

**COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC
FACILITIES AND TRANSPORTATION RULES GOVERNING
SELF-CONSTRUCTION PROJECTS BY PUBLIC EDUCATION ENTITIES**
March 16, 2010 Effective

1.00 REGULATORY AUTHORITY

1.01 These regulations shall be known as the Commission for Arkansas Division of Public School Academic Facilities and Transportation Rules Governing Self-Construction Projects by Public Entities.

1.02 The Commission's ~~for Arkansas Public School Academic Facilities and Transportation's (Commission)~~ authority for promulgating these rules is pursuant to Ark. Code Ann. §§ 6-21-109, 6-21-304, 17-25-101, 18-44-503, 18-44-507, 22-9-101, 22-9-203, and 25-15-201 et seq., Act 1472 of 2009.

2.00 PURPOSE

2.01 The purpose of these rules is to establish how the Arkansas 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) ~~is defined to mean~~ means an Arkansas public school district, charter schools, educational cooperatives, or any publicly supported entity having supervision over public educational entities.

3.02 "Self-construction" ~~is defined to mean~~ 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" ~~is defined to mean~~ means making or forming an improvement by combining parts, labor, or materials; the erection or alteration that exceeds a cost of ~~\$20,000~~ \$35,000 of a structure of physical object under the supervision or ownership of a public educational entity.

3.04 "Design professional" ~~is defined to mean~~ 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” ~~is defined to~~ means the repair but not the replacement or alterations that exceed a cost of \$20,000 \$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” ~~is defined to~~ means all supplies, goods, material, equipment, machinery, facilities, and personal property purchased for or on behalf of an Entity.
- 3.07 “Open market purchases” ~~is defined to~~ means those purchases of commodities by any purchasing official in which competitive bidding is not required.
- 3.08 “Administrator” ~~is defined to~~ 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” ~~is defined to~~ means the Commission for Arkansas Public School Academic Facilities and Transportation.
- 3.10 “Division” ~~is defined to~~ means the Arkansas Division of Public School Academic Facilities and Transportation.

4.00 NOTIFICATION OF INTENT

- 4.01 ~~When~~ If an Entity board votes to self-construct, the Administrator of the Entity shall submit Part A and B of the Construction Approval Form to the Division, which Form is attached as Appendix “A” to these rules, ~~annotating~~ indicating that the project is “Self Construction”. (The form may be found on the Division website at; <http://arkansasfacilities.arkansas.gov>). ~~and which is hereby incorporated into and made part of these rules, as “Appendix A” to these rules; This notification submission shall~~ must include all items required by Appendix “A.”

~~4.01.1 A description of the proposed construction project;~~

~~4.01.2. A written detailed project justification;~~

~~4.01.3 A written Assurance Impact Statement regarding segregative activities and/or policies.~~

~~4.01.4 An assurance statement of non violation of Federal Court Order or Federal or State law.~~

~~Approval may be granted by the Division at that time.~~

4.02 The Administrator of the Entity also must submit the written Assurance Impact Statement (see Section 4.01.3) and the annual Equity Compliance Report (see Section 4.01.4) to the Arkansas Department of Education, LEA State Funding—Loans and Bonds, Four Capitol Mall, Mail Slot 9, Little Rock, AR 72201

~~4.023 Upon receiving an Entity's notification of intent to self-construct, the Division shall provide a written assessment of review the Entity's decision to self-construct 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 ~~the~~ 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 ~~to~~ with all Arkansas laws, including but not limited to, the following:

~~6.02—Commodities Purchasing~~

6.01.1 ~~A-~~ Open market purchases may be made where the purchase price is less than ~~\$10,000~~ \$20,000. (Ark. Code Ann. § 6-21-304).

6.01.2 ~~B-~~ In each instance where the estimated purchase price shall equal or ~~Exceed~~ exceed ~~\$10,000~~ \$20,000, the commodity shall be procured by soliciting bids. (Ark. Code Ann. § 6-21-304)

~~6.03~~ — Bidding Requirements

6.01.3 ~~A-~~ When all estimated construction costs do not exceed ~~\$20,000~~ \$35,000, the contract shall be solicited according to local school board policy. (Ark. Code Ann. § 22-9-203).

6.01.4 ~~B-~~ When all estimated construction costs exceed ~~\$20,000~~ \$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) ~~as amended by Act 1051 of 2001~~

6.042 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 that three (3) alternates may be used, and the alternates must be set forth and considered in numerical order. (Ark. Code Ann. § 22-9-203).

6.053 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 five percent (25%) of the amount appropriated for the project and all alternates have been exhausted. (Ark. Code Ann. § 22-9-203) ~~as amended by Act 921 of 2001~~

6.064 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 ~~\$20,000~~ \$35,000. (Ark. Code Ann. § 22-9-203).

6.075 The successful bidder on construction that exceeds \$20,000 shall provide the owner a performance and payment bond ~~for one hundred percent (100%)~~ equal to ~~of~~ the contract amount. This bond must be filed in the county where the work is being performed before authorization to proceed is granted. (Ark. Code Ann. §§18-44-503 and 18-44-507).

6.086 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 ~~\$20,000~~ \$50,000 must also hold an Arkansas contractor's license. (Ark. Code Ann. 17-25-101(a))₂

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.

APPENDIX "A"

DIVISION OF PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION SCHOOL CONSTRUCTION APPROVAL FORM

August 1, 2017 _____

Part A

Instructions

Pursuant to Ark. Code Ann. §§ 6-20-1407 and 6-21-109, school districts that propose to construct and/or fund facility projects are required to submit written documentation.

Construction: Completion of this form is required for Division of Public School Academic Facilities and Transportation approval of a school district's construction project. It is additionally required from Charter Schools, Educational Cooperatives, or any publicly supported entity having supervision over public educational entities, if the process of self-construction is used.

Bond Applications: Completion of this form is required for loan or bond approval but is not required for non-voted refunding of existing debt.

Please answer the following questions, provide the required information, and submit the completed form with attachments to:

**Division of Public School Academic Facilities and Transportation
One Capitol Mall, Suite 4D-200
Little Rock, AR 72201**

General and Equity Information

Construction Approval applies to all construction projects costing over ~~\$20,000~~ \$35,000 at public school facilities regardless of the source of funds. *(This section shall not apply to maintenance projects or construction projects costing ~~\$20,000~~ \$35,000 or less.)*

1. Describe the proposed facility project: *(Indicate the Project Number from the Master Plan, Location, Campus, Building, and detailed description.)*
2. Provide a written, detailed, substantial justification for the proposed facility projects. Projects shall be considered legitimately justified if, for example:
 - A. The proposed facility project is necessary for the applying district to comply with Arkansas Department of Education (ADE) rules and regulations, and/or State and Federal statutes and regulations; and/or
 - B. The proposed facility project is necessary to meet important educational goals of the district. Completion of the proposed project should enable the applying district to provide a better quality, desegregated education, necessary to meet the needs of its present and projected population. The district must provide a desegregation impact statement showing that the proposed improvements will not have a segregative effect *(see item #3 below)*. A detailed outline or explanation of the educational goal to be met shall be included.

**DIVISION OF PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION
SCHOOL CONSTRUCTION APPROVAL FORM**

~~August 1, 2017~~_____

Part A - Continued

3. Provide a written Assurance Impact Statement indicating that the proposed facility project will not establish, continue, or ignore segregative activities and/or policies within your district or contiguous districts. Also, indicate with the Assurance Impact Statement that the proposed project in any school in any county contiguous to Pulaski County, Arkansas, will not have a substantial negative impact on the ability of any district in Pulaski County, Arkansas, to effectively desegregate.
4. The Annual Equity Compliance Report must be filed with the Arkansas Department of Education before approval can be granted. The Division of Public School Academic Facilities and Transportation will confirm the filing with the Equity Assistance Center.
5. Provide an assurance statement that the approval of the facilities project or the approval of any loan or bond financing the facilities project does not violate any Federal Court Order or federal or state law.
6. The written Assurance Impact Statement referenced in paragraph 3 and the Annual Equity Compliance Report referenced in paragraph 4 also must be submitted to:

**Arkansas Department of Education
LEA State Funding - Loans & Bonds
Four Capitol Mall, Mail Slot 9
Little Rock, AR 72201**

7. What method of construction does the district plan to use for the project? If the response is general contractor, no additional information is needed and only the superintendent's signature is required. *(If Self Construction is indicated then Part B must be completed and submitted with Part A.)*

General Contractor General Contractor as CM Design Build
 Self-Construction Construction Management Lease Purchase

SCHOOL DISTRICT

COUNTY

SIGNATURE OF ENTITY ADMINISTRATOR

DATE

**DIVISION OF PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION
SCHOOL CONSTRUCTION PROCESS INFORMATION**

~~August 1, 2017~~_____

Part B

(To be completed only if Self-Construction is indicated)

SCHOOL DISTRICT

COUNTY

PROJECT

PROJECT NUMBER

Construction Information

This form applies to all construction projects that exceed ~~\$20,000~~ \$35,000, including but not limited to; academic, maintenance and operations facilities, transportation facilities, and other non-instructional facilities.

1. What method of self-construction does the district plan to use for the project?
 District personnel
 District will serve as their own general contractor
 District will serve as their own general contractor and employ a construction manager
 District will serve as its own Construction Manager and contract for performance of the work.

2. Provide the date that the school board voted to self-construct the project.
Date: _____.

4. Has the district used the self-construction process on projects in the past?
Yes___ No___.

5. If yes to question #4, provide the date(s) that the district used the self-construction process.

SIGNATURE OF ENTITY ADMINISTRATOR

DATE

**DIVISION OF PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION
SELF-CONSTRUCTION ASSURANCE STATEMENT**

August 1, 2017 _____

Part B - Continued

SCHOOL DISTRICT

COUNTY

PROJECT

PROJECT NUMBER

By our respective signatures below, we certify that we are duly authorized to legally bind the above-mentioned school district, and that we have read the *Commission for Arkansas Public School Academic Facilities and Transportation Rules Identifying and Governing Self-Construction Projects by Public Education Entities*, and are in compliance with such rules and regulations, and further certify that the above-mentioned educational entity will:

- 1) Have the plans drafted by an appropriate design professional;
- 2) Submit final plans to the proper state agencies for approval; and
- 3) Follow all applicable Arkansas statutes concerning commodities purchasing requirements, bidding requirements, and licensing requirements.

SIGNATURE OF ENTITY ADMINISTRATOR

DATE

SIGNATURE OF SCHOOL BOARD PRESIDENT

DATE

SUMMARY OF REVISIONS

COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION RULES GOVERNING SELF-CONSTRUCTION PROJECTS BY PUBLIC EDUCATION ENTITIES

Amendments to these rules reflect changes made to law concerning public improvement contracts, commodities purchasing, and subcontractor licensure under Acts 725 and 1124 of 2017 (public improvement contracts and commodities purchasing), as well as under Act 1048 of 2015 (subcontractor licensure). These Acts raised the monetary amounts that triggered bidding and licensure requirements. Other changes made throughout the rules were stylistic or made for the purpose of clarification.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Commission for Arkansas Public School Academic Facilities and Transportation

DIVISION Division of Public School Academic Facilities and Transportation

PERSON COMPLETING THIS STATEMENT Lori Freno

TELEPHONE 501/682-4234 **FAX** 501/682-4249 **EMAIL:** lori.freno@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE CAPSAFT Rules Governing Self-Construction Projects by Public Education Entities

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes No

- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No

- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;
N/A

(b) The reason for adoption of the more costly rule;
N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
N/A

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.
N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year
General Revenue N/A

Next Fiscal Year
General Revenue N/A

Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____

Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue Zero
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____

General Revenue Zero
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ Zero

\$ Zero

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ Zero

\$ Zero

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.