

ARKANSAS DEPARTMENT OF EDUCATION
RULES AND REGULATIONS IDENTIFYING AND GOVERNING
SELF-CONSTRUCTION PROJECTS BY PUBLIC EDUCATION ENTITIES
August 13, 2001

1.00 REGULATORY AUTHORITY

- 1.01 These regulations shall be known as the Arkansas Department of Education's Rules and Regulations Identifying and Governing Self-Construction Projects by Public Education Entities.
- 1.02 These regulations are enacted pursuant to the Arkansas State Board of Education's authority under Ark. Code Ann. § 6-11-105 and Act 1204 of 2001.

2.00 PURPOSE

- 2.01 The purpose of these regulations is to describe how the department will identify, assist, monitor and address public educational entities that self-construct.

3.00 DEFINITIONS

- 3.01 "Public educational entities" (Entities) is defined to mean Arkansas public school Entities, charter schools, educational cooperatives or any publicly supported entity having supervision over public educational entities.
- 3.02 "Self-construction" is defined to mean any construction where the public educational entity uses its own employees, acts as a general contractor or uses a construction manager while acting as a general contractor.
- 3.03 "Construction project" is defined to mean making or forming an improvement by combining parts, labor or materials; the erection or alteration that exceeds a cost of \$20,000 of a structure or physical object under the supervision or ownership of a public educational entity.
- 3.04 "Design professional" is defined to mean a person or firm who provides professional expertise in order to carry out a capital erection, repair or improvement project. Design professionals may include, but may not be limited to the following professionals: planners (land, city, utilities, etc.), architects, landscape architects, surveyors (land), engineers (consulting and professional engineers providing expertise in various licensed fields such as civil, electrical, mechanical, structural, sanitary, etc.).
- 3.05 "Maintenance work" is defined to mean the repair but not the replacement or alterations that exceed a cost of \$20,000 of existing facilities when the size, capacity and type of the existing facility or equipment is not thereby substantially changed or increased.

- 3.06 “Commodities” is defined to mean all supplies, goods, material, equipment, machinery, facilities, and personal property purchased for or on behalf of an Entity.
- 3.07 “Open market purchases” is defined to mean those purchases of commodities by any purchasing official in which competitive bidding is not required.
- 3.08 “Administrator” is defined to mean a school Entity superintendent, an educational cooperative director, the Administrator, Director, Chairman, or President of a charter school, or other educational entity.

4.00 NOTIFICATION OF INTENT

- 4.01 When an Entity board votes to self-construct, the Administrator of the Entity shall notify the office of School Plant Services of the action. This notification shall be made in writing by electronic submission or by a letter submitted by U.S. mail. This notification shall include a description of the construction project. Approval may be granted by the office of School Plant Services at that time.
- 4.02 If additional information is needed after receiving the written notification of an Entity’s decision to self-construct, the office of School Plant Services will provide the Entity with a document for reporting this information. The document to be used for the additional information needed of an Entity’s intent to self-construct will be the Arkansas Department of Education School Site Approval Form. The Administrator of the Entity shall provide all information requested by the Arkansas Department of Education in the School Site Approval Form.
- 4.03 Upon receiving an Entity’s notification of intent to self-construct, the office of School Plant Services shall provide by certified mail a copy of the “Rules and Regulations Identifying and Governing Self-Construction Projects by Public Education Entities” to the Entity’s Administrator and board president.
- 4.04 Upon receiving an Entity’s notification of intent to self-construct, the office of School Plant Services shall provide a written assessment of the Entity’s decision to self-construct.

5.00 APPROVAL PROCEDURES

- 5.01 Upon receiving an Entity’s notification of intent to self-construct and it is determined that additional information is needed, the office of School Plant Services shall mail to the Entity: (1) a site approval form, and (2) a list of the Arkansas agencies required to review and approve the final construction documents before the project can be put out for bid or before self-construction may begin.
- 5.02 When an Entity develops plans for a self-construction project to be submitted to the office of School Plant Services for approval, the Entity shall ensure that

the design and plans satisfy all Arkansas legal requirements including, but not limited to, the following:

- A. All construction plans, specifications and estimates shall be made by and the construction executed under the observation of the appropriate design professional. (Ark. Code Ann. § 22-9-101)
- B. If the total cumulative and fair market value of construction or capital improvement is greater than \$25,000, an engineer, registered or licensed in the State of Arkansas, shall provide the required engineering services. (Ark. Code Ann. § 22-9-101 (b) (1))
- C. If the total cumulative and fair market value of construction or capital improvement is greater than \$100,000, an architect registered or licensed in the State of Arkansas shall provide the required architectural services. (Ark. Code Ann. § 22-9-101 (b) (2))

6.00 BID, BOND AND LICENSING REQUIREMENTS

6.01 When an Entity self-constructs, the Entity shall ensure by written report compliance to all Arkansas laws, including the following:

6.02 Commodities Purchasing

- A. Open market purchases may be made where the purchase price is less than \$10,000.
- B. In each instance where the estimated purchase price shall equal or exceed \$10,000, the commodity shall be procured by soliciting bids. (Ark. Code Ann. § 6-21-301)

6.03 Bidding Requirements

- A. When all estimated construction costs do not exceed \$20,000, the contract shall be solicited according to local school board policy.
- B. When all estimated construction costs exceed \$20,000, the Entity shall publish public notice of intent to receive bids a minimum of one (1) time per week for two (2) consecutive weeks. The bids may be opened one (1) week after the last date of publication. (Ark. Code Ann. § 22-9-203 as amended by Act 1051 of 2001)

6.04 When giving public notice of intent to receive bids for construction, an Entity may include alternates in the bid specifications. If the Entity includes alternates in the bid specifications, the alternates must be deductive, no more than three (3) alternates may be used and the alternates must be set forth and considered in numerical order. (Ark. Code Ann. §22-9-203 as amended by Act 921 of 2001)

- 6.05 When advertising for bids for construction, an Entity may negotiate a final contract amount with the successful bidder if the low bid is within twenty-five percent (25%) of the amount appropriated for the project and all alternates have been exhausted. (Ark. Code Ann. § 22-9-203 as amended by Act 921 of 2001)
- 6.06 A five percent (5%) corporate bid bond or a certified check in the amount of five percent (5%) of the bid shall accompany all submitted bids on construction contracts that exceed \$20,000. (Ark. Code Ann. § 22-9-203 (2) (A) (D))
- 6.07 The successful bidder on construction that exceeds \$20,000 shall provide the owner a performance and payment bond for one hundred percent (100%) of the contract amount. This bond must be filed in the county where the work is being performed before authorization to proceed is granted. (Ark. Code Ann. § 18-44-503)
- 6.08 Any sub-trades contractor doing work in areas such as electrical, plumbing, HVAC, etc. must hold the required trades' licenses from the State of Arkansas. This applies to Entity personnel, as well as sub-trades contractors not employed by the Entity. Any contractor who performs a job that exceeds \$20,000 must also hold an Arkansas contractor's license. (Ark. Code Ann. §17-25-101 (a))

7.00 ENFORCEMENT

- 7.01 Any Entity Administrator or certified employee that knowingly submits to the Arkansas Department of Education or the office of School Plant Services a false report or false information required by Arkansas law or these rules and regulations shall be subject to having his license revoked, suspended or placed on probation pursuant to Ark. Code Ann. § 6-17-410.