

SECTION THREE CONSTRUCTION SECTION

3-100 INTRODUCTION

(A) Ark. Code Ann. § 22-2-102 et seq. provides authority to ABA to promulgate such reasonable rules and procedures as may be required to carry out its duties consistent with the purposes of this Act. The Construction Section provides a review of all applicable legal restraints and requirements to assure compliance with all laws pertaining to the contracting of capital improvements, which includes but is not limited to Ark. Code Ann. § 22-9-101 et seq. (Public Works Law) and Ark. Code Ann. § 19-4-1401 et seq. (Accounting and Budgetary procedures).

(B) The Council has adopted the following rules in the interest of uniform application of all laws, encouraging a maximum of competition and participation among those interested in doing business with the State, and above all, establishing a climate which produces the greatest return for the taxpayers' dollars in the contracting of capital improvements.

(C) Any reference to the words "the Section" within this section shall mean the Construction Section.

3-101 CAPITAL IMPROVEMENTS

(A) Whenever an Agency intends to construct buildings and facilities or to make repairs or additions and improvements to existing buildings and facilities, the procedures as outlined in this manual must be followed.

(B) Capital improvement projects \$20,000 or less shall be exempt from ABA (Construction and Design Review Sections) oversight. Capital improvement projects in the amount of \$5,000.00 or less may be bid or made by the open market. These projects shall be known as a "Small Order."

(C) Capital improvement projects which exceed \$5,000 and are \$20,000 or less (between \$5,000.01 and \$20,000.00) shall be contracted by contacting and requesting a minimum of three (3) bonafide bidders to bid the work. These projects shall be known as a "Quote Bid."

(D) See §3-408 (E) for guidance pertaining to change orders which increases the contract above the exempt amount.

3-102 AGENCY OFFICIALS

All contracts, unless exempted, shall be processed and approved by the Section. Upon sufficient justification, bid openings may be performed by persons other than the Section. Justification may include a health or safety, or both, related emergency. Under such circumstances, Agency procurement staff shall be responsible for adhering to all laws, rules and regulations, including processing of bid protests.

3-200 CAPITAL IMPROVEMENT REQUESTS - GENERAL REQUIREMENTS

(A) When an Agency requests a capital improvement unless specifically exempted from oversight, the Agency shall submit to the Design Review Section, a cover letter identifying the capital improvement (see section 2) with sufficient plans and specifications so as to describe

what is required for formal bidding. When an Agency requests capital improvements on non-state owned or state owned leased facility they could be required to receive approval from the Real Estate Services Section, see also §5-103 (M).

(1) The project manual (specifications) shall be based on the CSI (Construction Specification Institute) format. All items, equipment, materials, etc., shall be specified under each of the appropriate Master Format Divisions.

(2) The original specifications shall be submitted using a standard size paper of 8 1/2" X 11". A minimum of 1" left side margin will be provided for binding.

(3) Upon approval by the Design Review Section of the project plans and specifications, Agencies must complete and return the Project General Information and Project Disclosure Statement forms.

(B) Upon the Design Review Section approval of the plans and specifications, the Section shall notify the Design Professional to submit the Divisions "00" and "01" documents electronically to the Section for review and approval. The Section will coordinate with the Design Professional to set the bid date, place legal advertising, receive and open bids. Billing for legal advertising will be sent to the requesting Agency. Bid dates shall not be set until the invitation to bid, bid forms divisions "00" and "01" documents have been initially reviewed by the Section. Bid openings shall not take place until the final set of bid documents have been approved by the Section. The Section shall furnish the Agency with the bid results. Upon the Agency's selection of a contractor, the Agency shall notify the Section within the time frame established by the Section so that the contract may be awarded. A request for re-bid may be approved upon sufficient justification. Bids shall expire as provided within the bid documents unless an extension is agreed upon by the lowest responsible bidder and the Agency.

(C) Intent to Award: Once the Section receives the Agency's selection of a contractor and the Contractor approved by the Section, a contract will be prepared by the Design Professional (or by the Agency if the Design Professional is not under contract to perform such services) and submitted with the intent to award to the Contractor. This enables the Contractor to acquire the performance and payment bond and the applicable insurance policies/certificates and disclosure statements. A contract will not be approved until these documents are received by ABA.

(D) Notice to Proceed: Upon approval by the Section, ABA will retain the original contract and a copy of the contract, performance and payment bond, certificate(s) of insurance and disclosure statements will be forwarded to the Agency official for disbursement, to the Contractor and the Design Professional. Design professionals who have contract administration shall be responsible for coordination and the issuance of the notice to proceed and shall provide a copy of the notice to proceed to the Section and Agency.

(E) Unless exempted, no capital improvement contract shall be awarded to other than the lowest responsible bidder.

3-201 CONTRACTS

Contracts for capital improvement, regardless of the source of funds involved, shall be issued in accordance with §3-400 et seq. Capital improvement contracts for projects, which exceed \$20,000 shall be approved by the Section prior to the start of work, and must specify the exact dollar amount to be paid. A performance and payment bond shall accompany the contract. The

contract shall contain the applicable language, disclosure forms and documents, and approval pursuant to the Governor's Executive Order 98-04. A set of back up documents shall accompany the contract. Applicable back up documents shall include: insurance documents, Executive Order 98-04 forms or approval or both; illegal immigrant disclosures, minority participation disclosures, proof of advertising (if placed by a non ABA staff); performance and payment bond. The dollar amount of the capital improvement contracts shall include, but is not limited to all taxes, insurance, bonds, and freight costs. All contracts shall be submitted in one (1) original and shall be accompanied with the documents listed above. The Section will retain the original and the backup documents.

3-202 EMERGENCY CONTRACTING

(A) Capital improvement contracting may be made pursuant to Ark. Code Ann. §22-9-201 where unforeseen or unavoidable circumstances occur:

- (1) When human life, health, safety or state property is in jeopardy.
- (2) To reconstruct facilities, construct new facilities and related site work due to fire, storm, riots, etc.
- (3) Construction or repairs to immediately needed equipment or facilities where delay would result in overall higher expenditures or cause the Agency to lose revenue due to not providing the service responsible for, but is not limited to, medical treatment, education, military armories.
- (4) Where unsuccessful bids (see §3-330) occur and the Section determines that additional advertising of bids would be futile.

(B) The Agency shall invite a minimum of three (3) competitive bids, unless the emergency is critical or obviously single source such as public utility. If time does not allow, bids may be submitted via quote bid instead of sealed bids upon prior approval by the Section.

(1) Prior to the invitation, Agencies shall provide the names of the proposed bidders to the Section for verification of eligibility.

(C) The Section must be contacted in advance for prior written approval where time permits. Where time does not permit prior written approval, telephone, fax or electronic mail approval must be obtained at the earliest practical date from the Section. The Section shall receive and record details on all telephone approvals. ABA shall provide agencies notice of its determination after a review of the Agency's justification is conducted. All project plans and specifications must be processed through the ABA Design Review Section. Upon approval, the Agency through coordination with the Section can process the bid and award of the contract. The following documentation is required when submitting an emergency contract for approval:

- (1) Written justification setting forth the circumstances of the emergency. Agencies may access emergency related documents at "www.aba.arkansas.gov".
- (2) Insurance Certificate.
- (3) Performance and Payment Bond issued in accordance with Arkansas laws and rules. The bond must be filed in the county where the work is to be performed.

- (4) List of subcontractors as required under Ark. Code Ann. §22-9-204.
- (5) Contractor must be properly licensed with the Contractors Licensing Board (refer to Ark. Code Ann. §17-25-101 et seq.)
- (6) Any other applicable document required by law or rule including but not limited to EO 98-04 (Disclosure).
- (7) All drawings and the project manual on engineering projects which exceed 25,000 and architectural projects which exceed \$100,000 shall be stamped, sealed and signed by the appropriate Design Professional.
- (8) One (1) original of the Contract and related back up documentation.

3-203 SOLE SOURCE CONTRACTING

(A) Sole source on capital improvements will be approved only when there are no other available sources to perform the required work. Sole source contracting may involve leases processed through the Real Estate Services Section in which the non-public lessor has the sole authority to approve contractors to perform work on non-state property. Sole source contracting does not relieve the statutory requirements for license, insurance and bonds; nor the requirement for processing all project plans and specifications through the Design Review Section. Agencies shall submit a written request to the Section setting forth the circumstances which justify their sole source request. If approved, the following documentation is required when submitting a contract for approval:

- (1) A written request setting forth the circumstances which justify their sole source request.
- (2) Insurance Certificate.
- (3) Performance and Payment Bond issued in accordance with Arkansas laws and rules. The bond must be filed in the county where the work is to be performed.
- (4) List of subcontractors pursuant to Ark. Code Ann. § 22-9-204.
- (5) Contractor must be properly licensed pursuant to Ark. Code Ann. § 17-25-101 et seq.
- (6) Any other applicable document required by law or rule including but is not limited to EO 98-04.
- (7) One (1) original of the contract and related back up documentation.
- (8) All drawings and the project manual shall be stamped, sealed and signed by the appropriate Design Professional.

(B) Agencies may invite multiple bidders, as approved by ABA, which involve proprietary specifications (as defined in §1-106) because maximizing competition is the goal within the limited parameters of qualified sources.

3-204 SPLIT PURCHASES

The Section shall not condone splitting of purchases to avoid these listed bidding procedures. When an Agency is found practicing split purchases, it shall result in revocation of the Agency's purchasing authority. Refer to § 3-102.

3-205 CAPITAL IMPROVEMENTS FOR LEASED PREMISES (STATE AND NON-STATE PROPERTY)

See Section 5-103 for agency contracting of improvements when the state is not the owner of the leased premises.

3-300 BIDDING RULES

These bidding rules are applicable to all bids produced by ABA, a Design Professional or an Agency for state projects. In those instances where an agency has not contracted for the administrative services of a Design Professional, the Agency is responsible for performing those duties which include all phases from bidding to closeout of the project.

3-301 BIDDING PRE-REQUISITES

(A) Before an Agency shall advertise for bids for construction, all requirements shall be met pursuant to the General Accounting and Budgeting laws and other applicable laws. Agency officials (refer to § 3-102) shall follow these bidding rules when processing bids.

(B) Certification of Project Amount:

(1) Agencies must have sufficient appropriations and funds for the capital improvement project prior to the solicitation of bids. Agencies are responsible for verification or receiving approval of any Methods of Finance or any sufficiency of funds Agencies must certify the appropriated amount for the award of the contract. The amount certified on the project general information sheet is the amount appropriated as defined in Ark. Code Ann. §22-9-203(h).

3-302 PLANS AND SPECIFICATIONS

(A) Agencies, through their Design Professional, shall ensure adequate numbers of plans and specifications be made available to prospective bidders. One set of specifications and half-sized drawings will be provided to the Section within three (3) days of the first advertisement, or in the case of an emergency or sole source contract prior to the issuance to bidders. Failure to do so may cause the delay or cancellation of the bid date. See Section 2-1603 for plan disbursement requirements for the successful Contractor at the award of contract.

(B) All drawings and the project manuals shall be stamped, sealed and signed by the appropriate Design Professional. No drawing used for the construction project shall be allowed on the site stamped or otherwise marked as "Not for Construction" or any other similar term. The Contractor will maintain a set of "approved for construction" drawings on the job site at all times.

3-303 ADVERTISING / PRE-BID CONFERENCE

(A) Once the plans and specifications have been given final approval by the Design Review

Section the capital improvement project shall be advertised pursuant to Ark. Code Ann. § 22-9-201 et seq. and § 19-4-1401 et seq. Proof of advertising shall be furnished to the Section when the advertisement is not issued by ABA. The Agency will be responsible for any advertising costs.

(B) (1) Pre-Bid Conference / General: While pre-bid conferences are recommended, they are not mandatory unless so designated in the plans and specifications. Should an Agency determine that a pre-bid conference is to be conducted, it should be held at a time and place after the last advertisement has been published. Design Professionals shall conduct the meeting and inform all prospective bidders on the substantive elements regarding the project requirements, special conditions and any other unique bidding requirements. Contact the Section for additional pre-bid conference requirements or information.

(2) Mandatory Pre-Bid Conference: Agencies shall seek approval from the Section by submitting justification as to the necessity of a mandatory pre-bid conference. Only those unique or special conditions shall warrant approval. Conditions which can be readily explained in the project manual, plans or specifications, or all, shall not be sufficient justification for approval. Design Professionals shall conduct the meeting and inform all prospective bidders on the substantive elements regarding the project requirements, special conditions and any other unique bidding requirements. Design Professionals shall be responsible for establishing the official beginning of the meeting pursuant to the time stated in the bid documents. Failure to attend by the established official time and remaining until Design Professionals terminates the conference shall be grounds for bid rejection due to unresponsiveness for failure to attend the meeting in its entirety. However, should the mandatory conference fail to include for discussion the unique or special conditions approved for the mandatory pre bid conference, then no bidders shall be rejected for failing to attend and the project shall be advertised for at least one (1) additional time and shall provide for a time and place for an additional pre-bid conference which shall not be mandatory.

3-304 BID ANNOUNCEMENTS

Any interested bidder may sign up (free of charge) for email bid announcements by going to the ABA website. Bid announcements and bid results are also posted on the ABA website (www.aba.arkansas.gov).

3-305 BID DATE AND LOCATION

Bid openings will be approved by the Section, only after receipt of the approval to bid letter from the Design Review Section. Bid openings are to be held on the premises of ABA unless other locations are approved by the Section.

3-306 SEALED BIDS

(A) All bids shall be submitted in a sealed envelope. Bidders shall comply with Ark. Code Ann. § 22-9-204 and the bid documents with respect to the listing of subcontractors. Every envelope should indicate the name of the bidder, project, project number, date and time of opening. Bidders utilizing a shipping courier (such as FedEx, UPS, DHL, etc.) should enclose the bid in an inner envelope with the above stated information listed. Upon receipt at the Section, or an approved alternate site, each bid shall be date and time stamped and held in a secure place until the bid opening. No bid may be surrendered to any person after it has been submitted

except upon written request and authorization from that bidder. (Refer to Withdrawal of Bids, § 3-323).

(B) All capital improvement bids shall include all costs such as sales tax, use tax, permits, and insurance. The Contractor on capital improvement projects, where labor and materials are furnished as defined by the Arkansas tax laws is 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 Agency.

3-307 AUTHORITY FOR OPENING BIDS

The responsibility for the supervision of opening bids is with the Section, ABA, unless special justification, such as a critical emergency has been determined by the Section to allow an Agency to open bids under §3-102. The person authorized to read the bids shall first review the bid documents to determine if the bid is responsive. Items determining responsiveness include but not limited to: Bid Form is complete, applicable bid security in the correct amount, and if a bid bond is utilized as bid security, the agent's power of attorney as his authority shall be enclosed bid amount (numerically shown), proper signatures, addenda acknowledgement, corrections or changes initialed, and applicable subcontractors are listed. Contractors submitting a bid must be licensed in accordance with the Contractors Licensing Board. If all documents appear to be properly submitted and executed, the official may proceed to read the bid. If any statutory formality is omitted, the bid should be declared non-responsive and remain unread. Formalities other than statutory may be waived.

3-308 BID OPENING AND RECORDING

(A) Bids shall be opened and read by a representative of the Section, at the designated time and place. Representatives of the Agency are recommended to be present at the bid opening. The Section representative is responsible for establishing the official expiration of time. In those instances where this is not practical or possible for the representative to attend the bid opening, the Section, may delegate this authority to a representative of the Agency. Also see § 3-305 thru 3-307.

(B) Bids may be opened in any order, but if listed on a prepared tabulation, they should be opened in such order. The review of licensure and bid security are the responsibility of the Section or the Agency official depending upon which entity is conducting the bid opening (see § 3-102). The bid tabulation form must be sent (faxed or mailed) to the Section within two (2) working days of the bid opening. Refer to §3-309 for Bid Tabulations.

C) After the bids are opened and reviewed, a letter will be sent to the Agency by the Section with the results of the bid opening along with the apparent low bidder's submittal and a form to be completed and returned by the Agency to the Section designating one of the following. The Agency may:

(1) Bid Acceptance: The letter regarding the bid results must be completed and signed by the Agency. Agencies shall return the original to the Section.

(2) Rejecting all Bids and Rebidding: If the Agency wishes to reject all bids and rebid, it shall provide justification to the Section. Requests for rebids which contain revisions to the bid documents must be reviewed and approved by ABA before a new bid date will be set.

(3) Negotiation. The Section must be contacted before any negotiation can occur. Unless the project was bid and awarded under the historic site laws, emergency contracting procedures or the Alternative Delivery method, all negotiations shall be made pursuant to Ark. Code Ann. §22-9-203 and requirements under the minimum standards and criteria unless exempted by law.

(4) Bid or Award Cancellation: Agencies shall provide written justification to the Section for cancellations of a bid opening or award of contract.

3-309 BID TABULATION

If bids are opened by the Agency then all tabulations must be sent (faxed, mailed or electronic email) to the Section within two (2) working days of the bid opening. Bid tabulations must contain the following information which includes but is not limited to: the date and time of the bid opening; the project number; the amount of the bid; the contractor names, whether a bid security was included along with the bid security amount, and the listing of any applicable subcontractors. The Section will determine the responsiveness of all submitted bids. Determination of the lowest responsible bidder is the responsibility of the Agency. The Section will complete the official bid tabulation upon the determination.

3-310 SCRIVENER ERRORS

Rejection of a bid due to scrivener error may be made pursuant to Ark. Code Ann. § 19-4-1405. The criteria under this law must be met before a bidder may receive relief including but not limited to serving written notice to the ABA Director any time after the bid opening, but no later than seventy-two (72) hours after receiving the intent to award, excluding Saturdays, Sundays, and Holidays.

3-311 CONTRACTOR'S LICENSE

Pursuant to Ark. Code Ann §17-25-101 et seq., for all state capital improvement projects, including residential projects, each contractor, including commercial, residential and residential remodeler, is required to be properly licensed with the Contractors Licensing Board and should indicate on his bid form his current license number as issued by the applicable licensing entity. The Section is responsible for licensure verification as well as the Agency official performing the bid opening pursuant to §3-102. Nothing in this section shall be construed to limit the authority of Ark. Code Ann. §17-25-315.

3-312 BID SECURITY

(A) All bids received shall be accompanied by a bid security for all bids exceeding \$20,000. Acknowledgement of the bid security shall be made aloud. The official reading of the bids shall indicate the bid security amount, the form of security as either a cashier's check or a bid bond. The official shall review and verify the bid security including but not limited to applicable agent licensure and power of attorney. Ark. Code Ann. § 19-4-1405 and § 22-9-203, and § 22-9-401 et seq. govern bid securities for capital improvements.

(B) Failure to execute the Contract, submit and file an acceptable payment and performance bond, obtain proof of liability insurance, provide illegal immigration certifications and disclosure documents pursuant to EO98-04, within the time specified in the bid documents after the intent to award has been issued to the bidder shall be just cause for the cancellation of the award and forfeiture of the bid security which shall become the property of the Agency, not as a penalty but

in liquidated damages sustained. Award may then be made to the next lowest responsible bidder, or the work may be rebid and constructed under contract or otherwise as the State determines. The responsible low bidder who fails to execute the Contract will not be considered for an award of contract on any subsequent bid of that project.

3-313 SUBCONTRACTOR'S BIDS

The listing of subcontractors on the form of proposal shall be made pursuant to Ark. Code Ann. § 22-9-204 and the bid documents. The designated official as stated in §3-308 shall verify the licenses of the applicable subcontractor's listed.

3-314 ALTERNATES

State projects under ABA jurisdiction shall not include the use of deductive or additive alternates.

3-315 CONTRACT AWARD

(A) Once the bid results are determined, and the Agency has requested to enter into a contract, intent to award a contract shall be prepared by the entity who has contract administration duties. A contract will not be issued until a performance and payment bond is received in accordance with Ark. Code Ann. § 18-44-501 et seq. and § 22-9-401 et seq. and other applicable documents are properly executed and received.

(B) Contracts shall be awarded pursuant to all applicable laws including but not limited to Ark. Code Ann. §22-9-201 et seq., and §19-4-1401 et seq. No capital improvement contract shall be awarded to other than the lowest responsible bidder.

(C) The Section shall retain the original of the contract. Copies of the Contract, the performance and payment bond, certificates of insurance, disclosure and certification statements will be forwarded to the Agency project coordinator upon ABA approval for disbursement. Upon approval the Design Professional may issue the Notice to Proceed to the Contractor. The Section shall receive a copy of the notice.

(D) The State reserves the right to rescind the award of any contract at any time before the execution of the contract by the parties and approval of ABA without any liability against the State.

3-316 DAVIS-BACON ACT (Federal Funds)

(A) The Davis-Bacon Act, pursuant to 40 U.S.C. 276(a) et seq., 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 subcontractor performing work on federally financed or assisted construction projects valued in excess of \$2,000. Under the provision of the Act, the Contractor or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages 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.

(B) Agencies are responsible for providing specific federal regulations, guidelines and procedures as directed by their Federal Grantor/ funding source to the Design Professional or any party that will publish work requiring the expenditures of Federal funds.

(C) The advertisement of the notice for such projects and the invitations for bids shall state that federal funds are being used and that Davis-Bacon Wage Rates will apply.

3-317 ARKANSAS PREVAILING WAGE RATES

Wage determinations shall be published pursuant to Ark. Code Ann. §22-9-301 et seq., unless exempted. Questions regarding applicability of wage rates should be made to the Arkansas Department of Labor for prevailing wage applications. The advertisement of the notice for such projects and the invitations for bids shall state the State Wage Determinations shall apply whenever applicable.

3-318 CONTRACTOR'S INSURANCE REQUIREMENTS

(A) Dollar amounts and types of coverage limits for all insurance policies shall be set by the Agency. Deviations from the types of insurance and amounts set less than what is stated below, shall be documented by the agency and maintained in the Section project file. Before an Agency enters into a contract for the construction or alteration of facilities or repairs to existing building, grounds or facilities, it shall ensure that the Contractor has complied by showing proof with the following insurance requirements have been met:

(B) The Contractor shall purchase and maintain such insurance as will protect him from claims set forth which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by anyone directly or indirectly employed by any of them, or by anyone for whose acts may be liable.

(C) Builder's Risk Insurance: The Contractor shall procure and maintain during the term of contract Builder's Risk Insurance or Installation Floater Insurance, and any extended coverage which shall cover damage for capital improvement projects. Perils to be insured are fire, lightning, vandalism, malicious mischief, explosion, riot and civil commotion, smoke, sprinkler leakage, water damage, windstorm, hail 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. Exception: Contract documents which do not require coverage based upon inapplicable coverage (such as demolition or abatement work).

(D) GENERAL REQUIREMENTS: While it is not a requirement, it is recommended agencies accept policies issued by an insurer which has a claims paying ability rating of not less than "B+" or better as to claims paying ability by A.M. Best or not less than "A" by Standard and Poors rating service, or has an equivalent rating as established by one other nationally recognized statistical rating organization satisfactory to Agency. All policies shall contain a waiver of subrogation against the Owner, Owner's lenders ("Lender") and any designate agent of the representative of Owner (Owner's Agent").

(E) CANCELLATION/NOTIFICATION PROVISIONS: 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 that is in accordance with Ark. Code Ann. § 23-66-206.

(F) PROOF OF INSURANCE: ABA approval of contract shall be conditional upon the Contractor providing proof of insurance to the Owner. The Contractor shall be financially responsible for all deductibles or self-insured retentions.

(G) EQUIPMENT AND MATERIALS: The Contractor shall be responsible for any loss, damage, or destruction of its own property or that of any subcontractor's equipment and materials used in conjunction with the work.

(H) SUBCONTRACTORS: The Contractor shall require all subcontractors to provide and maintain general liability, automobile and workers' compensation insurance coverage substantially similar to those required of the Contractor. The Contractor shall require certificates of insurance from all subcontractors as evidence of coverage. Contractor will be the responsible party for any and all claims by subcontractors if subcontractor fails to have appropriate insurance.

(I) CONTRACTOR'S INSURANCE REQUIREMENTS:

(1) Commercial General Liability: The Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the contract, Commercial General Liability insurance covering bodily injury and property damage containing minimum limits of one million dollars (\$1,000,000) written on a per occurrence form with a two million dollars (\$2,000,000) aggregate limit. This insurance shall include personal injury coverage with employment exclusion deleted, and contractual liability. Such coverage shall include products and completed operations and shall not be excluded under the commercial general liability insurance. Nothing shall prohibit an Agency from requiring increased amounts than stated herein.

(2) Umbrella Liability: The Contractor shall be required to furnish umbrella liability coverage, and keep in effect during the term of the contract which provides excess limits over the primary coverages. Agencies must refer to the recommendation of the Risk Management division of the Arkansas Insurance Department on the minimum amount of coverage.

(3) Automobile Liability: The Contractor shall obtain, at Contractor's expense and keep in effect during the term of the contract, automobile liability insurance including hired and non-owned coverage in minimum amounts of one million dollars (1,000,000) per occurrence.

(4) Workers' Compensation and Employers' Liability: The Contractor, its subcontractors, if any and all employee providing work, labor or materials used in connection with this work.

(5) Contractor's Equipment:

(a) The Contractor shall be responsible for any loss, damage or destruction of its own property or that of any subcontractor's equipment and materials used in connection with this work.

(b) Contractor will purchase at Contractor's own sole cost and expense such policy to cover contractor's owned property.

(c) Contractor will provide waiver of subrogation to Owner.

(d) Pollution Liability: If requested by Owner at any time, Contractor shall, at Contractor's expense, obtain and maintain in force and effect for the term of the contract Pollution Liability

Insurance covering losses caused by pollution conditions that result from the performance of the Contract. This requirement also applies to any consultant or contractor engaged by Contractor or performing construction, geotechnical, well drilling, abatement activities or contractor services.

(e) Pollution Liability Insurance shall cover Owner costs and liabilities attributable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; clean-up cost; and defenses, including costs and expenses (including attorney's fees) incurred in the investigation, defense or settlement of claims. Contractor shall maintain such insurance in an amount of at least two million dollars (2,000,000) per loss with annual aggregate of at least five million dollars (\$5,000,000). Nothing shall prohibit Agencies from increasing the amounts stated herein.

(i) If coverage is written on a claims-made basis, Contractor represents that any retroactive dates applicable to coverage under the policy precedes the effective date of the letter; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years or as required by law beginning from the time that services under the contract are completed.

(ii) If the scope of work as defined in this Contract includes the disposal of any hazardous or non-hazardous materials from the Projects site, the Contractor must furnish to the owner evidence of pollution liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this Contract. Such coverage must be maintained in amounts conforming to applicable laws, rules and regulations.

(f) Remediation: Remediation Contractor shall provide liability insurance for the removal or remediation of asbestos including the transportation and disposals of asbestos waste materials from the Project site. Limits of insurance shall be not less than those required under the Commercial General Liability policy. Depending on the nature and amount of asbestos to be removed/abate, Owner may request higher limits than those required by the Commercial General Liability policy.

(g) Additional Requirements: All policies shall be provided by insurers qualified to write the respective insurance in the State of Arkansas, be in such form and include such provision as are generally considered standard provisions for the type of insurance involved.

3-319 ACKNOWLEDGEMENT OF ADDENDA

Any or all addenda will be acknowledged on the bid form and such acknowledgment shall be stated during the reading of the bids. Failure by the bidder to acknowledge all addenda shall be considered as a non-responsive bid. 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 twenty four (24) hours before receiving bids. An addendum, upon approval by the Section, which only sets a later bid date, may be issued anytime before time has been called for the opening of bids. While failure to acknowledge all addenda renders a bid non-responsive, failure to acknowledge addenda which only sets a later bid date or time, or both, shall not be deemed to be non-responsive. In the event an addendum requires changes in the scope of the project, an appropriate extension of the bidding period should be granted. Changes in the scope of the work or specifications shall require review and approval by the Design Review Section. No addenda shall be issued without the prior approval of the Section. Within this subsection, issued means delivery of addenda by fax transmission to, hand delivered to electronic

notification or picked up by potential bidders who received plans and specifications from the official plan distribution entity. Design Professionals are responsible for issuance of all addenda and documentation relating to its issuance (not receipt). Bidders are responsible for verifying if any addenda were issued prior to submitting a bid.

3-320 CONTRACT TIME

The period of time allocated for the substantial completion of the work shall be stated as a calendar date or as calendar days. The Agency, with input from the Design Professional, shall decide on the amount of liquidated damages and the amount of such damages to be included in the project specifications. Refer to § 3-403.

3-321 LATE BIDS

All bids received shall be recorded by date and time on the sealed bid envelope. The recorded time and date shall be determinative regarding issues of lateness. Bids received at the office designated in the invitation to bid, but after the time has been called for receipt will not be considered, unless, it is determined that the late receipt was due solely to mishandling by the State after receipt at the State office designated in the invitation.

3-322 MODIFICATIONS OF BIDS

Bidders may submit written modifications to their bid at any time prior to the exact time set for receipt of bids. Modifications may be made on the bidder's envelope. No modifications made shall show the base bid amount. The bidder must sign any bid modification.

3-323 WITHDRAWAL OF BIDS

Withdrawal of bids by fax is authorized, but such withdrawal must be verified by a follow up letter from the bidder before such withdrawal is finally accepted, but only if the withdrawal is made prior to the time being called for the opening of the bid. Withdrawal by fax shall only cause the bid to remain unopened and unread for such period of time as required to receive confirmation by letter but no later than 3 business days. A bid may also be withdrawn in person by a bidder, or his representative, provided, his identity is made known and he signs a receipt for the bid, but only if the withdrawal is made prior to the exact time set for receipt of bids.

3-324 QUALIFICATIONS OF CONTRACTORS

(A) Contract awards should be made to the lowest responsible bidder. Breaches of responsibility may include but not limited to:

(1) Conviction for of a criminal offense in connection with obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(2) Conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity;

(3) Conviction under State or Federal antitrust;

(4) Violation of contract provisions, as set forth below:

- (a) Failure to perform in accordance with the specifications or within the time limit provided in the state capital improvement contract; or
- (b) Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts;
- (5) Failure to post bid or performance bonds as required by laws or rules;
- (6) Substitution of work or materials without the prior written approval of the Agency and the Design Professional; however these approvals shall not in any manner diminish the Section's approval of change orders;
- (7) Failure to replace inferior or defective work or materials after notification by the Agency or the Section to which such services or materials has been provided or delivered;
- (8) Refusal to accept a contract awarded pursuant to the terms and conditions of the contractor's bid;
- (9) Falsifying invoices, or making false representations to any Agency or State official, or untrue statements about any payment under a contract or to procure award of a contract, or to induce a modification in the price or the terms of a contract to the contractor's advantage;
- (10) Collusion or collaboration with another contractor or contractors in the submission of a bid or bids that results in, or could result in lessening or reducing competition for a bid;
- (11) Falsifying information in the submission of any document in any process related to the capital improvement project.
- (12) Failure to make appropriate and timely payments to their subcontractors;
- (13) Any other act or omission the Agency determines to demonstrate that the Contractor cannot act in a responsible manner, including but is not limited to suspension or debarment by any other governmental entity for any cause, which may include but not limited to Contractors who are suspended or debarred by the State Department of Labor or deemed unqualified by the Contractor's Licensing Board.

3-325 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. Failure to do so is solely at the bidder's risk. 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 pursuant to Arkansas Gross Receipt Tax Rules. Bidders on capital improvement projects which are not tax exempt; and successful bidders cannot avoid sale or use taxes for whom they are performing the work for.

3-326 ADDITIONS TO OR DELETION FROM THE DOCUMENTS

All deletions, changes, additions, or alterations of the bid documents will be acknowledged and read aloud. If such modifications are not 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.

3-327 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 and approved by the Section.

3-328 PROTESTS

Any actual or prospective bidder who is aggrieved in connection with the project documents, or award of a capital improvement contract has the right to protest to the Construction Administrator, or the Agency that opened and read the bid pursuant to §3-102. The protest shall be submitted in writing within five (5) business days after the bid opening; in the event a bidder is declared non-responsive or rejected after the five (5) day period, the bidder shall have three (3) business days from the declaration to submit a protest. All protests shall identify the project by bid number or with sufficient detail to identify the project, and shall with specificity, set forth the allegations of the acts or omissions related to the protest. Since time is of the essence in award of all capital improvement contracts, protests and their resolution shall be resolved promptly. ABA shall be informed of protests to Agency Officials and their response. Subcontractors or suppliers are not considered bidders under this subsection. Only official representatives of the actual or prospective bidder may submit a protest. This section shall not be construed as a waiver of the State's right to reject any or all bids and to waive any formalities.

Any and all protests regarding the Agency determination of the lowest responsible bidder shall be made to the Agency with copy to ABA in the timeframe stated above and in the manner stated in §3-329.

3-329 RESOLUTION OF PROTEST

The Construction Administrator, the Agency official (performing the bid opening) or a designee of either office shall have authority to settle or resolve a protest of an aggrieved bidder actual or prospective, concerning the project bid documents, solicitation, or award of a contract.

3-330 UNSUCCESSFUL BID

In the event no responsive bids are received or the bidders are deemed not responsible or both, and it is determined by the Section that further solicitation of bids would be futile, the contract may be awarded to any available qualified contractor only after obtaining the approval of the Construction Administrator or designee.

3-400 CONTRACT ADMINISTRATION

This section is applicable to all agency capital improvement projects regardless of whether a design professional has contract administration duties or not.

3-401 CONSTRUCTION OBSERVATIONS

A) The Section has the responsibility of periodic construction observations on all projects unless

exempted. If the Agency has capital improvement project issues, which need to be addressed involving the Contractor or the project or both, the Agency should immediately notify the Section. Pre-construction meetings should include ABA personnel. Notification of pre-construction meetings shall be provided to the Section five (5) calendar days prior to the meeting.

B) When the project is presumed to be complete, the Section shall be notified by the Design Professional so that the certification of final completion may be signed by the parties, including ABA. Notification shall be provided to the Section five (5) calendar days prior to the certification of final completion. Final pay requests and release of retainage will not be approved by the Section until all close out procedures have been completed. See § 3-500 through § 3-504.

3-402 INVOICE/PAY REQUEST

(A) All invoices/pay requests shall be submitted to the Agency. All invoices and pay requests shall be processed in accordance with § 22-9-201 et seq. and § 19-4-1401 et seq.

If the invoice or pay request is for partial pay, then the amount of retainage pursuant to Ark. Code Ann. § 22-9-601 et seq. shall be withheld and shown on the invoice/pay request. No amount of the retainage shall be released until the conditions under the law are met. If the invoice/pay request is for full payment, no retainage is withheld.

(B) The following shall accompany any partial releases of retainage for phased work as well as the final pay request:

(1) An affidavit from the Contractor stating that other than those noted written exceptions no existing debts are owed and that all payments due to subcontractors or suppliers have been made regarding the capital improvement project. The Contractor shall submit a copy with the final invoice/pay request to the Agency. The Agency shall then submit a copy with pay request to the Section.

(2) Documentation that the Surety Company has approved and consented to the final payment. Approval of the surety company for final payment to the Contractor shall not relieve the surety company of any of its obligations.

(3) Retainage release pay request package prepared by the appropriate entity and submitted to the Section, including:

(a) Final pay request/invoice indicating retainage release executed by the Contractor, Design Professional and Agency; (not required to be submitted to ABA for phased completions)

(b) One (1) copy of the Certificate of Substantial Completion;

(c) Letter from Design Professional verifying that all punch list items have been completed by the Contractor, and approving the following if applicable:

(i) Commencement date of the Contractor's warranty period shall become effective on the date of substantial completion and shall not be less than one year;

(ii) Roof(s) warranty(s) Installer's warranty and the manufacture warranty if specified;

(iii) Termite Inspection Certificate;

(iv) Operational and Maintenance Manuals;

(v) Certificate of Air Balance; and

(vi) As built mark up prints and shop drawings provided by the Contractor for use by the design profession in the preparation of record drawings. (Not required for phased completions)

(4) Certification of Final Completion: Certification of final completion will occur when the Contractor, Design Professional, Owner and ABA have signed and certified the project meets final completion which includes but not limited to all phases of the work, closeout documentation has been provided and punch list items are complete. A meeting with representatives from the parties above, shall occur on site prior to any project final certification (not required for phased completions).

3-403 LIQUIDATED DAMAGES

Any amount of liquidated damages owed by the Contractor to the Agency for delay in project completion will be calculated by multiplying the "amount per day" of liquidated damages specified in the contract documents by the number of days, which occur between the contract completion date (as amended by applicable change orders) and the date of issue of the certificate of substantial completion date. Deductions for liquidated damages can be deducted from the final pay request. Prior to final payment approval and retainage release, the Agency shall provide to the Section written documentation and justification regarding any assessment of liquidated damages. The final payment will be reflective of such actions. The Agency with input from the Design Professional, shall decide on the amount of liquidated damages and the amount of such damages to be included in the project specifications.

3-404 DESIGN PROFESSIONAL CONTRACT ADMINISTRATION RESPONSIBILITIES

(A) After the Design Professional has received written approval from ABA that the project has been approved for bid, the Section, shall set a bid opening date, time and place prior to any advertising for bids. Agency officials pursuant to §3-102 shall coordinate bid dates with the Section. Bids shall be solicited for the project in accordance with Arkansas laws and rules (Refer to § 3-200 (B)).

(B) One (1) copy of half size plans and specifications shall be provided to the Section within three (3) business days after the first advertisement or plan/specification disbursement. Failure to do so may cause a delay or cancellation of the bid opening. Any addenda to the plans and specifications must be reviewed and approved by the Section prior to issuance. Design Professionals shall submit addenda, which require a change in scope of work in sufficient time to allow for appropriate ABA review and comment.

(C) If the bid plans and specifications have been modified during negotiations (after the bid opening but prior to the award of contract) then one (1) set of the modified plans and specifications shall be furnished to the Design Review Section for review and approval. Upon approval, a set of the final construction documents issued shall be provided to the Section. Additionally, any modifications to the plans and specifications after the award of contract shall be submitted to the Design Review Section for review and approval. Upon approval, a set of plans and specifications shall be furnished to the Section.

(D) Detailed instructions for Design Professionals can be found in §2-100 et seq. pertaining to the Design Review Section. The Section will not approve bid opening time, place, or date without final plan review and approval from the Design Review Section. Observation reports shall be submitted by the Design Professional (Refer to §§2-201, 2-206, and 2-1605.) For payment of professional services, see §2-308.

E) Design Professionals will complete all other contract administrative duties and responsibilities as noted in the MSC and all other standard services and responsibilities pursuant to their professional services contract.

3-405 AWARD OF CONTRACT

(A) After the lowest responsible bidder has been determined a letter of intent to award a contract may be issued by the Design Professional. Once issued, a contract is to be submitted to the Section, for approval with one complete set of as contracted plans and specifications (see §3-406). A notice to proceed shall not be issued, nor is any work to commence until and unless the contract has been approved by the Section.

(B) No capital improvement contract shall be awarded to other than the lowest responsible bidder. If the apparent low bidder is not determined to be the lowest responsible bidder, Agencies should contact the Section.

Refer also to §§ 3-315.

3-406 CONSTRUCTION CONTRACTS

(A) The Design Professional, will prepare the construction contract and after execution by the Contractor and Agency, the one (1) original along with the appropriate documents shall be forwarded to the Section for review and approval. The following information shall be submitted: bonds, insurance certificates, proof of advertising if placed by the Agency or Design Professional, illegal immigration certification, disclosure forms and documents pursuant to EO 98-04 shall accompany the contract. The Section will review and approve or disapprove all construction contracts. The ABA contract number shall be used in pay requests, payments, correspondence, etc., pertaining to the contract.

(B) The Section will retain the original set of documents and copies will be forwarded to the Agency Project Coordinator for disbursement, to the Contractor and the Design Professional. The Design Professional shall issue a notice to proceed. Within ten (10) business days after the decision to proceed, the Contractor shall submit a complete breakdown of the project cost (schedule of values) and project schedule to the Design Professional who in turn shall provide such to the Agency and the Section. No payment shall be made to the Contractor until the breakdown of project costs and project schedule are provided. The Contractor shall deliver to the Owner and the Section a copy of the Contract and Grant Disclosure Statement along with a statement of the listed subcontractor's contract amounts, subcontractors Grant and Disclosure statements and any other statements requiring disclosure.

(C) The ABA construction project file shall contain copies of bonds, contracts, certified bid tabulation, insurance certificates, Design Professional agreements, proof of advertising, change orders, observation reports, processing of final payment requests and the applicable disclosure forms and documents pursuant to EO98-04. Documentation reflecting justification and approval

shall also be contained in the project file if the contract was made pursuant to historic preservation, alternative delivery, sole source or emergency procedures.

(D) Refer also to §§ 3-315, 3-503. Refer to § 3-408 for information regarding contract change orders.

3-407 PRE-CONSTRUCTION CONFERENCES

A member of the Section may be available for pre-construction conferences. All notices of conferences specifying the time, date and location shall be delivered to ABA no later than working five (5) days before the scheduled conference date. Conferences shall be conducted at a location convenient to the site (Agency decision) with all parties (ABA, Agency project coordinator, Contractor and Design Professional) involved. All necessary information for discussion shall be made available including but is not limited to all subcontractors, applications for payments, payment procedures, change order process, construction time schedule, project superintendence, safety procedures, etc., that would be of significance to the project. The Design Professional shall provide the minutes of these proceedings to the parties involved. The Design Professional shall deliver a copy of the minutes, including the sign in sheet, to the Section within five (5) business days of the meeting.

3-408 CHANGE ORDERS

(A) A change order is an amendment to the original contract that may include but is not limited to changes in the dollar value of the contract or the time for completion. Change Orders shall be submitted for approval to the Section after agreement is reached by the Agency, Design Professional, and the Contractor as to the change. A Change Order is not effective until approved by the Section. Emergency change orders may be effective by following the same rules as emergency contracts. The distribution of change orders will be the same as the original contract.

(B) The Agency or authorized representative must submit with the Change Order form documentation stating the work to be accomplished or deleted, any revisions to the contract time and the exact dollar amount. In addition to the Section's review and approval of the change order, the Design Review Section shall review and approve any changes regarding the scope of the project within its jurisdiction. Submittals shall be in one (1) original along with the appropriate backup documentation.

(C) The Design Professional shall prepare the change order and have the Contractor and the Agency and the Design Professional execute it. After the signatures have been received, the Section will determine if the documentation is in order and approve the change order accordingly and provide the copies to the Agency Project Coordinator for disbursement to the Contractor and Design Professional. The Section shall maintain the original of the change order. If proper documentation is not provided, the change order will be returned to the sender.

(D) Change orders shall be approved by the Section, before work is done, unless prior approval by the Section has been granted.

(E) The Section shall not be responsible for review nor approval of change orders on exempt contracts (Refer to § 3-101) unless the change order increases the total contract amount to more than the exempt amount. If the exempt contract is increased to more than the exempt amount by a change order, the Agency shall seek approval from the Section by submitting the

original contract or purchase order along with justification for the increase. Under no circumstances shall an Agency abuse this process to subvert any law or rule relating to capital improvements.

(F) All drawings pertaining to the work referenced within the change order shall be stamped, sealed, and signed by the appropriate Design Professional prior to submission to ABA.

(G) The documentation for change orders shall include any applicable copies of all requests for pricing from the Design Professional and responses from the Contractor and the subcontractors. Pricing and supporting documentation must comply with the contract documents.

3-500 PROJECT CLOSEOUT

(A) Substantial Completion: The Contractor shall notify all parties involved of the date upon which he will be ready for substantial completion at least five (5) calendar days in advance. The project architect or engineer and a representative of ABA and the agency will schedule and perform the observation to verify if the construction meets substantial completion status. No statement of substantial completion shall be effective without the Section's approval. The Agency or Design Professional shall submit one (1) original and applicable documents to the Section for review and approval. The Section will retain the original; copies will be forwarded to the Agency Project Coordinator the Contractor and Design Professional.

(B) Upon completion of the punch list items, the Contractor may submit a request for final payment. ABA shall be provided all necessary approvals including consent of surety, release of claims, certificate of final completion, payment document for final payment from the Contractor and the Agency's request for final payment. Contractor shall furnish copies of all maintenance manuals and warranty items to the design professional prior to the request for final payment. See § 3-402 for required documentation.

(C) Project Close Out Finals: The Contractor shall notify the Design Professional that he is ready for a final review at least five (5) calendar days in advance, at which time the Design Professional, with the Agency and representatives of ABA will conduct a final review (walk through); and, if acceptable, accept the facility. All mechanical, (HVACR-Plumbing), Electrical, or other building systems shall be checked and inspected completely at the time of final review prior to project final acceptance. The mechanical system should be balanced once per each major seasonal change by the Contractor under the administration of the Design Professional during the first year warranty period as per the project specifications. Written instructions concerning seasonal adjustment should be issued to the Agency/Owner for use by the applicable Agency building maintenance staff. The Design Professional shall provide ABA with a letter stating that all systems have been inspected and deficiencies listed have been corrected. Upon completion of the project, a certification of final completions shall be signed by the Contractor, Design Professional, Agency and ABA.

(D) When the project has reached final completion, the Design Professional shall provide to the Section and Agency Representative a CD Rom with the following information:

- (1) Complete bid proposals of all bidders;
- (2) Substantive correspondence relating to the project;
- (3) Complete pay applications and design professional inspection reports and photos;

- (4) Manuals/specification books;
- (5) All Contractor warranty and equipment warranty documents;
- (6) Inspection and permit documents issued by Federal or State entities with approvals and/acceptance of Work;
- (7) All record documents; and
- (8) All equipment and system inspection and acceptance documents.

The CD-Rom shall be in an ABA approved readable format (MS-Word, MS-Excel, pdf, jpg, and tif files are acceptable). Failure to provide the above items may cause delay in the Design Professional's final payment. The information must be set up within folders for easy discovery. Upon request of the Design Professional, ABA will provide additional instructions on the required formatting or placement of documents or both, along with other requirements of the CD-Rom.

3-501 RECORD DRAWINGS

The Contractor shall, during the progress of the work keep an accurate record of all changes 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 during the progress of the job. Exact locations of all underground utility service entrances and their connections to utility mains as well as all valves, etc., which will be concealed in the finish work shall be accurately indicated on the drawings by measured distances. Depths as well as horizontal distances shall be shown. Upon completion of the work and prior to final payments, the Contractor shall furnish to the Design Professional, one (1) set each of "record" reproducible prints legibly and accurately drawn to indicate all changes, additions, deletions, etc., from the contract drawings. The Design Professional shall verify and add to information as required and transmit these reproducible prints to the Agency. On ABA owned property the Design Review Section shall receive the copy of the "record" drawings of reproducible prints or cd-rom copies for record keeping. In this instance the Section will still receive a cd-rom with the above stated data.

3-502 DELIVERY OF GUARANTEES, BONDS, MAINTENANCE MANUALS

Upon completion of the work and before final payment will be authorized, the Contractor shall furnish the Design Professional, for review and approval prior to transmission to the Agency, the Contractor's one-year acceptance warranty (the warranty period begins upon the date as stated in the substantial completion document, bonds, roof warranties, termite inspection, maintenance and operation manuals and operation training, air balance data, shop drawings, catalog data, as-built "record" reproducible prints, etc., as called for under the various Divisions of Specifications. Certification of the above will be made by the Design Professional and attached to the Contractor's request for final payment.

3-503 COMPLETION CERTIFICATES, AFFIDAVITS

Before final payment the Contractor shall furnish to the Design Professional one (1) executed copy of the required documents which shall be attached to the Contractor's request for final payment.

3-504 DUTIES OF DESIGN PROFESSIONALS ON STATE PROJECTS

(A) The Design Professional shall maintain up-to-date files on each project, which shall include project plans and specifications, shop drawings, record drawings, and observations and inspection reports. The Design Professional shall provide to ABA any and all applicable contracted medium regarding the project prior to their final payment. All drawings are the property of the Design Professional; however, the State retains the right to obtain copies of all drawings upon request and payment of direct reproduction costs. Drawings produced for State projects shall not be used or incorporated into any other projects unless permission to do so is provided in writing from ABA and the Design Professional. Refer to §2-1605 for Design Professional project observation requirements.

(B) Design Professionals shall be responsible for reviewing all closeout documents, manuals and warranty items for approval and compliance with the contract documents.

3-600 PAYMENT REQUESTS

(A) Requests for payments from capital improvement funds shall be made by the use of a payment document using the General Accounting Procedures pursuant to AASIS.

(B) Each payment document shall indicate, the ABA project number and be supported by the Design Professional's certification of the Contractor's estimates. Estimates must be broken down by units of work normally used to calculate the work accomplished during the invoicing period.

(C) The Design Professional shall conduct site visits to determine the responsibility and performance required by the Contract Documents. Refer to §2-1605 for Design Professional's project observation requirements. Observations shall concur with the Contractor's payment request and shall be submitted in written form with the pay request.

(D) Observation reports by Design Professionals are required once a month at a minimum. The use of the standard A.I.A. Document G-711 "Architect Field Report" or other approved form is acceptable. Reports are to be maintained on file by the Design Professionals and shall be provided to the Owner/Agency and the Section on a monthly basis.

Minimal observation reports shall include but not limited to the following phases of construction:

(1) Foundation.

(2) Roof deck.

(3) Roofing and Insulation,

(4) Mechanical Equipment Installation.

(5) Electrical Equipment Installation

(6) Prior to application of interior wall, backfilling trenches, laying concrete, and ceiling finishes concealing the work (i.e. plumbing, electrical, HVACR) shall be observed.

(7) Plumbing equipment and fixtures.

(E) Contractor final pay requests must be approved by the Design Professional. Payment requests shall be submitted by the Contractor in one (1) original.

3-601 PAYMENTS

(A) For contracts in which a payment and performance bond was issued, a copy of all payment documents including labor or materials or both shall be sent to the Agency for approval prior to any payment being released. Where a payment document is supported by two (2) or more invoices, the Contractor shall provide documentation clearly evidencing the total to be paid. Failure to provide documentation shall result in return of the payment document to the Contractor.

(B) If pay estimates are not approved, the Contractor involved shall be notified in writing immediately and shall be informed as to the reasons for non-approval.

(C) Late payment penalties may be assessed pursuant to Ark. Code Ann. §19-4-1411 and §22-9-205.

3-602 FINAL PAYMENTS

(A) The following shall accompany the final payment document for contracts:

(1) Contractor's invoice.

(2) Certificate of Final Completion.

(3) Contractor's release of claims.

(4) Consent of surety

(5) Agency request for final payment.

(6) The Design Professionals acceptance and certification letter.

3-603 DELAY IN PROCESSING PAYMENT DOCUMENTS

Any penalties for the delay in processing of payments may be processed in accordance with Ark. Code Ann. §19-4-1411, §22-9-205.

3-700 CAPITAL IMPROVEMENT ALTERNATIVE DELIVERY METHODS

Pursuant to Ark. Code Ann. §19-4-1415, ABA, unless exempted by law, has authority to approve and administer contracts (contractor, construction manager, architect or engineer) for projects that exceed \$5,000,000, which are awarded through negotiations instead of the bid process. This type of alternative delivery method of contract shall be referred to as "negotiated work".

3-701 PROJECT CRITERIA

(A) Agencies may utilize “negotiated award” status for projects, which include but are not limited to the following criteria: Project’s programming requires “Fast Tracking”; traditional design-bid-build process is less fiscally advantageous than negotiated work; and negotiated work is more practical for project needs.

(B) Prior to utilization of negotiated award, Agencies shall make a written request and provide justification to the ABA Director for the use of alternative methods and give justification for an alternative delivery method pursuant to § 3-700. The ABA Director may approve the request after reviewing the documents submitted. The Agency shall cooperate with the ABA Director if more information is requested. If approved by the ABA Director, the Agency shall then submit the project for review by the Arkansas Legislative Council. No contract shall be awarded without the approval of ABA and Legislative Council review.

3-702 SELECTIONS AND CONTRACT AWARD PROCESS

(A) All selection processes involving the Design Professional, Contractor or contract manager shall be made in accordance with §3-700. See also §2-1700 for the Design Professional selection process.

(B) The pre-selection committee shall consist of five (5) members. The ABA Director shall determine the two (2) members from ABA. The respective Agency director shall determine the three (3) members of the Agency.

(1) A request for proposals (RFP) shall be made in accordance with §3-700. The Agency shall prepare all RFPs. ABA shall approve the draft of the RFP prior to its publication. RFPs for Contractor’s services shall have a statement in regards to the state or federal prevailing wage.

(2) The pre-selection team shall meet at a designated time and place to review the proposals. No more than five and no fewer than three applicants shall be selected. ABA may waive the minimum amount if less than 3 proposals are submitted. The Agency shall notify the finalists within five (5) business days of the selection determination.

(C) The final selection committee shall consist of three (3) members of the Agency. The Agency director shall determine the members of the final selection committee. The Agency shall notify ABA and the finalists of the time and date that the final selection interviews will be held. The Agency shall notify the successful finalist within five (5) business days. While ABA may attend the final selection meeting, it shall not vote in the matter.

(D) The State reserves the right to reject any and all proposals and to waive any formality in the negotiation and award process.

(E) Once the final selection is determined, the Agency may begin to enter into final negotiations with the successful finalist. Nothing shall prohibit the Agency from entering into negotiations with other finalists, if final negotiations are not successful.

(F) Before ABA may approve any contracts:

(1) The contractor, engineer, architect, or construction manager shall be licensed in accordance with §3-700;

(2) Contract Documents shall be reviewed in accordance with all related laws and rules and the ABA Division 00 requirements and §2-706

(3) The Contractor or Contract Manager (Refer to §3-315) shall submit a performance and payment bond(s); and

(4) Insurance amounts and processes relating to such shall be in accordance with §3-318;

3-703 CONTRACT OVERSIGHT

The Section has contract oversight and responsibility.

(A) The Design Professional shall provide the Section current approved for construction plans and specifications as the project progresses. The plans will be in half size. A copy of the plans and specifications that the GMP is established on will be provided to the Section, the Design Review Section, Agency official, and Contractor and the plans and specifications will be stamped or duly noted as “Guaranteed Maximum Price” and “Approved for Construction” with the date and signature and/or seal of the Design Professional. For additional Design Professional requirements see §2-1706.

(B) Phased Fast Track Projects: Notice to Proceed will be issued to the Contractor for each approved for construction phase of the work. No work may commence on any phased of work without ABA approval.

3-800 CAPTIAL IMPROVEMENTS HISTORIC SITES

Pursuant to Ark. Code Ann. §§22-9-208 through 22-9-211, ABA, unless exempted by law, has authority to approve and administer contracts for projects awarded pursuant to the Historic Site laws:

§22-9-208 – Legislative intent and construction

§22-9-209 – Advertising of contracts

§22-9-210 – Award of Contract

§22-9-211 – Payment

3-801 Project Criteria

Agencies requesting to utilize the Historic Site method of contracting shall send written request and justification to the ABA Director for placement on the ABA Council agenda. Upon ABA Council approval, the request may be forwarded for review by the Arkansas Legislative Council and approval by the Chief Fiscal Officer of the State. Nothing shall prohibit an agency from applying for Legislative Council review prior to the ABA Council review approval.