an itemized accounting together with appropriate supporting data for the purposes of considering additions or deductions to the Contract Amount. Supporting data shall include but is not limited to the following:

- Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance
- Cost of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed
- Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or other
- Costs of premiums for all bonds and insurance, permit fees, sales, use and similar taxes related to the Work
- Additional costs of supervision and field office personnel directly attributable to the change

The burden of proof to substantiate costs rests upon the Contractor. Contractor agrees that the University's representative shall have the right, at reasonable time, to inspect and audit the books and records of the Contractor to verify the propriety and granting of such costs.

Compute requests for changes whether additions or deductions as follows:

- For work performed by the Contractor:

Net Cost of Materials (A)

State Sales Tax (B)

Net Placing Cost (C)

Workers Compensation Insurance Premium and FICA Tax (D)

$A+B+C+D = E$

Overhead and Profit – 12% x (E) = F

Allowable Bond Premium (G)

TOTAL COST = F + G

- Credit for work deleted shall be computed as outlined in the paragraphs above except the Contractor's share of overhead and profit percentage is 7%.
- For added work performed by the subcontractors: subcontractors shall compute their work as outlined in the paragraphs above. To the cost of that portion of the work (Change) that is performed by the subcontractor, the Contractor shall add an Overhead and Profit of 5% plus the Allowable Bond Premium
- For work deleted by a subcontractor: subcontractors shall compute their work as outlined in the paragraphs above, except that the Overhead and Profit shall be 5%.

All changes in the Work shall be paid for and the compensation thus provided shall be accepted by the Contractor as payment in full for the use of small tools, superintendent's services, premium on bond, and all other overhead expenses incurred in the prosecution of such work.

The University shall not be deemed to have agreed to any costs for additional work, to have agreed to additional time for completion, or to have agreed to any other changes in the terms and conditions of the Contract Documents until the University, design professional, and Contractor have executed a Change Order (Appendix 23). For any increases to the contract amount, scope of work, time for completion or other terms relating to the Change Order (Appendix 23), the Contractor shall furnish an amendment to the Bond agreement in which the Surety has agreed to amend the Payment and Performance Bond (Appendix 19) to reflect such revisions.

Contract Time is the period of time identified in the Contract Documents for Substantial Completion of the Work, including authorized adjustments made as part of Change Orders (Appendix 23) agreed to by the Owner, Contractor and design professional.

C. Payment Requests

Payment shall be processed within the time allowed and according to Payment Requests/Processing Payments - Arkansas Code Annotated 19-4-1411 (Appendix 24).

The Contractor may submit periodically, but not more than once each month, a Request for Payment for work completed. When unit prices are specified in the Contract Documents, the Request for Payment shall be based upon the quantities completed.

Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site, and if approved in advance by the University, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner and the design professional to establish the University's title to such materials or equipment or otherwise protect the University's interest including applicable insurance and transportation to the site for those materials and equipment stored off site.

The Contractor shall furnish the design professional or University all reasonable facilities and job tickets required for obtaining the necessary information relative to the progress and execution of the Work and the measurement of

quantities. Each Request for Payment shall be computed from the work completed on all items listed in the approved schedule of values less 10% of the first 50% of the adjusted Contract Sum and less previous payments to the Contractor on the Contract.

D. Substantial Completion

A Certificate of Substantial Completion (Appendix 25), establishing the Date of Substantial Completion shall state the responsibilities of the University and the Contractor for security, maintenance, heat, utilities, damage to work, and insurance and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion, unless another timeframe is stated in the Certificate of Substantial Completion (Appendix 25). The Certificate of Substantial Completion (Appendix 25) shall not become effective until approved by the University. An original Certificate of Substantial Completion (Appendix 25) or other similar form may be used as the Substantial Completion Certificate.

E. Acceptance and Final Payment

Upon receipt of written notice the Work is ready for final inspection, the design professional together with the University will conduct such inspection and when the design professional determines the work is acceptable to the design professional and University, the design professional shall certify his acceptance to the University. Final Payment shall be the Contract Sum plus approved Change Order (Appendix 23) additions less approved Change Order (Appendix 23) deductions, less previous payments made, and less liquidated damages, if any. The Contractor shall furnish evidence that he has fully paid all debts for labor, materials, and equipment incurred in connection with the Work. The Owner, upon approval by the design professional of all documentation to be provided by the contractor, will accept the Work and release the Contractor, except as to the conditions of the Payment and Performance Bond (Appendix 19), any legal rights of the University, required guarantees and correction of faulty work after Final Payment, and shall authorize payment of the Contractor's final Request for Payment. The Contractor must allow sufficient time between the time of completion of the work and approval of the final Request for Payment for the design professional to assemble and check the necessary data.

Acceptance of final payment by the Contractor shall constitute waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of final Request for Payment. Any claims for interest on delinquent payments shall be made pursuant to Delinquent Payments – Arkansas Code Annotated 22-9-205 (Appendix 26).

VIII. Bid Protests

Any actual or prospective bidder or contractor who is aggrieved in connection with the specifications, solicitation for, or award of a capital improvement contract may protest to the University's Vice President for Finance or other official designated by the President. The protest shall be submitted in writing within five (5) working days after the bid opening and identify the project by bid number or with sufficient detail to identify the project and the grounds upon which the protest is made. Since time is of the essence in award of all capital improvement contracts, protests and their resolution shall be resolved promptly.

The University's Vice President for Finance or a designee shall have the authority to settle or resolve a protest of an aggrieved bidder or contractor, actual or prospective, concerning the specifications, solicitation, or award of a contract. If a protest is not resolved by mutual agreement, the Vice President for Finance or other designated official of the University shall promptly issue a decision in writing stating the reasons for the action taken. A copy of the decision shall be furnished to the protestant and other interested parties. The decision shall be final and conclusive.

IX. Construction Inspection and Observation

Construction inspection and observation will be performed as contractually required by the design professional in consultation with the appropriate building consultant. Contract documents, as modified and agreed to by the University and Architect, will specify the extent of basic and optional inspection services to be provided, but shall not modify observations required by applicable law.

In addition to construction inspection services provided by the Architect/Engineer, the University Associate Vice President for Facilities (Director of Physical Plant) or designee will perform routine project review and observation. The University Associate Vice President for Facilities (Director of Physical Plant) or designee will conduct periodic project review meetings on site with the Contractor and Architect/Engineer as required to monitor project progress and work performance.

X. Contractor Dispute Resolution

In the event of any dispute regarding the Contractor, Architect, Engineer, and/or Owner (hereinafter referred to as party/parties for this section only) under this Agreement, the party shall notify the appropriate University Administrator in writing. The University's Administrator or his designee will then attempt to negotiate a settlement of the dispute between the parties.

If the University's Administrator, or designee, determines he is unable to negotiate a settlement between the parties, the parties may participate in mediation. A request for mediation must be made in writing to the University and the parties shall agree upon the location of the mediation. A Mediator mutually agreed upon by the parties shall conduct the mediation process. Mediation shall be voluntary, non-binding and all proceedings in connection with such shall be subject to the Agreement and applicable provisions of Arkansas law. Any mediation fees shall be borne equally between the parties. The parties shall coordinate mediation and all parties notified. The University's Administrator or his designee may view any and all mediation proceedings. Any settlements arising out of the mediation process must be approved by the University.

Notwithstanding anything to the contrary contained herein, if any dispute arises between the Parties, whether or not it requires at any time the use of dispute resolution procedures described about, in no event, nor for any reason, shall the Contractor, Architect, or Engineer interrupt the provision of services/performance to the University, or perform any other action that prevents, slows down, or reduces, in any way, the provisions of the Agreement unless: (a) authority to do so is granted by the University or (b) the Agreement has been terminated by the University. Nothing in these contract documents, including the use of mediation, shall be construed to waive the sovereign immunity of the State of Arkansas or any entities thereof.

XI. Project Close Out

The general contractor shall notify all parties involved of the date upon which he will be ready for substantial completion. The project architect or engineer will schedule and carry out the inspection to verify the construction meets substantial completion status.

The contractor shall notify the design professional that he is ready for a final inspection, at which time the design professional with the University will conduct a final inspection, and, if acceptable, accept the facility. All mechanical, electrical, or other building systems shall be checked and inspected completely at the time of final inspection prior to project close out by the acting consultant who should be a registered professional engineer or other qualified personnel. The mechanical system should be balanced once per each major seasonal change by the contractor under the supervision of the consultant or engineer during the first year warranty period.

XII. Project Document Management

A. During Construction

The contractor shall, during the progress of the work, keep an accurate record of all changes, additions, deletions, and corrections from the layouts shown on the drawings. Record of changes may be kept by accurately marking all changes on a set of prints and their connections to utility mains as well as all valves, etc., which will be concealed in the finished work, shall be accurately indicated on the drawings by measured distances. Depths as well as horizontal distances shall be shown. The Design Consultant shall verify and add to information as required and transmit these reproducible prints to the University as outlined in item 2, below. Further, the contractor shall furnish the Design Consultant for review and approval prior to transmission to the University, 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 sepia prints, etc., as called for under the various divisions of specifications. From this material collected by and through the contractor and several sub-contractors, the Design Consultant shall cause to be prepared and furnish to the University a neatly bound folio containing the manufacturer's instructions, arrangement drawings and detailed parts identification on all items of operable equipment of a plumbing, electrical, or mechanical nature built into and part of the project covered by the construction documents. Depending upon the size of the project, the folio may be divided into volumes covering the various elements of work such as electrical, plumbing, heating, ventilating, air conditioning, refrigeration, elevators, building hardware, special equipment and such other divisions as may be deemed appropriate.

B. Completion Certificates and Affidavits

Before final payment the contractor shall furnish to the design professional quadruplicate executed copies of current editions of AIA standard documents as follows:

Certificate of Substantial Completion (Appendix 25)

Affidavit of Payment of Debts and Claims (Appendix 27)

Affidavit of Release of Liens (Appendix 28)

Consent of Surety of Final Payment (Appendix 29)

Copies of the above documents will be attached to the Contractor's final Payment Request.

C. Completion of Construction

The Design Consultant shall provide to the University a copy of the material outlined in Item 1, above, in a neatly bound folio. In addition, the Design Consultant shall furnish one (1) set of original construction documents to the University corrected as required from contractor information above. The original construction documents are to be prints on .005 inch polyester film or similar copies of the Architect's original tracings. If requested by the University, the Design Consultant is to also furnish the above corrected as-built drawings in the form of an AutoCAD drawing recorded on 3 ½" double-sided, high-density diskette(s) in IBM PC compatible format.

APPENDICES

1. Procedure for Capital Projects (Approved _____)
2. Selection of Design Professional and General Contractor or Construction Manager (Approved _____)
3. Capital Project Proposal
4. Capital Construction Checklist
5. Request for Approval of Method of Financing
6. Method of Finance – Arkansas Code Annotated 19-4-1407
7. Procedure for Selection of Architects or Engineers (Approved _____)
8. Procedure for Selection of On-Call Architects or Engineers (Approved _____)
9. Arkansas State Accounting Procedures Manual – Part II – Construction
10. Advertisement
11. Advertisement & Award – Arkansas Code Annotated 22-9-203
12. Advertisement & Award – Arkansas Code Annotated 19-4-1402
13. Competitive Sealed Bids – Arkansas Code Annotated 22-9-204
14. Bid Form
15. Alarm System License – Act 429 of 1977
16. Asbestos License/Certification – Act 394 of 1985
17. Trench or Excavation Safety – Arkansas Code Annotated 22-9-212
18. WH 347 Form “Payroll” (for contractor’s optimal use)
19. Payment and Performance Bond
20. Builder’s Risk Insurance
21. Contract and Grant Disclosure and Certification Form
22. Notice to Proceed
23. Change Order
24. Payment Requests/Processing Payments – Arkansas Code Annotated 19-4-1411
25. Certificate of Substantial Completion
26. Delinquent Payments – Arkansas Code Annotated 22-9-205
27. Affidavit of Payment of Debts and Claims
28. Affidavit of Release of Liens
29. Consent of Surety of Final Payment
30. Illegal Immigrant Verification Form – Act 157 of 2007

Procedure for Capital Projects (Approved _____)

A capital project shall be defined as:

- A project which requires the services of an architect and/or engineer approved by the President.
- A project which requires substantive changes to the exterior facade of a building.
- Any new construction, renovation, or remodeling project not covered in Section I that the President has approved.

Before a capital project will be considered by the President, a Capital Project Proposal (Appendix 3) must be completed and submitted to the President and Office of Financial Services for review and recommendations.

The Southern Standard Building Code (1999, as amended) and the National Fire Protection Association (NFPA) codes as applicable shall be the construction standards.

The President may approve combining multiple phases of project review depending on the complexity and cost of the project being recommended. The approval process is listed below:

- Submit Capital Project Proposal (Appendix 3) to the President and Office of Financial Services
- Develop concept description
- Request authority to begin process to select design professionals and if appropriate, general contractor or construction manager
- Estimate project costs and identify potential funding sources
- Request authority to select appropriate project delivery method: design-bid-build or negotiated construction and design contract
- Express intent to issue bonds as applicable
- Receive approval from the President to proceed

The President or his designee approves the project concept description, funding sources, project design and issuance of debt instruments. The President or his designee authorizes solicitation of bids in accordance with law and authorizes contract award if the low bid is within the amount of funds available for the project. Final architect and/or engineer and construction manager or general contractor selection resides with the President or his designee.

Selection of Design Professionals and General Contractor or Construction Manager
(Approved _____)

In lieu of other policies and procedures of the Board of Trustees with respect to capital projects, the procedures set forth herein may be used for major capital projects. As used herein, a major capital project is one which exceeds \$5,000,000, excluding the cost of land, to be paid from public funds, or at least 80% of the estimated cost of the proposed project, excluding the cost of land, to be paid by private funds. This policy establishes procedures for the award and oversight of contracts for design and construction services for major capital projects. This policy and the procedures herein are intended to comply with Act 1626 of 2001.

A Capital Project Proposal (Appendix 3) for a major capital project will be submitted to the President and the Office of Financial Services as set forth in Procedure for Capital Projects (Appendix 1). The proposal may request authority to begin the process to select an architect and/or engineer as design professionals for the project and a general contractor and/or construction manager for the project. The President may either authorize the selection process to begin or may defer such action to the next meeting of the Board of Trustees, regular or special.

Following approval to begin the selection process for design professionals and a general contractor and/or construction manager, the President shall constitute an ad hoc committee or committees to recommend selection of design professionals and a general contractor and/or construction manager for the project. The committee shall consist of at least three (3) members, one of whom shall be the Vice President for Finance or his designee.

The committee shall identify through such means as it deems appropriate, licensed architects, engineers and contractors which it believes have the demonstrated qualifications to assure the design and completion of the project in an expeditious manner while adhering to high standards of design and construction quality. At a minimum, the appropriate campus official shall publish notice of intention to receive written proposals for three (3) consecutive days in a newspaper of statewide distribution and shall allow a minimum of ten (10) working days for design professionals, general contractors and construction managers to send letters or resumes in response to the advertisement. The committee may also require additional means of notification including, but not limited to, posting on campus websites, placement of notice in trade publications directed to licensed design professionals and contractors or by direct mail to licensed design professionals or contractors who have demonstrated experience in performing major capital projects for the University.

Following the date established in the notice for interested design professionals, contractors and/or construction managers to send letters, resumes and other information with respect to their qualifications and interest in the project, the committee shall review the submissions and shall select a maximum of five (5) applicants for interviews. Following initial interviews, the committee shall select not more than three (3) applicants for design services and not more than three (3) applicants for general contractor and/or construction management services for final interviews. The final interviews shall be held at the time and date designated by the selection committee.

In recommending selection of a general contractor, construction manager, architect or engineer, the committee shall consider its established criteria which shall include, but are not limited to, the following:

- The experience of the professional or professionals in similar projects;
- The record of the professional or professionals in timely completion of projects with high quality workmanship;
- Other similar matters to determine that the professional or professionals will complete the project within the time, budget and to the specifications set.

The committee will present its list of finalists and recommendations for selection of design professionals and general contractor and/or construction manager through the Vice President for Finance to the President. After review, the President will select the professional or professionals which are determined to be in the best interest of the University for design and construction of the project.

The President shall make the final decision and authorize contracts to be negotiated and awarded to the design professionals and the contractor and/or construction manager selected. The Vice President for Finance or his designee shall be authorized to negotiate the terms of the contracts for professional services. There shall be separate contracts for design and construction services.

All project architects and engineers shall be properly licensed in accordance with the Arkansas State Board of Architects and the Arkansas State Board of Engineers. The construction manager or general contractor shall be properly licensed by the Arkansas Contractors Licensing Board. All subcontractors shall be properly licensed by the Arkansas Contractors Licensing Board.

Capital Project Proposal

Name of Proposed Facility: _____

1. Project Function

2. Facility Location and Description (Attach Map)

3. Total Project Cost

4. Parking Plan to Support New or Expanded Facility

5. Source of Project Funds

Capital Construction Checklist

Architect/Engineer Selection

Project Specific:

- Letter to President requesting permission to begin selection process for architect/engineer
- Letter to President with short list of "recommended" architects/engineers for selection

On-call:

- Letter to President requesting permission to begin selection process for architect/engineer
- Letter to President with short list of "recommended" architects/engineers for selection

Capital Project Approval:

- Capital Project Proposal (Appendix 3) to President for approval
- If no financing issues, request for President's authorization to solicit bids for project and authorization to award contract to low bid if within funding
OR
- President's authorization to begin soliciting qualifications for General Contractors if using Guaranteed Maximum Process
- Request for Approval of Method of Financing (Appendix 5) submitted to Vice President for Finance for signature and forwarding to Legislative council for review/approval

Deferred Maintenance/ Renovation:

- If cost estimate greater than \$500,000, Capital Project Proposal (Appendix 3) to President for approval

Bond Issue Financing:

- Request to President for approval of "Intent Resolution" using not-to-exceed amount
- Request for Economic Feasibility Review by ADHE Coordinating Board
- Submission from Bond Counsel of Final Authorizing Resolution for President's approval

Reynolds Financing or other Private Funds:

- Request to President for approval to make application for private or foundation funding for capital project

Loan Financing:

- Request to Vice President for Finance to make application for loan financing; can combine with authorization to execute Loan agreement and all other documents necessary to complete the borrowing

DFA-OFFICE OF ACCOUNTING
Request for Approval of Method of Financing

Agency: _____ Date: _____
 Project Name: _____ Request No.: _____
 Project Description: *(in detail)*: _____

Appropriation Authority: Act(s): _____
 Estimated Date of Commencement: _____
 Estimated Date of Completion: _____

	<u>Estimate of Cost</u>	<u>Original Total Projected Cost</u>	<u>Revised Total Projected Cost</u>	<u>Final Total Cost</u>
(1) Construction: <i>(Include cost of built-in equipment)</i>				
(2) Architect/Engineer Fees: _____% of Item (1)				
(3) Contingencies: <i>[Not to exceed 10% of Item (1) and (2)]</i>				
Total Base Cost:		\$ 0.00	\$ 0.00	\$ 0.00
(4) Other Costs:				
(A) Land Purchases:				
(B) Art (Act 1079 of 1985):				
(C)				
Total Other Costs:		\$ 0.00	\$ 0.00	\$ 0.00
(5) Movable Equipment and Furniture:				
(6) Total Cost of Project:		\$ 0.00	\$ 0.00	\$ 0.00

	<u>Source</u>	<u>Appropriated</u>				<u>Original</u>		<u>Revised</u>	<u>Final</u>
		Bus Area	Funds Center	Commit Item	Fund	%	Amount	%	Amount
(7)	Appropriated Funds:								
	General Improvement:					%	%		
						%	%		
						%	%		
						%	%		
						%	%		
	Agency Bank Funds:					%	%		
	Source of Bank Funds(<i>Specify</i>):								
	Federal Grant Funds:					%	%		
	Trust Funds:					%	%		
	Special Revenue Funds:					%	%		
	Other Appropriated Funds:					%	%		
						%	%		
	Total Appropriated Funds:							\$ 0.00	\$ 0.00
(8)	Other Funds:								
	Bond Proceeds:					%	%		
	Others (<i>Specify</i>):					%	%		
						%	%		
(9)	TOTAL FUNDING AVAILABLE:					100%	100%	\$ -	\$ -

Submitted by: Agency: _____ Date: _____
 By: _____ Title: _____
 Approved by: Major Department Approval: _____ Date: _____
 By: _____ Title: _____
 DFA-Office of Accounting: _____ Date: _____
 By: _____ Title: Assistant Administrator

Method of Finance – Arkansas Code Annotated 19-4-1407

Before any state agency shall enter into any contract of employment with an architect or take any other affirmative action toward the construction or financing of any project as provided in this subchapter, it shall submit to the Chief Fiscal officer of the State, in writing, a summary statement setting forth:

- A general description of the proposed project;
- Its estimated overall costs; and
- The method it proposes to use to finance its cost, which is to be a method of financing that must be approved by the Governor.

After examining the method of financing and making such investigation as he shall deem necessary or advisable, the Chief Fiscal Officer of the State shall notify the agency, in writing, of his and the Governor's approval or disapproval of the method of financing the project. In the event of disapproval by the Chief Fiscal Officer of the State and the Governor, the agency may submit an alternate plan of financing the project. In any event, no affirmative action shall be taken by the agency unless and until a method of financing shall be approved by the Governor and the Chief Fiscal Officer of the State. The Chief Fiscal Officer of the State shall have no authority to pass upon the need for any such construction, such authority being vested solely in the agency.

The method of financing as required by this subchapter shall include estimated dates for commencing and completing the project. After the contracts for the project have been awarded, then the method of financing shall be amended to include the estimated dates of completion in accordance with the awarded contracts.

History. Acts 1973, No. 876 § 22; 1975, No. 985, § 1; A.S.A. 1947, § 13-348.

Procedure for Selection of Architects or Engineers (Approved _____)

Following submission of a Capital Project Proposal (Appendix 3) to the President for review and recommendations, the President may approve the project and authorize commencement of the process to select design professionals for the project.

After approval to begin the selection process for design professionals, the President shall constitute a committee to recommend selection of design professionals for the project. The committee shall consist of at least three (3) members, one of whom shall be the Vice President for Finance or his designee. The selection committee shall cause an advertisement to be placed in a newspaper of general circulation for three (3) consecutive days briefly stating the scope of the required services, the project location, selection criteria in order of importance, any necessary forms to submit, closing date for responses and the address of the office which is to receive submissions. The selection committee may also utilize such other means and methods of communications as it deems appropriate to furnish notice to licensed architects and engineers of the proposed project, the selection process and criteria and other relevant information. At a minimum the selection committee shall allow ten (10) working days from the date of first publication in a newspaper of general circulation for design professionals to respond to the advertisement.

Except as provided in Selection of Design Professional and General Contractor or Construction Manager (Appendix 2) with respect to major capital projects, the selection committee shall interview at least five (5) applicants. If less than five (5) firms submit responses, then all firms shall be interviewed. Following these interviews the selection committee shall compile a list of a minimum of three (3) firms recommended for the project and shall submit the list through the Vice President for Finance to the President. After review of the committee's recommendation, the President will select the design professional or professionals which are determined to be in the best interests of the University for design of the project. The President shall make the final decision and authorize contracts to be negotiated and awarded to the design professional or professionals for the project. The Vice President for Finance or his designee shall be authorized to negotiate the terms of the contract or contracts for professional services.

Procedure for Selection of On-Call Architects or Engineers (Approved _____)

On-call architects or engineers for deferred maintenance or minor renovation projects shall be selected in accordance with the Procedure for Selection of Architects or Engineers (Appendix 7).

The professional services contract with such design professional or professionals shall be for a term of one (1) year and may be renewed annually with written approval of the President. No retainer or other fee shall be paid except those associated with specific deferred maintenance or minor renovations projects and the firm or firms selected to provide on-call architectural or engineering services shall not, by virtue of such contract, be assured of any specific amount of work under such contract. Contracts for on-call architectural or engineering services shall not provide expressly or by implication that the design professional or professionals providing such services will be awarded a contract for new construction or renovation related to or arising out of services performed under such contracts for deferred maintenance or minor renovation projects.

As used herein “deferred maintenance or minor renovation projects” shall mean a project, the estimated cost of which does not exceed \$500,000. A specific deferred maintenance or minor renovation project or projects in excess of this amount must be approved by the President. Deferred maintenance or minor renovation projects shall not be subject to the Procedure for Capital Projects (Appendix 1).

The total fees and costs for professional services and reimbursable expenses for on-call architects or engineers shall not exceed \$125,000 for a contractor per fiscal year without prior written approval of the President.

Arkansas State Accounting Procedures Manual - Part II – Construction

Act 104 of 1971, as amended, requires State agencies, departments or institutions to obtain legislative authorization prior to the construction and/or acquisition of any lands, buildings, structures, utility systems or similar facilities to be financed in part or wholly from State Treasury Funds, Federal Grants, Revenue Bonds or Revenue Notes provided by law, agency or institutional receipts, donated funds from private sources or a combination of the above sources.

In unusual circumstances between sessions of the General Assembly, a State agency, department or institution which needs to make a capital expenditure for construction and/or acquisition of any lands, building, structures, utility systems or similar facilities costing \$50,000 or more in cash funds for which prior legislative authorization was not given must submit a request for such expenditure to the Chief Fiscal Officer of the State to include a Method of Finance (AFGM 043). The Method of Financing must include the source(s) of funding and estimate(s) of the cost of maintaining and operating such capital improvements in the event approval of such capital expenditures is to be granted. (NOTE: The source of bank funds must be specifically stated such as: tuition and fees, federal government, etc.) The Chief Fiscal Officer will submit his recommendation to the Legislative Council for review. If approved, the requesting agency, department or institution may proceed with the capital expenditure subject to the provisions of Act 876 of 1973, as amended and other legislation as applicable.

State agencies planning construction of buildings, major repairs, additions, or improvements to existing facilities are allowed to select their own architect and engineer subject to the review and approval of the Arkansas State Building Services. It is recommended that public notice of intent to select an architect or engineer be given prior to the selection. Notice must be given by means of an advertisement in a newspaper of extensive circulation in the area. All applicants should be given the opportunity to make an initial presentation limited to their background, prior experience, special expertise and any other area that will enable the agency to evaluate the capability and reliability of the person or firm applying. Applicants are not required to submit completed plans and specifications at the initial interview.

Prior to entering into any contract or making a commitment of any funds, the payment of which would be against a construction and permanent improvement appropriation, a Method of Finance (AFGM 043) must be submitted to the State Building Services Office of Construction, except that such provision shall not be applicable to the Game and Fish Commission, the Arkansas State Highway and Transportation Department, Public School Districts of the State of Arkansas, and office of elected officials. From the State Building Services Office of Construction, the Method of Financing goes to the Office of Accounting of the Department of Finance and Administration. Upon certification of the availability

of appropriations and funds, the Department of Finance and Administration Office of Accounting approves the Method of Financing. It is then encumbered by the Fiscal Management Section of the Office of Accounting. The approved encumbered Method of Financing is copied and distributed by the Office of Accounting to State Building Services and the originating agency. The agency making the request is responsible for providing its contracting parties with a copy of the Method of Financing.

After the Method of Financing is approved and distributed, Professional Services contracts for architectural or engineering services, construction, repairs, alterations or improvements may be awarded.

Refer to procedures by State Building Services for detailed instructions.

A revised Method of Financing must be submitted if:

- Changes in items 1 through 5 (Attachment II – 8.1) cause a change in item 6 or,
- Any change in funding sources (Attachment II – 8.1) items 7 through 9

Modifications to approved Method of Financing must be submitted on AFGH 043 to the Office of Construction, State Building Services. Subsequent distribution and/or processing will be accomplished according to that of the original Method of Financing.

If the estimated dates of commencement and/or completion as stated on the original Method of Financing change, a letter of revision must be submitted to the Office of Construction, State Building Services. This revised date will appear on the next revision to the Method of Financing.

Professional Services contracts relating to an approved Method of Financing must be on file in the Department of Finance and Administration Office of Accounting. All other contracts should be on file with the Office of Construction, State Building Services prior to payment being made against such contracts. If a change to the contracts changes items 1 through 6 of the Method of Financing a revised Method of Financing must be submitted. Refer to procedures issued by the Department of Finance and Administration Office of State Purchasing, and the Office of Construction, State Building Services regarding detailed instructions for the purchase of materials and/or services not included in the original contract(s).

Advertisement

To: Arkansas Democrat Gazette

From: Southern Arkansas University

Please insert the following "Notice to Design Professionals" in the appropriate column of your paper to run for three (3) consecutive days beginning with your issue dated **Friday, January 25, 2008** and continuing through **Sunday, January 27, 2008**.

NOTICE TO ARCHITECTS

Southern Arkansas University is soliciting responses from interested firms to provide **Architectural and related Engineering Services** for the following project:

A RENOVATION OF APPROXIMATELY 7,500 SQUARE FEET OF THE EXISTING WHARTON NURSING BUILDING, A 9,000 SQUARE FOOT NEW ADDITION AND 5,000 SQUARE FEET OF ADDITIONAL PARKING AREA

Written responses (8 copies) will be considered if received by 2:00 PM on February 22, 2008.

All respondents will be notified of the results by mail.

Written responses shall include:

1. Current office size, personnel descriptions, work load, and all building and engineering consultants to be used, including civil, geo-technical, and landscape design
2. Projects currently under contract with State Agencies or Educational Facilities
3. Similar project experience with nursing facilities
4. Submit proof of current professional liability insurance coverage (\$500,000 minimum of professional liability insurance coverage required, including all consultants except geo-technical)
5. All firms shall be licensed by the State of Arkansas
6. Out of State firms should joint venture, align or associate with an in-state licensed firm

Professional services required:

PROGRAM REVIEW, MASTER PLAN REVIEW, COST ESTIMATING, SCHEMATIC DESIGN, DESIGN DEVELOPMENT, CONSTRUCTION DOCUMENTS, BIDDING, CONSTRUCTION ADMINISTRATION, INSPECTION AND PROJECT CLOSE OUT

Address eight (8) copies of responses to:

Southern Arkansas University, Office of Purchasing, 100 East University, Magnolia, AR 71753

Advertisement and Award – Arkansas Code Annotated 22-9-203**22-9-203. Public improvements generally — Award procedure**

- (a) No contract providing for the making of major repairs or alterations, for the erection of buildings or other structures, or for making other permanent improvements shall be entered into by the state or any agency thereof, any county, municipality, school district, or other local taxing unit with any contractor in instances where all estimated costs of the work shall exceed the sum of twenty thousand dollars (\$20,000) unless:
- (1) The state or any agency of the state shall have first published notice of its intention to receive bids one (1) time each week for not less than two (2) consecutive weeks for projects more than the amount of fifty thousand dollars (\$50,000) and published notice of its intention to receive bids one (1) time each week for not less than one (1) week for projects more than the quote bid limit, as provided under the Arkansas Building Authority minimum standards and criteria, but less than or equal to fifty thousand dollars (\$50,000) in a newspaper of general circulation published in the county in which the proposed improvements are to be made or in a trade journal reaching the construction industry; and
 - (2) Any county, municipality, school district, or other local taxing unit shall have first published notice of its intention to receive bids one (1) time each week for not less than two (2) consecutive weeks in a newspaper of general circulation published in the county in which the proposed improvements are to be made or in a trade journal reaching the construction industry.
- (b) (1) The date of publication of the last notice shall be not less than one (1) week before the day fixed therein for the receipt of bids.
- (2) If there is no newspaper regularly published in the county in which the proposed work is to be done, the notices may be published in any newspaper having a general circulation in the county.
 - (3) Nothing in this section shall be construed as limiting to two (2) the number of weeks the notices may be published for projects over the amount of fifty thousand dollars (\$50,000), limiting to one (1) the number of weeks the notices may be published for projects more than the quote bid limit, as provided under subsection (a) of this section, and less than or equal to fifty thousand dollars (\$50,000), and as limiting to two (2) the number of weeks the notices may be published for all other projects.

- (c) (1) All notices shall contain:
 - (A) A brief description of the kind or type of work contemplated;
 - (B) The approximate location thereof;
 - (C) The place at which prospective bidders may obtain plans and specifications;
 - (D) The date, time, and place at which sealed bids will be received;
 - (E) The amount, which may be stated in a percentage, of the bid bond required;
 - (F) A statement of the taxing unit's reservation of the right to reject any or all bids and to waive any formalities; and
 - (G) Such other pertinent facts or information which to it may appear necessary or desirable.

- (2) (A) (i) Every bid submitted on public construction contracts for any political subdivision of the state shall be void unless accompanied by a cashier's check drawn upon a bank or trust company doing business in this state or by a corporate bid bond.
- (ii) Every bid submitted on public construction contracts for the state or any agency or department of the state shall be void unless accompanied by a cashier's check drawn upon a bank or trust company doing business in this state or by a corporate bid bond, except for projects under twenty thousand dollars (\$20,000).
- (iii) No bid bond shall be required for public construction contracts for the state or any agency or department of the state under or equal to twenty thousand dollars (\$20,000).
- (B) This bid security shall indemnify the public against failure of the contractor to execute and deliver the contract and necessary bonds for faithful performance of the contract.
- (C) The bid security shall provide that the contractor or surety must pay the damage, loss, cost, and expense subject to the amount of the bid security directly arising out of the contractor's default in failing to execute and deliver the contract and bonds.
- (D) Liability under this bid security shall be limited to five percent (5%) of the amount of the bid.

- (d) On the date and time fixed in the notice, the board, commission, officer, or other authority in which or in whom authority is vested to award contracts shall open and compare the bids and thereafter award the contract to the lowest responsible bidder but only if it is the opinion of the authority that the best interests of the taxing unit would be served thereby.
- (e) In the event that all bids submitted exceed the amount appropriated for the award of the contract, the state agency or its designated representatives shall have the authority to negotiate an award with the apparent responsible low bidder but only if the low bid is within twenty-five percent (25%) of the amount appropriated.
- (f) (1) In the event that all bids submitted exceed the amount appropriated for the award of the contract and if bidding on alternates was not required by the plans and specifications, the county, municipality, school district, or other local taxing unit shall have the authority to negotiate an award with the apparent responsible low bidder but only if the low bid is within twenty-five percent (25%) of the amount appropriated.
- (2) If the plans and specifications for the project require bids on alternates in addition to a base bid, there shall be no more than three (3) alternates, and the alternates shall:
 - (A) Be deductive; and
 - (B) Be set forth in the plans and specifications in numerical order.
- (3) If all bids submitted exceed the amount appropriated for the award of the contract, then the county, municipality, school district, or other local taxing unit may determine the apparent responsible low bidder by deducting the alternates in numerical order.
- (4) After making the deductions, if the cost of the project is less than twenty-five percent (25%) above the amount appropriated, then and only in that event, the county, municipality, school district, or other local taxing unit may negotiate an award with the low bidder so determined.
- (g) Whenever it is obvious from examination of the bid document that it was the intent of a bidder to submit a responsive bid and that the bid, if accepted, would create a serious financial loss to the bidder because of scrivener error, such as the transposition of figures, the board, commission, officer, or other authority in which or in whom authority is vested has the authority to relieve the bidder from responsibility under the bond and may reject the bid.
- (h) For projects of this state or any agency of the state, “amount appropriated” within this section means funds currently available for the project as determined

by the state or any agency or department of the state or any county, municipality, school district, or other local taxing unit prior to the opening of any bids.

- (i) No contract providing for the making of major repairs or alterations, for the erection of buildings or other structures, or for making other permanent improvements shall be entered into by the state, any agency of the state, any county, municipality, school district, or other local taxing unit with any contractor in instances where all estimated costs of the work shall exceed the sum of seventy-five thousand dollars (\$75,000) unless the bid documents contain statements which encourage the participation of small, minority, and women's business enterprises.
- (j)
 - (1) Notwithstanding any other provision of law to the contrary, any municipality or sanitation authority may enter into contracts with private persons, firms, associations, corporations, joint ventures, or other legal entities, including a combination of any of those entities, to provide for the design, building, operation, and maintenance of all or any portion of its wastewater treatment system, storm water treatment system, or water treatment system, or any combination of those systems.
 - (2) The contracts may include provisions for the design, financing, construction, repair, reconditioning, replacement, operation, and maintenance of the system, or any combination of those services and functions.
 - (3) Prior to entering into a contract under this section, the governing authority shall solicit qualifications-based competitive sealed proposals.
 - (4) The governing authority shall first establish criteria for evaluation of any entity submitting proposals on the contracts for the purpose of assisting the governing authority in making a review of the entity's previous performance on projects of comparable nature and magnitude and the environmental compliance record of the entity during the five (5) years immediately preceding the execution of the contract.
 - (5) The governing authority shall take into consideration the information to assist in determining the eligibility of any entity.
 - (6) The award of a contract under this section shall be made to the responsible and responsive entity whose proposal is determined in writing to be the most advantageous to the governmental authority, taking into consideration the evaluation factors set forth in the request for proposals.
 - (7) The governing authority of the municipality or the sanitation authority shall employ an appropriately licensed professional who is independent of the contractor to monitor and perform an independent review and inspection of

the design-build-operate-maintenance contract, or any part thereof, during its performance.

- (8) Before soliciting proposals for a design-build-operation-maintenance project, the governing authority of the municipality or the sanitation authority shall employ an appropriate licensed professional to perform the necessary studies and preliminary design to clearly establish the parameters for the project, including:
 - (A) Acceptable processes and structural alternatives; and
 - (B) Cost estimates for the acceptable alternatives.
- (k) (1) The state, an agency of the state, a county, a municipality, a school district, or other local taxing unit shall not require in plans or specifications that a bidder or supplier:
 - (A) Hold membership in any professional or industry associations, societies, trade groups, or similar organizations;
 - (B) Possess certification from any professional or industry associations, societies, trade groups, or similar organizations as steel building fabricators; or
 - (C) Be endorsed by any professional or industry associations, societies, trade groups, or similar organizations.
- (2) However, plans and specifications may include or reference standards adopted by professional or industry associations, societies, trade groups, or similar organizations.

History. Acts 1949, No. 159, §§ 1, 2; 1977, No. 370, § 1; 1981, No. 266, § 1; A.S.A. 1947, §§ 14-611, 14-612; Acts 1987, No. 758, § 4; 1995, No. 1319, § 2; 1997, No. 1193, § 1; 1999, No. 219, § 3; 1999, No. 675, §§ 1, 2; 1999, No. 1309, § 1; 1999, No. 1310, § 1; 2001, No. 921, § 1; 2001, No. 1051, § 1; 2003, No. 1297, § 1; 2005, No. 859, § 4.

Advertisement and Award – Arkansas Code Annotated 19-4-1402**19-4-1402. Contracts to be filed**

- (a) Executed counterparts of all contracts entered into by any state agency with respect to proposed projects for new improvements or major repairs or additions to existing buildings and facilities shall be filed with the Arkansas Building Authority prior to the issuance of any vouchers making payments under the contract, unless the contract is exempted from the jurisdiction of the authority by any law or a regulation promulgated pursuant to the Arkansas Administrative Procedure Act, § [25-15-201](#) et seq.
- (b) (1) The Boards of Trustees of the University of Arkansas, Arkansas State University, University of Central Arkansas, Henderson State University, Arkansas Tech University, and Southern Arkansas University, respectively, are exempt from the requirements of this section requiring the filing of the contracts with the authority.
- (2) The governing boards of all other public institutions of higher education shall be exempt from filing the contracts with the authority:
- (A) Upon approval of the Department of Higher Education; and
- (B) If prior to granting approval, the department shall have reviewed and approved policies and procedures adopted by the governing boards of the public institutions of higher education with respect to bidding and construction of capital improvement projects.
- (3) Nothing in this section shall prevent a public institution of higher education exempt under this subsection from entering into an agreement with the authority to file its contracts with the authority.
- (c) (1) All contracts for new improvements or major repairs or additions to existing buildings and facilities under this subchapter shall include a project disclosure statement prepared by the agency, board, commission, or public institution of higher education.
- (2) The disclosure statement shall provide the estimated timeline, scope, and cost of the total project.

- (3) The disclosure statement shall not be construed as authorizing any:
- (A) Additional work which is beyond the scope of the bid documents; or
 - (B) Payment exceeding the contract amount.
- (d) Nothing in this section shall prohibit any agency, board, commission, or public institution of higher education from executing contract amendments.

History. Acts 1973, No. 876, § 22; 1977, No. 813, § 2; A.S.A. 1947, § 13-348; Acts 1997, No. 294, § 1; 2001, No. 214, § 1; 2001, No. 961, § 3; 2005, No. 2186, § 1.

Competitive Sealed Bids – Arkansas Code Annotated 22-9-204**22-9-204. Subcontractors exceeding \$20,000 — Penalty**

- (a) As a condition to performing construction work for and in the State of Arkansas, all prime contractors shall use no other subcontractors when the subcontractors' portion of the project is twenty thousand dollars (\$20,000) or more, except those licensed by the Contractors Licensing Board and qualified in:
- (1) Mechanical, indicative of heating, air conditioning, ventilation, and refrigeration;
 - (2) Plumbing;
 - (3) Electrical; and
 - (4) Roofing.
- (b) (1) In the event the prime contractor is qualified and licensed by the board, he or she may use his or her own forces to perform those tasks listed in this section as subcontractors in one (1) or more of the trades listed.
- (2) (A) A subcontractor, including the situation stated in subdivision (b)(1) of this section, may subcontract a portion of the listed work.
- (B) However, a subcontractor is prohibited from subcontracting the work in its entirety.
- (c) (1) When the prime contractor makes a definite decision regarding the subcontractors he or she intends to use, he or she shall place the name of each subcontractor in a blank space provided on the form of proposal of his or her bid.
- (2) In the event that one (1) or more of the subcontractors named by the prime contractor in his or her successful bid thereafter refuses to perform his or her contract or offered contract, the prime contractor may substitute another subcontractor licensed by the board after having obtained prior approval from the architect or engineer and the owner. Additional approval must be obtained from the Arkansas Building Authority for capital improvement projects under its jurisdiction.
- (d) The prime contractor shall submit written evidence that the substituted contractor is costing the same amount of money or less and, if costing less, that the savings will be deducted from the total contract of the prime contractor and rebated to the owner.

- (e) It shall be mandatory that the mechanical, plumbing, electrical, roofing, and sheet metal subcontractors named on the form of proposal by the prime contractor awarded a contract under the provisions of this subchapter be given contracts by the prime contractor in keeping with their proposals to perform the items for which they were named.
- (f) (1) It shall be a violation of this section for any prime contractor to submit a bid listing unlicensed contractors or to use unlicensed contractors on a public works project.
- (2) It shall be a violation of this section for any subcontractor who is not licensed by the board to contract to perform work on a public works project.
- (3) Any contractor or subcontractor who, after notice and hearing, is found to have violated this section shall pay to the authority a civil penalty of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) and may be suspended from bidding on future public works contracts for a term of not less than six (6) months nor more than twelve (12) months.
- (4) All hearings and appeals under this section shall be pursuant to the provisions of the Arkansas Administrative Procedure Act, § [25-15-201](#) et seq. The authority shall have the power to file suit in the Pulaski County Circuit Court to obtain a judgment for the amount of any penalty not paid within thirty (30) days of service on the contractor of the order assessing the penalty.
- (5) Penalties collected pursuant to this section shall be deposited in the Arkansas Building Authority Maintenance Fund.

History. Acts 1949, No. 159, § 3; 1957, No. 183, § 1; 1961, No. 477, § 1; 1983, No. 871, § 1; A.S.A. 1947, § 14-613; Acts 1987, No. 759, § 1; 1989, No. 936, § 1; 1991, No. 728, § 1; 1993, No. 645, § 1; 1999, No. 1250, § 1; 1999, No. 1496, § 1; 2001, No. 989, § 1; 2003, No. 364, § 18.

BID FORM

Section 00410

Bid Time: _____

Bid Date: _____

Location: _____

BID FROM:

BID TO: Southern Arkansas University

PROJECT:

Gentlemen:

1. Having carefully examined the Contract Documents for this project, as well as the premises and all conditions affecting the proposed construction, the undersigned proposes to provide all labor, materials, services, and equipment necessary for, or incidental to, the construction of the project in accordance with the Contract Documents within the time set forth, for the lump sum base bid of:

\$ _____

2. Allowances: Allowances described in Section 01200 are included in the Bid Price.
3. Unit Prices: If the required quantities of the items listed below are increased or decreased by change order, the unit prices set forth below shall apply to such quantities.

\$ _____

\$ _____

\$ _____

4. Arkansas Code Annotated 22-9-212 requires the contractor to indicate on this bid form the cost of Trenching Safety Systems. FAILURE TO SHOW THIS COST WILL INVALIDATE THE BID. (NOTE THIS COST SHALL BE INCLUDED IN THE ABOVE BASE BID)

\$ _____

5. Completion Date: Bidder agrees that the work will be substantially complete and ready for final payment in accordance with the Contract Documents by _____.

6. The undersigned, in compliance with the Contract Documents for the construction of the above named project, does hereby declare:

That the undersigned understands that the State reserves the right to reject any and all bids and to waive any formality. That if awarded the Contract, the undersigned will enter into an Agreement, on a form identical to the form included in the Contract Documents and execute required performance and payment bonds within ___ days after receipt of the Intent to Award, will commence work within ___ days after the date of the Notice to Proceed, and will complete the Contract fully by Completion Date indicated. Should the undersigned fail to fully complete the work within the above stated time, he shall pay the Owner as fixed, agreed and liquidated damages and not as a penalty, the sum of \$ _____ for each calendar day of delay until the work is completed or accepted.

The undersigned further agrees that the bid security payable to Owner and accompanying this proposal shall become the property of the Owner as liquidated damages if the undersigned fails to execute the Contract or to deliver the required bonds to the Owner within ___ days from receipt of the Intent to Award as these acts constitute a breach of the Contractor's duties.

That this bid may not be withdrawn for a period of ___ days after the bid opening.

The undersigned understands that the Owner's intent is to construct all facilities proposed within the limits established by the funds appropriated for the project.

The names of subcontractors and the nature of the work to be performed by each one have been included on the Bid Form.

The undersigned agrees to pay all prevailing hourly wage rates prescribed and mandated by Ark. Code Ann. § 22-9-301 et. seq., if the bid exceeds \$75,000) or

the undersigned agrees to pay all prevailing hourly wage rates mandated by the Davis-Bacon Wage Rates and any other applicable federal regulations.

Bids submitted by a "Joint Venture/Joint Adventure" shall be signed by representatives of each component part of the Joint Venture. The licenses of each component part of the Joint Venture shall also be listed in the bid submittal. Therefore, joint venture bidders shall indicate at least two (2) signatures and two (2) licenses numbers on the Bid Form. Exception: Joint Ventures who have been properly licensed with the Arkansas Contractors Licensing Board as a "Joint Venture" need only to indicate the joint venture license number on the Bid Form. Joint Venture Bidders shall indicate at least two (2) signatures on the bid form even if they are licensed as a joint venture.

7. The following documents are attached to and made a condition of this Bid:

- Bid security
- Listing of Mechanical, Plumbing, Electrical and Roofing Subcontractors, if required

8. The undersigned acknowledges receipt of and inclusion as a part of the Contract Documents the following addenda:

No. Dated

No. Dated

No. Dated

No. Dated

9. Listing of Mechanical, Plumbing, Electrical and Roofing Subcontractors

All mechanical, plumbing, electrical and roofing subcontractors shall be listed regardless of qualifications, licensures or work amount. Bidders should consult the project manual on how to fill out this form. Failure to name the subcontractor in the space provided shall cause the bid to be declared non-responsive and the bid will not receive consideration.

Indicate the Name(s), of each entity performing the listed work:

MECHANICAL (Indicative of HVACR):

Is the amount of work \$20,000.00 or over: Yes___ No ___

PLUMBING:

Is the amount of work \$20,000.00 or over: Yes___ No ___

ELECTRICAL: (Indicative of wiring and illuminating fixtures)

Is the amount of work \$20,000.00 or over: Yes___ No ___

ROOFING AND SHEETMETAL (Indicative of roofing applications)

Is the amount of work \$20,000.00 or over: Yes___ No___

Respectfully Submitted:

Name of Bidder (Typed or Printed)

Address

Telephone Number

Fax Number

Contractor's License Number or Contractor's (Joint Venture) License Number(s)

BY: (Signature and Title)

Federal ID Number or SSN#

Date of Bid

Alarm System License – Act 429 of 1977**17-40-101. Title.**

This chapter may be cited as the “Private Investigators and Private Security Agencies Act”.

History. Acts 1977, No. 429, § 1; A.S.A. 1947, § 71-2122.

17-40-102. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) “Accident reconstruction” means the interpretation of physical evidence in the application of scientific principles to form opinions relative to the events of an accident;
- (2) “Administrator” means the Administrator of the Arkansas Board of Private Investigators and Private Security Agencies;
- (3) “Alarm systems agent” means any individual employed by an alarm systems company who sells on site, performs a survey of the premises to be protected, or responds to alarm signal devices, burglar alarms, or cameras as described in subdivision (5) or (27) of this section;
- (4) “Alarm systems apprentice” means any individual employed by an alarm systems company who installs, services, or repairs on site as described in subdivision (5) or (27) of this section that is supervised by an alarm systems technician, a supervisor of technicians, or a manager;
- (5) “Alarm systems company” means any person, firm, association, or corporation that for a fee or other valuable consideration installs, services, sells on site, performs a survey of the premises to be protected, monitors, or responds to electrical, electronic, or mechanical alarm signal devices, burglar alarms, television cameras, or still cameras used to manually or automatically signal or detect burglary, fire, breaking or entering, shoplifting, pilferage, theft, hold-up, or other illegal or unauthorized activity;
- (6) “Alarm systems monitor” means any individual employed by an alarm systems company who monitors or responds as described in subdivision (5) of this section;
- (7) “Alarm systems technician” means any individual employed by an alarm systems company who installs, services, or repairs on site as described in subdivision (5) or (27) of this section;

- (8) “Armored car company” means any person that provides armed security transportation and protection of money, currency, coins, bullion, securities, bonds, jewelry, or other valuables from one (1) place or point to another place or point;
- (9) “Board” means the Arkansas Board of Private Investigators and Private Security Agencies;
- (10) “Commissioned security officer” means any private security officer to whom a security officer commission has been issued by the board;
- (11) “Firearm” means, as defined in Webster's New Collegiate Dictionary, a weapon from which a shot is discharged by gunpowder;
- (12) “Guard company” means any person engaging in the business of providing or undertaking to provide a private watchman, guard, or street patrol service on a contractual basis for another person and performing any one (1) or more of the following or similar functions:
 - (A) Prevention of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property;
 - (B) Prevention, observation, or detection of any unauthorized activity on private property;
 - (C) Control, regulation, or direction of the flow or movements of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of property; or
 - (D) Protection of individuals from bodily harm;
- (13) “Investigations company” means any person who engages in the business or accepts employment to obtain or furnish information with reference to:
 - (A) Crime or wrongs done or threatened against the United States or any state or territory of the United States;
 - (B) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;
 - (C) The location, disposition, or recovery of lost or stolen property;
 - (D) The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to property; or

- (E) The securing of evidence to be used before any court, board, officer, or investigating committee;
- (14) “License” means a permit granted by the board entitling a person to operate as a security services contractor, an investigations company, or an alarm systems company;
- (15) “Licensee” means any person to whom a license is granted under this chapter;
- (16) “Manager” means, in the case of a corporation, an officer or supervisor, or, in the case of a partnership, a general or unlimited partner meeting the experience qualifications set forth in § [17-40-306](#) for managing a security services contractor or an investigations company;
- (17) “NBFAA” means the National Burglar and Fire Alarm Association, 7101 Wisconsin Avenue, Suite 901, Bethesda, MD 20814-4805, (301) 907-3208;
- (18) “NICET” means the National Institute for Certification in Engineering Technologies, 1420 King Street, Alexandria, VA 22314-2794, (703) 684-2835;
- (19) “Person” means an individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity;
- (20) “Private investigator” means any person who performs one (1) or more services as described in subdivision (13) of this section;
- (21) “Private security officer” means any individual employed by a security services contractor or the security department of a private business to perform the duties of a security guard, security watchman, security patrolman, or armored car guard;
- (22) “Registrant” means an individual who has filed an application with the board to perform the duties of a private investigator, manager, or branch office manager;
- (23) “Registration” means a permit granted by the board to an individual to perform the duties of a private investigator, manager, or branch office manager;
- (24) “Security department of a private business” means the security department of any person if the security department has as its general purpose the protection and security of its own property and grounds and if it does not offer or provide security services to any other person;

- (25) “Security officer commission” means an authorization granted by the board to an individual employed as a private security officer to carry a firearm;
- (26) “Security services contractor” means any guard company or armored car company;
- (27) “Single-station alarm systems company” means any person, firm, association, or corporation that for a fee or other valuable consideration installs, services, or sells on site fire, smoke, or heat detectors to be installed in a one-family or two-family dwelling or performs a survey of the premises to be protected if the detectors are single-station installations and not a part of or connected to any other detection device or system;
- (28) “Supervisor of technicians” means any individual employed by an alarm systems company who supervises alarm systems technicians or alarm systems apprentices and who may install, service, or repair on site as described in subdivision (5) of this section; and
- (29) “Undercover agent” means an individual hired by another individual, partnership, corporation, or other business entity to perform a job for that individual, partnership, corporation, or other business entity and, while performing the job, to act as an undercover agent, an employee, or an independent contractor of a licensee, but supervised by a licensee.

History. Acts 1977, No. 429, § 2; 1979, No. 907, §§ 1-3; 1983, No. 899, §§ 1, 2; 1985, No. 1004, §§ 13-15; A.S.A. 1947, § 71-2123; Acts 1989, No. 651, § 1; 1989, No. 926, § 1; 1999, No. 1493, § 1; 2001, No. 1474, § 1.

17-40-103. Exemptions.

- (a) This chapter does not apply to:
 - (1) A person employed exclusively and regularly by one (1) employer in connection with the affairs of that employer only and where there exists an employer-employee relationship;
 - (2) An officer or employee of the United States, of this state, or of a political subdivision of either, while the employee or officer is engaged in the performance of official duties;
 - (3) A person who has part-time or full-time employment as a law enforcement officer and who is certified by the Arkansas Commission on Law Enforcement Standards and Training as a law enforcement officer and receives compensation for private employment on an individual or an

is: independent contractor basis as a patrolman, guard, or watchman if the person

- (A) (i) Employed in an employee-employer relationship; or
 - (ii) Employed on an individual contractual basis; and
- (B) Not in the employ of another law enforcement officer;
- (4) A person engaged exclusively in the business of obtaining and furnishing information for purposes of credit worthiness or collecting debts or ascertaining the financial responsibility of applicants for property insurance and for indemnity or surety bonds, with respect to persons, firms, and corporations;
- (5) Consumer reporting agencies as defined in 15 U.S.C. § 1681 et seq.;
- (6) An attorney at law in performing his or her duties or an employee of an attorney at law, only in connection with providing investigative services to the attorney and his or her practice;
- (7) Admitted insurers, insurance adjusters, agents, and insurance brokers licensed by the state performing duties in connection with insurance transacted by them;
- (8) An officer, employee, or agent of a communications common carrier, as defined in 47 U.S.C. § 153(h), while engaged in the normal course of business of the carrier or protecting the carrier or a user of the services of that carrier from fraudulent, unlawful, or abusive use of services;
- (9) A professional engineer registered with the State Board of Registration for Professional Engineers and Land Surveyors engaged in providing investigative services as outlined in this chapter;
- (10) A person who or business which sells or manufacturers alarm systems, unless such a person or business performs any service as described in § [17-40-102\(5\)](#);
- (11) Installation, servicing, or responding to fire alarm systems or any alarm device which is installed in a motor vehicle, aircraft, or boat;
- (12) Installation of an alarm system on property owned by or leased to the installer;
- (13) Installation of fixed fire extinguisher systems by persons licensed by the Arkansas Fire Protection Licensing Board;

- (14) Installation of the raceway, conductors, and components of a fire alarm system by an entity holding a valid Arkansas contractor's license, electrical classification, when the systems are furnished by alarm systems companies licensed under this chapter, provided the alarm systems company:
 - (A) Furnishes a system designed to comply with applicable codes and standards;
 - (B) Furnishes the installing contractor with wiring diagrams and specifications for the required conductors;
 - (C) Provides periodic job site inspections of the installation in progress;
 - (D) Connects and installs the system components;
 - (E) Tests the completed installation in compliance with NFPA 72, providing the owner's representative and the local fire marshal with test documentation; and
 - (F) Instructs the system owner's representative and provides operator manuals for the installed system; and
- (15) Alarm system agents, alarm system apprentices, and alarm system technicians for class E-S and F-S licenses shall be exempt from the requirements for National Burglar and Fire Alarm Association Level 1 and 2 certification.
- (b) Although under the provisions of this chapter the security department of a private business that hires or employs an individual in the capacity of a private security officer to possess a firearm in the course and scope of his or her duties is required to make application for a security officer commission for the individual according to the provisions of this chapter, the security department of a private business shall not be required to make application to the Arkansas Board of Private Investigators and Private Security Agencies for any license under this chapter.
- (c) Notwithstanding any other provision of this chapter, employees of a licensee who are employed exclusively as undercover agents shall not be required to register with the Arkansas Board of Private Investigators and Private Security Agencies under this chapter.

History. Acts 1977, No. 429, §§ 3, 38; 1979, No. 907, § 4; 1983, No. 899, § 3; 1985, No. 756, § 1; A.S.A. 1947, §§ 71-2124, 71-2159; Acts 1987, No. 630, § 1; Acts 1989, No. 651, § 2; 1989, No. 926, § 2; 1991, No. 709, § 1; 1999, No. 1493, § 2; 2001, No. 1474, § 4.

17-40-104. Penalties.

- (a) Any person who violates any provision of this chapter is guilty of a Class A misdemeanor. Any person who violates any provision of this chapter within one (1) year of a previous violation is guilty of a Class D felony.
- (b) No person shall threaten, intimidate, or attempt to unlawfully influence any member of the Arkansas Board of Private Investigators and Private Security Agencies created by § [17-40-201](#) while the board member is engaged in the duties of the board. Violations of this subsection shall constitute Class A misdemeanors.

History. Acts 1977, No. 429, § 33; 1981, No. 792, § 16; 1983, No. 899, § 12; A.S.A. 1947, §§ 71-2154, 71-2161; 1999, No. 1493, § 3.

17-40-105. Notice of violation.

No person licensed under this chapter shall be prosecuted for violating this chapter unless the licensee has been notified of the alleged violation within three hundred sixty-five (365) days after the occurrence of the violation.

History. Acts 1983, No. 899, § 11; A.S.A. 1947, § 71-2160.

17-40-106. Exclusive regulation — Authority of political subdivisions.

- (a) The regulation of investigation, security, and alarm systems businesses shall be exclusive to the Arkansas Board of Private Investigators and Private Security Agencies.
- (b) Licensees and employees of licensees, under the provisions of this chapter, shall not be required to obtain any authorization, permit, franchise, or license from, or pay another fee or franchise tax to, or post bond in any city, county, or other political subdivision of this state to engage in the business or perform any service authorized under this chapter.
- (c) However, any city or county shall be permitted to require a business operating within its jurisdiction to register without fee and may adopt an ordinance to require users of alarm systems to obtain revocable permits without fee.

History. Acts 1989, No. 926, § 15.

17-40-107. Introduction of evidence — Effect of violations.

The introduction of evidence in all courts in Arkansas shall not be affected by violations of this chapter.

History. Acts 1991, No. 709, § 2.

Asbestos License/Certification – Act 394 of 1985**20-27-1001. Purpose.**

The purpose of this subchapter is to protect the public health and safety and the environment and to qualify the Arkansas Department of Environmental Quality to adopt, administer, and enforce a program for licensing training providers involved with the training of regulated asbestos professionals, for licensing asbestos abatement consultants and asbestos abatement contractors, and for certifying air monitors, contractor-supervisors, inspectors, management planners, project designers, and workers involved with demolitions, renovations, and asbestos-response actions in which regulated asbestos-containing materials are disturbed in accordance with this subchapter, the Arkansas Water and Air Pollution Control Act, § [8-4-101](#) et seq., and regulations issued pursuant thereto.

History. Acts 1985, No. 394, § 1; A.S.A. 1947, § 82-1944; Acts 1987, No. 531, § 1; 1993, No. 817, § 1; 1997, No. 308, § 1; 1999, No. 1164, § 174.

20-27-1002. Penalties.

- (a) Any person who violates any provision of this subchapter or commits any unlawful [act](#) thereunder or who violates any regulation or order of the Arkansas Pollution Control and Ecology Commission shall be subject to the penalty provisions provided in § [8-4-103](#).
- (b) All moneys collected as civil penalties shall be deposited into the Hazardous Substance Remedial Action Trust Fund as provided by § [8-7-509](#).

History. Acts 1985, No. [394](#), § 7; A.S.A. 1947, § 82-1950; Acts 1993, No. 817, § 6; 1999, No. 142, § 1; 2005, No. 1824, § 19.

20-27-1003. Definitions.

As used in this subchapter:

- (1) “Air monitor” means any person who collects airborne samples for analysis of asbestos fibers;
- (2) “Asbestos abatement consultant” means any person or other legal entity, however organized, that acts as an agent for the owner or operator in performing demolitions, renovations, or response actions which will involve, or may involve, the removal or disturbance of asbestos-containing materials in any facility;
- (3) “Asbestos abatement contractor” means any person or other legal entity, however organized, that acts as an agent for the owner or operator in performing demolitions, renovations, or response actions which will involve, or may involve, the removal or disturbance of asbestos-containing materials in any facility;

- (4) “Category I nonfriable asbestos-containing material” means asbestos-containing packings, gaskets, resilient floor coverings, and asphalt roofing products containing more than one percent (1%) asbestos as determined using the method specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy;
- (5) “Category II nonfriable asbestos-containing material” means any material excluding Category I nonfriable asbestos-containing materials containing more than one percent (1%) asbestos as determined using the methods specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy that when dry cannot be crumbled, pulverized, or reduced to powder by hand pressure;
- (6) “Certificate” means a document issued by the Arkansas Department of Environmental Quality to any person certifying that that person has satisfactorily completed asbestos training, examination, and other requirements established by the department to perform the duties of the following:
 - (A) Air monitor;
 - (B) Contractor/supervisor;
 - (C) Inspector;
 - (D) Management planner;
 - (E) Project designer; and
 - (F) Worker;
- (7) “Contractor/supervisor” means any person who supervises the following activities with respect to friable asbestos-containing material in a facility:
 - (A) A response action other than a small-scale short-duration activity;
 - (B) A maintenance activity that disturbs friable asbestos-containing material other than a small-scale short-duration activity; or
 - (C) A response action for a major fiber-release episode;
- (8) “Demolition” means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or intentional burning of a facility;
- (9) “Department” means the Arkansas Department of Environmental Quality;

- (10) “Director” means the Director of the Arkansas Department of Environmental Quality;
- (11) (A) “Facility” means:
- (i) Any institutional, commercial, public, industrial, or residential structure, installation, or building, including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative but excluding residential buildings having four (4) or fewer dwelling units;
 - (ii) Any ship; and
 - (iii) Any active or inactive waste disposal site.
- (B) For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation, or building that was previously subject to this regulation is not excluded, regardless of its current use or function;
- (12) “Friable asbestos materials” means any materials containing more than one percent (1%) asbestos as determined by using the method specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy that when dry can be crumbled, pulverized, or reduced to powder by hand pressure;
- (13) “Inspector” means any person who inspects for asbestos-containing material in a facility;
- (14) “License” means a document issued by the department to an asbestos abatement contractor, asbestos abatement consultant, or training provider who meets the criteria for licensing as established by the department;
- (15) “Management planner” means any person who prepares management plans for a school;
- (16) “Nonfriable asbestos-containing material” means any material containing more than one percent (1%) of asbestos as determined using the method specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy, that when dry cannot be crumbled, pulverized, or reduced to powder by hand pressure;
- (17) “Owner or operator” means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who

owns, leases, operates, controls, or supervises the demolition or renovation operation, or both;

(18) “Project designer” means any person who designs the following activities with respect to friable asbestos-containing material in a facility:

- (A)** A response action other than a small-scale short-duration activity;
- (B)** A maintenance activity that disturbs friable asbestos-containing material other than a small-scale short-duration activity; or
- (C)** Response action for a major fiber-release episode;

(19) “Regulated asbestos-containing material” means:

- (A)** Friable asbestos material;
- (B)** Category I nonfriable asbestos-containing material that has become friable;
- (C)** Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading; or
- (D)** Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subchapter;

(20) “Renovation” means altering a facility or one (1) or more facility components in any way, including the stripping or removal of regulated asbestos-containing material from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions;

(21) “Response action” means a method, including removal, encapsulation, enclosure, repair, and operation and maintenance, that protects human health and the environment from friable asbestos-containing material;

(22) “Training provider” means any person or other legal entity, however organized, that conducts some or all of the training programs for asbestos professional disciplines which are regulated by the department; and

(23) “Worker” means any person who carries out any of the following activities with respect to friable asbestos-containing material in a facility:

- (A)** A response action other than a small-scale short-duration activity;

- (B) A maintenance activity that disturbs friable asbestos-containing material other than a small-scale short-duration activity; or
- (C) A response action for a major fiber-release episode.

History. Acts 1985, No. 394, § 2; A.S.A. 1947, § 82-1945; Acts 1987, No. 531, § 2; 1993, No. 817, § 2; 1997, No. 308, § 1; 1999, No. 1164, § 175.

20-27-1004. Powers and duties of the Arkansas Department of Environmental Quality.

The Arkansas Department of Environmental Quality shall be charged with the responsibility of administering and enforcing this subchapter and is given and charged with the following powers and duties:

- (1) To require and regulate training and examinations for all disciplines certified by this subchapter and the regulations promulgated pursuant to this subchapter;
- (2) To establish standards and procedures for the licensing of consultants, contractors, and training providers and to establish performance standards for the abatement of friable and nonfriable asbestos materials. The performance standards shall be as stringent as those standards adopted by the United States Environmental Protection Agency pursuant to section 112 of the Clean Air Act;
- (3) To enforce regulations necessary or appropriate to the implementation of this subchapter, including taking legal action in any court of competent jurisdiction;
- (4) To issue licenses and certificates to all applicants who satisfy the requirements of this subchapter and any regulations issued pursuant to this subchapter, to renew the licenses and certificates, and to suspend or revoke the licenses and certificates for cause and after notice and opportunity for hearing; and
- (5) To establish annual license fees for asbestos abatement consultants, asbestos abatement contractors, and training providers, annual certification fees for air monitors, contractor/supervisors, inspectors, management planners, project designers, and workers in order to recover the costs of processing license and certificate applications and the issuance of licenses and certificates, and such other fees as are necessary to recover the costs of enforcing this subchapter.

History. Acts 1985, No. 394, § 3; A.S.A. 1947, § 82-1946; Acts 1987, No. 531, § 3; 1993, No. 817, § 3; 1997, No. 308, § 1; 1997, No. 309, § 2.

20-27-1005. Procedures.

The procedures of the Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, review of action on licenses, right of appeal, presumptions, finality of actions, and related matters shall be as provided in Part I of the Arkansas Water and Air Pollution Control Act, § [8-4-101](#) et seq., including, but not limited to, §§ [8-4-205](#), [8-4-210](#), [8-4-212](#) — [8-4-214](#), and [8-4-218](#) — [8-4-229](#).

History. Acts 1985, No. 394, § 4; A.S.A. 1947, § 82-1947.

20-27-1006. License required — Exceptions.

- (a) Any asbestos abatement consultant or asbestos abatement contractor shall obtain a license under this section from the Arkansas Department of Environmental Quality prior to actively engaging in any asbestos demolition, renovation, or asbestos response action, and any training provider shall obtain a license under this section from the department prior to actively engaging in any asbestos training as provided by this subchapter.
- (b) (1) The application for license shall be made in the manner and form required by the department. An application for license or renewal of a license shall be accompanied by proof of liability insurance coverage in the form and amount required by the department and proof of training and examination as required by the department.
 - (2) Training providers shall not be required to furnish proof of liability insurance coverage under subdivision (b)(1) of this section.
- (c) (1) The department shall license all applicants for licenses under this subchapter who satisfy the requirements of this subchapter.
 - (2) Licenses shall be valid for a period of one (1) year.
 - (3) Licenses shall be renewable upon application and upon satisfying the renewal requirements of the department.
- (d) State and federal governments and subdivisions thereof shall be exempt, except for training providers, from the license requirements of this section.

History. Acts 1985, No. 394, § 5; A.S.A. 1947, § 82-1948; Acts 1987, No. 531, § 4; 1993, No. 817, § 4; 1997, No. 308, § 1.

20-27-1007. Prohibitions.

It shall be unlawful for any person:

- (1) To conduct:
 - (A) Asbestos response actions, demolitions, or renovations without having first obtained a license from the Arkansas Department of Environmental Quality when acting as an asbestos abatement consultant or as an asbestos abatement contractor;
 - (B) Training without having first obtained a license from the department when acting as an asbestos training provider; or
 - (C) Asbestos response actions, demolitions, or renovations without having first obtained certification from the department when acting as a clearance air monitor, contractor/supervisor, inspector, management planner, project designer, or worker;
- (2) To participate in any response action, demolition, or renovation contrary to the regulations or orders issued under this subchapter or contrary to the Arkansas Water and Air Pollution Control Act, § [8-4-101](#) et seq., and the Arkansas Solid Waste Management Act, § [8-6-201](#) et seq., and the regulations promulgated thereunder, whether or not such person is required to have a license or certificate pursuant to this subchapter;
- (3) To knowingly make any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this subchapter or regulations adopted pursuant to this subchapter or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this subchapter or any regulations adopted pursuant to this subchapter; or
- (4) To violate any provision of this subchapter or any regulation or order adopted or issued under this subchapter.

History. Acts 1985, No. 394, § 6; A.S.A. 1947, § 82-1949; Acts 1987, No. 531, § 5; 1993, No. 817, § 5; 1997, No. 308, § 1; 1999, No. 54, § 1.

Trench or Excavation Safety – Arkansas Code Annotated 22-9-212**22-9-212. Public improvements generally — Trench or excavation safety systems.**

- (a) Whenever any agency of this state or of any county, municipality, or school district, or other local taxing unit or improvement district, enters into a contract covered by the provisions of §§ [22-9-202](#) — [22-9-204](#) for the making of repairs or alterations or the erection of buildings or for the making of any other improvements, or for the construction or improvement of highways, roads, streets, sidewalks, curbs, gutters, drainage or sewer projects, or for any other construction project in which the public work or public improvement construction project involves any trench or excavation which equals or exceeds five feet (5') in depth, the agency, county, municipality, school district, local taxing unit, or improvement district shall require:
- (1) That the current edition of Occupational Safety and Health Administration Standard for Excavation and Trenches Safety System, 29 CFR 1926, Subpart P, be specifically incorporated into the specifications for the project; and
 - (2) That the contract bid form include a separate pay item for trench or excavation safety systems to be included in the base bid.
- (b) In the event a contractor fails to complete a separate pay item in accordance with the applicable provisions of subsection (a) of this section, the agency, county, municipality, school district, local taxing unit, or improvement district shall declare that the bid fails to comply fully with the provisions of the specifications and bid documents and will be considered invalid as a nonresponsive bid. The owners of the above-stated project shall notify the Safety Division of the Department of Labor of the award of a contract covered by this section.

History. Acts 1993, No. 291, §§ 1, 2.

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions, Form WH-347 Inst.)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>	ADDRESS	OMB No.: 1215-0149 Expires: 03/31/2003
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PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
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(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT. OR ST.	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK	
				HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX		OTHER	TOTAL DEDUCTIONS		
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We estimate that it will take an average of 56 minutes to complete this collection of information, including time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U. S. Department of Labor, Room S3502, 200 Constitution Avenue, N. W., Washington, D. C. 20210.

Payment and Performance Bond

We _____, hereinafter referred to as Principal, and _____, hereinafter referred to as Surety, are held and firmly bound unto Southern Arkansas University, as obligee, hereinafter referred to as Owner, in the amount of \$_____, said amount to be deemed a performance bond payable to Owner under the terms of this Payment and Performance Bond Agreement. The Principal and Surety state that the Surety is a solvent corporate surety company authorized to do business in the State of Arkansas.

Principal has by written agreement dated _____ entered into a Contract (the Contract) with the Owner for: _____

_____. The above referenced Contract is incorporated herein by reference.

Under this Payment and Performance Bond Agreement, the Principal and Surety shall be responsible for the following:

- The Principal shall faithfully perform the above referenced Contract, which is incorporated herein by reference and shall pay all indebtedness for labor and materials furnished or performed under the Contract.
- In the event that the Principal fails to perform the Contract, the Principal and the Surety, jointly and severally, shall indemnify and save harmless the Owner from all cost and damage which the Owner may suffer by reason of Principal’s failure to perform the Contract. Said indemnification shall include, but not be limited to, full reimbursement and repayment to the Owner for all outlays and expenses which the Owner may incur in making good any such default or failure to perform the Contract by the Principal.
- Principal shall pay all persons all indebtedness for labor or material furnished or performed under the Contract and in doing so this obligation shall be null and void. In the event that Principal fails to pay for such indebtedness, such persons shall have a direct right of action against the Principal and Surety, jointly and severally, under this obligation, subject to the Owner’s priority.
- Principal shall guarantee the faithful performance of the prevailing hourly wage clause as provided in the Contract.

This bond given in accordance with Arkansas laws and regulations (including Arkansas Code Annotated 18-44-503, 19-4-1405 and 22-9-401 et seq.). The Surety guarantees that the Principal shall comply with Arkansas Code Annotated 22-9-308 (d) by payment and full compliance with all prevailing hourly wage contract provisions where the contract amount exceeds the amount provided in Arkansas Code Annotated 22-9-302 (1).

Any alteration which may be made in the terms of the Contract, or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the contract, or any other forbearance on the part of either the Owner or the Principal to the other shall not in any way release the Principal and the Surety or Sureties or either or any of them, their heirs, personal representative, successors or assigns from their liability hereunder, notice to the Surety or Sureties of any such alteration, extension or forbearance being hereby waived. In no event shall the aggregate liability of the Surety exceed the amount provided in the Contract.

This Payment and Performance Bond Agreement is binding upon the above named parties, and their successors, heirs, assigns and personal representatives.

Executed by the parties who individually represent that each has the authority to enter into this agreement.

BY: _____
Contractor Date

BY: _____
Arkansas Resident Local Agent/Attorney-in-Fact Date
(In accordance with Arkansas Code Annotated 22-9-402 (b))

Agent Date

Address

City County State Zip Code

Business Phone: _____

Fax: _____

Email: _____

THIS FORM IS THE ONLY PAYMENT AND PERFORMANCE BOND
ACCEPTABLE

Payment and Performance Bond Amendment # _____

We, _____ hereinafter referred to as Principal, and _____, hereinafter referred to as Surety, have entered into an agreement entitled "Payment and Performance Bond", with _____ as obligee hereinafter known as Owner Agency. Furthermore, we agree that said bond agreement, which was filed in the county of _____ on the _____ day of _____, 20____ and this amendment #____ is hereby incorporated into said bond agreement and any previous amendment(s) therein. This amendment shall be upon the same terms and conditions as set forth in the Bond Agreement, including any amendments, except the Agreement shall be amended and modified as follows:

1. The total aggregate amount for the Bond Agreement shall be \$_____. This amended amount reflects those costs, time for completion and other terms of the Contract associated with said bond agreement and Change Order(s) # _____ for the project contract entered into between Principal and Owner Agency.
2. This Payment and Performance Bond Agreement Amendment is binding upon the above named parties, and their successors, heirs, assigns and personal representatives. The Bond Agreement as hereby extended, amended and modified is hereby ratified and confirmed by the parties who individually represent that each has the authority to enter into this amended agreement.

BY: _____
Contractor Date

BY: _____
Arkansas Resident Local Agent/Attorney-in-fact Date
(In accordance with Arkansas Code Annotated 22-9-402(b)(1)(2))

Agent Date

Address

City County State Zip Code

Business Phone Fax Number

THIS PAYMENT AND PERFORMANCE BOND AMENDMENT IS THE ONLY AMENDMENT FORM ACCEPTABLE

Builders Risk Insurance

Refer to Article 11.4 of the General Conditions of the Contractor for Construction

NOTE: Change the responsibility for providing this Property Insurance from the Owner to the General Contractor

CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SOCIAL SECURITY NUMBER	FEDERAL ID NUMBER	SUBCONTRACTOR:	SUBCONTRACTOR NAME:
TAXPAYER ID #: --- ---	OR ---	<input type="checkbox"/> Yes <input type="checkbox"/> No	
IS THIS FOR:			
<input type="checkbox"/> Goods? <input type="checkbox"/> Services? <input type="checkbox"/> Both?			
TAXPAYER ID NAME:			
YOUR LAST NAME:	FIRST NAME:	M.I.:	
ADDRESS:			
CITY:	STATE:	ZIP CODE: --	COUNTRY:

AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:

FOR INDIVIDUALS *

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse *is* a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (√)		Name of Position of Job Held <small>[senator, representative, name of board/ commission, data entry, etc.]</small>	For How Long?		What is the person(s) name and how are they related to you? <small>[i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.]</small>	
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Relation
General Assembly							
Constitutional Officer							
State Board or Commission Member							
State Employee							

None of the above applies

FOR AN ENTITY (BUSINESS) *

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (√)		Name of Position of Job Held <small>[senator, representative, name of board/commission, data entry, etc.]</small>	For How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?		
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Ownership Interest (%)	Position of Control
General Assembly								
Constitutional Officer								
State Board or Commission Member								
State Employee								

None of the above applies

Contract and Grant Disclosure and Certification Form

Failure to make any disclosure required by Governor’s Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:

1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM**. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.

2. I will include the following language as a part of any agreement with a subcontractor:

Failure to make any disclosure required by Governor’s Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM** completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontractor disclosure conditions stated herein.

Signature _____ Title _____ Date _____

Vendor Contact Person _____ Title _____ Phone No. _____

Agency use only

Agency Number _____ Agency Name _____ Agency Contact Person _____ Contact Phone No. _____ Contract or Grant No. _____

Notice To Proceed

Date: _____

Contract Amount: _____

To: _____
(Contractor)

Address: _____

This will serve formal notice to proceed with the work involved in:

Furnish all labor, materials and equipment necessary to:

This notice is subject to all terms and conditions of your proposal dated _____.

Mail Invoices To:

ENCLOSED IS RELEASE OF CLAIMS AND CONSENT* OF SURETY FOR FINAL PAYMENT FORMS TO BE SUBMITTED WITH REQUEST FOR FINAL PAYMENT. FAILURE TO DO SO WILL RESULT IN DELAY IN PAYMENT WHEN JOB IS COMPLETE. NOTIFY THE DESIGN CONSULTANT OR AGENCY PURCHASING OFFICIAL TO SCHEDULE THE FINAL INSPECTION DATE.

Institution Purchasing Official

*Required only on projects over \$20,000 or upon demand

Change Order

Project: _____

Change Order # _____

I, THE UNDERSIGNED CONTRACTOR DO HEREBY CERTIFY THAT I HAVE REVIEWED MY FILES AND DECLARE THAT THERE ARE/ARE NOT (CIRCLE ONE) NEW OR ADDITIONAL SUBCONTRACTORS AND SUBCONTRACTORS WHICH ARE REQUIRED TO BE DISCLOSED UNDER THIS CONTRACT PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER 98-04. I HAVE ATTACHED TO THIS CHANGE ORDER THOSE DISCLOSURES REQUIRED UNDER THE ORDER. I UNDERSTAND THAT ANY FALSE INFORMATION PROVIDED BY OR OMISSION MADE BY ME MAY BE GROUNDS FOR TERMINATION DUE TO MATERIAL BREACH.

The undersigned entities agree that the following changes shall be incorporated into the contract:

(Attach additional sheets if necessary)

The original contract sum was: \$ _____

The net change by previous Change Order was: \$ _____

The contract sum prior to this Change Order was: \$ _____

The contract sum will be increased/decreased/remain unchanged (circle one) by this Change Order

The new contract sum, which includes this Change Order, shall be: \$ _____

The contract time will be increased to/decreased by/remain unchanged (circle one) # of days _____

The contract completion date shall be: _____

Design professional:

Name

Address

Signature

Date

Contractor:

Name

Address

Signature

Date

Owner:

The President acting for and on behalf of Southern Arkansas University

BY: _____
President Date

Payment Requests/Processing Payments – Arkansas Code Annotated 19-4-1411**19-4-1411. Processing of payments.**

- (a) (1) When a contractor submits a properly prepared request for payment of work completed on state construction projects and the request for payment conforms with the provisions of the contract award and laws of the State of Arkansas, the following maximum time is allowed for the processing of the payment requests by the various parties involved, excluding time required for transmittal from one (1) party to another:
- (A) A design professional — five (5) working days;
 - (B) A state agency or institutions of higher education exempt from review and approval by the Arkansas Building Authority — five (5) working days, including preparation of a voucher and submission for payment; and
 - (C) The Department of Finance and Administration — five (5) working days.
- (2) Should payment be contested by any of the parties listed in this subsection, it shall be the responsibility of the parties contesting the payment, within the time specified for processing payment, to notify the contractor involved that payment has been contested and reasons therefore.
- (3) Should any of the parties listed in this subsection fail to properly process uncontested requests for payments within the time limits specified following date of receipt, a penalty of eight percent (8%) per annum of the amount of the request for payment shall be assessed against the parties responsible for the delay.
- (b) (1) The Chief Fiscal Officer of the State shall establish procedures for monitoring payments to contractors. When it has been determined that payment processing has exceeded the time limits established in this section, the Chief Fiscal Officer of the State shall cause an investigation to be made for the purpose of determining the responsible parties and the amount of penalty to be paid.
- (2) Penalties assessed for failure to comply with the provisions in this section shall be paid to the contractor by the parties responsible in accordance with procedures established by the Chief Fiscal Officer of the State.

History. Acts 1973, No. 876, § 22; 1977, No. 813, § 3; 1979, No. 833, § 9; A.S.A. 1947, § 13-348; Acts 2001, No. 214, § 4; 2001, No. 961, § 6; 2003, No. 364, § 6.

Certificate of Substantial Completion

The form below is a demonstration of the information necessary to complete a Certificate of Substantial Completion.

AIA FORM 704 is the form that should be completed and submitted.

PROJECT CAMPUS:

TO OWNER:

CONTRACT FOR:

CONTRACT DATE:

TO CONTRACTOR:

DATE OF ISSUANCE:

PROJECT OR DESIGNATED PORTION SHALL INCLUDE:

The Work performed under this contract has been review and found, to the Construction Manager's and Architect's best knowledge, information and belief, to be substantially complete. Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion thereof designated about is hereby established as _____ which is also the date of commencement of applicable warranties required by the Contract Documents except as stated specifically below.

Delinquent Payments – Arkansas Code Annotated 22-9-205**22-9-205. Public improvements generally — Interest on delinquent payments.**

Whenever any agency of this state or of any county, municipality, or school district, or other local taxing unit or improvement district enters into a contract covered by the provisions of §§ 22-9-202 — 22-9-204 for the making of repairs or alterations or the erection of buildings or for the making of any other improvements, or for the construction or improvement of highways, roads, streets, sidewalks, curbs, gutters, drainage or sewer projects, or for any other construction project, and the contract provides that payment therefore shall be made upon completion and acceptance of the project, and the contractor, upon completion and approval of the project, presents a claim for payment of the amount due thereon in accordance with the terms of the contract, and the claim is not paid by the public authority within ninety (90) days from the date of presentation of the claim, then the public authority shall pay to the contractor interest at the rate of ten percent (10%) per annum on the unpaid amount due for all periods of time that the payment under the contract is not made subsequent to ninety (90) days after presentation of the claim.

History. Acts 1969, No. 135, § 1; A.S.A. 1947, § 14-614.1.

Affidavit of Payment of Debts and Claims

The form below is a demonstration of the information necessary to complete a Certificate of Substantial Completion.

AIA FORM 706 is the form that should be completed and submitted.

TO OWNER:

PROJECT CAMPUS:

ARCHITECT PROJECT NO:

CONTRACT DATE:

TO CONTRACTOR:

STATE OF ARKANSAS:

COUNTY OF:

The undersigned hereby certifies that to the best of the undersigned's knowledge, information and belief, except as listed below, the Releases or Waivers of Lien attached hereto include the Contractor, the Subcontractors, all suppliers of materials and equipment, and all performers of Work, labor or services who have or may have liens or encumbrances or the right to asset liens or encumbrances against any property of the Owner arising in any manner out of the performance of the Contract referenced above.

EXCEPTIONS:

SUPPORTING DOCUMENTS ATTACHED HERETO:

Consent of Surety to Final Payment

The following documents should be attached if required by the Owner.

1. Contractor's Release or Waiver of Liens
2. Separate releases or waivers from subcontractors

CONTRACTOR:

BY: _____

(Signature of authorized representative)

Printed name and Title: _____

Subscribed and sworn to before me on this date: _____

Notary Public: _____

My commission expires: _____

Affidavit of Release of Liens

The form below is a demonstration of the information necessary to complete a Certificate of Substantial Completion.

AIA FORM 706A is the form that should be completed and submitted.

TO OWNER:

PROJECT CAMPUS:

ARCHITECT PROJECT NO:

CONTRACT DATE:

TO CONTRACTOR:

STATE OF ARKANSAS:

COUNTY OF:

The undersigned hereby certifies that to the best of the undersigned's knowledge, information and belief, except as listed below, the Releases or Waivers of Lien attached hereto include the Contractor, the Subcontractors, all suppliers of materials and equipment, and all performers of Work, labor or services who have or may have liens or encumbrances or the right to asset liens or encumbrances against any property of the Owner arising in any manner out of the performance of the Contract referenced above.

EXCEPTIONS:

SUPPORTING DOCUMENTS ATTACHED HERETO:

Contractor's Release or Waiver of Liens, conditional upon receipt of final payment. Separate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers, to the extent required by the Owner, accompanied by a list thereof.

CONTRACTOR:

BY: _____

(Signature of authorized representative)

Printed name and Title: _____

Subscribed and sworn to before me on this date: _____

Notary Public: _____

My commission expires: _____

Consent of Surety of Final Payment

The form below is a demonstration of the information necessary to complete a Certificate of Substantial Completion.

AIA FORM 707 is the form that should be completed and submitted.

TO OWNER:

PROJECT CAMPUS:

ARCHITECT PROJECT NO:

CONTRACT DATE:

In accordance with the Contract between the Owner and Contractor as indicated above the SURETY, or bond of CONTRACTOR, hereby approves of the final payment to the Contractor and agrees that final payment to the Contractor shall not relieve the Surety of its obligation to OWNER, as set for in said Surety's bond.

In WITNESS WHEREOF, THE Surety has hereunto set its hand on this date:

SURETY

Signature of authorized representative

Division Zero – General Requirements

Instructions for completing Southern Arkansas University Division Zero (0)

Date: _____

These documents are not to be modified except where noted. If you need to make a modification, contact: Southern Arkansas University Office of Purchasing, 100 East University, Magnolia, AR 71753, Phone: 870-235-5059 for approval prior to submitting the entire division zero document for review.

In this document you should find the following sections. If you are missing any sections contact the Office of Purchasing at 870-235-5059.

Section 00130 Invitation to Bid

Section 00200 Instruction to Bidders

Section 00410 Bid Form

Section 00520 Agreement Form
Contract and Grant Disclosure and Certification Form

Section 00611 Consent of Surety

Section 00614 Performance and Payment Bond

Section 00640 Release of Claims

Section 00700 General Conditions

Section 00800 Supplementary Condition's

00130 INVITATION TO BID

Do not add to or delete from this document except where edit points are noted or highlighted.

Top of page left side insert Name, address and phone number of Architect/Engineer/Consultant.

Top of page right side insert project name and bid project number.

Paragraph 1: Insert description and location of project.

Paragraph 2: Insert time, date and location of mandatory pre-bid. If it is not a mandatory pre-bid delete the word mandatory and the sentence " Bidders failing to attend this meeting forfeit the right to submit a bid." If a pre-bid is not required delete the entire paragraph.

Paragraph 3: Insert time and date of bid opening.

Paragraph 5: You may name additional plan rooms.

Paragraph 6: Insert where to obtain bidding documents and deposit information. Deposits for plans/specifications must be refundable.

Paragraph 10: Insert the prevailing wage statement if necessary.
If the project is estimated at \$75,000.00 or above, the Arkansas Department of Labor Prevailing Wage Rates shall apply to the project. You must contact the Dept. of Labor, (501) 682-4536, to obtain the prevailing wage rates. If project is \$2,000.00 or more and includes Federal Funds the Davis-Bacon Wage Rates and other Federal Regulations shall apply. You may obtain information on the Davis-Bacon Wage Rates by contacting the Southern Arkansas University Office of Purchasing at 870-235-5059. If the project contains State and Federal Funds, the Davis-Bacon Wage Rates will be used.

00200 INSTRUCTIONS TO BIDDERS

Do not add to or delete from this document except where edit points are noted or highlighted.

Paragraph 3.3: Insert the name, address and phone number of Design Professional (Architect/Engineer/Consultant).

Paragraph 7.3: Insert the number of calendar days for receipt of bonds and insurance. It is preferred to use 10 days. If the project has been declared an emergency, you may use a shorter time frame.

Paragraph 18: Insert the number of calendar days the owner has to accept bids. It is preferred to have 30 days. If the project has been declared an emergency, the time should be shorter. You may add:

Section 00320 Geotechnical Data

Section 00340 Environmental Assessment Information

00410 BID FORM

Do not add to or delete from this document except where edit points are noted highlighted.

First page top right-hand corner: Insert Bid time and date.

First Page, PROJECT: Insert short project description.

Paragraph 2: Allowances: Delete if not required.

Paragraph 3: Unit Prices: Delete if not required. If required, insert description.

Paragraph 4: Trenching: If the project has trenching or excavations which equals or exceeds five feet in depth, the following conditions have to be complied with: (1) That the current edition of Occupational Safety and Health Administration Standard for Excavation and Trenches Safety System, 29 CFR 1926, Subpart P, (.650,651,.652)

http://www.access.gpo.gov/nara/cfr/waisidx_99/29cfrv8_99.html

be specifically incorporated into the specifications, section 01 526 for the project; and (2) That the bid form include a separate pay item for trench or excavation safety systems to be included in the base bid. If the project does not have trenching delete this item.

Paragraph 5: Completion Time: Insert the number of consecutive calendar days to be required for the completion of the work.

Paragraph 6(b): Insert the number days the bonds will be required to be submitted. This number should match the number in paragraph 7.3 of the Instructions to Bidders. Insert the number of calendar days the contractor will begin work after the Notice to Proceed. The preferred number of days is 5. Insert the amount of liquidated damages. The amount of liquidated damages must be approved by the Owner.

Paragraph 6(c): Insert the number days the bonds will be required to be submitted. This number should match the number in paragraph 6(b) of the Bid Form and paragraph 7.3 of the Instructions to Bidders.

Paragraph 6(d): Insert the number of calendar days the owner has to accept bids. It is preferred to have 30 days. If the project has been declared an emergency the time should be shorter. This number should match paragraph 17 of the Instructions to Bidders.

Paragraph 6(g): Insert the appropriate wage scale statement either State or Davis-Bacon. If a wage scale is not required delete.

Paragraph 9: A specific line for listing each of the protected subcontractors required for this project must be provided on the bid form. Arkansas Code 22-9-204 requires that Mechanical, Electrical, Plumbing and Roofing/Sheet metal be listed. It is the responsibility of the design Professional to determine if any work is to be performed by these trades and provide the proper listing on the form. If a trade is not required for this project, do not provide a line for that subcontractor. It is essential the Plumbing Division, Dept. of Health be contacted. It has been determined that some sewer, water and gas lines may be covered under the Plumbing Division.

If you are in doubt as to whether a trade is required you should contact the proper licensing board.

Electrical, Arkansas Board of Electrical Examiners, 501-682-4549

HVACR, State Health Department 501-661-2307

Plumbing Division, State Health Department 501- 661-2642

All subs, if their portion of the work is \$20,000.00 or more, must have a license issued by the Arkansas Contractor's Licensing Board with the proper classification. You may contact them at 501-372- 4661.

You should determine which subcontractor categories will be required and listed. Failure to do so may result in rejection of bids, protests and a delay in the contract award.

00520 AGREEMENT FORM

Do not add to or delete from this document except where edit points are noted or highlighted.

Insert date of contract, contractor name, address and agency name.

Paragraph 1: Insert amount of contract, county, project number and name, and date of bid opening.

Paragraph 3: Insert the number of calendar days the contractor is to begin work. This number should match Paragraph 6(b) of the Bid Form. Insert number of consecutive calendar required for completion of the work. The Contract and Disclosure Form is located at the end of these documents. When you print, remove and insert behind the Agreement Form.

00700 GENERAL CONDITIONS

Do not add to or delete from this document.

00800 SUPPLEMENTARY CONDITIONS

You may also add into this section, section 00 830- Prevailing Wage Rates, section 00 850-Drawings and Schedules, and section 00 900- Addenda and Modifications

Division Zero – Bid Documents

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Section 00640 Release of Claims

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Section 00800 Supplementary Conditions

00810 Modifications to General Conditions

00830 Prevailing Wage Rates

INVITATION TO BID
Section 00130

Design Professional's Office: _____

Project Name and Bid Number: _____

Project Description: _____

Southern Arkansas University
Office of Financial Services
Overstreet Hall 10
870-235-5059

You are invited to bid on a General Contract for the construction of _____ located on the campus of Southern Arkansas University hereinafter termed Owner. The bids shall be on a lump sum basis.

There will be Mandatory Pre-Bid Conference held at _____ on _____ in the Southern Arkansas University Boardroom. The Owner will not accept a bid from any Bidder failing to attend mandatory meeting(s). The University reserves the right to schedule additional mandatory meetings, if it determines them to be in its best interests.

The Owner will receive bids until ____ p.m., local time, _____ 20___. Bids may be mailed or delivered to Southern Arkansas University Office of Financial Services, 100 East University, P.O. Box 9403, Magnolia, AR 71754-9403, hereinafter termed SAU. Bids received after this date and time will not be accepted. Bids will be publicly opened and read aloud at the time and date mentioned. Interested parties are invited to attend.

The Owner, unless designated to another entity, supervises the bidding and awarding of all construction contracts, approves contracts, change orders, requests for payment and ensures that on-site inspections are accomplished.

Obtaining contract documents through any source other than the Design Professional listed above, or their representative(s) is not advisable due to the risks of receiving incomplete or inaccurate information. Contract documents obtained through the Design Professional or their representative(s) are considered the official version and take precedence should any discrepancies occur. The official version of the complete set of the Contract documents should be examined and are obtainable from _____.

Prime bidders will be furnished three (3) sets of bidding documents by providing a check in the amount of \$50 per set, payable to _____. Deposits will be refunded to all prime bidders who submit a bona fide bid and return the documents in good condition within ten (10) days after the opening of the bids. Prime bidders requiring additional sets and sub-bidders may purchase bidding documents. While contract documents can be examined at the following plan rooms, bidders should use caution in doing so:

F. W. Dodge Company
501 North Pierce Street
Little Rock, AR 72211
501-225-9453

Construction Market Data
2200 South Main Street
Little Rock, AR 72207
501-280-0525

Arkansas Department of Economic Development
One Capital Mall, Suite 4C300
Little Rock, AR 72201
501-682-6105

Bid Security in the amount of five percent (5%) of the bid must accompany each bid in accordance with the Instructions to Bidders.

Bidders are hereby notified that any bidder who desires to enter into Contract for this work must comply with disclosure requirements pursuant to Governor Executive Order 98-04. Submission to the Owner of completed Disclosure forms will be a condition of the Contract. The Owner cannot enter into any contract, which does not obligate the contractor to require the submission of Disclosure forms for subcontractors.

Bidders are hereby notified that Arkansas Department of Labor Prevailing Wages Rates will apply.

Bidders are hereby notified that Davis-Bacon Wage Rates and other Federal regulations apply.

The Owner reserves the right to reject any and all bids, and to waive any formalities.

This invitation does not commit the Owner to pay any cost incurred in the preparation of bids.

Bidders shall conform to the requirements of the Arkansas licensing laws and regulations for contractors, and shall be licensed before his bid is submitted unless the project is federally funded and therefore excepted by Ark. Code Ann. §17-25-315.

Pursuant to Ark. Code Ann. § 22-9-203, SAU encourages all small, minority, and women business enterprises to submit bids for capital improvements. Encouragement is also made to all general contractors that in the event they subcontract portions of their work, consideration be given to the identified groups.

INSTRUCTIONS TO BIDDERS
Section 00200

1. **BIDDING DOCUMENTS.** Bidders may obtain complete sets of Contract Documents from issuing office designated in the Invitation to Bid. Complete sets of Contract Documents must be used in preparing bids; neither Owner nor Design Professional assume responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents. Obtaining Contract documents through any source other than the Design Professional listed in the Invitation to Bid is not advisable due to the risks of receiving incomplete or inaccurate information, and the bidder runs the risk of basing bidder's proposal on such information. The documents obtained through the Design Professional or his representative(s) or the SAU Procurement Office are considered the official version and take precedence if any discrepancies occur. The fact that documents used for bidding purposes are named "contract documents " does not diminish in any way the right of the Owner to reject any and all bids and to waive any formality.

2. **EXAMINATION OF DRAWINGS, SPECIFICATIONS AND SITE OF WORK.** Bidder shall examine the Contract Documents and visit the project site of work. Bidder shall become familiar with all existing conditions and limitations under which the Work is to be performed, and shall base bid on items necessary to perform the Work as set forth in the Contract Documents. No allowance will be made to Bidder because of lack of such examination or knowledge. The submission of a Bid shall be construed as conclusive evidence that the Bidder has made such examination.

3. **INTERPRETATION OF CONTRACT DOCUMENTS DURING BIDDING.**

3.1 All references to the Owner shall be interpreted to mean Southern Arkansas University.

3.2 If any person contemplating submitting a Bid is in doubt as to the true meaning of any part of the Contract Documents or finds discrepancies in or omissions from any part of the Contract Documents, he may submit to the Design Professional a written request for an interpretation or correction thereof not later than five (5) calendar days before Bid opening. In those instances where a Design Professional is not involved with the project, written requests for interpretation or correction may be made to the SAU Procurement Department within the time frame stated above.

3.3 Address all communications regarding the Contract Documents to the Design Professional:

In those instances where a Design Professional is not involved, address all such communications to Southern Arkansas University Office of Financial Services, P.O. Box 9403, Magnolia, AR, 71754-9403, 870-235-5059.

3.4 Interpretation or correction of the Contract Documents will be made only by Addendum and will be mailed, faxed or delivered to each Bidder of record by the Design Professional; and in those instances where a Design Professional is not involved the SAU Procurement Department shall distribute Addenda in the above referenced manner. The Owner will not be responsible for oral explanations or interpretation of the Contract Documents.

3.5 Addenda issued during the bidding period will be incorporated into the Contract Documents.

4. SUBSTITUTIONS.

4.1 Materials, products, and equipment described in the Contract Documents establish a standard of required function and a minimum desired quality or performance level, or other minimum dimensions and capacities, to be met by any proposed substitution. Acceptability of substitutions will not be considered during bidding period.

4.2 In some cases, prior approval of material or equipment, or both shall be obtained from Owner in order to obtain the desired color, size, visual appearance, and other features specified.

5. TYPE OF BID.

5.1 The Work under this Contract will be awarded under a stipulated sum contract to the lowest responsible base bid amount. No segregated bids or assignments will be considered. Bids are to include all labor, materials, equipment, sales tax, social security tax, State Unemployment Insurance and all other like items necessary to complete this project.

5.2 Any estimate of quantities is approximate only and shall be the basis for receiving unit price bids for each item, but shall not be considered by the Bidder as the actual quantities that may be required for the completion of the proposed work. Bidder shall state a unit price for every item of work named in the Proposal. Bidder shall include, in the unit prices, furnishing of labor, materials, tools, equipment, and apparatus of every description to construct, erect, and finish the Work. The unit price bid for the items shall be shown numerically and in the appropriate spaces provided on the Bid Form. Such figures shall be clear and distinctly legible so that no question can arise as to their intent or meaning. Unit price bids and totals shown in the Bid Form shall not include costs of engineering, advertising, printing and appraising.

6. PREPARATION OF BID. Bid shall be made on an unaltered Bid Form identical to the form included with the Contract Documents. Fill in all blank spaces and submit one original. Bids shall be signed with name typed below the signature. Where Bidder is a corporation, bids shall be signed with the legal name of the corporation followed by the name of the state of incorporation, contractor's license number issued by the Contractors Licensing Board, and the signature of an authorized officer of the corporation.

6.1 Bids submitted by a "Joint Venture/Joint Adventure" shall be signed by representatives of each component part of the Joint Venture. The licenses of each component part of the Joint Venture shall also be listed in the bid submittal. Therefore, joint venture bidders shall indicate at least two (2) signatures and two (2) license numbers on the Bid Form. Exception: Joint Ventures who have been properly licensed with the Arkansas Contractors Licensing Board as a "Joint Venture" need only to indicate the joint venture license number on the Bid Form. Joint Venture bidders shall indicate at least two (2) signatures on the Bid Form even if they are licensed as a joint venture.

7. BID GUARANTEE AND BONDS.

7.1 Each bid proposal shall include a bid security in the amount of five percent of the total bid offered, if the bid is in excess of \$20,000.00. The bidder will be required to submit a bidder's deposit, which includes enclosing a cashier's check payable to the order of the OWNER drawn upon a bank or trust company doing business in Arkansas or by a corporate bid bond in an amount equal to five (5) percent of the bid. The bidder shall include in the bid the bid bond amount so that the bid represents the total cost to the Owner of all work included in the contract.

7.2 The bid bond shall indemnify the Owner against failure of the Contractor to execute and deliver the contract and necessary bond (Performance and Payment Bond) for faithful performance of the contract. The bid bond shall provide that the contractor or surety must pay the damage, loss, cost and expense subject to the amount of the bid security directly arising out of the Contractor's default in failing to execute and deliver the contract and bonds.

7.2 Owner will have the right to retain the bid security of bidders to whom an award is being considered until the Contract has been executed and bonds if required, have been furnished, or until specified time has elapsed so that bids may be withdrawn, or all bids have been rejected.

7.3 Should Bidder fail to enter into a contract and furnish the required bonds and insurance certificates within ___ days after receipt of Intent to Award, the bid guarantee will be forfeited to the Owner as liquidated damages.

8. PERFORMANCE AND PAYMENT BOND. Performance and Payment Bonds are not required for bids \$20,000.00 or under, except for roofing projects. For work exceeding \$20,000.00, the bidder shall furnish a Performance and Payment Bond in the amount equal to 100 percent of contract price, on a form identical to the Arkansas Statutory Performance and Payment Bond Form included with the Contract Documents as security for faithful performance of the Contract and payment of all obligations arising thereunder within ten days after receipt of the Intent to Award. The bond shall be written by a surety company qualified and authorized to do business in the State of Arkansas. The bond shall be executed by a resident local agent or non-resident agent licensed by the State

Insurance Commissioner to represent the surety company. The bond shall be written in favor of the Owner. Bidder shall file the bond with the Circuit Clerk in the county where the Work is to be performed. Failure to deliver said bonds, as specified, shall be considered as having abandoned the Contract and the bid security will be retained as liquidated damages. The bidder shall include in the bid the Performance and Payment bond amount so that the bid represents the total cost to the Owner of all work included in the contract.

9. SUBCONTRACTORS. Name of principal subcontractors shall be listed where indicated on the Bid Form in accordance with Ark. Code Ann. § 22-9-204 and the contract documents. All prime contractors, as a condition to perform construction work for and in the State of Arkansas, shall use no other subcontractors when the subcontractor's portion of the project is \$20,000.00 or more, except those qualified and licensed by the Contractors Licensing Board in Mechanical (HVAC), Plumbing, Electrical and Roofing.

A bidder should request clarification from the Design Professional (or from the SAU Procurement Department, if no Design Professional exists for the project), if the bidder determines a type of work (mechanical –indicative of HVAC; electrical – indicative of wiring and illuminating fixtures; plumbing; roofing and sheetmetal work - indicative of roofing application) is a component of the project, but space has not been provided on the bid form for the listing of such or if the bid form lists a type of work that is not a component of the project. Clarification should be made in accordance with Instruction 3.2.

For those bids where the listed subcontract work is \$20,000.00 or more, the prime contractor must make a decision as to which subcontractor he intends to use. The prime contractor shall place the names of each subcontractor and indicate whether the amount of the listed work is \$20,000.00 or more in the space provided on the Bid Form. The prime contractor may use his own forces to do the listed work, however, if the listed work is \$20,000.00 or more, the prime contractor must be qualified and licensed by the Arkansas Contractors Licensing Board to perform the listed work. Once the prime contractor determines his own forces will be used, he shall place his name, and indicate in the space provided on the Bid Form whether the amount of the listed work is \$20,000.00 or more. Failure to complete the form correctly shall cause the bid to be declared non-responsive, and the bid will not receive consideration.

A subcontractor, including the prime contractor listed as using his own forces, may contract a portion of the listed work. However, a subcontractor is prohibited from subcontracting the work in its entirety.

In the event the amount of the listed subcontract work is below \$20,000.00, the Prime Contractor shall place the names of the person or firm performing the work and indicate in the space provided on the Bid Form whether the listed work is under \$20,000.00. It shall be mandatory that any subcontractors listed in (A) – (D) on the Bid Form by the Prime Contractor is awarded a contract under Ark. Code Ann. § 22-9-204. Prime Contractors who submit a bid listing unlicensed subcontractors or use unlicensed

subcontractors on a state project or any subcontractor not licensed by the Contractors Licensing Board who perform work having a value of \$20,000.00 or more on a state project are subject to a civil penalty, after notice and hearing, of not less than \$250.00 nor more than \$500.00 and may be suspended from bidding on state projects. In the event that one (1) or more of the subcontractors named by the prime contractor in his successful bid thereafter refuse to perform his contract or offered contract, the prime contractor may substitute another subcontractor, after having obtained prior approval from the design professional, and the owner.

9.3. Electrical License Requirement

No person shall perform electrical work on the contract without possessing an Arkansas State Master or Journeyman License from the Arkansas State Electrical Examiners Board. All electrical work and apprentice electricians shall be supervised by a Master or Journeyman Electrician on a one to one ratio.

All electricians shall have a copy of their license with them and shall be required to show it to an appropriate inspector upon request.

9.4 Pursuant to Ark. Code Ann. § 22-9- 404, the Bidder may require listed subcontractors (mechanical, plumbing, electrical and roofing/sheet metal) whose bid to the Contractor exceeds \$50,000.00 to provide a Performance and Payment Bond to the Bidder.

10. SUBMITTAL. Submit bid on the Bid Form in an opaque, sealed envelope. Identify the envelope with: project name and number, name of Bidder, and Arkansas Contractors License number; only one bid shall be submitted per State Contractors license number. Submit bids in accordance with the Invitation to Bid. All blanks on the form shall be filled out in ink or be typewritten. Erroneous entries, alterations, and erasures shall be lined out, initialed by the Bidder, and the corrected entry inserted on the Bid Form. Only those bids submitted on Owner supplied forms as found in these documents will be accepted.

10.1 PROPRIETARY INFORMATION. All bid information, proposals, forms, briefs, sales brochures, etc. will become property of the Owner when submitted with a bid. All bid documents submitted by the bidder shall be available for public inspection after the bid opening. Proprietary pages and documents required to be submitted with bid must be clearly marked as such.

11. MODIFICATION AND WITHDRAWAL. Bidder may withdraw bid at any time before bid opening and may resubmit up to the date and time designated for receipt of bids. No bid may be withdrawn or modified after time has been called for the bid opening. Oral modifications to bids will not be considered. Bidder may submit written modifications to bid in writing, by telegraph, or by facsimile at any time prior to the expiration of the bidding time and date and shall so word the modification(s) as to not reveal the amount of the original bid. Telegraph or facsimile modifications shall require written confirmation over the Bidder's signature within 24 hours after bid opening.

12. DISQUALIFICATION OF BIDDERS. The Owner shall have the right to disqualify bids (before or after opening), which includes but is not limited to, evidence of collusion with intent to defraud or other illegal practices upon the part of the Bidder, to reject a bid not accompanied by the required bid security or by other data required by the Contract Documents, or to reject a Bid which is in any way incomplete or irregular.

13. LATE BIDS. Late bids, bids en route, bids left at a location other than the Office of Procurement by special carrier or other will not be considered. Bids must be in the Office of Procurement by or before the time as indicated on the Invitation to Bid

14. APPLICABLE LAWS.

14.1 Labor. Contractors employed upon the work will be required to conform to the labor laws of the State of Arkansas and the various acts amendatory and supplementary thereto, and to all the laws, regulations, and legal requirements applicable thereto.

14.2 Discrimination. Bidder shall not discriminate against any employee, applicant for employment, or subcontractor as provided by law. Bidder shall be responsible for ensuring that all subcontractors comply with federal and state laws and regulations related to discrimination. Upon a final determination by a court or administrative body having proper jurisdiction that the Bidder has violated state or federal laws or regulations, the Owner may impose a range for appropriate remedies up to and including termination of the Contract.

14.3 Taxes. Bidder shall include in the bid all state sales tax, social security taxes, state unemployment insurance, and all other items of like nature. It is the intent that the bid shall represent the total cost to the Owner of all work included in the contract. There are no provisions for a contractor to avoid taxes by using the tax exempt number of a state agency, board, commission or institutions. Said taxes shall be included in the bid price.

14.4 State licensing laws for Contractors.

14.5 Disclosure. Potential Bidders are hereby notified that any bidder who desires to enter into a contract not exempted from the disclosure requirements, that disclosure is a condition of the Contract and that the Owner cannot enter into any such contract for which disclosures are not made and the language of paragraphs a, b, and c below will be included in the body of any contract awarded.

Potential Bidders are hereby notified that:

Disclosure is required to be a condition of any present or future subcontract for which the total consideration is greater than ten thousand dollars (\$10,000.00).

The Contractor shall require any present or future subcontractor, for which the subcontract amount is greater than \$10,000.00, to complete and sign the Contract and Disclosure and Certification. The contractor shall ensure that any agreement, current or

future between the contractor and a subcontractor for which the total consideration is greater than \$10,000.00 shall contain the following:

Failure to make any disclosure required by Governor Executive Order 98-04, or any violation of any rule, regulation or adopted pursuant to that Order, shall be material breach of the term of this subcontract. The party who fails to make the required disclosure or who violates the rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

The Contractor shall transmit a copy of the subcontractor's disclosure form to the agency and a statement containing the dollar amount of the subcontract within ten (10) days upon receipt of subcontractor's disclosure.

Note: A copy of the "Contract and Grant Disclosure and Certification Form" is included at the end of this division.

14.6 Minority Participation: Pursuant to Ark. Code Ann. § 22-9-203, the Owner and the State of Arkansas encourage all small, minority, and women business enterprises to submit bids for capital improvements. Encouragement is also made to all general contractors that in the event they subcontract portions of their work, consideration is given to the identified groups.

14.7 The bidding, award and administration of the contract shall be made pursuant to Ark. Code Ann. §14-4-1401 et seq., Ark. Code Ann. § 22-9-101 et seq., and Ark. Code Ann. § 22-2-101 et seq.

15. LIQUIDATED DAMAGES. The amount of liquidated damages to be assessed shall be in accordance with the amount indicated in the Contract. Bidder understands and agrees that under the terms of the Contract to be awarded, if the Contractor fails to complete the work within the time limit specified in the Contract, the Contractor shall pay the Owner as Liquidated Damages, and not in the nature of a penalty the sum specified in the Bid Form for each day completion is delayed. It is further understood and agreed by bidder that the said sum fixed as Liquidated Damages is a reasonable sum considering the damages that Owner will sustain in the event of any delay in completion of the Work, and said sum is herein agreed upon and fixed as Liquidated Damages because of difficulty in ascertaining the exact amount of damages that may be sustained by such delay.

16. PRE-BID CONFERENCE. Refer to Invitation To Bid, section 00130, for information concerning any mandatory Pre-bid Conferences.

17 OPENING. Bids will be opened as identified in the Invitation to Bid, section 00130.

18 EVALUATION and CONSIDERATION OF BIDS, It is the intent of the Owner to award a Contract to the lowest responsive qualified bidder provide the bid has been submitted in accordance with the requirements of the Contract Documents and does not exceed the funds certified for the project by more than 25%. The Owner shall have the right to waive any formalities in a bid received and to accept the bid which, in the

Owner's judgment, is in its best interests. The Owner shall have the right to accept any or all bids for a period not to exceed ___ days.

18.1 Tie Bids. If two or more sealed bids are equal in amount, meet Bidding Document requirements, and are the lowest received by the time of the bid opening, then the apparent low bidder will be determined by lot (placing the name of the tie bidders into a container and drawing one name). The drawing will be conducted by (CAMPUS) Procurement Department personnel, and another person so designated by the Owner in the presence of a witness and the tie bidders or representatives. The witness shall be an employee of the State of Arkansas. Documentation of the drawing shall be included on the bid tabulation and be signed by those present. Nothing in the above and foregoing will diminish the Owner's reserved right to reject any and all bids and to waive any formalities.

19. EXECUTION OF CONTRACT.

19.1 The apparent low Bidder shall be prepared, if so required by the Owner, to present evidence of experience, qualifications, and financial ability to carry out the terms of the Contract. Attention is called to the fact that the bidder in signing the proposal, represents that he has the financial ability and experience to carry out the work throughout its several stages within the time for completion set forth on the Bid Form.

19.2 The successful Bidder will be required to execute an Agreement with the Owner on a form identical to the Agreement Form included with the Contract Documents and the Performance and Payment Bond and Certification of Insurance within ten days after receipt of the Intent to Award. Failure of the Bidder to do so may result in the Bidder being rejected and could result in disqualification and forfeiture of bid bond.

19.3 The successful Bidder will be required to furnish Owner with proof of insurance, as prescribed by the General Conditions and Supplementary General Conditions.

END OF DOCUMENT

BID FORM

Section 00410

Bid Time: _____

Bid Date: _____

Location: _____

BID FROM:

BID TO: Southern Arkansas University

PROJECT:

Gentlemen:

1. Having carefully examined the Contract Documents for this project, as well as the premises and all conditions affecting the proposed construction, the undersigned proposes to provide all labor, materials, services, and equipment necessary for, or incidental to, the construction of the project in accordance with the Contract Documents within the time set forth, for the lump sum base bid of:

\$ _____

2. Allowances: Allowances described in Section 01200 are included in the Bid Price.
3. Unit Prices: If the required quantities of the items listed below are increased or decreased by change order, the unit prices set forth below shall apply to such quantities.

\$ _____

\$ _____

\$ _____

4. Arkansas Code Annotated 22-9-212 requires the contractor to indicate on this bid form the cost of Trenching Safety Systems. FAILURE TO SHOW THIS COST WILL INVALIDATE THE BID. (NOTE THIS COST SHALL BE INCLUDED IN THE ABOVE BASE BID)

\$ _____

5. Completion Date: Bidder agrees that the work will be substantially complete and ready for final payment in accordance with the Contract Documents by

_____.

6. The undersigned, in compliance with the Contract Documents for the construction of the above named project, does hereby declare:

That the undersigned understands that the State reserves the right to reject any and all bids and to waive any formality. That if awarded the Contract, the undersigned will enter into an Agreement, on a form identical to the form included in the Contract Documents and execute required performance and payment bonds within ___ days after receipt of the Intent to Award, will commence work within ___ days after the date of the Notice to Proceed, and will complete the Contract fully by Completion Date indicated. Should the undersigned fail to fully complete the work within the above stated time, he shall pay the Owner as fixed, agreed and liquidated damages and not as a penalty, the sum of \$ _____ for each calendar day of delay until the work is completed or accepted.

The undersigned further agrees that the bid security payable to Owner and accompanying this proposal shall become the property of the Owner as liquidated damages if the undersigned fails to execute the Contract or to deliver the required bonds to the Owner within ___ days from receipt of the Intent to Award as these acts constitute a breach of the Contractor's duties.

That this bid may not be withdrawn for a period of ___ days after the bid opening.

The undersigned understands that the Owner's intent is to construct all facilities proposed within the limits established by the funds appropriated for the project.

The names of subcontractors and the nature of the work to be performed by each one have been included on the Bid Form.

The undersigned agrees to pay all prevailing hourly wage rates prescribed and mandated by Ark. Code Ann. § 22-9-301 et. seq., if the bid exceeds \$75,000) or the undersigned agrees to pay all prevailing hourly wage rates mandated by the Davis-Bacon Wage Rates and any other applicable federal regulations.

Bids submitted by a "Joint Venture/Joint Adventure" shall be signed by representatives of each component part of the Joint Venture. The licenses of each component part of the Joint Venture shall also be listed in the bid submittal. Therefore, joint venture bidders shall indicate at least two (2) signatures and two (2) licenses numbers on the Bid Form. Exception: Joint Ventures who have been properly licensed with the Arkansas Contractors Licensing Board as a "Joint Venture" need only to indicate the joint venture license number on the Bid Form. Joint Venture Bidders shall indicate at least two (2) signatures on the bid form even if they are licensed as a joint venture.

7. The following documents are attached to and made a condition of this Bid:

- Bid security
- Listing of Mechanical, Plumbing, Electrical and Roofing Subcontractors, if required

8. The undersigned acknowledges receipt of and inclusion as a part of the Contract Documents the following addenda:

No. Dated

No. Dated

No. Dated

No. Dated

9. Listing of Mechanical, Plumbing, Electrical and Roofing Subcontractors

All mechanical, plumbing, electrical and roofing subcontractors shall be listed regardless of qualifications, licensures or work amount. Bidders should consult the project manual on how to fill out this form. Failure to name the subcontractor in the space provided shall cause the bid to be declared non-responsive and the bid will not receive consideration. Indicate the Name(s), of each entity performing the listed work:

MECHANICAL (Indicative of HVACR):

Is the amount of work \$20,000.00 or over: Yes ___ No ___

PLUMBING:

Is the amount of work \$20,000.00 or over: Yes ___ No ___

ELECTRICAL: (Indicative of wiring and illuminating fixtures)

Is the amount of work \$20,000.00 or over: Yes ___ No ___

ROOFING AND SHEETMETAL (Indicative of roofing applications)

Is the amount of work \$20,000.00 or over: Yes ___ No ___

Respectfully Submitted:

Name of Bidder (Typed or Printed)

Address

Telephone Number

Fax Number

Contractor's License Number or Contractor's (Joint Venture) License Number(s)

BY: (Signature and Title)

Federal ID Number or SSN#

Date of Bid

AGREEMENT FORM
Section 00520

THIS AGREEMENT entered into this _____ day of _____
20____ by and between _____ hereinafter referred to as the
Contractor, and Southern Arkansas University hereinafter referred to as Owner in
accordance with Ark. Code Ann. § 22-2-101 et seq.,

WITNESSETH:

1. That for and in consideration of the payment by the owner in the amount of
\$ _____ to be made as set forth in the Contract Documents, the
Contractor hereby agrees to furnish all tools, labor, equipment, and materials, and to
build and construct that certain project in Columbia County, designated as

Project #: _____

Project Name: _____
consisting of construction, more specifically described in the Contract Documents
attached hereto and incorporated herein by reference. Contract Documents include the
following: the Agreement Form (this instrument); the Invitation to Bid; Instruction to
Bidders; Bid Form; all Addenda; Performance and Payment Bond; General and
Supplementary Conditions; Drawings and Specifications, Drawings listed in the
Specifications; Notice to Proceed; and Change Orders. All construction shall be in exact
accord with the Contract Documents filed with the SAU Procurement Department located
in Magnolia, Arkansas on _____. The Owner shall have direct contract
supervision. Said construction shall be to the satisfaction of the Owner and the Design
Professional, and in accordance with the laws of the State of Arkansas, and the work shall
be subject to inspection and approval at all times by the Owner, the Design Professional,
appropriate state and federal agencies.

2. Owner may at any time during the progress of the work alter, change, subtract from, or
add to said Contract Documents without violating this Agreement or the terms thereof.
Said changes, alterations, subtractions, or additions shall be set forth in writing in a
document referred to as a "Change Order." Said document shall not be effective unless
approved by the Owner and the Design Professional. Once effective, the Change Order
shall be attached hereto and incorporated herein by reference and shall be made a
condition or term of the Contract Documents.

3. The Contractor agrees, for the consideration set forth in the Bid Form, to begin work
within ___ calendar days after a Notice to Proceed is issued and to complete the work
within consecutive calendar days of the start date established by the Notice To Proceed.
If the Contractor fails to complete the work within the time limit herein specified, he shall
pay to the Owner, as liquidated damages and not in the nature of a penalty, the sum
specified in the Bid Form of for each calendar day delayed, it being understood and

agreed between the parties hereto that the said sum fixed as liquidated damages is a reasonable sum, considering the damages that Owner will sustain in the event of any such delay, and said amount is herein agreed upon and fixed as liquidated damages because of difficulty of ascertaining the exact amount of damages that may be sustained by such delay. The said sum shall be deducted from the final amount of estimate due the Contractor.

4. Should Contractor be delayed in the execution or completion of the work by the act, neglect or default of the Owner, or by any damage by fire, weather conditions or other casualty or event for which the contractor is not responsible, or by general strikes or lockouts caused by acts of employees, then any extended period shall be determined and fixed by the Owner. Said extended period shall be the time for a period equivalent to the time lost by reason of any or all of the causes aforesaid, but no such allowance shall be made unless a claim therefore is presented in writing to the Owner within seven calendar days of the occurrence of the event causing the delay.

5. It is mutually agreed between the parties that in the performance of this contract, Contractor is acting independently and in no sense as Agent of the State or the Owner. Contractor shall not let, assign, or transfer this contract or any interest therein, without the written consent of the Owner.

6. It is agreed and understood between the parties hereto that the Contractor shall accept, and the Owner will pay for, the work, at the prices stipulated in the Contract Documents, such payment to be in the form of legal tender, and the payment shall be made at the time and in the manner set forth in the Contract Documents.

7. Any laborer or mechanic employed by the Contractor or any Subcontractors for this project, directly on site for the work covered by the Contract Documents, shall be paid a rate of wages required by the Contract Documents. If the Owner discovers that wages less than the rate of wages specified by the Contract Documents have been or are being paid, then the Owner, after giving written notice to the Contractor, will terminate the Contractor's right to proceed with the project work or such part of the work as to which there has been a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the Contractor and his sureties shall be liable to the Owner for any excess costs occasioned thereby.

8. Contractor shall promptly repair, at his own expense and to the satisfaction of the Owner damage done by him or his employees or agents at the work site, or to the public property or buildings, or both, and will save the Owner harmless from all claims of any person for injury to person or to property occasioned by his act, or the acts of his employees or agents, while in the execution of the work specified.

9. The Owner may terminate this agreement to the extent Owner's funds are no longer available for expenditures under this agreement.

10. Failure to make any disclosure required by Governor's Executive order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a

material breach of terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the Agency.

a) The contractor shall prior to entering any agreement with any subcontractor, for which the total consideration is greater than \$10,000, require the subcontractor to complete a Contract and Grant Disclosure and Certification Form. The contractor shall ensure that any agreement, current or future between the contractor and a subcontractor for which the total consideration is greater than \$10,000 shall contain the following:

Failure to make any disclosure required by Governor Executive Order 98-04, or any violation of any rule, regulation or adopted pursuant to that Order, shall be a material breach of the term of this subcontract. The party who fails to make the required disclosure or who violates the rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

b) The Contractor shall, within ten days of entering into any agreement with a subcontractor, transmit to the SAU Procurement Office, a copy of the Contract and Grant Disclosure and Certification Form completed and signed by the subcontractor and a statement containing the dollar amount of the subcontractor.

c) The terms and conditions regarding the failure to disclose and conditions which constitutes material breach of contract and rights of termination and remedies under the Executive Order 98-04 are hereby incorporated within.

11. Nothing in this Contract shall be construed to waive the sovereign immunity of the STATE OF ARKANSAS or any entities thereof, including Owner.

Executed by the parties who individually represent that each have the authority to enter into this Contract.

CONTRACTOR

BY: _____

TITLE:

ADDRESS:

DATE:

NAME:

WITNESS:

Affix Corporate Seal (if any)

Address:

OWNER:

BY:

DATE:

CONSENT OF SURETY
Section 00611

Comes the undersigned, who does hereby swear and affirm that:

1. My name is _____ and I am an authorized representative of a surety company.

2. With regards to the Project; Project # ; Contract date ; Contractor; and Owner; I hereby approve the final payment to the contractor. I agree that the final payment to the contractor shall not relieve the Surety Company of any of its obligations as set forth in the contract with the State of Arkansas and this contractor.

AFFIANT DATE

VERIFICATION

STATE OF ARKANSAS)

)

COUNTY OF)

SUBSCRIBED AND SWORN TO before me this of , 20 .

NOTARY PUBLIC

MY COMMISSION EXPIRES:

Payment and Performance Bond

We _____, hereinafter referred to as Principal, and _____, hereinafter referred to as Surety, are held and firmly bound unto Southern Arkansas University, as obligee, hereinafter referred to as Owner, in the amount of \$_____, said amount to be deemed a performance bond payable to Owner under the terms of this Payment and Performance Bond Agreement. The Principal and Surety state that the Surety is a solvent corporate surety company authorized to do business in the State of Arkansas.

Principal has by written agreement dated _____ entered into a Contract (the Contract) with the Owner for: _____

_____. The above referenced Contract is incorporated herein by reference.

Under this Payment and Performance Bond Agreement, the Principal and Surety shall be responsible for the following:

- The Principal shall faithfully perform the above referenced Contract, which is incorporated herein by reference and shall pay all indebtedness for labor and materials furnished or performed under the Contract.
- In the event that the Principal fails to perform the Contract, the Principal and the Surety, jointly and severally, shall indemnify and save harmless the Owner from all cost and damage which the Owner may suffer by reason of Principal’s failure to perform the Contract. Said indemnification shall include, but not be limited to, full reimbursement and repayment to the Owner for all outlays and expenses which the Owner may incur in making good any such default or failure to perform the Contract by the Principal.
- Principal shall pay all persons all indebtedness for labor or material furnished or performed under the Contract and in doing so this obligation shall be null and void. In the event that Principal fails to pay for such indebtedness, such persons shall have a direct right of action against the Principal and Surety, jointly and severally, under this obligation, subject to the Owner’s priority.
- Principal shall guarantee the faithful performance of the prevailing hourly wage clause as provided in the Contract.

This bond given in accordance with Arkansas laws and regulations (including Arkansas Code Annotated 18-44-503, 19-4-1405 and 22-9-401 et seq.). The Surety guarantees that the Principal shall comply with Arkansas Code Annotated 22-9-308 (d) by payment and full compliance with all prevailing hourly wage contract provisions where the contract amount exceeds the amount provided in Arkansas Code Annotated 22-9-302 (1).

Any alteration which may be made in the terms of the Contract, or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the contract, or any other forbearance on the part of either the Owner or the Principal to the other shall not in any way release the Principal and the Surety or Sureties or either or any of them, their heirs, personal representative, successors or assigns from their liability hereunder, notice to the Surety or Sureties of any such alteration, extension or forbearance being hereby waived. In no event shall the aggregate liability of the Surety exceed the amount provided in the Contract.

This Payment and Performance Bond Agreement is binding upon the above named parties, and their successors, heirs, assigns and personal representatives.

Executed by the parties who individually represent that each has the authority to enter into this agreement.

BY: _____
Contractor Date

BY: _____
Arkansas Resident Local Agent/Attorney-in-Fact Date
(In accordance with Arkansas Code Annotated 22-9-402 (b))

Agent Date

Address

City County State Zip Code

Business Phone: _____

Fax: _____

Email: _____

**THIS FORM IS THE ONLY PAYMENT AND PERFORMANCE BOND
ACCEPTABLE**

Payment and Performance Bond Amendment # _____

We, _____ hereinafter referred to as Principal, and _____, hereinafter referred to as Surety, have entered into an agreement entitled "Payment and Performance Bond", with _____ as obligee hereinafter known as Owner Agency. Furthermore, we agree that said bond agreement, which was filed in the county of _____ on the _____ day of _____, 20____ and this amendment # _____ is hereby incorporated into said bond agreement and any previous amendment(s) therein. This amendment shall be upon the same terms and conditions as set forth in the Bond Agreement, including any amendments, except the Agreement shall be amended and modified as follows:

1. The total aggregate amount for the Bond Agreement shall be \$_____. This amended amount reflects those costs, time for completion and other terms of the Contract associated with said bond agreement and Change Order(s) # _____ for the project contract entered into between Principal and Owner Agency.
2. This Payment and Performance Bond Agreement Amendment is binding upon the above named parties, and their successors, heirs, assigns and personal representatives. The Bond Agreement as hereby extended, amended and modified is hereby ratified and confirmed by the parties who individually represent that each has the authority to enter into this amended agreement.

BY: _____
 Contractor Date

BY: _____
 Arkansas Resident Local Agent/Attorney-in-fact Date
 (In accordance with Arkansas Code Annotated 22-9-402(b)(1)(2))

 Agent Date

 Address

 City County State Zip Code

 Business Phone Fax Number

THIS PAYMENT AND PERFORMANCE BOND AMENDMENT IS THE ONLY AMENDMENT FORM ACCEPTABLE

GENERAL CONDITIONS

Section 00700

ARTICLE 1 -- GENERAL PROVISIONS

1.1 DEFINITIONS

1.1.1 Contract Documents: Contract Documents consist of Agreement; Invitation to Bid; Instruction to Bidders; the Bid Form; the Bid and the Performance and Payment bonds; General and Supplementary Conditions; Specifications; Drawings; Addenda issued prior to execution of the Contract; all Owner approved Change Orders; other documents listed or referred to in the Agreement; and modifications issued after execution of the Contract and signed by Contractor and Owner.

1.1.2 Contract: The Contract Documents form the Contract for construction. The Contract Documents will not be construed to create a contractual relationship between the Design Professional and Contractor, between the Owner and a subcontractor, between the Owner and Design Professional, or between entities other than the Owner and Contractor.

1.1.3 Work: Construction and services required by the Contract Documents whether completed or partially completed, include tools, labor, equipment, supplies, transportation, handling, and incidentals provided by the Contractor.

1.1.4 Project: The total capital improvement project described in the Contract Documents.

1.1.5 Drawings: Graphic and textual portions of the Contract Documents showing the design, location, and dimensions and size of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.6 Specifications: Written requirements for materials, equipment, systems, standards, and workmanship for the Work, and performance of related services.

1.1.7 Project Manual: Volume, which may include the bidding requirements, forms, contracting requirements, and the Specifications.

1.1.8 Owner: The person or entity identified as such in the Contract Agreement, referred to throughout the Contract Documents as singular in number. The term Owner means the Owner and the Owner-authorized representative.

1.1.9 Contractor: The person or entity identified as such in the Contract Agreement, referred to throughout the Contract Documents as singular in number. The term Contractor means the Contractor or the Contractor-authorized representative.

1.1.10 Design Professional (Architect/Engineer/Consultant): The person or entity identified as such in the Agreement, lawfully licensed to practice architecture or engineering or another field of expertise and under contract to Owner to provide design service, advice, and consultation, referred to throughout the Contract Documents as if singular in number. The term Design Professional means the Architect/Engineer/Consultant or the authorized representative.

1.1.11 Subcontractor: Any person, firm, or corporation with a direct contract with the Contractor who acts for or in behalf of the Contractor in executing a portion of the Work. The term subcontractor is referred to as singular in number and means the subcontractor or the subcontractor-authorized representative.

1.1.12 Inspector: A duly authorized representative of the Owner, and Design Professional, designated for detailed inspection of materials, construction, workmanship, and methods of construction.

1.1.13 Site: The particular location of that part of the project being considered.

1.1.14 State: The Owner.

1.2 INTENT

1.2.1 The intent of the Contract Documents is to set forth the standards of construction, the quality of materials and equipment, the guarantees that are to be met, and to include items necessary for proper execution and completion of the Work. The Contract Documents are complementary and what is required by one will be as binding as if required by all. Performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable as necessary to produce indicated results.

1.2.2 Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings will not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3 CAPITALIZATION

1.3.1 Terms capitalized in the Contract Documents include those which are specifically defined, the titles to numbered sections and articles, identified references to paragraphs, and the titles of other published documents.

1.4 INTERPRETATION

1.4.1 Whenever in these Contract Documents the words "as ordered", "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it shall be understood that the order, direction, requirement, permission, or allowance of the Owner and Design Professional is intended.

1.4.2 Whenever in these Contract Documents the word "product" is used, it shall be understood that the materials, systems, and equipment will be included.

1.4.3 Whenever in these Contract Documents the word "provide" is used, it shall be understood that it means to "furnish and install".

1.4.4 The Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2 -- OWNER

2.1 LAND

2.1.1 The Owner will provide the lands shown on the Drawings upon which the Work shall be performed. The Owner will provide a right-of-way for access to the project site.

2.1.2 The Owner will provide base lines for the location of the principle component parts of the Work with a suitable number of bench marks adjacent to the Work.

2.2 RIGHT OF ENTRY BY OWNER

2.2.1 The Owner and his authorized representative will have the right to enter the property or location on which the Work shall be constructed. The Owner further reserves the right to construct or have his authorized agents construct such work as the Owner will desire, so long as these operations do not interfere with or delay the work being constructed under this Contract.

2.3 OWNER'S RIGHT TO CARRY OUT THE WORK

2.3.1 If the Contractor defaults or neglects to perform the Work in accordance with the Contract Documents, including the requirements with respect to the schedule of completion, and fails after ten days written notice from the Owner to correct the deficiencies, the Owner may deduct the cost thereof from the payment then or thereafter due the Contractor.

ARTICLE 3 -- CONTRACTOR

3.1 GENERAL

3.1.1 The Contractor shall perform the Work in accordance with the Contract Documents.

3.1.2 The Contractor shall furnish labor, materials, equipment, and transportation necessary for the proper execution of the work unless specifically noted otherwise. The Contractor shall do all the work shown on Drawings and described in Specifications and all incidental work considered necessary to complete the project in a substantial and acceptable manner, and to fully complete the work or improvement, ready for use, occupancy and operation by the Owner. Drawings and Specifications shall be interpreted by the Design Professional or the Owner if no Design Professional exists for the project.

3.1.3 The Contractor shall cooperate with the Owner, Design Professional, inspectors, and with other contractors on the Project. Contractor shall allow inspectors acting in an official capacity, to have access to the project site.

3.1.4 The Contractor shall determine that the final and completed work on the project is in accordance with the Contract Documents. The failure of the Design Professional to find or correct errors or omissions in the use of materials or work methods during the progress of the work shall not relieve the Contractor from his responsibility to correct all the defects in the project.

3.1.5 The Contractor shall assist in making final inspections and shall furnish such labor and equipment as may be required for the final tests of equipment, piping, and structures.

3.2 REVIEW OF FIELD CONDITIONS

3.2.1 Before ordering material or doing Work, the Contractor shall verify all measurements involved and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of difference between actual dimensions and the measurements indicated on Drawings; differences which may be found, shall be submitted to Design Professional for consideration before proceeding with the Work.

3.2.2 Drawings may show the location or existence of certain exposed and buried utilities as well as existing surface and subsurface structures. The Owner assumes no responsibility for failure to show any or all such utilities and structures on the Drawings or to show such in the exact location. It is mutually agreed such failure will not be considered sufficient basis for claims for extra work or for increasing the pay quantities in any manner unless the obstruction encountered necessitates substantial changes in the lines or grades or requires the building of a special structure.

3.3 REVIEW OF CONTRACT DOCUMENTS

3.3.1 The Contractor shall study and compare Drawings, Specifications, and other instructions and shall report to the Design Professional at once any error, inconsistency, or omission discovered.

3.3.2 In the event of conflict among the Contract Documents, interpretations will be based on the following order of precedence, stated highest to lowest:

The Agreement

This Division Zero (0) shall control in the event of conflict between this Division Zero (0) and other Divisions 1 through 16

Addenda to Drawings and Specifications with those of later date having precedence.

Drawings and Specifications

3.3.3 Since the Contract Documents are complementary, the Contractor shall take no advantage of any apparent error or omission in the Drawings and Specifications. The Owner or Design Professional shall furnish interpretations as deemed necessary for the fulfillment of the intent of the Drawings and Specifications.

3.3.4 Discrepancies found between the Drawings and Specifications and actual site conditions or any errors or omissions in the Drawings or Specifications shall be immediately reported to the Design Professional or in the case where a Design Professional is not on the Project, the Owner shall be notified, who shall address such error or omission in writing. Work done by the Contractor after discovery of such discrepancies, errors, or omissions shall be at the Contractor's risk and expense.

3.4 REQUEST FOR SUPPLEMENTARY INFORMATION

3.4.1 The Contractor shall make timely requests of the Owner or Design Professional for additional information required for the planning and production of the Work. Such requests shall be submitted as required, but shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Contractor understands and agrees that it is Contractor's duty to determine the need for, and to request said additional information in writing from the Design Professional by such date as allows Design Professional to provide the information to the Contractor by a date that will not adversely affect Contractor's ability to complete the Work by the date specified in the Contract.

3.4.2 Additional instructions may be issued by the Design Professional during the progress of the Work to clarify the Drawings and Specifications or as may be necessary to explain or illustrate changes in the Work.

3.5 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.5.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

3.5.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.5.3 Samples are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

3.5.4 The Contractor shall provide shop drawings and other submittals, settings, schedules, and other drawings as may be necessary for the prosecution of the Work in the shop and in the field as required by the Drawings, Specifications, or Design Professional instructions.

3.6 LABOR AND MATERIALS

3.6.1 Except as otherwise specifically stated in the Contract, the Contractor shall provide, but not be limited to, all materials, labor, tools, equipment, water, light, heating and cooling, power, transportation, superintendence, temporary construction of every nature, taxes legally collectible because of the work, and all other services and facilities of every nature whatsoever necessary to complete the Work in accordance with the Contract Documents in an orderly and efficient manner. The sequence of construction operations shall follow the schedule of construction as approved by the Design Professional. The Work shall not be discontinued by the Contractor without approval of the Design Professional. Should prosecution of the Work be discontinued for any reason, the Contractor shall notify the Design Professional at least twenty-four hours in advance of resuming the Work.

3.6.2 Materials and equipment furnished under this Contract will be subject to inspection by the Owner's authorized representative or by independent laboratories. Defective material, equipment, or workmanship may be rejected at any time before the acceptance of the Work even though the defective material, equipment, or workmanship may have been previously overlooked and estimated for payment. The Contractor shall replace defective equipment and material in accordance with the Contract Documents at no additional cost to the Owner.

3.6.3 The Contractor shall provide materials and supplies not subject to conditional sales agreements, or other agreement reserving unto the seller any right, title, or interest therein. All materials and supplies shall become the property of the Owner upon final acceptance of this Contract by the Owner.

3.6.4 If shop tests are to be conducted, the Contractor shall notify the Owner of such tests so a representative may witness tests, if desired.

3.6.5 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Design Professional, and in accordance with a Change Order.

3.7 UNAUTHORIZED WORK

3.7.1 Work done without lines and grades having been given or work done beyond the lines or not in conformity with the grades shown on the Drawings or as provided by the Owner, except as provided herein, and work completed without proper inspection and supervision or any extra or unclassified work completed without written authority and prior agreement shall be at the Contractor's risk. Such unauthorized work, at the option of the Design Professional, may not be measured and paid for and may be ordered removed at the Contractor's expense.

3.8 SUPERINTENDENCE

3.8.1 The Contractor shall supervise and direct the Work. The Contractor shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for coordinating portions of the Work under the Contract.

3.8.2 The Contractor shall employ a qualified superintendent during the duration of the Project who is acceptable to the Owner and the Design Professional. The superintendent shall be maintained on the Project site and shall be present on the site at all times work is in progress. The superintendent shall be capable of reading and understanding the Drawings and Specifications and shall have full authority to act in behalf of the Contractor. All directions and instructions given to the Superintendent shall be considered as given to the Contractor and shall be as binding as if given to the Contractor.

3.8.3 Workmanship shall be performed by workmen experienced in their trade and skilled and experienced for the class of work to which assigned. Any person, including supervisory personnel, who does not show and exhibit skill and proficiency in said work shall be removed by the Contractor and replaced by a competent and experienced workman.

3.8.4 The Contractor shall, at all times, be responsible for the conduct and discipline of his employees and all Subcontractors and their employees. Disorderly, incompetent or intemperate persons, or persons who commit any crimes or trespass on public or private property in the vicinity of the Work must not be allowed to continue working upon the project which the Contractor has with the State. Any superintendent, foreman or workman employed by the Contractor or a Subcontractor who unreasonably refuses or neglects to comply with the instructions of the Owner, Design Professional, or inspector, shall, at the written request of the Owner or Design Professional, be removed from the work site and shall not be allowed to work further on any portion of the work without the approval of the Owner.

3.8.5 The Contractor shall coordinate Work by the various trades to provide uniform and symmetrical layout and spacing of the exposed components which will affect the finished design and appearance. Where spacing and related locations are not specifically shown

on Drawings or where in doubt, the Contractor shall consult the Design Professional prior to installation of that part of the Work.

3.9 PERMITS, FEES, AND NOTICES

3.9.1 The Contractor shall purchase and secure all applicable permits and licenses and give all notices necessary and incidental to the prosecution of the Work. However, in accordance with Ark. Code Ann. §22-9-213, public works construction projects conducted by the Owner, a state agency, are exempt from permit fees or inspection requirements of county or municipal ordinances.

3.9.2 When new construction under the Contract crosses highways, railroads, streets or utilities under the jurisdiction of the state, county, city, or other public agency, public utility, or private entity, the Contractor shall secure written permission from the proper authority before executing such new construction. A copy of this written permission shall be filed with the Owner before any work is completed. The Contractor shall furnish a release from the proper authority before final acceptance of the Work. Any bonds required for this Work shall be secured and paid for by the Contractor.

3.10 SAMPLES AND TESTS

3.10.1 The Contractor shall provide samples, materials, and equipment necessary or required for testing as outlined in the various sections of the Specifications or as directed by the Owner. The Contractor shall pay all costs for testing. Should materials, methods, or systems fail to meet specified standards, the Contractor shall pay all costs for additional testing as required by the Owner.

3.10.2 All tests shall be made by a laboratory approved by the Owner.

3.11 LOCATION, GRADIENT, AND ALIGNMENT

3.11.1 Based upon the site information provided by the Owner, the Contractor shall develop and make detailed surveys necessary for construction including slope stakes, batter boards, and other working points, lines and elevations.

3.11.2 The Contractor shall report any errors, inconsistencies, or omissions to the Design Professional as a request for information.

3.11.3 The Contractor shall preserve benchmarks, reference points and stakes, and in the case of destruction thereof by the Contractor, shall be responsible for damage or mistakes resulting from unnecessary loss or disturbance.

3.12 LAND

3.12.1 Additional land and access thereto not shown on Drawings that may be required for temporary construction facilities or for storage of materials shall be provided by the Contractor at his expense with no liability to the Owner. The Contractor shall confine his

equipment and storage of materials and the operation of his workmen to those areas shown on the Drawings and described in the Specifications, and such additional areas which he may provide or secure as approved by the Owner.

3.12.2 The Contractor shall not enter upon private property for any purpose without first obtaining permission.

3.12.3 The Contractor shall be responsible for the preservation of and prevent damage or injury to all trees, monuments, and other public property along and adjacent to the street and right-of-way. The Contractor shall prevent damage to pipes, conduits and other underground structures, and shall protect from disturbance or damage all monuments and property marks until an authorized agent has witnessed or otherwise referenced their location, and shall not remove monuments or property marks until directed.

3.13 LIMITS OF WORK

3.13.1 The Contractor shall conduct Work and operations so as to cause a minimum of inconvenience to the public. At any time when, in the opinion of the Owner or Design Professional, the Contractor is obstructing a larger portion of a road, street, or other public right-of-way than is necessary for the proper execution of the Work, the Design Professional may require the Contractor to finish the sections on which work is in progress before work is commenced on any new sections.

3.14 WARRANTY

3.14.1 The Contractor shall warrant that all Work, materials, and equipment furnished will be free from defects in design, materials, and workmanship and will give successful service under the conditions required. The warranty period for Work, materials, and equipment furnished by the Contractor shall be one year from the date of the written acceptance of the Work as stated in the Substantial Completion Form approved by the Contractor, Owner and the Design Professional, unless a longer period is agreed upon.

3.15 PATENTS AND ROYALTIES

3.15.1 If the Contractor is required or desires to use any design, device, material or process covered by letters, patent, or copyright, he shall provide for such use by suitable legal agreement with the patents or Owner. It is mutually understood and agreed that without exception the Contract Sum shall include all royalties or costs arising from patents, trademarks, and copyrights in any way involved in the Work. The Contractor and the surety shall defend, indemnify, and save harmless the Owner and all its officers, agents and employees from all suits, actions, or claims of any character, name and description brought for or on account of infringement or alleged infringement by reason of the use of any such patented design, device, material or process of any trademark or copyright used in connection with the Work agreed to be performed under this Contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of any action or actions, suit or suits which may be commenced against the Owner for any such infringement or alleged infringement at any time during the

prosecution or after the completion of the Work contracted for herein. It is mutually agreed that the Owner may give written notice of any such suit to the Contractor, and thereafter, the Contractor shall attend to the defense of the same and save and keep harmless the Owner from all expense, counsel fees, cost liabilities, disbursements, recoveries, judgments, and executions in any manner growing out of, pertaining to, or connected therewith.

3.16 CLEANING UP

3.16.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials.

3.16.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

ARTICLE 4 -- ADMINISTRATION OF CONTRACT

4.1 DESIGN PROFESSIONAL AUTHORITY

4.1.1 The Design Professional will interpret the requirements of the Contract Documents and decide matters concerning performance thereunder on request of the Owner or Contractor.

4.1.2 The Design Professional will provide administration of the Contract as described in the Contract Documents and will be the Owner's representative. The Design Professional will decide any and all questions as to the acceptability of materials or equipment furnished, work performed, interpretation of the Drawings and Specifications, rate of progress of the Work, acceptability of the quality of workmanship provided, and other questions as to the fulfillment of the Contract by the Contractor.

4.1.3 The Design Professional will prepare all change orders on the form specified by the Owner. The Design Professional may authorize minor changes in the Work not involving adjustment in Contract Sum or extension of Contract Time and not inconsistent with the intent of the Contract Documents.

4.1.4 The Design Professional Design Professional and his authorized representatives and the Owner will have the right to enter the property or location on which the Work shall be constructed.

4.2 CLAIMS

4.2.1 Definition: A claim is a demand or assertion by one of the parties seeking adjustment, or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims will be initiated by written notice. The responsibility to substantiate claims shall rest with the party making the claim.

4.2.2 Claims of the Contractor or the Owner: Claims regarding the Work of the Contract shall be referred initially to the Design Professional for a decision. The Design Professional will review claims, and 1) reject in whole or in part; 2) approve the claim; 3) suggest a compromise; 4) advise the parties that the Design Professional is unable to resolve the claim.

4.2.3 Claims for Concealed or Unknown Conditions: If new and unforeseen items of work are discovered, which cannot be covered by any item or combination of items for which there is a Contract Sum, then the Contractor shall notify the Design Professional as quickly as reasonably possible and shall not continue working on the discovered new or unforeseen items without express written permission from the Design Professional. The Contractor shall complete such work and furnish such materials as may be required for the proper completion or construction of the work contemplated upon written Change Order from the Design Professional as approved by the Owner. Work shall be performed in accordance with the Contract Documents.

4.2.4 Claims for Extensions of Time: The Contractor shall provide written notice to Design Professional within ten days stating the cause of the delay and request an extension of Contract Time. The Design Professional will act on the request in writing. The extension of time shall be for a period equivalent to the time lost by reasons indicated. No extension of time shall be effective until included in a Change Order approved by the Owner and Design Professional.

4.2.5 Claims for Changes in the Work: The Contractor shall provide written notice to Design Professional within ten calendar days after the receipt of instructions from the Owner, as approved by the Design Professional, to proceed with changes in the Work and before such Work is commenced. Changes in the Work shall not be commenced before the claim for payment has been approved, except in emergencies endangering life or property. The Contractor's itemized estimate sheets showing labor and material shall be submitted to the Design Professional. The Owner's order (Change Order) for changes in the Work shall specify any extension of the Contract Time and one of the following methods of payment:

- a. Unit prices or combinations of unit prices, which formed the basis of the original Contract.
- b. A lump sum fee based on the Contractor's estimate, approved by the Design Professional and accepted by the Owner.

c. The actual cost of the Work plus an allowance of 12 percent and 5 percent for the General Contractor and Subcontractor, respectively.

4.2.6 Claims for Additional Costs: In case of an emergency which threatens loss or injury of property or safety of life, the Contractor shall be allowed to act, without previous instructions from the Design Professional, in a diligent manner. The Contractor shall notify the Design Professional immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted, but in no case more than 7 calendar days following the event causing the emergency, to the Design Professional for consideration. The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided under these General Conditions. No agreement to pay costs for additional work shall be effective until included in a Change Order approved by the Owner, Contractor and the Design Professional.

ARTICLE 5 -- SUBCONTRACTORS

5.1 ASSIGNMENT OF CONTRACT

5.1.1 Neither the Owner nor the Contractor shall have the right to sublet, sell, transfer, assign, or otherwise dispose of the "Contract" or any portion thereof without written consent of the other party. No assignment, transfer, or subletting, even with the proper consent, shall relieve the Contractor of his liabilities under this Contract. Should any Assignee or Subcontractor fail to perform the work undertaken by him in a satisfactory manner, the Owner, has the right to annul and terminate the Assignee's or Subcontractor's contract on the project.

5.2 SUBCONTRACTS

5.2.1 The subcontracting of the whole or any part of the Work to be done under this Contract will not relieve the Contractor of his responsibility and obligations. All transactions of the Owner or Design Professional shall be with the Contractor. Subcontractors will be considered only in the capacity of employees or workmen and shall be subject to the same requirements as to character and competency.

5.2.2 The Contractor shall discharge or otherwise remove from the project any Subcontractor that the Owner or the Design Professional has reasonably determined as incompetent or unfit.

5.2.3 The Contractor may not change those Subcontractors listed on the proposal without the written approval of the Owner and Design Professional. The Contractor shall not be relieved of any liabilities under this Contract, but shall be fully responsible for any Subcontractor or work by said Subcontractor where Subcontractor is employed by the Contractor to perform work under this Contract. Nothing contained in the Contract Documents shall create contractual relations between any Subcontractor and the State.

5.2.4 No officer, agent, or employee of the Owner, including the Design Professional, shall have any power or authority to bind the Owner or incur any obligation in his behalf to any Subcontractor, material supplier or other person in any manner whatsoever.

ARTICLE 6 - CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OTHER CONTRACTS

6.1.1 The Owner reserves the right to award other contracts in connection with the Project. The Contractor shall cooperate with the other contractors with regard to the storage of materials and equipment, access to the site, and execution of their work. It shall be the Contractor's responsibility to inspect the work of other contractors which will affect the work of this Contract and to report to the Owner irregularities which will not permit him to complete his work in a satisfactory manner or in the time allotted. Failure to so report shall constitute an acceptance of the work of other contractors.

6.2 DEPENDENCE ON OTHERS

6.2.1 If any part of the Contractor's work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the work, promptly report to the Design Professional any apparent discrepancies or defects in such other work that render it suitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acceptance of the work.

ARTICLE 7 -- CHANGES IN THE WORK

7.1 GENERAL

7.1.1 The Owner may, as the need arises, without invalidating the Contract, order changes in the work in the form of additions, deletions, or modifications. Compensation to the Contractor for additional work or to the Owner for deductions in the work and adjustments for the time of completion shall be adjusted at the time of ordering such change.

7.1.2 Additional work shall be done as ordered in writing by the Owner. The order shall state the location, character, and amount of extra work. All such work shall be executed under the conditions of the Contract, subject to the same inspections and tests.

7.1.3 The Design Professional and the Owner reserve and shall have the right to make changes in the Contract Documents and the character or quantity of the work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument, prepared by the Design Professional and approved by the Owner stating their agreement upon the following, separately or in any combination thereof:

- a. Description and details of the work.
- b. Amount of the adjustment in the Contract Sum.
- c. Extent of the adjustment in the Contract Time.
- d. Terms and conditions of the Contract Documents.

Change Order requests by the Contractor shall be submitted in a complete itemized breakdown, acceptable to the Owner and the Design Professional.

Where unit prices are stated in the Contract, Contractor should submit an itemized breakdown showing each unit price and quantities of any changes in the Contract Amount. The value of all such additions and deductions shall then be computed as set forth in Paragraph 7.2.2.3.

7.2.2.2 The Contractor shall present an itemized accounting together with appropriate supporting data for the purposes of considering additions or deductions to the Contract Amount. Supporting data shall include but is not limited to the following:

Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker or workmen's compensation insurance;

Cost of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

Costs of premiums for all bonds and insurance, permit fees, and sales, use of similar taxes related to the Work; and

Additional costs of supervision and field office personnel directly attributable to the change.

The burden of proof of cost rests upon the Contractor. Contractor agrees that Owner or Owner's Representative shall have the right, at reasonable times, to inspect and audit the books and records of Contractor to verify the propriety and granting of such cost.

Compute requests for changes be they additions or deductions as follows:

For work performed by the Contract:

Net Cost of Materials a

State Sales Tax b

Net Placing Cost c

W.C. Insurance Premium and FICA Tax d

a+b+c+d

Overhead and Profit, 12% x (a+b+c+d) e

Allowable Bond Premium f

TOTAL COST a+b+c+d+e+f

Credit for work deleted shall be computed as outlined in 7.2.2.3 a. through e., except the Contractor's share of overhead and profit percentage is seven percent.

For added work performed by Subcontractors: Subcontractors shall compute their work as outlined in 7.2.2.3 a. through e. To the cost of that portion of the work (Change) that is performed by the Subcontractor, the Contractor shall add an Overhead and Profit Change of five percent plus the Allowable Bond Premium.

For work deleted by a Subcontractor: Subcontractors shall compute their work as outlined in 7.2.2.3 a through e, except that the overhead and profit shall be seven percent and the Contractor's overhead and profit shall be five percent.

7.3 PAYMENT FOR CHANGES IN THE WORK

7.3.1 All changes in the Work will be paid for in the manner indicated in Article 4, Paragraph 4.2, and the compensation thus provided shall be accepted by the Contractor as payment in full for the use of small tools, superintendent's services, premium on bond, and all other overhead expenses incurred in the prosecution of such work.

7.3.2 The Owner shall not be deemed to have agreed to any costs for additional work, to have agreed to additional time for completion, or to have agreed to any other change in the terms and conditions of the Contract Documents until Owner, Design Professional and Contractor have executed a Change Order to this Contract. For any increases to the contract amount, scope of work, time for completion or other terms relating to the Change Order, the Contractor shall, if deemed necessary by Owner, furnish an amendment to the Bond agreement in which the Surety has agreed to amend the Performance and Payment Bond to reflect such revisions. When the Amendment is determined to be needed by Owner, Change Orders will not be processed without the attached Amendment to the Performance and Payment Bond. The Contractor is responsible for obtaining the bonding companies concurrence with the new contract amount, time for completion, or other terms related to the Change Order. As with the initial Bond Agreement, a Power of Attorney for the Arkansas Resident Agent must be attached. In addition, the Clerk of the County where the work is being performed must certify the Amendment as having been filed before payment is made.

ARTICLE 8 -- TIME

8.1 DEFINITIONS

8.1.1 Contract Time is the period of time identified in the Contract Documents for Substantial Completion of the Work, including authorized adjustments made as part of Change Orders agreed to by the Owner, the Design Professional and the Contractor.

8.1.2 Date for commencement of the Work is the fifth calendar day following the date of mailing, by regular mail, of the Notice to Proceed, unless otherwise stated in the Contract.

8.1.3 Date of Substantial Completion is the date certified by the Design Professional and the Owner.

8.2 PROGRESS

8.2.1 Time limits identified in the Contract Documents are of the essence of the Contract. The Contractor confirms that the Contract Time is a reasonable period of time for performing the Work.

8.3 HOLIDAYS

8.3.1 New Year's Day, Robert E. Lee/Dr. Martin Luther King's Birthday, President's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and the day thereafter, Christmas Eve and Christmas Day will be considered as being legal holidays; no other days will be considered unless declared by the Governor of the State of Arkansas through an Executive Order or Proclamation. No Design Professional clarifications, observations, or State inspections will be provided on legal holidays, Saturdays and Sundays, and no work shall be performed on these days except in an emergency or with written approval in advance by the Design Professional and Owner.

8.4 DELAYS

8.4.1 Delays beyond the Contractor's control occasioned by an act or omission on the part of the Owner, strikes, fires, additions to the work, delays by any separate contractor employed by the Owner, extremely abnormal weather conditions, or other delays beyond the Contractor's control may, if agreed to by Change Order by the Contractor, Owner and Design Professional entitle the Contractor to an extension of time in which to complete the work. While such delays may be just cause for an extension of the Contract Time, the Contractor shall not have a claim for damages for any such cause or delay.

ARTICLE 9 -- PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contractor shall accept the compensation, as herein provided, in full payment for furnishing all materials, equipment, labor, tools, and incidentals necessary to complete the Work and for performing all Work contemplated and embraced under the Contract; also for loss or damage arising from the nature of the Work, from the action of the elements or from any unforeseen difficulties which may be encountered during the prosecution of the Work until the final acceptance by the Design Professional and Owner and for all risks of every description connected with the prosecution of the Work, for all expenses incurred in consequence of the suspension or discontinuance of the Work as specified, for any infringement of patent, trademark, or copyright, and for completing the Work according to the Contract Documents. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

9.1.2 No moneys payable under Contract or any part thereof, except the estimate for the first month or period, shall become due and payable if the Owner so elects until the Contractor shall satisfy the said Owner that he has fully settled or paid for all materials and equipment used in or on the Work and labor done in connection therewith, and the Owner, if he so elects, may pay any or all such bills wholly or in part and deduct the amount or amounts so paid from any monthly or final estimate excepting the first estimate.

9.1.3 In the event the surety on any contract or payment bond given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has the right to do business in a state revoked as provided by law, the Owner may at its election withhold payment of any estimate filed or approved by the Design Professional until the Contractor shall give a good and sufficient bond in lieu of the bond so executed by such surety. Any and all subsequent bonds shall be filed with the Circuit Clerk of the County in which the Work is being performed.

9.2 SCHEDULE OF VALUES

9.2.1 The Contractor shall submit to the Design Professional a schedule of values for each part of the Work. The schedule shall be a complete breakdown of labor and materials for the various parts of the Work including an allowance for profit and overhead. The total of these amounts shall equal the Contract Sum. The approved schedule of values shall be used as a basis for the monthly payments to the Contractor. In applying for the monthly payment, the Contractor shall show a detailed account of work accomplished in conformity with the schedule.

9.3 MEASUREMENT OF QUANTITIES

9.3.1 The Contractor shall be paid for all Work performed under the Contract based on Design Professional computations of as-built quantities and the Contractor's Contract Sum. This payment shall be full compensation for furnishing all supplies, materials, tools, equipment, transportation, and labor required to do the Work; for all loss or damage, because of the nature of the Work, from the action of the elements or from any unforeseen obstruction or difficulty which may be encountered in the prosecution of the Work and for which payment is not specifically provided for all or any part of the Work; and for well and faithfully completing the Work in accordance with the Contract Documents. The method of computation and payment for each item shall be as set forth in the Specifications or the Supplementary Conditions.

9.4 REQUESTS FOR PAYMENT

9.4.1 The Contractor may submit periodically, but not more often than once each month, a Request for Payment for work completed. When unit prices are specified in the Contract Documents, the Request for Payment shall be based on the quantities completed.

9.4.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site, and if approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner and the Design Professional to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest including applicable insurance and transportation to the site for those materials and equipment stored off the site.

9.4.3 The Contractor shall furnish the Design Professional all reasonable facilities and job tickets required for obtaining the necessary information relative to the progress and execution of the Work and the measurement of quantities. Each Request for Payment shall be computed from the work completed on all items listed in the approved schedule of values less 10 percent of the first 50 percent of the adjusted Contract Sum and less previous payments to the Contractor on the Contract.

9.5 PERIODIC ESTIMATES FOR PAYMENT

9.5.1 Unless otherwise stated in the Specifications or Supplementary Conditions, the Owner shall cause the Design Professional to prepare an Estimate for Payment to the Contractor each month. The Design Professional will make the estimate for the materials complete in place and the amount of work performed in accordance with the Contract between the twenty-fifth day of the month and the fifth day of the succeeding month.

9.5.2 From the total of the amount estimated to be paid, an amount equal to 10 percent of the total completed shall be retained until the Contract is 50 percent complete after which no further retainage will be withheld from the monthly estimates. All sums withheld by the Owner and requested in a Final Pay Request prepared by the Contractor will be paid

to the Contractor within 30 days after the Contract has been completed and the work approved by the Owner and the Design Professional. No retainage will be withheld on that amount of the progress payment pertaining to the cost of materials stored at the site or within a bonded warehouse.

9.6 PAYMENT FOR INCREASED OR DECREASED QUANTITIES

9.6.1 When alterations in the quantities of work not requiring Contract modifications are ordered and performed, the Contractor shall accept payment in full at the Contract Sum, for the actual quantities of work accomplished. No allowance will be made for anticipated profits. Increased or decreased work involving Contract modifications shall be paid for as stipulated in such Contract modifications

9.7 DESIGN PROFESSIONAL'S ACTION ON A REQUEST FOR PAYMENT (See also 9.9)

9.7.1 The Owner shall cause the Design Professional to, within five working days plus time required for transmittal from one party to another, act on a Request for Payment by the Contractor in one of the following:

- a. Approve the Request for Payment as submitted by the Contractor, and transmit same to the Owner.
- b. Approve an adjusted amount as the Design Professional will decide is due the Contractor informing the Contractor in writing of the reason for the adjusted amount, and transmit same to the Owner.
- c. Withhold the Request for Payment submitted by the Contractor informing the Contractor and the Owner in writing of the reason for withholding the request.

9.8 OWNER'S ACTION ON A REQUEST FOR PAYMENT (See also 9.9)

9.8.1 The Owner will, within ten working days plus transmittal time between the various state agencies involved, act on a Request for Payment after approval by the Design Professional by one of the following:

- a. Approve the Request for Payment as approved by the Design Professional, and forward the Pay Request to the Owner's Contract Administrator in Finance for review and approval prior to submission to Owner's Accounts Payable for payment.
- b. Approve payment of an adjusted amount as the Owner will decide is due the Contractor, informing the Contractor and the Design Professional in writing of the reason for the adjusted amount of payment.
- c. Withhold the Request for Payment informing the Contractor and the Design Professional in writing of the reason for withholding the payment.

9.9 ARKANSAS STATE AGENCIES ACTION ON A REQUEST FOR PAYMENT

9.9.1 The State shall process payments in accordance with Ark. Code Ann. §19-4-1411, or as modified by subsequent law, which establishes the time limits for the Design Professional, the Owner and the Department of Finance and Administration. It also authorizes the Chief Fiscal Officer of the State to investigate any complaints of late payments and assess penalties for late payment. Complaints shall be addresses to "Chief Fiscal Officer of the State: Department of Finance and Administration; 1509 West Seventh Street, Suite 401; Post Office Box 3278; Little Rock, AR 72203-3278.

9.10 WITHHOLDING PAYMENT

9.10.1 The Design Professional or the Owner may withhold payment for contested issues, including but not limited to, defective work on the project; evidence indicating the probable filing of claims by other parties against the Contractor related to the project; damage caused to another contractor; reasonable evidence that Work cannot be completed for the unpaid balance of the Contract Sum or within Contract Time or failure of the Contractor to make payments on materials, equipment or labor to subcontractors. It is the responsibility of the contesting party to notify the Contractor in writing that payment has been contested and the reasons why. The notification must be done within the timeframe specified for processing of payment under Ark. Code Ann. §19-4-1411.

9.11 PAYMENT FOR UNCORRECTED WORK

9.11.1 Should the Design Professional direct the Contractor not to correct work that has been damaged or that was not performed in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made to compensate the Owner for the uncorrected work. The Design Professional shall determine the amount of the equitable deduction.

9.12 PAYMENT FOR REJECTED MATERIALS AND WORK

9.12.1 The removal of rejected Work and materials and the re-execution of acceptable work by the Contractor shall be at the expense of the Contractor. The Contractor shall pay the cost of replacing the work of other contractors destroyed or damaged by the removal of the rejected work or materials and the subsequent replacement with acceptable work.

9.13 DATE OF SUBSTANTIAL COMPLETION

9.13.1 A Certificate of Substantial Completion, which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to work, and insurance and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion, unless another timeframe is stated in the Certificate of Substantial

Completion. The Certificate of Substantial Completion shall not become effective until approved by the Owner and the Design Professional.

9.14 FINAL COMPLETION AND PAYMENT BY OWNER

9.14.1 The Contractor shall furnish a letter from the Design Professional attached to the Contractor's final estimate, which shall include all retainage withheld, certifying that the Design Professional has received and approved all guarantees, bonds, maintenance and operation manuals, air balance data, shop drawings, catalog data, and record documents specified in the Contract Documents.

9.14.2 Before final payment, the Contractor shall furnish to the Design Professional executed copies of the Release of Claims and Consent of the Performance and Payment Bond Surety for Final Payment. Items listed in this Section Nine (9) shall be submitted with and at the same time as the final estimate to the Design Professional and shall be promptly delivered by the Design Professional to the Owner. No final payment or release of retained amounts shall be made without complete compliance with this Section Nine (9), and approval by the Owner of the Final Pay Request, which shall include payment of all retained amounts,

9.14.3 Any claim by the Contractor to the Owner for interest on a delinquent final payment shall only be made pursuant to Ark. Code Ann. § 22-9-205.

9.15 PARTIAL OCCUPANCY OR USE

9.15.1 The Owner may occupy or use any completed or partially completed portion of the Work provided such use or occupancy is consented to by the insurer and authorized. The Contractor will prepare a list of items to be completed or corrected before partial acceptance. Upon receipt of the Contractor's list, the Design Professional will make an inspection to determine whether the Work or portion thereof is substantially complete. No portion of the work shall be considered substantially complete unless described in a Certificate of Substantial Completion Form approved by the Contractor, Owner and the Design Professional.

9.15.2 The Design Professional will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to Work and insurance, identify work items to be corrected or completed by the contractor and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion, unless another timeframe is stated in the Certificate of Substantial Completion. No retained amounts shall be paid until the Contractor, Design Professional and the Owner approve a Certificate of Substantial Completion for all of the Work unless specifically provided for by this contract, and all other conditions for final acceptance of this Work are met to the satisfaction of the Owner.

9.15.3 Instances where some of the Work is "sectioned" out and substantially completed, the retained amounts shall not be paid until the final Certificate of Substantial Completion of the entire Work is approved by the Contractor, Design Professional, and the Owner and all other conditions of this Section Nine (9) are met by the Contractor.

9.16 FINAL INSPECTION

9.16.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents, laws, ordinances, or any public authority having jurisdiction shall be made at the appropriate time. The Contractor shall give the Design Professional timely notice of when and where tests and inspections shall be made so that the Design Professional may be present. The Contractor shall make arrangements for the testing and inspection with an independent testing laboratory.

9.16.2 The Contractor shall ensure that the final completed work is in accordance with the Contract Documents. Required certificates of testing and inspection shall be secured by the Contractor and delivered to the Design Professional, unless otherwise required by the Contract Documents.

9.17 ASSIGNMENT OF WARRANTIES

9.17.1 All warranties of materials and workmanship running in favor of the Contractor shall be transferred and assigned to the Owner on completion of the Work and at such time as the Contractor receives final payment.

9.17.2 In case of warranties covering work performed by subcontractors, such warranties shall be addressed to and in favor of the Owner. The Contractor shall be responsible for delivery of such warranties to the Owner prior to final acceptance of the work.

9.17.3 Delivery of guarantees or warranties shall not relieve the Contractor from any obligation assumed under any provision of the Contract. All warranties shall be for one year from the date of Substantial Completion of the Project, unless extended otherwise.

9.18 ACCEPTANCE AND FINAL PAYMENT

9.18.1 Upon receipt of written notice that the Work is ready for final inspection, the Design Professional together with the Owner will conduct such inspection and when the Design Professional determines the work is acceptable to the Design Professional and the Owner, the Design Professional shall certify his acceptance to the Owner. Final Payment shall be the Contract Sum plus approved Change Order additions less approved Change Order deductions and less previous payments made. The Contractor shall furnish evidence that he has fully paid all debts for labor, materials, and equipment incurred in connection with the Work. The Owner, upon approval by the Design Professional of all documentation to be provided by the contractor in accordance with this Section 9, and approval by the Design Professional, Contractor and Owner of the Certificate of Substantial Completion will accept the Work and release the Contractor, except as to the

conditions of the Performance and Maintenance Bond, any legal rights of the Owner, required guarantees and correction of faulty work after Final Payment, and shall authorize payment of the Contractor's final Request for Payment. The Contractor must allow sufficient time between the time of completion of the work and approval of the final Request for Payment for the Design Professional to assemble and check the necessary data.

9.18.2 Acceptance of final payment by the Contractor shall constitute waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Request for Payment. Any claims for interest on delinquent payments shall be made pursuant to Ark. Code Ann. § 22-9-205.

ARTICLE 10 -- PROTECTION OF PERSONS AND PROPERTY

10.1 GENERAL

10.1.1 The Contractor shall at all times exercise precaution for the safety of employees on the Project and of the public, and shall comply with all applicable provisions of federal, state and municipal safety laws and applicable building and construction codes. The Contractor shall provide and maintain passageways, guard fences, lights, and other facilities for protection required by all applicable laws. All machinery, equipment, and other physical hazards shall be guarded in accordance with all federal, state or municipal laws or regulations.

10.1.2 The Work, from commencement to completion, and until written acceptance by the Design Professional, and the Owner or to such earlier date or dates when the Owner may take possession and control in accordance with Section Nine (9) of these General Conditions, shall be under the charge and control of the Contractor and during such period of control by the Contractor, all risks in connection therewith shall be borne by the Contractor. The Contractor shall make good and fully repair all damages to the Project by reason of the Contractor's negligence, and make good on all injuries to persons caused by any casualty or cause by reason of the Contractor's negligence. The Contractor shall adequately protect adjacent Property as provided by law and the Contract Documents. The Contractor shall hold the Owner harmless from any and all claims for injuries to persons or for damage to property during the control by the Contractor of the project or any part thereof.

10.1.3 The Contractor shall at all times so conduct the Work as to ensure the least possible obstruction to traffic, to the general public, and the residents in the vicinity of the Work, and to ensure the protection of persons and property. No road, street, or highway shall be closed to the public except with the permission of the Owner and proper governmental authority. Fire hydrants on or adjacent to the Work shall be kept accessible to fire fighting equipment at all times. The local fire department shall be notified of the temporary closing of any street.

ARTICLE 11 -- INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall secure and maintain in force during this Contract such insurance as is specified within the Contract Documents, from an insurance company authorized to write the prescribed insurance in the jurisdiction where the Project is located as will protect the Contractor, his subcontractors, and the Owner from claims for bodily injury, death, or property damage which may arise from operations under this Contract. The Contractor shall not commence work under this Contract until he has obtained all the insurance required, has filed the Certificate of Insurance with the Owner, and the certificate has been approved by the Owner. 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.

11.1.2 Workman's Compensation and Employer's Liability Insurance in statutory limits shall be secured and maintained as required by the laws of the State of Arkansas. This insurance shall cover all employees who have performed any of the obligations assumed by the Contractor under these Contract Documents including Employer's Liability Insurance. This insurance shall protect the Contractor against any and all claims resulting from injuries, sickness, disease, or death to employees engaged in work under this Contract.

11.1.3 Comprehensive General Liability Insurance, including automobile and truck liability. Prior to blasting, the Contractor shall furnish Certificate of Insurance, which shall certify that damage caused by blasting is within the coverage of his Comprehensive General Liability Insurance to the full limits thereof. Hired and non owned automobile insurance for automobiles and trucks shall include hired and non owned automobile coverage.

11.1.4 Contractor's Protective Liability Insurance: The Contractor shall indemnify and save harmless the Owner from and against all losses and all suits, claims, demands, judgments, actions, and payments of every description and nature brought or recovered against him by reason of any omission or act of the Contractor, his agents, or employees in the execution of the Work or in the guarding of it. The Contractor shall secure and maintain protective liability insurance in the name of the Owner and the Contractor covering them from contingent liability under this Contract.

11.1.5 Builder's Risk and Fire Insurance: The Contractor shall procure and maintain during the life of this Contract Builder's Risk Insurance fire, lightning, extended coverage, vandalism, and property theft on the insurable portion of the Project on a 100 percent completed value basis against damage to the equipment, structures, or material.

The Owner and the Contractor, as their interests may appear, shall be named as the Insured.

11.1.6 Proof of Insurance: The Contractor shall maintain the insurance coverages required by this contract (see Supplemental Conditions for required coverages) throughout the term of this contract, and shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled, or materially altered except after 15 days prior written notice has been received by the Owner."

11.2 BONDS

11.2.1 Performance and Payment Bond: The Contractor shall, at the time of execution of the Contract, furnish bonds covering faithful performance of the Contract and the payment of obligations. Performance and Payment bonds, and any amendments thereto, shall be filed with the circuit clerk office in the County Courthouse of the county where the work shall be performed. For any increases to the contract amount, scope of work, time for completion or other terms relating to the Change Order, the Contractor may be required by Owner to furnish an amendment to the Bond agreement in which the Surety has agreed to amend the Performance and Payment Bond to reflect such revisions. As with the initial Bond Agreement, a Power of Attorney for the Arkansas Resident Agent must be attached. In addition, the Clerk of the County where the work is being performed must certify the Amendment as having been filed before payment is made.

ARTICLE 12 -- UNCOVERING AND CORRECTION OF WORK

12.1 EXAMINATION OF COMPLETED WORK

12.1.1 If any portion of the work should be covered contrary to the request of the Owner, Design Professional, or Inspector or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, Design Professional, or Inspector, be uncovered for his observation and replaced at the Contractor's expense.

12.2 DEFECTIVE WORK

12.2.1 Defective work, whether through the use of defective materials, the result of poor workmanship, or any other cause, shall be removed within ten days after notice is given by the Owner or Design Professional. The Work and affected materials and equipment shall be removed and replaced as necessary to comply with the Contract Documents without additional cost to the Owner. The fact that the defective work may have been previously overlooked by the Design Professional shall not constitute acceptance.

12.3 REJECTED MATERIALS

12.3.1 Materials which do not conform to the requirements of the Contract Documents, are not equal to samples approved by the Design Professional, or are in any way unsuited or unsatisfactory for the purpose for which intended, shall be rejected. Defective materials shall be removed within ten days after notice by the Design Professional. The materials shall be replaced with new materials as necessary to comply with the Contract Documents at no additional cost to the Owner. The fact that the defective material may have been previously overlooked by the Design Professional shall not constitute acceptance.

12.3.2 Should the Contractor fail to remove and replace rejected material within the specified ten days after written notice to do so, the Owner may remove and replace the material and deduct the cost from the Contract Sum.

12.4 CORRECTION OF FAULTY WORK AFTER FINAL PAYMENT

12.4.1 The approval of the final Contractor's Request for Payment by the Design Professional and the making of the final payment by the Owner to the Contractor shall not relieve the Contractor of responsibility to correct faulty materials or workmanship promptly after receipt of written notice from the Owner. The Owner shall give such notice of faulty materials or workmanship promptly, after discovery of the condition. If the Contractor fails to correct the defects, promptly, after receipt of written notice from Owner, the Owner may have the work corrected at the Contractor's expense.

ARTICLE 13 -- MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the laws and regulations of the STATE OF ARKANSAS. Venue for any administrative action or judicial proceedings shall be Pulaski County, Arkansas. Nothing in these General Conditions shall be construed to waive the sovereign immunity of the STATE OF ARKANSAS or any entities thereof.

13.1.2 The Contractor shall give all notices and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the Work. The Contractor shall indemnify and save harmless the Owner against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree whether by himself or his employees.

13.1.3 The Contractor shall comply with the laws of the local, state, and federal government regarding wages and hours of labor.

13.2 WRITTEN NOTICE

13.2.1 Consider as served when delivered in person or sent by certified or registered mail to the individual, firm, or corporation or to the last business address of such known to him who serves the notice.

13.2.2 The written Notice to Proceed with the Work shall be issued by the Design Professional after the execution of the Contract by the Owner. The Contractor shall begin and prosecute the Work and uninterruptedly in a manner that will complete the Work within the time limits stated in the Contract.

13.3 TESTS AND INSPECTIONS

13.3.1 All materials and each and every part of the Work shall be subject at all times to inspection by the Owner, Design Professional, or the Inspector. The Contractor shall be held to the intent of the Contract Documents in regard to quality of materials, equipment, and workmanship, and the diligent execution of the Contract. The inspection may extend to and include plant, shop, or factory inspection of material furnished. The Contractor agrees to allow Federal or State inspectors, acting in an official capacity, to have access to the job site.

13.3.2 The Owner, Design Professional, and Inspectors shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection for ascertaining if the Work as performed is in accordance with the requirements and the Contract Documents.

13.3.3 Inspectors shall only have authority to suspend any work in a life threatening situation which is being improperly done, subject to the final decision of the Owner or Design Professional. Inspectors shall have no authority to permit deviations, or to relax provisions of the Contract Documents without the written permission or instruction of the Owner and the Design Professional, or delay the Contractor by failing to work with reasonable promptness.

13.4 VERBAL AGREEMENTS

13.4.1 No verbal objection, order, claim, or notice by any of the parties involved to the other parties shall affect or modify any of the terms or obligations contained in the Contract Documents. None of the terms or provisions of the Contract Documents shall be considered waived or modified unless the waiver or modification thereof is in writing, and agreed upon by the parties in the form of a Change Order approved by the Owner, Design Professional and the Contractor and no evidence shall be introduced in any proceeding of any other waiver or modification.

ARTICLE 14 -- TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 SUSPENSION OF WORK

14.1.1 The work or any portion thereof may be suspended at any time by the Owner provided that the Owner gives the Contractor written notice of the suspension. The notice shall set forth the date on which the work is to be suspended and the date on which the work is to be resumed. The Contractor shall resume the work upon written notice from the Owner within ten days after the date set forth in the notice of suspension.

14.1.2 The Owner will have the authority to suspend the work, wholly or in part, for such period of time as deemed necessary. The suspension may be due to unsuitable weather, or such other conditions as are considered unfavorable for the proper prosecution of the work, or the failure on the part of the Contractor to fulfill the provisions of the Contract. Failure to supply material, equipment, or workmanship meeting the requirements of the Contract Documents shall be just cause for suspension of the Work. The Contractor shall not have the right to suspend operations without the Design Professional or Owner's permission.

14.2 TERMINATION BY OWNER FOR CAUSE

14.2.1 The Owner will have the right to terminate the Contract upon giving ten days written notice of the termination to the Contractor and the Contractor's surety, in the event of any default by the Contractor and upon written notice from the Design Professional to the Owner that sufficient cause exists to justify such action. In the event of termination of the Contract, the Owner may take possession of the Work and of all materials, tools, and equipment and construction equipment and machinery thereon and may finish the work by whatever method he may select. If the Owner does not elect to use his own forces, the surety shall furnish a competent licensed contractor within 10 working days from the written notice to the surety.

14.2.2 It shall be considered a default by the Contractor whenever he shall become insolvent; declare bankruptcy assigns assets for the benefit of his creditors; fails to provide qualified superintendence, proper materials, competent subcontractors, competent workmen; fails to make prompt payments for labor, materials, or equipment; disregards or violates provisions of the Contract Documents; disregards the Owner's or the Design Professional's instructions; fails to prosecute the Work according to the approved schedule of completion, including extensions thereof as provided for by approved Change Orders; and fails to start the Work on the date established in the Notice to Proceed.

ARTICLE 15 – ALTERNATIVE DISPUTE RESOLUTION

15.1 MEDIATION

15.1.1 In the event of any dispute regarding the Contractor, Architect, Engineer, and/or Owner (hereinafter referred to as party/parties for this section only) under this Agreement, the party shall notify the appropriate Owner's Administrator in writing. The

Owner's Administrator or his designee will then attempt to negotiate a settlement of the dispute between the parties.

15.1.2 If the Owner's Administrator, or designee, determines he is unable to negotiate a settlement between the parties, the parties may participate in mediation. A request for mediation must be made in writing to the Owner and the parties shall agree upon the location of the mediation. A Mediator mutually agreed upon by the parties shall conduct the mediation process. Mediation shall be voluntary, non-binding and all proceedings in connection with such shall be subject to this Agreement and applicable provisions of Arkansas law. Any mediation fees shall be borne equally between the parties. The parties shall coordinate mediation and the Owner shall notify the University of Arkansas System Office of any

mediation prior to it taking place. The Owner's Administrator or his designee may view any and all mediation proceedings. Any settlements arising out of the mediation process must be approved by the University of Arkansas System Office.

15.1.3 Notwithstanding anything to the contrary contained herein, if any dispute arises between the Parties, whether or not it requires at any time the use of dispute resolution procedures described above, in no event, nor for any reason, shall the Contractor, Architect, or Engineer interrupt the provision of services/performance to the Owner, or perform any other action that prevents, slows down, or reduces, in any way, the provisions of the Agreement unless: (a) authority to do so is granted by the Owner or (b) the Agreement has been terminated by the Owner. Nothing in these contract documents, including the use of mediation, shall be construed to waive the sovereign immunity of the State of Arkansas or any entities thereof.

END OF DOCUMENT

SUPPLEMENTARY CONDITIONS
Section 00800

MODIFICATIONS TO GENERAL CONDITIONS- Section 00810

ARTICLE 11 - INSURANCE AND BONDS

1 Subparagraph 11.1.1, add the following sentence:

The amount of such insurance shall be not less than the following or any limits required by law.

2 Subparagraph 11.1.2, add the following clause:

11.1.2.2 Worker's Compensation:

A. State: Statutory

B. Applicable Federal Statutory

C. Employer's Liability \$ 100,000.00 per Accident

\$ 500,000.00 Disease, Policy Limit

\$ 100,000.00 Disease, each Employee

3 Subparagraph 11.1.3, add the following clause:

11.1.3.2 Comprehensive General Liability

General Aggregate: \$ 1,000,000.00

Completed Operations to be maintained for one year after final payment: \$ 1,000,000.00
Aggregate

Personal Injury \$ 1,000,000.00 Each Occurrence

Each Occurrence Limit \$ 1,000,000.00 Each Occurrence

Automobile Liability (including owned, non-owned, and hired vehicles) \$ 1,000,000.00
Combined Single Limit

Umbrella Excess Liability \$ 1,000,000.00

4 Subparagraph 11.1.4, add the following clause:

Owner's and Contractor's Protection Liability \$ 1,000,000.00 Combined Single Limit

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SOCIAL SECURITY NUMBER FEDERAL ID NUMBER SUBCONTRACTOR:
SUBCONTRACTOR NAME:

TAXPAYER ID #: ---- ---- OR ---- Yes No

IS THIS FOR:

TAXPAYER ID NAME: Goods? Services? Both?

YOUR LAST NAME: FIRST NAME: M.I.:

ADDRESS:

CITY: STATE: ZIP CODE: --- COUNTRY:

As a condition of obtaining, extending, amending, or renewing a contract, lease, purchase agreement, or grant award with any Arkansas State Agency, the following information must be disclosed:

For Individuals*

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse is a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held

Mark (√)

Name of Position of Job Held

[senator, representative, name of board/ commission, data entry, etc.]

For How Long?

What is the person(s) name and how are they related to you?

[i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.]

Current
Former
From

MM/YY
To

MM/YY
Person's Name(s)
Relation

General Assembly

Constitutional Officer

State Board or Commission Member

State Employee

None of the above applies

For an Entity (Business)*

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held

Mark (√)

Name of Position of Job Held

[senator, representative, name of board/commission, data entry, etc.]

For How Long?

What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?

Current

Former

From

MM/YY

To

MM/YY

Person's Name(s)

Ownership Interest (%)

Position of Control

General Assembly

Constitutional Officer

State Board or Commission Member

State Employee

None of the above applies

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:

Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a Contract and Grant Disclosure and Certification Form. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.

I will include the following language as a part of any agreement with a subcontractor:

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the Contract and Grant Disclosure and Certification Form completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontractor disclosure conditions stated herein.

Signature Title Date

Vendor Contact Person Title Phone No.

Agency use only

Agency Agency Agency Contact Contact Contract or

Number Name Person Phone No. Grant No.

Illegal Immigrant Verification – Act 157 of 2007

19-11-105. Illegal immigrants — Prohibition — Public contracts for services.

(a) As used in this section:

- (1) “Contractor” means a person having a public contract with a state agency for professional services, technical and general services, or any category of construction in which the total dollar value of the contract is twenty-five thousand dollars (\$25,000) or greater;
- (2) “Exempt agency” means the constitutional departments of the state, the elected constitutional offices of the state, the General Assembly, including the Legislative Council and the Legislative Joint Auditing Committee and supporting agencies and bureaus thereof, the Arkansas Supreme Court, the Court of Appeals, circuit courts, prosecuting attorneys, and the Administrative Office of the Courts;
- (3) “Illegal immigrants” means any person not a citizen of the United States who has:
 - (A) Entered the United States in violation of the federal Immigration and Naturalization Act or regulations issued under the act;
 - (B) Legally entered but without the right to be employed in the United States; or
 - (C) Legally entered subject to a time limit but has remained illegally after expiration of the time limit;
- (4) “Professional services contract” means a contract between a state agency and a contractor in which:
 - (A) The relationship between the contractor and the state agency is that of an independent contractor rather than that of an employee;
 - (B) The services to be rendered consist of the personal services of an individual that are professional in nature;
 - (C) The state agency does not have direct managerial control over the day-to-day activities of the individual providing the services;
 - (D) The contract specifies the results expected from the rendering of the services rather than detailing the manner in which the services shall be rendered; and

- (E) Services rendered under a professional services contract are rendered to the state agency itself or to a third-party beneficiary;
- (5) “Public contract for services” means any type of agreement between a state agency and a contractor for the procurement of services and all categories of construction with a state agency in which the total dollar value of that contract is twenty-five thousand dollars (\$25,000) or greater;
- (6) (A) “State agency” means any agency, institution, authority, department, board, commission, bureau, council, or other agency of the state supported by appropriation of state or federal funds, except an exempt agency under subdivision (a)(7)(B) of this section.
(B) “State agency” includes an exempt agency when any agency or exempt agency procures any item subject to Arkansas Constitution, Amendment 54;
- (7) (A) “Technical and general services” means:
(i) Work accomplished by skilled individuals involving time, labor, and a degree of expertise in which performance is evaluated based upon the quality of the work and the results produced;
(ii) Work performed to meet a demand, including without limitation work of a recurring nature that does not necessarily require special skills or extensive training; or
(iii) The furnishing of labor, time, or effort by a contractor or vendor, not involving the delivery of any specific end product other than reports that are incidental to the required performance.
(B) “Technical and general services” shall not be construed to include the procurement of professional services under § [19-11-801](#) et seq.
(b) No state agency may enter into or renew a public contract for services with a contractor who knows that the contractor or a subcontractor employs or contracts with an illegal immigrant to perform work under the contract.
(c) Before executing a public contract, each prospective contractor shall certify in a manner that does not violate federal law in existence on January 1, 2007, that the contractor at the time of the certification does not employ or contract with an illegal immigrant.
(d) (1) If a contractor violates this section, the state shall require the contractor to remedy the violation within sixty (60) days.

- (2) (A) If the contractor does not remedy the violation within the sixty (60) days specified under subdivision (d)(1) of this section, the state shall terminate the contract for breach of the contract.
- (B) If the contract is terminated under subdivision (d)(2)(A) of this section, the contractor shall be liable to the state for actual damages.
- (e) (1) (A) If a contractor uses a subcontractor at the time of certification, the subcontractor shall certify in a manner that does not violate federal law in existence on January 1, 2007, that the subcontractor at that time of certification does not employ or contract with an illegal immigrant.
- (B) A subcontractor shall submit the certification required under subdivision (e)(1)(A) of this section within thirty (30) days after the execution of the subcontract.
 - (2) The contractor shall maintain on file the certification of the subcontractor throughout the duration of the term of the contract.
 - (3) If the contractor learns that a subcontractor is in violation of this section, the contractor may terminate the contract with the subcontractor, and the termination of the contract for a violation of this section shall not be considered a breach of the contract by the contractor and subcontractor.

History. Acts 2007, No. 157, § 1.

**SOUTHERN ARKANSAS UNIVERSITY
Purchasing Department
100 East University
Magnolia, AR 71753
Tel: 870-235-5059
Fax: 870-235-5166**

Act 157 of 2007 of the Arkansas Regular Legislative Session **requires** that any business or person responding to a Request for Proposal (RFP) for professional services, technical and general services or any category of construction in which the total dollar value is \$25,000 or greater **certify, prior to the award of the contract**, that they do not employ or contract with any illegal immigrants. Bidders are to certify online at:

http://www.arkansas.gov/dfa/procurement/pro_immigrant.html

This is a mandatory requirement. Failure to certify may result in rejection of your proposal, and no award will be made to a vendor who has not so certified. If you have any questions, please contact the Purchasing Department. Thank you.

Alan Davis
Purchasing Agent

TO BE COMPLETED BY BUSINESS OR PERSON SUBMITTING RESPONSE:

Please check the appropriate statement below:

_____ We have certified on-line that we do not employ or contract with any illegal immigrants
Date on-line certification completed: _____

_____ We have NOT certified on-line at this time, and we understand that no contract can be awarded to our firm until we have done so.
Reason for non-certification: _____

Name of Company	
Mailing Address	
City, State & Zip	
Signature	
Name & Title (printed or typed)	
Date	

Division One – General Requirements

Date: _____

THE FOLLOWING ARE INTENDED TO BE THE SUGGESTED MINIMUM GUIDELINES FOR DIVISION ONE (1)- GENERAL REQUIREMENTS DOCUMENT. THE DESIGN PROFESSIONAL SHOULD THOROUGHLY DISCUSS EACH TOPIC WITH THE OWNER.

AS A MINIMUM, THE DESIGN PROFESSIONAL SHOULD INCLUDE THE FOLLOWING TOPICS OR SIMILAR SECTIONS WITH APPROPRIATE LANGUAGE AS APPLICABLE:

Section 01010 Summary of The Work

01011 Contracts

01015 Contractor's Use of Premises

01016 Occupancy

01018 Owner Furnished Items

Section 01020 Allowances

01021 Cash Allowances

Section 01025 Measurement and Payment

Section 01040 Coordination

01041 Project Coordination

01045 Cutting and Patching

Section 01050 Field Engineering

Section 01060 Regulatory Requirements

01062 Easements, Permits and Regulations

01063 Access to Work Site by Regulatory Authority

Section 01100 Special Project Procedures

01101 Physical Data

01103 Acceleration of the Work

Section 01200 Project Meetings

01210 Pre-construction Conferences

01220 Progress Meetings

Section 01300 Submittals

01310 Progress Schedules

01320 Progress Reports

01340 Shop Drawings, Product Data and Samples

01341 Roofers Qualifications

01370 Schedule of Values

Section 01400 Quality Controls

Section 01500 Construction Facilities and Temporary Controls

01510 Temporary Utilities

01520 Temporary Construction

01525 Construction Aids

01526 Trench Safety Systems

01530 Barriers and Enclosures

01540 Security

01550 Access Roads

01560 Temporary Controls

01580 Project Identification and Signs

01591 Field Offices and Sheds

Section 01600 Materials and Equipment

01610 Transportation and Handling

01620 Storage and Protection

01630 Project Options and Substitutions

Section 01700 Contract Closeout

01710 Final Cleaning

01711 Pre-final, Final Inspections and Occupancy

01720 Project Record Documents

01730 Operating and Maintenance Data

01740 Warranties and Bonds

01750 Spare Parts and Maintenance Materials

SPECIFIC REQUIREMENTS

Include the following in the indicated section or similar sections:

Section 01063 Access to Work Site by Regulatory Authority- shall contain the following statement:

" The contractor awarded this project agrees to allow any Federal or State inspector, acting in their official capacity, to have access to the job site"

Section 01015 Contractor's Use of Premises- shall contain specific statements concerning contractor access, use of site, confining operations to project limits and use of existing facilities such as elevators and parking as appropriate.

Section 01016 Occupancy- Shall contain statements concerning Owner's continued occupancy of existing and/or adjacent buildings where appropriate. Include statement that contractor is to provide minimum inconvenience to the Owner. Include statements about partial occupancy and/or moving equipment into the building prior to final completion and acceptance of the work, if appropriate.

Section 01018 Owner Furnished Items- Include statements concerning any owner furnished items for which the contractor has any responsibility for receiving, unloading, installing, making final utility connections, or otherwise coordinating with his work.

Section 01101 Physical Data- shall contain local National Weather Service Climatological Data for use in determining "unusually inclement weather" for the purposes of determining time extensions based on weather.

Section 01341 Roofers Qualifications- include the following statement:

"In addition to other submissions required by this section and Division 7, submit a photocopy of the manufacturer's current and valid approved applications certificate."

Section 01510 Temporary Utilities- Include in this section statements concerning temporary electricity, lighting, heating, cooling, telephone, water, sanitary facilities, fire protection, etc. Discuss with Owner and include any of the utility items that the owner will provide for the contractor's use on the project.

Section 01526 Trench Safety Systems- include specific language concerning requirements of 29 CFR 1926, Subpart P- Excavations, Trenching and Shoring of the Occupational Safety and Health Administration regulations for trench excavations which exceed five (5) feet. Include Approximate Angle of Repose Table P-1 and Trench Shoring Minimum Requirements Table P-2.

Section 01530 Barriers and Enclosures- Discuss with Owner the need for protective fencing on the project and include in this section. All sites where the Owner continues to use facilities and adjacent buildings will likely require temporary fencing.

Section 01540 Security- or similar section shall include statements concerning the protection of all landscape items, streets, drives, sidewalks, site features and adjacent property where appropriate. Include language concerning contractor's responsibility for protection of all persons on site, including the general public through signs, guardrails, fencing, etc. Include statements concerning protection of existing work against weather. Include statement that the contractor is solely responsible for security and safety on site.

Section 01560 Temporary Controls- Include statements on construction cleaning, keeping site free from dust and debris. Include statements on erosion control, noise control, pest control, pollution control as appropriate.