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**Department of Finance
and Administration**

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PROFESSIONAL AND CONSULTANT SERVICES CONTRACTS

RECOMMENDATIONS:

1. Legislative Council concur with the regulation governing sole source procurement of professional and consultant service contracts.
2. Legislative Council establish an exemption from their review of professional and consultant service contracts with an assessed value of \$25,000 or less.

DISCUSSION:

SOLE SOURCE: Sole source purchasing should only be used when all other methods of procurement are clearly not applicable. The agency chief fiscal officer or equivalent or director, division director or deputy director of an agency, college or university may authorize the use of sole source purchases. Sole source professional and consultant service contracts, except for those exempt by law and those that are documented by sole source justification, may only be awarded after legal public notice of intent has been published in a newspaper of statewide circulation. The notice must clearly state the nature of the contract, the contracting agency, and the deadline by which interested providers must respond. Agencies shall post notification on the agency or Office of State Procurement website.

SOLE SOURCE JUSTIFICATION: Sole source professional and consultant service contracts which are not exempt by law or for which legal public notice of intent has not been published in a newspaper of statewide circulation, must be justified in writing. The justification must clearly demonstrate that to contract otherwise would not be in the best interests of the state. The justification must fully address: why the service is needed; the methods used to determine that a lack of responsible/responsive competition exists for the service; how it was determined that the provider possesses exclusive capabilities; why the service is unique; whether or not there are patent or proprietary rights which make the required service unavailable from other sources, and what the agency would do if the provider/service were no longer available.

PROFESSIONAL AND CONSULTANT SERVICES EXEMPT BY LAW: Although exempt from the competitive bidding process, the contracting for "professional services" for legal, architectural, engineering and land surveying will be conducted in accordance with § 19-11-801, which directs, "that the state shall negotiate contracts for professional services on the basis of demonstrated competence and qualifications for the type of services required and at fair and reasonable prices." By regulation, all exempt professional service contracts will be required to utilize the Request for Qualifications contracting method.

REVISION OF REVIEW LIMITS: To bring professional consulting services contracts more in line with the State Procurement law, policies and regulation and to make better use of the

limited time of the Review Committee members and the resources of OSP, recommend the Director of State Procurement be authorized to review and sign all professional and consultant service contracts with an assessed value of from \$5,000 to \$25,000, and that a summary of each contract be submitted to the Legislative Council's Review Committee prior to the contract's effective date. This will have the effect of no longer making it necessary for the Legislature to review professional and consultant service contracts below the \$25,000 threshold.

REVIEW OF REGULATIONS: The Office of State Procurement has presented, to the Legislative Council Review Committee, recommendations for rewriting the Accounting Procedures Regulations which govern the sole source procurement of professional and consultant services and the review of contracts with a value of \$5,000 to \$25,000, with the purpose of bringing the procurement of these services more in line with the requirements of the State Procurement Law. The transfer of responsibility for professional and consultant service contracts from the Office of Accounting to the Office of State Procurement will become effective September 1, 2001. Agencies would continue to contract for professional and consultant services valued under \$5,000 using the small procurement method, and would be responsible for using the competitive bid method to establish contracts valued up to \$25,000. Contracts with an estimated dollar value of greater than \$25,000 would be developed utilizing the competitive sealed proposal method. Colleges and universities with agency procurement officials would be able to contract using these same procedures under the provisions of the State Procurement Law. The Office of State Procurement would provide oversight of the procurement of professional and consultant service contracts and would review all sole source procurements of such services to insure compliance with applicable laws and regulations.

OSP will continue to work with a cross functional team from across State agencies to review all applicable professional consulting services contracting regulations and make changes where appropriate. During this review a list of recommendations to change or modify existing laws will be presented to the Review Committee with the recommendation that these changes be made part of a committee bill and provided for consideration and passage during the next legislative session.

EXPLANATORY NOTES

1. Definition of sole source: A sole source procurement shall be that procurement which, by virtue of the performance specifications, is determined to be available from only one provider.

2. This method requires that state agencies advertise, through a statewide newspaper, and via the inter-net, for a vendor to provide the desired services. Once the agency publishes the notification of intent and a vendor responds for additional information and upon receiving the information, confirms that they are capable of providing the service the agency publishes an RFP. At that point it takes the procurement out of the "sole source"

category and normal competitive bid procedures apply. If the agency does not receive a response from other than the current provider, the agency can then contract with that provider for the service on a sole source basis.

3. When are the provisions of the “sole source” regulations used? If the agency elects not to advertise and decides to retain the services of the current provider, then they are required to comply with the requirements of the sole source justification prior to contact award.

4. This is how we envision the sole source process: The agency is responsible for preparing the sole source justification in memorandum form, signed by the agency chief fiscal officer or equivalent or director, division director or deputy director of an agency, college or university. The justification is forwarded to OSP for review of compliance with the sole source procurement justification requirements. Upon confirmation by OSP of review of the written justification, the agency prepares the remaining contract documents and forwards them to OSP for administrative review. The documents are then forwarded to the Contracts Review Committee.

5. This process will require the agencies to do additional future planning to ensure services are provided for their agency/clients in a timely manner.

6. The Request for Qualifications provisions will apply to “professional services” for legal, architectural, engineering and land surveying. The process will require, by regulation, that state agencies use this process to determine the 2 or 3 most qualified providers and then to negotiate the best and final offer. The provisions of 19-11-802---805 provide a framework for completion of this process.

7. The effect of these recommendations is to open up the professional services/consulting contracting process to providers within the state who have not had an opportunity in the past to participate. In addition competition from providers outside the State of Arkansas can be expected to increase.

8. The recommendations presented anticipate that the committee will review those contracts that are greater than \$25K and that OSP will provide to the committee summary information for those contracts from \$10 to \$25K. A review of the contracts that the Office of Accounting has processed indicates that 65% to 70% are over the \$25,000 threshold. This will partially bring professional services/consulting contracting in line with the State Procurement Law bid limits.

9. Arkansas Code Annotated Section 19-4-1710 (b) discusses the power of the Legislative Council to review or exempt from review any contract or group of contracts contemplated by the subchapter. This provides the authority for the Legislative Council to exempt from review those contracts \$5,000 to \$25, 000 as discussed above.