

**COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC
FACILITIES AND TRANSPORTATION RULES GOVERNING
SELF-CONSTRUCTION PROJECTS BY PUBLIC EDUCATION ENTITIES
Effective May 30, 2019**

1.00 REGULATORY AUTHORITY

- 1.01 These regulations shall be known as the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing Self-Construction Projects by Public Entities.
- 1.02 The Commission's authority for promulgating these rules is pursuant to Ark. Code Ann. § 6-21-109, 6-21-301, 6-21-304, 17-25-101, 18-44-503, 18-44-507, 19-11-259, 22-9-101, 22-9-203, and 25-15-201 *et seq.*

2.00 PURPOSE

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

3.00 DEFINITIONS

- 3.01 "Public educational entities" (Entities) means Arkansas public school districts, charter schools, educational cooperatives, or any publicly supported entity having supervision over public educational entities.
- 3.02 "Self-construction" means any construction where the public educational entity uses its own employees, acts as a general contractor, uses a construction manager while acting as a general contractor, or acts as its own construction manager using contracted construction services.
- 3.03 "Construction project" means making or forming an improvement by combining parts, labor, or materials; the erection or alteration that exceeds a cost of \$35,000 of a structure or physical object under the supervision or ownership of a public educational entity.
- 3.04 "Design professional" means 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” means the repair but not the replacement or alterations that exceed a cost of \$35,000 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” means all supplies, goods, material, equipment, machinery, facilities, and personal property purchased for or on behalf of an Entity.
- 3.07 “Open market purchases” means those purchases of commodities by any purchasing official in which competitive bidding is not required.
- 3.08 “Administrator” means a school Entity superintendent, an educational cooperative director, the Administrator, Director, Chairman, or President of a charter school, or other educational entity.
- 3.09 “Commission” means the Commission for Arkansas Public School Academic Facilities and Transportation.
- 3.10 “Division” means the Arkansas Division of Public School Academic Facilities and Transportation.
- 4.00 NOTIFICATION OF INTENT
- 4.01 If an Entity board votes to self-construct, the Administrator of the Entity shall submit Part A and B of the Construction Approval Form, which is attached as Appendix “A” to these rules, to the Division indicating that the project is “Self Construction”. (The form may be found on the Division website at; <http://arkansasfacilities.arkansas.gov>). This submission must include all items required by Appendix “A.”
- 4.02 The Administrator of the Entity also must submit the written Assurance Impact Statement (*see Item 3 of Part A in Appendix A*) and the annual Equity Compliance Report (*see Item 4 of Part A in Appendix A*) to the Arkansas Department of Education, LEA State Funding—Loans and Bonds, Four Capitol Mall, Mail Slot 9, Little Rock, AR 72201.
- 4.03 Upon receiving an Entity’s notification of intent to self-construct, the Division shall review the Entity’s proposed self-construction project.
- 5.00 APPROVAL PROCEDURES
- 5.01 When an Entity develops plans for a self-construction project to be submitted to the Division for approval, the Entity shall ensure that the

design and specifications 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 an 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)).

5.02 Upon review of the foregoing requirements, the Division may approve or deny the self-construction project

6.00 BID, BOND, AND LICENSING REQUIREMENTS

6.01 When an Entity self-constructs, the Entity shall ensure by written report to the Division compliance with all Arkansas laws, including but not limited to the following:

6.01.1 Open market purchases may be made where the purchase price is less than the current amount set by the Commissioner of Education establishing the maximum purchase amount for open-market purchases. (Ark. Code Ann. § 6-21-304).

6.01.2 In each instance where the estimated purchase price shall equal or exceed the current amount set by Commissioner of Education establishing the maximum purchase amount for open-market purchases, the commodity shall be procured by soliciting bids. (Ark. Code Ann. § 6-21-304).

6.01.3 When all estimated construction costs do not exceed \$35,000, the contract shall be solicited according to local school board policy. (Ark. Code Ann. § 22-9-203).

6.01.4 When all estimated construction costs exceed \$35,000, the Entity shall publish public notice of intent to receive bids a

minimum of one (1) time per week for two (2) consecutive weeks. The bids may be opened one (1) week after the last date of publication. (Ark. Code Ann. § 22-9-203).

- 6.02 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).
- 6.03 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).
- 6.04 An entity shall accept the lowest qualified bid from a firm resident in Arkansas. This bid shall be accepted only if the bid does not exceed the lowest qualified bid from a nonresident firm by more than five percent (5%) and if one (1) or more firms resident in Arkansas made written claim for a preference at the time bids were submitted. (Ark. Code Ann. § 19-11-259).
- 6.05 A five percent (5%) corporate bid bond or certified check in the amount of five percent (5%) of the bid shall accompany all submitted bids on construction contracts that exceed \$35,000. (Ark. Code Ann. § 22-9-203).
- 6.06 The successful bidder on construction that exceeds \$20,000 shall provide the owner a performance and payment equal to the contract amount. This bond must be filed with the clerk of the circuit court of the county where the work is being performed before authorization to proceed is granted. (Ark. Code Ann. § 18-44-503 and 18-44-507).
- 6.07 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 employed by the Entity. Any contractor who performs a job that exceeds \$50,000 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 Commission or Division 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.