

# 2019 Contract Review Manual



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# 2019 Contract Review Schedule

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<b>January</b>					
Deadline:	Friday, December 28, 2018	3:30 p.m.	Room 404		
Meeting:	Thursday, January 10, 2019	1:30 p.m.	Room 200		
<b>February</b>					
Deadline:	Monday, January 28, 2019	3:30 p.m.	Room 404		
Meeting:	Thursday, February 7, 2019	1:30 p.m.	Room 200		
<b>March</b>					
Deadline:	Monday, February 25, 2019	3:30 p.m.	Room 404		
Meeting:	Thursday, March 7, 2019	8:30 a.m.	Room 200		
<b>April</b>					
Deadline:	Monday, March 25, 2019	3:30 p.m.	Room 404		
Meeting:	Thursday, April 4, 2019	8:30 a.m.	Room 200		
<b>May</b>					
Deadline:	Friday, April 19, 2019	3:30 p.m.	Room 404		Previously 23rd
Meeting:	Thursday, May 2, 2019	8:30 a.m.	Room 200		
<b>June</b>					
Deadline:	Friday, May 24, 2019	3:30 p.m.	Room 404		Previously 28th
Meeting:	Thursday, June 6, 2019	8:30 a.m.	Room 200		
<b>July</b>					
Deadline:	Thursday, June 27, 2019	3:30 p.m.	Room 404		Previously 24th
Meeting:	Thursday, July 11, 2019	1:30 p.m.	Room 200		
<b>August</b>					
Deadline:	Friday, July 19, 2019	3:30 p.m.	Room 404		Previously 22nd
Meeting:	Thursday, August 1, 2019	1:30 p.m.	Room 200		
<b>September</b>					
Deadline:	Friday, August 23, 2019	3:30 p.m.	Room 404		Previously 26th
Meeting:	Thursday, September 5, 2019	1:30 p.m.	Room 200		
<b>October</b>					
Deadline:	Friday, September 20, 2019	3:30 p.m.	Room 404		Previously 23rd
Meeting:	Thursday, October 3, 2019	1:30 p.m.	Room 200		
<b>November</b>					
Deadline:	Friday, October 25, 2019	3:30 p.m.	Room 404		Previously 28th
Meeting:	Thursday, November 7, 2019	1:30 p.m.	Room 200		
<b>December</b>					
Deadline:	Friday, November 22, 2019	3:30 p.m.	Room 404		Previously 18th
Meeting:	Thursday, December 5, 2019	1:30 p.m.	Room 200		

## **CONTRACT REVIEW POLICIES**

Adopted by the Committee on April 4, 2019

1. Contracts can only be submitted to the committee the month of their effective date or one month prior.
2. If a contract requires an extension of time exceeding the time the original contract was approved; even though money remains within the contract, the contract **MUST** go back through the usual Contract Review Committee Process.
3. Contracts must have Contractors physical street address. No Post Office Boxes will be accepted.
4. Agendas and forms are now on the Internet Website:  
[www.legislature.state.al.us/aliswww/ISD/House/ContractReviewComm.aspx](http://www.legislature.state.al.us/aliswww/ISD/House/ContractReviewComm.aspx). The agendas will be placed on the web the week of the monthly meeting and remain posted until the following months agenda is posted.
5. All contracts submitted to the committee must include 1 original and 2 copies. The disclosure form that is now required must be attached to all 3 copies. *Contracts will not be reviewed if Disclosure Statement is not provided.*
6. **THERE WILL BE NO AUTOMATIC RENEWAL PROVISIONS.** Contracts will not be accepted by the committee that includes automatic renewal provisions. Any contract being renewed **MUST** go back through the usual Contract Review Contract Review Committee Process.
7. Do not mark the bid box if the contract was let by an RFP (Request for Proposal). The Bid box is only to be marked if the contract was obtained through the Purchasing Department. All RFP's must be submitted on the RFP database unless exempted by Alabama statute.
8. ***CONTRACTS WILL ONLY BE ACCEPTED FOR A 2 YEAR PERIOD.***
9. Whenever an **EMERGENCY CONTRACT** is signed by the Governor-a copy must be submitted to the clerk of the committee.
10. Contracts that **EXTEND TIME** or **INCREASE MONEY** **MUST** come back before the committee to be amended.
11. All Lobbyist/Consultants must be listed on Review Report whether they are paid or not.
12. **THE 45-DAY HOLD FOR CONTRACTS BEGINS ON THE MEETING DAY THE CONTRACT APPEARS ON THE AGENDA.**

13. All contracts MUST include a CONTRACT TOTAL AND A BEGINNING AND ENDING DATE. Beginning date to be the "Upon Governor's Approval".
14. All blanket approval letters signed by the committee will have to be renewed every 2 years.
15. All contracts being submitted must have a cover sheet that is completely and accurately filled out. Unsigned/Incomplete Contracts or Contracts that do not have the required supporting documentation will not be accepted by the clerk of the committee. (e.g. cover sheet, Governor's additional questions, immigration status, disclosure statement, signed contract, e-verify, W-9, sole source, IT approval, contract clauses from pgs. 38-39 of the Fiscal Policies and Procedures Manual, etc.)
16. No late contracts will be accepted.
17. There is a new line added to the Review Report regarding the Contract being a Minority and/or Woman owned business.
  - a. Please circle which applies to the contractor Minority or Woman owned or both as well as check the yes box at the end of the question.

# Contract Review Document Checklist

<b>Personal or Professional Services Contracts</b>		
<b>New Contract</b>	<b>Amendment Contract</b>	<b>Renewal Contract</b>
Contract Review Cover Sheet	Contract Review Cover Sheet	Contract Review Cover Sheet
Governor's Additional Questions	Governor's Additional Questions	Governor's Additional Questions
Immigration Status	Immigration Status	Immigration Status
Disclosure Statement	Disclosure Statement	Disclosure Statement
Signed Contract	Signed Amended Contract	Signed Renewal Contract
E-Verify	IT Contract? (must have approved Secretary of IT Signature attached)	E-Verify
Certificate of Compliance		Certificate of Compliance
W-9		W-9
Sole Source? (attach Sole Source Letter)		Sole Source? (attach Sole Source Letter)
IT Contract? (must have approved Secretary of IT Signature attached)		IT Contract? (must have approved Secretary of IT Signature attached)

**NOTE**

In the contract the following clauses are required (found in Finance Policies and Procedures, Page 38-39):

1. Termination Clause / Alternate Dispute Resolution Clause
2. Merit System Clause
3. Immigration Clause
4. No Boycott Clause

# Contract Review Document Checklist

Legal Services Contract		
New Contract	Amendment Contract	Renewal Contract
Contract Review Cover Sheet (Legal Services)	Contract Review Cover Sheet (Legal Services)	Contract Review Cover Sheet (Legal Services)
Governor's Additional Questions	Governor's Additional Questions	Governor's Additional Questions
Immigration Status	Immigration Status	Immigration Status
Disclosure Statement	Disclosure Statement	Disclosure Statement
Signed Contract	Signed Amended Contract	Signed Renewal Contract
E-Verify		E-Verify
Certificate of Compliance		Certificate of Compliance
W-9		W-9
DAG Appointment Letter		DAG Appointment Letter
Rate of Approval Letter		Rate of Approval Letter

**NOTE**

In the contract the following clauses are required (found in Finance Policies and Procedures, Page 38-39):

1. Termination Clause / Alternate Dispute Resolution Clause
2. Merit System Clause
3. Immigration Clause
4. No Boycott Clause



Kay Ivey  
Governor

Kelly Butler  
Acting Director of Finance

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Kathleen D. Baxter, PhD, CGFM, CPM  
State Comptroller

Michael G. Hudson, CGFM  
Deputy State Comptroller

November 6, 2018

MEMORANDUM

TO: Department Directors  
Chief Fiscal Officers

FROM: Kathleen D. Baxter  
State Comptroller 

SUBJECT: Update to *Fiscal Policy and Procedures Manual*

Submitted herein is updated information related to the State of Alabama's Fiscal Policy and Procedures Manual. This is an update in content to *Section 5-2 F Emergency Contracts*, *Section 6-5 E Payment of Interfund Purchases* and *Section 6-5 F Payment for Reimbursement of Travel Expenses*.

Please distribute this information to those individuals in your agency who use the manual. This information is also available at <http://comptroller.alabama.gov/fiscal-policy-procedures/>. If you have questions or comments, please contact Lindsay Bryant at [lindsay.bryant@comptroller.alabama.gov](mailto:lindsay.bryant@comptroller.alabama.gov).

## CHANGES/UPDATES TO THE FISCAL POLICY AND PROCEDURES MANUAL

### CHAPTER 5 CONTRACTS

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#### 5-2 STATUTORY/APPROVAL REQUIREMENTS

##### A. DISCLOSURE STATEMENT

A Disclosure Statement is required to be filed with all proposals, bids, contracts or grant proposals to the State of Alabama in excess of \$5,000.00. In circumstances where a contract is awarded by competitive bid, the Disclosure Statement is required only from the successful bidder and must be submitted within ten days after award (Code of Alabama 1975, §41-16-80 through 88, as amended).

##### B. REVIEW BY THE LEGISLATIVE CONTRACT REVIEW OVERSIGHT COMMITTEE

All contracts for personal and professional services, \$1,500 and greater, must be reviewed by the Oversight Committee within a reasonable time not to exceed 45 days after it has been submitted by the department (Code of Alabama 1975, §29-2-41, as amended). Additional information concerning this review can be found in section 5-4C.

##### C. GOVERNOR'S APPROVAL OF ALL CONTRACTS

All contracts for personal or professional services with private entities or individuals must be approved in writing by the Governor. ~~(Governor's Executive Order 24, August 28, 1957).~~

##### D. ASSIGNMENT OF CONTRACTS

A professional service contract cannot be assigned to a third party. If a different contractor is required, the original contract must be canceled and a new contract must be initiated.

##### E. CONTRACTS/INTERAGENCY SERVICE AGREEMENTS BETWEEN GOVERNMENTAL ENTITIES

Contracts/Interagency Service Agreements between governmental entities must be entered into STAARS.

##### F. EMERGENCY CONTRACTS

~~An emergency contract for personal or professional services shall be let for a period of not more than 60 days (Code of Alabama 1975, §29-2-41.1, as amended). An emergency agreement must be entered in STAARS. See section 5-4C for additional instructions.~~

1. Background/Law



If an agency faces an emergency situation affecting public health, safety, convenience, or the economic welfare of the state, a professional services contract may be let with a qualified professional service provider without complying with the competitive requirements of Alabama Code Section 41-16-72.

Emergencies affecting public health or safety may be let for the time period necessary to alleviate the emergency situation and are exempt from review by the Legislative Contract Review Oversight Committee ("LCROC"). See Ala. Code Section 29-2-41.1 and 41-16-72(6).

A contract involving an emergency affecting the economic welfare of the state may be let for a period of not more than 60 days without the need for review by the LCROC. If the contract must exceed 60 days to alleviate the emergency, the contract is subject to LCROC review.

Contracts let to address emergencies affecting "convenience," as the term is used in Ala. Code Section 41-16-72(6), may be let for the time period necessary to alleviate the emergency situation, but must be reviewed by LCROC, regardless of the duration of such contracts.

## 2. Procedures

If an agency faces an emergency affecting public health, safety, convenience, or the economic welfare of the state, the agency head must declare the emergency, in writing under oath, and provide a copy of the emergency declaration to the Governor and Attorney General. It is imperative that the emergency declaration pinpoint the basis of the emergency, i.e. public health, safety, convenience, or economic welfare, and provide facts with sufficient specificity to justify the need for an emergency contract. The emergency declaration is not a contract; it is a declaration of an emergency and recitation of facts justifying the need to let a contract without competition. Following the declaration, a contract must be let with a qualified professional services provider and it must contain all required information set forth in section 5-4B below. Finally, the emergency contract will be forwarded to LCROC, if required as outlined above, and to the Governor for approval.

The duration of an emergency contract shall not exceed the time necessary to alleviate the emergency situation. In other words, the duration must be reasonably calculated to alleviate the emergency. The Governor will not approve, and the Comptroller will not pay, contracts that do not meet this requirement. If approved by the Governor, the Comptroller will generally honor payment for a period of one year from the date of the emergency declaration.

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## **5-4 PERSONAL AND PROFESSIONAL SERVICES CONTRACTS**

### **C. THE LEGISLATIVE CONTRACT REVIEW OVERSIGHT COMMITTEE**

After all required signatures have been obtained; the original and 2 copies must be forwarded to the Legislative Contract Review Committee. All contracts for personal or professional services with private entities or individuals must be reviewed by the Committee (*Code of Alabama 1975, §29-2-41, as amended*) **except:**

1. Contracts for insurance
2. Contracts let by competitive bid
3. Contracts entered into by public corporations and authorities
4. Contracts for a total amount of less than \$1,500, including compensation and reimbursement of expenses.
5. Certain emergency contracts as outlined in Section 5-2F above.

~~In case of an emergency adversely affecting public health, safety, security, or the economic welfare of the state, so declared in writing to the governor by the head of the institution or agency involved, setting forth the nature of the danger to public health, safety, security or the economic welfare of the state, contracts may be let to the extent necessary to meet the emergency without review by the committee. Any contract let pursuant to this section involving an emergency adversely affecting the economic welfare of the state shall be let for a period of not more than 60 days during which time the committee shall review a contract for a longer period of time if such services are required beyond the 60-day limit hereby imposed (Code of Alabama 1975, §29-2-41.1, as amended).~~

The Committee must review and comment on a contract or a letter of intent to contract within a reasonable time not to exceed 45 days after it has been submitted to the Committee. If the Committee fails to review and comment on any contract or letter of intent to contract within this time frame, the contract will be deemed to have been reviewed. Any contract made by the state or any of its agencies, which has not been submitted for review by the Contract Review Committee will be voided. If a department elects to submit a letter of intent to contract instead of a proposed contract, the department must submit a copy of the actual contract to the Committee once the contract has been executed. The Contract Review Committee meets the first Thursday of each month. All contracts to be reviewed must be accompanied by the Contract Review Report Form or Legal Services Contract Review Report Form. All contracts to be reviewed must be received no later than 10 days prior to the Thursday meeting date to be placed on the agenda. The Committee requires at least one original contract and two copies. The Governor's Office does not submit contracts to the Committee.

## CHAPTER 5 CONTRACTS

### 5-1 INTRODUCTION

The preparation of contracts involving public funds is one of the most involved procedures covered in the law. These instructions are not intended to be All-inclusive, and any omissions or exclusions are not to be regarded as an exemption from the law or regulations. The State department or agency head has sole responsibility for full compliance with the law.

The major purpose of this section of the Manual is to provide procedures for the review, approval, establishment and modification of personal and professional services contracts in STAARS. However, there are other contract types that have legal requirements that must be met. The classifications discussed in this chapter summarize the legal requirements that distinguish the contract types for personal and professional service contracts.

### 5-2 STATUTORY/APPROVAL REQUIREMENTS

#### A. DISCLOSURE STATEMENT

A Disclosure Statement is required to be filed with all proposals, bids, contracts or grant proposals to the State of Alabama in excess of \$5,000.00. In circumstances where a contract is awarded by competitive bid, the Disclosure Statement is required only from the successful bidder and must be submitted within ten days after award (Code of Alabama 1975, §41-16-80 through 88, as amended).

#### B. REVIEW BY THE LEGISLATIVE CONTRACT REVIEW OVERSIGHT COMMITTEE

All contracts for personal and professional services, \$1,500 and greater, must be reviewed by the Oversight Committee within a reasonable time not to exceed 45 days after it has been submitted by the department (Code of Alabama 1975, §29-2-41, as amended). Additional information concerning this review can be found in section 5-4C.

#### C. GOVERNOR'S APPROVAL OF ALL CONTRACTS

All contracts for personal or professional services with private entities or individuals must be approved in writing by the Governor.

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A professional service contract cannot be assigned to a third party. If a different contractor is required, the original contract must be canceled and a new contract must be initiated.

#### E. CONTRACTS/INTERAGENCY SERVICE AGREEMENTS BETWEEN GOVERNMENTAL ENTITIES

Contracts/Interagency Service Agreements between governmental entities must be entered into STAARS.

## **F. EMERGENCY CONTRACTS**

### **1. Background/Law**

If an agency faces an emergency situation affecting public health, safety, convenience, or the economic welfare of the state, a professional services contract may be let with a qualified professional service provider without complying with the competitive requirements of Alabama Code Section 41-16-72.

Emergencies affecting public health or safety may be let for the time period necessary to alleviate the emergency situation and are exempt from review by the Legislative Contract Review Oversight Committee ("LCROC"). See Ala. Code Section 29-2-41.1 and 41-16-72(6).

A contract involving an emergency affecting the economic welfare of the state may be let for a period of not more than 60 days without the need for review by the LCROC. If the contract must exceed 60 days to alleviate the emergency, the contract is subject to LCROC review.

Contracts let to address emergencies affecting "convenience," as the term is used in Ala. Code Section 41-16-72(6), may be let for the time period necessary to alleviate the emergency situation, but must be reviewed by LCROC, regardless of the duration of such contracts.

### **2. Procedures**

If an agency faces an emergency affecting public health, safety, convenience, or the economic welfare of the state, the agency head must declare the emergency, in writing under oath, and provide a copy of the emergency declaration to the Governor and Attorney General. It is imperative that the emergency declaration pinpoint the basis of the emergency, i.e. public health, safety, convenience, or economic welfare, and provide facts with sufficient specificity to justify the need for an emergency contract. The emergency declaration is not a contract; it is a declaration of an emergency and recitation of facts justifying the need to let a contract without competition. Following the declaration, a contract must be let with a qualified professional services provider and it must contain all required information set forth in section 5-4B below. Finally, the emergency contract will be forwarded to LCROC, if required as outlined above, and to the Governor for approval.

The duration of an emergency contract shall not exceed the time necessary to alleviate the emergency situation. In other words, the duration must be reasonably calculated to alleviate the emergency. The Governor will not approve, and the Comptroller will not pay, contracts that do not meet this requirement. If approved by the Governor, the Comptroller will generally honor payment for a period of one year from the date of the emergency declaration.

## **G. ADDITIONAL LAW CITATIONS AND REGULATIONS GOVERNING CONTRACTS**

In addition to all general laws regulating the execution of contracts for the State, the specific provisions of the Competitive Bid Law (§41-16-22 through 79), the Public Works Law (§39-2-1 through 14 and 39-5-1 through 6), and the Minimum Wage Law must be complied with in the execution of all state contracts (all citations are *Code of Alabama 1975*, as amended).

## **H. VERIFICATION OF EMPLOYMENT ELIGIBILITY BY EMPLOYER SEEKING ECONOMIC INCENTIVES (E-VERIFY)**

Pursuant to Code of Alabama, Section 31-13-9(a), "As a condition for the award of any contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees, the business entity or employer shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama."

Pursuant to Code of Alabama, Section 31-13-9(b), "As a condition for the award of any contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees within the State of Alabama, the business entity or employer shall provide documentation establishing that the business entity or employer is enrolled in the E-Verify program. During the performance of the contract, the business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations."

**All contracts or agreements to which the state, a political subdivision, or state-funded entity are a party shall include the following clause:**

*"By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom."*

### Criteria for contracts that require the E-verify MOU:

Code of Alabama, Section 31-13-9(l) states that "For purposes of this section, "contract" shall mean a contract awarded by the state, any political subdivision thereof, or any state-funded entity that was competitively bid or would, if entered into by the state or an agency thereof, be required to be submitted to the Contract Review Permanent Legislative Oversight Committee."

### Required attachment to contract:

The E-Verify MOU first page, the signature page, the page that includes the TIN number, and any Company profile pages that may be applicable must be attached to the contract or agreement with signatures in ink and/or legally proper electronic signatures. The Company ID number on each page cannot be written. It will be imprinted on the E-Verify MOU when printed after the US Department of Homeland Security has verified the information.

If a company is exempt from, or does not qualify for, enrolling in the E-Verify Program and therefore cannot supply an E-Verify MOU, they should complete a Certificate of Compliance to indicate this exemption. The Certificate of Compliance form should be included if an E-Verify MOU is not applicable.

## **5-3 CLASSIFICATION OF CONTRACTS**

There are specific laws authorizing and governing the following contract types.

### **A. CONTRACTS FOR THE PURCHASE OF PERSONAL PROPERTY**

Contracts for the purchase of personal property for each State department, board, bureau, commission, agency, office, and institution must be executed as a purchase order document issued by the State Purchasing Agent, unless specifically authorized by law to be purchased by another authority (*Code of Alabama 1975, §41-4-110 and 111, as amended*).

## **B. CONTRACTS EXECUTED BY THE DIVISION OF CONSTRUCTION MANAGEMENT**

The Division of Construction Management has full power and authority on behalf of the State to execute contracts, to acquire lands, to plan and design buildings, and to plan and design all improvements of all properties owned or acquired by the State. All similar work must be approved by the Division of Construction Management unless another authority is specifically authorized by law (*Code of Alabama 1975, §41-4-400, as amended*).

## **C. CONTRACTS FOR PUBLIC IMPROVEMENTS**

Contracts for public improvements such as construction, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, bridges, docks, underpasses, and viaducts, will be executed by an awarding authority. Awarding authorities include the State Highway Department, the State Building Commission, Alabama State Docks, the State Board of Education, and all state agencies (*Code of Alabama 1975, §39-2-1 as amended*).

## **D. CONTRACTS FOR PERSONAL AND PROFESSIONAL SERVICES**

Contracts to secure the services of individuals possessing a high degree of professional skill include, but are not limited to, attorneys, physicians, teachers, artists, appraisers, engineers, and other consultants (*Code of Alabama 1975, §41-16-21, as amended*). Detailed procedures for the review and approval of personal and professional services contracts are provided in the following sections.

## 5-4 PERSONAL AND PROFESSIONAL SERVICES CONTRACTS

The sections that follow provide the guidelines to determine and define personal and professional services contracts between the State of Alabama and contractors. Specific contract information is required as well as the review and approval process prior to the execution of the contract. These guidelines define the areas of responsibility and establish a workable contract review, audit, and reporting system to ensure legal compliance and accountability. Attached are two flow charts representing an overview of the contract approval process. The first flow chart is for most contracts. The second flow chart is for those contracts that are for governmental, sole source, architect, engineer, attorney, and physician related contracts.

The department or agency must determine whether each contract is for personal services (employer/employee relationship) or professional services (independent contractor). Each contract will be classified using the criteria in section A below. If the contract is for personal services, the department is liable for the employer's share of employment taxes. In budgeting for the contract, the department should allow for this additional cost.

### A. INDEPENDENT CONTRACTOR VERSUS EMPLOYEE

The Internal Revenue Service and the courts have considered many facts in deciding whether a worker is an independent contractor or an employee. These facts fall into three main categories.

Behavioral Control  
Financial Control  
Relationship of the Parties

The State Comptroller uses a list of 20 factors as guidelines to determine whether an individual is considered an employee. The presence of any of the 20 factors may indicate a possible employer/employee relationship depending on the occupation and the context in which services are performed. Under common-law rules, every individual who performs services subject to the will and control of an employer, as to both what must be done and how it must be done, is an employee. It does not matter that the employer allows the employee discretion and freedom of action, as long as the employer has the legal right to control both the method and the result of the services. If an employer/employee relationship exists, it makes no difference how it is described. It does not matter if the employee is called an employee, partner, agent, or independent contractor. The 20 factors are:

1. Instructions - A worker who must comply with another's instructions about when, where and how to work is ordinarily an employee.
2. Training - If the worker is required to receive training to learn how to do the work, an employment relationship is likely.
3. Integration - The more the worker is integrated into the business operations, the more likely he is an employee.
4. Services Rendered Personally - An employee renders services personally. This shows that the employer is interested in the methods used, as well as the results, and an employment relationship exists.
5. Hiring, Supervising, and Paying Assistants - If the worker is responsible for his assistants, this is indicative of independent contractor status.
6. Continuing Relationship - A continuing or recurring nature of work suggests employment.
7. Set Hours of Work - If hours are established by the business, this tends to indicate

employment.

8. Full Time Required - An independent contractor has more freedom as to when and for whom he will work than a worker who is required to devote substantially full time to the business.
9. Doing Work on Business Premises - If required, it suggests control by the employer.
10. Order or Sequence Set - If the business (State) sets the order or sequence of work, this tends to indicate employment.
11. Reporting - The more the worker must report, the greater the control, indicating employment.
12. Payment by Time, not Job - Independent contractors are more often paid by the job. Employees are usually paid by the hour, week or month.
13. Payment of Traveling Expenses - An employer generally retains the right to regulate the employee's business activities and expenses.
14. Furnishing of Tools - Independent contractors more often furnish their own tools and materials.
15. Significant Investment - Independent contractors more often invest in facilities that are used in performing services.
16. Realization of Profit or Loss - A worker who can realize a profit or loss from his services is generally an independent contractor.
17. Working for More Than One Firm at a Time - An independent contractor will often perform services for more than one business at a time.
18. Making Service Available to the Public - An independent contractor makes services available to the general public.
19. Right to Discharge - An independent contractor cannot be fired so long as he produces a result that meets contract specifications.
20. Right to Terminate - If the worker can terminate services without liability, this indicates an employment relationship.

If the determination is made that an employer/employee relationship exists, the contract must be approved and processed as personal services through the Personnel Department (see section 5-5 below). Payments must be made on the Government Human Resources System (GHRIS) and will be subject to withholding taxes. The contractor will not be eligible for coverage under health insurance, retirement, or longevity but the department will be liable for employer's share of employment taxes. If the determination is made that an employer/employee relationship does not exist, the contract must be approved and processed as professional services, funds will be encumbered (see section 5-6) and payments will be made through STAARS.



## B. REQUIRED CONTRACT INFORMATION

Personal and professional service contracts must include the following information:

1. Name - to include contracting department and contractor (**contractor name must match tax identification number as it appears on the contractor's Form W-9**). A contract cannot be established with multiple vendors. A separate contract must be negotiated for each contractor.
2. Contract Number - for personal services contracts, the department is not required to assign a contract number. The department should designate "CONTRACT EMPLOYEE" in place of a contract number on the contract documents. For professional service contracts, a 9-digit contract number should be issued by the department as follows:

C \_ \_ \_ \_ \_

- a. The first digit will be a "C" indicating a contract.
  - b. The second digit will be a number to designate the applicable fiscal year (8 for budget fiscal year 2018, 9 for budget fiscal year 2019, etc.)
  - c. The third through the fifth digits will be your department's agency number.
  - d. The sixth through the ninth digits will be a sequential 4-digit number assigned by the department (not required to use all 4 digits)
3. Scope of contract - what is to be done, the purpose, goal, job, etc.
  4. Term of Contract - The beginning and ending dates must be specified in the contract. The effective date of the contract must be a date that is after the date the contract is approved by the Governor. No retroactive approval will be granted.
  5. Total Contract Amount - The method of payment (hourly, bi-weekly, monthly, by the job, etc.) as well as the maximum amount to be paid must be specified in the contract. If the contract covers expenses, there should be a statement about the kind of expenses to be paid. Unless otherwise specified, travel expenses are to be paid in accordance with state regulations (see section on travel reimbursement). The contract must include a maximum amount to be paid for expenses. The contract must include the total dollar amount over which the contract may not exceed (compensation plus expenses).
  6. Termination Clause/Alternative Dispute Resolution Clause – The contract must contain a statement allowing for the termination of the contract by either party within a specified period of time. In addition, all contracts must include the following Alternative Dispute Resolution language:

*In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama.*

*For any and all other disputes arising under the terms of this contract which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center For Dispute Resolution of the Alabama State Bar.*

7. Merit System Exclusion Clause - The contract must contain a clause stating that the contractor is not to be considered a merit system employee and is not entitled to any

benefits of the State Merit System.

8. Federal Employer Identification Number or Social Security Number - The department must attach a copy of the contractor's Form W-9 to ensure that the contractor name matches the tax identification number. If the contractor is registered through the STAARS Vendor Self Service, there is a substitute W9 that can be used. Otherwise, a blank Form W-9 can be downloaded through the IRS.gov website. Form W-9.
9. Signatures - The following signatures are required prior to submission to the Contract Review Committee:
  - a. Contractor
  - b. Department Head
  - c. Attorney General (if contract is for litigation services)
  - d. Office of Information Technology. Code of Alabama, Section 41-4-221 (If contract is for computer services).
  - e. Purchasing Director. Code of Alabama, Section 41-16-75 (if contract is for sole source contracts)

Note: If the contract is for personal services, the signature of the Personnel Director and the Finance Director is required. This signature is obtained after review by the Legislative Contract Review Oversight Committee but prior to submission to the Governor's Office.

10. Resume - The department must obtain and attach to the contract a resume or description of company credentials to document the expertise that the individual or contractor possesses to perform the contractual services.
11. Disclosure Statement – A Disclosure Statement is required to be filed with all proposals, bids, contracts or grant proposals to the State of Alabama in excess of \$5,000.00. In circumstances where a contract is awarded by competitive bid, the Disclosure Statement is required only from the successful bidder and must be submitted within ten days after award (Code of Alabama 1975, §41-16-80 through 88).
12. ALL professional service contracts, interagency service agreements or emergency contracts must be entered in STAARS. Although contracts less than \$1,500.00 do not need Legislative oversight review, they **must be entered** in STAARS.
13. Immigration clause - All contracts or agreements to which the state, a political subdivision, or state-funded entity is a party shall include the following clause:

*"By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom."*
14. Required attachment to contract:

The E-Verify MOU first page, the signature page, the page that includes the TIN number, and any Company profile pages that may be applicable must be attached to the contract or agreement with signatures in ink and/or legally proper electronic signatures. The Company ID number on each page cannot be written. It will be imprinted on the E-Verify MOU after the US Department of Homeland Security has verified the information.
15. No Boycott Clause (Act 2016-312) – All contracts shall include the following clause:

*"In compliance with Act 2016-312, the contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade."*

### **C. THE LEGISLATIVE CONTRACT REVIEW OVERSIGHT COMMITTEE**

After all required signatures have been obtained, the original and 2 copies must be forwarded to the Legislative Contract Review Committee. All contracts for personal or professional services with private entities or individuals must be reviewed by the Committee (*Code of Alabama 1975, §29-2-41, as amended*) **except:**

1. Contracts for insurance
2. Contracts let by competitive bid
3. Contracts entered into by public corporations and authorities
4. Contracts for a total amount of less than \$1,500, including compensation and reimbursement of expenses.
5. Certain emergency contracts as outlined in Section 5-2F above.

The Committee must review and comment on a contract or a letter of intent to contract within a reasonable time not to exceed 45 days after it has been submitted to the Committee. If the Committee fails to review and comment on any contract or letter of intent to contract within this time frame, the contract will be deemed to have been reviewed. Any contract made by the state or any of its agencies, which has not been submitted for review by the Contract Review Committee will be voided. If a department elects to submit a letter of intent to contract instead of a proposed contract, the department must submit a copy of the actual contract to the Committee once the contract has been executed.

The Contract Review Committee meets the first Thursday of each month. All contracts to be reviewed must be accompanied by the Contract Review Report Form or Legal Services Contract Review Report Form . All contracts to be reviewed must be received no later than 10 days prior to the Thursday meeting date to be placed on the agenda. The Committee requires at least one original contract and two copies. The Governor's Office does not submit contracts to the Committee.

### **D. APPROVAL BY THE GOVERNOR**

All contracts will be forwarded to the Governor's Office after review by the Contract Review Committee and approval by the Personnel Director if for personal services. The Governor's Office will return the contracts to the department after the Governor's approval.

The following sections provide additional instructions for personal services and professional service contracts.

## **5-5 ADMINISTRATION OF PERSONAL SERVICES CONTRACTS**

### **A. SUBMISSION TO STATE PERSONNEL DEPARTMENT**

The Personnel Department's decision to support or oppose a contract will be based on (1) whether or not the job is appropriate for merit system employment, (2) if the rate of pay is commensurate with the qualifications of the individual and appropriate for the work to be done, and (3) if it is within the corresponding merit system pay range (where applicable).

Occasionally an agency must engage the services of individuals outside the merit system. An original and 2 copies of all personal service contracts, \$1,500 and above must be submitted to the Legislative Contract Review Oversight Committee for their review. An original and 1 copy of all personal service contracts, under \$1,500, must be submitted directly to the State Personnel Department for their approval.

Contracts under \$15,000 may be approved by the Personnel Director.

### **B. SIGNATURES/APPROVALS**

Contracts of \$15,000 and over must be presented to the Personnel Board. To be included on the Board agenda, the contract MUST be submitted no later than 15 days prior to the date of the Board meeting. The contract must meet all requirements in order to be placed on the Board agenda. All personal services contracts require the signature of the State Finance Director.

### **C. PAYMENTS TO CONTRACT EMPLOYEES**

Payments for services rendered under personal services contracts will be processed through the payroll/personnel system (GHRIS) as contract employees.

## **5-6 ADMINISTRATION OF PROFESSIONAL SERVICES CONTRACTS**

### **A. SUBMISSION TO THE STATE COMPTROLLER'S OFFICE**

In order to record and monitor all professional service contracts (independent contractors), basic contract data and accounting information will be entered into STAARS by the department. The department should complete FRMS Form 50, Contract Cover Sheet, attach all contract documents with required approvals, and submit to the Comptroller's Office through STAARS for review and processing. Departments that do not have automated accounting systems will forward the completed contract documents to the Comptroller's Office where they will be audited, approved, and entered into STAARS by the Fiscal Management Section of the State Comptroller's Office. Non-automated Departments must include the appropriate accounting information on the contract cover sheet.

The Contract Cover Sheet (FRMS Form 50) requires basic information about the contract including the contract number, contractor name, address, effective and expiration dates, vendor number (federal tax identification number or social security number), and total contract amount (for all new contracts) or revision amount.

The procurement types are defined as follows:

- 6 - Professional Service – Standard
- 7 - Professional Service – Sole Source
- 8 - Professional Service – Legal or Medical
- 9 - Interagency Agreements (All Types) – Quasi Governmental not State Agencies
- 10 - Construction
- 15 - Professional Service – Emergency

The procurement types for IT related professional services contracts, which carry a specific document type, are as follows:

- 6 - Professional Service – Standard
- 9 - Interagency Agreements (All Types) – Quasi Governmental not State Agencies

## **B. RFP PROCESS**

Professional services, except those specifically exempt, shall be procured in accordance with competitive, qualification-based selection policies and procedures, pursuant to Code of Alabama, Section 41-16-72(3). "...Notice of need for professional services shall be widely disseminated to the professional community in a full and open manner...." (Code of Alabama, Section 41-16-72(3)(f)). Information regarding the solicitation should be entered in STAARS using the RFP document. RFP documents will work flow to the Comptroller's Office for approval. Once approved, the information will be loaded in VSS and on the Comptroller's RFP data base. After the award is finalized the award information will be entered in STAARS by the agency using a MAP1, MAPIT1, or MAPBC1 document. When the MAP\* document is finalized, the system will update VSS. However, agencies will need to go to the Comptroller's web site to enter and update the award information directly on this data base (Code of Alabama, Section 41-4-66). Therefore, when this process is complete, the award information will be in two places, on VSS and the Comptroller's data base. Email reminders will be sent until this step has been completed.

## **C. NEW/ORIGINAL CONTRACTS**

New contracts are entered into STAARS for professional services by entering a MAP1 document (procurement types 6, 7, 8, 9, and 12), for Architects and Engineers approved by the Building Commission, by entering a MAPBC document (procurement type 10), and for information technology services, by entering a MAPIT procurement type 11). These documents do not have any chart of account elements on them. The State Comptroller's Office will review the contract documents and information on the MAP1 and MAPIT and approve these documents in STAARS.

## **D. NEW/ORIGINAL INTERAGENCY SERVICE AGREEMENTS (AGREEMENTS BETWEEN TWO STATE AGENCIES)**

To record and monitor all interagency service agreements (those agreements between two state agencies), basic contract data and accounting information will be entered into STAARS by the department. The agency will enter an ISA1 document in STAARS. The Comptroller's Office will set up a Cited Authority record on the CAUTH table to facilitate the beginning and ending dates on these agreements. The format is agency + document number and must be used on the encumbrance document (ISE1) for these agreements. The department should complete FRMS Form 50, Contract Cover Sheet, attach all contract documents with required approvals, and submit to Comptroller's Office through STAARS for review and processing.

## **E. CONTRACT ENCUMBRANCES**

All professional service type encumbrances that reference a MAP\* document are done by entering a DOP\* document in STAARS. These documents are used to encumber funds and to change any chart of account elements for the expenditure of these funds. DOP1 documents require the audit and approval of the Comptroller's Office.

All Interagency Service Agreements that reference an ISA1 document is done by entering an ISE1 document in STAARS. An ISE1 encumbrance requires a Cited Authority reference which is set up by the Comptroller staff with the following format: agency + document ID. The cited authority reference must be entered on the ISE1 document. These documents require the audit and approval of the Comptroller's Office.

## **F. THE ACCOUNTING EFFECTS OF CONTRACT TRANSACTIONS**

A purchase order for current quarter amounts is generated from all DOP\* and ISE1 transactions and funds are encumbered. The encumbrance reserves a portion of the department's appropriation, allotment, and expense budget, but does not reserve the department's cash. When a purchase order is created, there is a debit to the Encumbrances account and a credit to the Reserve for Encumbrances. In each subsequent quarter agencies will need to modify each DOP\* and ISE1 documents to encumber funds.

## **G. CONTRACT MODIFICATIONS/AMENDMENTS**

A contract modification/amendment is used for any change on a contract document in STAARS, most common changes are increases or decreases to the total contract amount and/or changes in the expiration date. Contract modifications/amendments are required to be entered in STAARS. These changes require approval from the Comptroller's Office before the system will process the transaction. Date changes and total contract amount changes require a legally negotiated change (an amendment) to the original contract and the department must obtain all the required signatures and reviews. Contract modification/amendments may also be used during the 13th accounting period to make changes between multi-year contracts. The department must enter an explanation in the document description on the MAP\* document. The Comptroller's Office will approve the transactions upon receipt and audit of all contract modifications/amendments.

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## **H. MULTI-YEAR CONTRACTS**

MAP\* and ISA1 documents with an expiration date that exceeds 9/30 of the current year will be allowed to encumber funds on a new DOP\* for the succeeding fiscal year. This will keep the integrity of the MAP\* and ISA1 for the life of the contract/agreement.

1. Current FY contracts/agreements with expiration dates that exceed 9/30 of the current year will remain in STAARS as active.
2. During the 13th accounting period, agencies will be allowed to decrease or increase a prior year encumbrance. Increases may only be made if there is available allotment for the prior year. Increases may only be done until the 13<sup>th</sup> accounting closes. Decreases may be done throughout the fiscal year up until the encumbrances are closed.
3. **IMPORTANT:** If there is an unexpended balance left on a prior year encumbrance (DOP\* or ISA1) and there are no other obligations for that budget fiscal year, you must unencumber that balance. This is necessary to avoid losing the total spending authority for a particular contract. However, you must use caution when doing this. If you make an error and the 13<sup>th</sup> accounting period is closed, you cannot encumber those funds again.

## **I. PAYMENTS TO CONTRACTORS**

Payments to independent contractors will be processed through the Comptroller's Office via STAARS by referencing the delivery order number on a payment request document.

## **J. REPORTS**

The departments may review the status of contracts on the monthly Encumbrance and Liquidation Report (AFIN-AP-006 Encumbrance and Liquidation Report).

The AFIN-AP-007 Professional Service Contracts Balance Report provides the total contract amount, total ordered amount, total expended amount and total remaining amount available.

## **K. SOFTWARE**

Commercial Off the Shelf (COTS) software is not allowed to be purchased on a professional services contract. Pursuant to Code of Alabama 1975, Section 41-16-72, "Contracts for professional services shall be limited only to that portion of a contract relating to the professional service provided. Goods purchased by the state in conjunction with the contract for professional services shall be purchased pursuant to Section 41-16-20".

Contract Review Permanent Legislative Oversight Committee  
Alabama State House --- Montgomery, Alabama 36130

**CONTRACT REVIEW REPORT**  
(Separate review report required for each contract)

Name of State Agency: \_\_\_\_\_

Name of Contractor: \_\_\_\_\_

Contractor's Physical Street Address (No P.O. Box Accepted) \_\_\_\_\_ City \_\_\_\_\_ ST \_\_\_\_\_

Is Contractor a Sole Source? YES  NO  (IF YES, ATTACH LETTER)

Is Contractor organized as an Alabama Entity in Alabama? YES  NO

Is Contractor a minority and/or woman-owned business? YES  NO

If so, is Contractor certified as such by the State of Alabama? YES  NO

Check all that apply: ALDOT  ADECA  OTHER (Name) \_\_\_\_\_

Is Contractor Registered with Alabama Secretary of State to do Business as a Corporation in Alabama? YES  NO

IF LLC, GIVE NAMES OF MEMBERS: \_\_\_\_\_

Is Act 2001-955 Disclosure Form Included with this Contract? YES  NO

Does Contractor have current member of Legislature or family member of Legislator employed? YES  NO

Was a Lobbyist/Consultant used to secure this Contract OR affiliated with this Contractor? YES  NO

IF YES, GIVE NAME: \_\_\_\_\_

Contract Number: \_\_\_\_\_ (See Fiscal Policies & Procedures Manual, Page 5-8)

Contract/Amendment Amount: \$ \_\_\_\_\_ (PUT AMOUNT YOU ARE ASKING FOR TODAY ONLY)

% State Funds: \_\_\_\_\_ % Federal Funds: \_\_\_\_\_ % Other Funds: \_\_\_\_\_ \*\*

\*\*Please Specify Source of Other Funds (Fees, Grants, etc.) \_\_\_\_\_

Date Contract Effective: \_\_\_\_\_ Date Contract Ends: \_\_\_\_\_

Type Contract: NEW:  RENEWAL:  AMENDMENT:   
If Renewal, was it originally Bid? YES  NO

IF AMENDMENT, Complete A through C:

[A] ORIGINAL contract amount \$ \_\_\_\_\_

[B] Amended total prior to this amendment \$ \_\_\_\_\_

[C] Amended total after this amendment \$ \_\_\_\_\_

Was Contract Secured through Bid Process? YES  NO  Was lowest Bid accepted? YES  NO

Was Contract Secured through RFP Process? YES  NO  Date RFP was awarded: \_\_\_\_\_

Posted to Statewide RFP Database at <http://rfp.alabama.gov/Login.aspx>? YES  NO

If NO, give a brief explanation as to why not: \_\_\_\_\_

Summary of Contract Services to be Provided: \_\_\_\_\_

Why Contract Necessary AND why this service cannot be performed by merit employee: \_\_\_\_\_

I certify that the above information is correct.

\_\_\_\_\_  
Signature of Agency Head

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Printed Name of Agency Head

\_\_\_\_\_  
Printed Name of Contractor

Agency Contact: \_\_\_\_\_ Phone: \_\_\_\_\_



Contract Review Permanent Legislative Oversight Committee  
Alabama State House --- Montgomery, Alabama 36130

**LEGAL SERVICES CONTRACT REVIEW REPORT**

(Separate review report required for each contract)

Name of State Agency: \_\_\_\_\_

Name of Contractor: \_\_\_\_\_

Contractor's Physical Street Address (No P.O. Box Accepted) \_\_\_\_\_ City \_\_\_\_\_ ST \_\_\_\_\_

Is Contractor a minority and/or woman-owned business? YES  NO

If so, is Contractor certified as such by the State of Alabama? YES  NO

Check all that apply: ALDOT  ADECA  OTHER (Name) \_\_\_\_\_

Is Contractor Registered with Alabama Secretary of State to do Business as a Corporation in Alabama? YES  NO

**IF LLC, GIVE NAMES OF MEMBERS:** \_\_\_\_\_

Is Act 2001-955 Disclosure Form Included with this Contract? YES  NO

Was a Lobbyist/Consultant Used to Secure this Contract OR affiliated with this Contractor? YES  NO

**IF YES, GIVE NAME:** \_\_\_\_\_

Contract Number: \_\_\_\_\_ (See Fiscal Policies & Procedures Manual, Page 5-8)

Contract/Amendment Amount: \$ \_\_\_\_\_ (PUT AMOUNT YOU ARE ASKING FOR TODAY ONLY)

% State Funds: \_\_\_\_\_ % Federal Funds: \_\_\_\_\_ % Other Funds: \_\_\_\_\_ \*\*

\*\*Please Specify Source of Other Funds (Fees, Grants, etc.) \_\_\_\_\_

Rate of Compensation: \$ \_\_\_\_\_ (If over \$195/hr. attach Governor or Attorney General approval)

Amount of RETAINER: \$ \_\_\_\_\_ Is this Contract for LITIGATION? YES  NO

Is this a CONTINGENCY Contract? YES  NO

Attorney Assigned Work: \_\_\_\_\_

Is Contractor Appointed by Attorney General? YES  NO  (IF YES, ATTACH APPOINTMENT LETTER)

Date Contract Effective: \_\_\_\_\_ Date Contract Ends: \_\_\_\_\_

Type Contract: NEW:  RENEWAL:  AMENDMENT:

If AMENDMENT, Complete A through C:

[A] ORIGINAL contract amount \$ \_\_\_\_\_

[B] Amended total prior to this amendment \$ \_\_\_\_\_

[C] Amended total after this amendment \$ \_\_\_\_\_

Summary of Contract Services to be Provided: \_\_\_\_\_

Why Contract Necessary AND why this service cannot be performed by merit employee: \_\_\_\_\_

I certify that the above information is correct.

\_\_\_\_\_  
Signature of Agency Head

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Printed Name of Agency Head

\_\_\_\_\_  
Printed Name of Contractor

Agency Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Revised 11/02/17

**GOVERNOR'S ADDITIONAL CONTRACT QUESTIONS  
FOR PERSONAL AND PROFESSIONAL SERVICES CONTRACTS**

**PART I.** Mark the statutory basis for the claimed exemption from the requirement of "competitive bidding, on sealed bids, to the lowest responsible bidder," Ala. Code § 41-16-20, and any applicable requirements relating to procurement of professional services. See Ala. Code §§ 41-16-72 to -79. Then check all boxes that apply beneath the claimed exemption(s).

- § 41-16-20
- § 41-16-21(a)
- § 41-16-21(b)
- § 41-16-21.1
- § 41-16-21.2
- § 41-16-72(1) (attorneys)
  - Litigation (Hourly)
    - DAG appointment letter attached
    - Governor's rate approval letter attached
  - Litigation (Contingency Fee)
    - DAG appointment letter attached
    - Written determination attached as required by § 41-16-72(1)f.2.
    - Fee within limits prescribed by § 41-16-72(1)f.3. or AG's written authorization for exceeding limits is attached
    - AG's standard contract addendum attached per § 41-16-72(1)f.7.
  - Non-litigation - Justification letter attached for not using in-house counsel or AG
- § 41-16-72(1)(d) (experts)
- § 41-16-72(2) (physicians) – Provider selected from AMLC list
- § 41-16-72(3) (architects, engineers, etc.)
  - RFP, RFQ, or other notice of need for professional services was widely disseminated to the professional community in a full and open manner
  - The contract fees are within the approved fee schedule
- § 41-16-72(4) (other professional: \_\_\_\_\_)
  - Proposals were solicited from providers on list obtained from Purchasing Division
  - Fees of selected provider do not exceed lowest qualified proposal by 10% or more
  - If fees exceed lowest qualified proposal by 10%, justification letter is attached
- § 41-16-72(7) (exempted agencies)
- § 41-16-74 (GSA provider)
- § 41-16-75 (sole source provider)
  - No other goods or services can meet the needs of the agency, and no other vendor offers substantially equivalent goods or services that can accomplish the purposes of this contract
  - Detailed justification/explanation letter attached
  - Written approval from Purchasing Director or Finance Director attached
- § 41-16-78 (other exemptions/exceptions)

Questions about this form and any suggestions for revisions may be sent to the Governor's Legal Office  
(334) 242-7120 or [teresa.lee@governor.alabama.gov](mailto:teresa.lee@governor.alabama.gov)

**PART II.** Complete this section ONLY if contract was awarded by RFP or RFQ. Check all that apply.

- Solicitation was posted to online database as required by § 41-4-66.
- The solicitation was distributed to how many providers? \_\_\_\_\_
- The agency received responses/proposals from how many providers? \_\_\_\_\_
- Explanation of how proposals were evaluated:  
\_\_\_\_\_  
\_\_\_\_\_

**PART III.** Complete this section ONLY if contract is for IT (Information Technology) related services.

- Contract is for professional services such as IT consulting or custom software/system design and development, not for off-the-shelf software or off-the-shelf cloud-based product.
  - Written approval of OIT attached per § 41-4-285
- If exemption from OIT approval is claimed, please explain basis:  
\_\_\_\_\_  
\_\_\_\_\_

**PART IV.** Complete this section ONLY if contract is for **personal services** (employer-employee relationship).

- Approved by State Personnel Department or its Board in accordance with Section 5-5 of the State of Alabama Fiscal Policy and Procedures Manual

**PART V. COMPLETE THIS SECTION FOR ALL CONTRACTS.**

- Contract is limited to personal/professional services; any goods provided in conjunction with contract have been purchased by competitive bid in accordance with § 41-16-20.
- Contract does not contain a waiver of sovereign immunity.
- Contract does not require the state to indemnify.
- Contract contains all required clauses:
  - Early termination clause on page: \_\_\_\_\_
  - Alternative Dispute Resolution clause on page: \_\_\_\_\_
  - Merit System Exclusion clause on page: \_\_\_\_\_
  - Beason-Hammon (immigration) clause on page: \_\_\_\_\_
  - No-boycott (i.e. free trade) clause on page: \_\_\_\_\_
- Disclosure statement required by § 41-16-82 is attached (or contract is for \$5,000 or less).

**I certify that all the information provided on this form is true, correct, and complete to the best of my knowledge.**

\_\_\_\_\_  
**Agency/Department Head**

**IMMIGRATION STATUS**

I hereby attest that all workers on this project are either citizens of the United States or are in a proper and legal immigration status that authorizes them to be employed for pay within the United States.

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Witness



# State of Alabama Disclosure Statement

Required by Article 3B of Title 41, Code of Alabama 1975

ENTITY COMPLETING FORM

ADDRESS

CITY, STATE, ZIP

TELEPHONE NUMBER

STATE AGENCY/DEPARTMENT THAT WILL RECEIVE GOODS, SERVICES, OR IS RESPONSIBLE FOR GRANT AWARD

ADDRESS

CITY, STATE, ZIP

TELEPHONE NUMBER

This form is provided with:

Contract

Proposal

Request for Proposal

Invitation to Bid

Grant Proposal

Have you or any of your partners, divisions, or any related business units previously performed work or provided goods to any State Agency/Department in the current or last fiscal year?

Yes

No

If yes, identify below the State Agency/Department that received the goods or services, the type(s) of goods or services previously provided, and the amount received for the provision of such goods or services.

STATE AGENCY/DEPARTMENT	TYPE OF GOODS/SERVICES	AMOUNT RECEIVED

Have you or any of your partners, divisions, or any related business units previously applied and received any grants from any State Agency/Department in the current or last fiscal year?

Yes

No

If yes, identify the State Agency/Department that awarded the grant, the date such grant was awarded, and the amount of the grant.

STATE AGENCY/DEPARTMENT	DATE GRANT AWARDED	AMOUNT OF GRANT

1. List below the name(s) and address(es) of all public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF PUBLIC OFFICIAL/EMPLOYEE	ADDRESS	STATE DEPARTMENT/AGENCY

2. List below the name(s) and address(es) of all family members of public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the public officials/public employees and State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF FAMILY MEMBER	ADDRESS	NAME OF PUBLIC OFFICIAL/ PUBLIC EMPLOYEE	STATE DEPARTMENT/ AGENCY WHERE EMPLOYED

If you identified individuals in items one and/or two above, describe in detail below the direct financial benefit to be gained by the public officials, public employees, and/or their family members as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

Describe in detail below any indirect financial benefits to be gained by any public official, public employee, and/or family members of the public official or public employee as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

List below the name(s) and address(es) of all paid consultants and/or lobbyists utilized to obtain the contract, proposal, request for proposal, invitation to bid, or grant proposal:

NAME OF PAID CONSULTANT/LOBBYIST	ADDRESS

**By signing below, I certify under oath and penalty of perjury that all statements on or attached to this form are true and correct to the best of my knowledge. I further understand that a civil penalty of ten percent (10%) of the amount of the transaction, not to exceed \$10,000.00, is applied for knowingly providing incorrect or misleading information.**

Signature \_\_\_\_\_ Date \_\_\_\_\_

Notary's Signature \_\_\_\_\_ Date \_\_\_\_\_ Date Notary Expires \_\_\_\_\_

Article 3B of Title 41, Code of Alabama 1975 requires the disclosure statement to be completed and filed with all proposals, bids, contracts, or grant proposals to the State of Alabama in excess of \$5,000.

State of \_\_\_\_\_ )

County of \_\_\_\_\_ )

**CERTIFICATE OF COMPLIANCE WITH THE BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (ACT 2011-535, as amended by Act 2012-491)**

DATE: \_\_\_\_\_

**RE Contract/Grant/Incentive (describe by number or subject):** \_\_\_\_\_ by and between \_\_\_\_\_ (Contractor/Grantee) and \_\_\_\_\_ (State Agency or Department or other Public Entity)

The undersigned hereby certifies to the State of Alabama as follows:

1. The undersigned holds the position of \_\_\_\_\_ with the Contractor/Grantee named above, and is authorized to provide representations set out in this Certificate as the official and binding act of that entity, and has knowledge of the provisions of THE BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (ACT 2011-535 of the Alabama Legislature, as amended by Act 2012-491) which is described herein as "the Act".
2. Using the following definitions from Section 3 of the Act, select and initial either (a) or (b), below, to describe the Contractor/Grantee's business structure.

**BUSINESS ENTITY.** Any person or group of persons employing one or more persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit. "Business entity" shall include, but not be limited to the following:

- a. Self-employed individuals, business entities filing articles of incorporation, partnerships, limited partnerships, limited liability companies, foreign corporations, foreign limited partnerships, foreign limited liability companies authorized to transact business in this state, business trusts, and any business entity that registers with the Secretary of State.
- b. Any business entity that possesses a business license, permit, certificate, approval, registration, charter, or similar form of authorization issued by the state, any business entity that is exempt by law from obtaining such a business license, and any business entity that is operating unlawfully without a business license.

**EMPLOYER.** Any person, firm, corporation, partnership, joint stock association, agent, manager, representative, foreman, or other person having control or custody of any employment, place of employment, or of any employee, including any person or entity employing any person for hire within the State of Alabama, including a public employer. This term shall not include the occupant of a household contracting with another person to perform casual domestic labor within the household.

\_\_\_\_\_(a) The Contractor/Grantee is a business entity or employer as those terms are defined in Section 3 of the Act.

\_\_\_\_\_(b) The Contractor/Grantee is not is a business entity or employer as those terms are defined in Section 3 of the Act.

3. As of the date of this Certificate, Contractor/Grantee does not knowingly employ an unauthorized alien within the State of Alabama and hereafter it will not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama;
4. Contractor/Grantee is enrolled in E-Verify unless it is not eligible to enroll because of the rules of that program or other factors beyond its control.

Certified this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Name of Contractor/Grantee/Recipient

By: \_\_\_\_\_

Its \_\_\_\_\_

The above Certification was signed in my presence by the person whose name appears above, on

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

WITNESS: \_\_\_\_\_

\_\_\_\_\_  
Print Name of Witness



ALABAMA  
DEPARTMENT OF FINANCE  
Division of Purchasing

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## Sole Source Criteria

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The declaration of a "sole source" purchase must be exercised judicially and always with good faith. The following test must be applied and all criteria met when a declaration is made.

"Sole source" - A good's or service's "uniqueness" alone cannot qualify the producer or supplier of the good or service as a "sole service" of a good or service under Alabama's competitive bidding laws; instead, to so qualify under subdivision (a)(11), the good or service offered must be unique; that uniqueness must be substantially related to the intended purpose, use and performance of the good or service sought; the entity seeking to be declared a "sole source" must show that other similar goods or services cannot perform the desired objectives of the entity seeking the goods or services. *GE Co. v. City of Mobile*, 585 So. 2d 1311 (Ala. 1991).

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**State of Alabama  
Legislative Fiscal Office**

Alabama State House  
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Montgomery, AL 36130  
p: (334) 242-7950 | f: (334) 242-4708  
[www.lfo.state.al.us](http://www.lfo.state.al.us)

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## MEMORANDUM

**To:** Representative Jack Williams (Vestavia)  
**From:** Elizabeth Robison, Legislative Fiscal Analyst  
**Date:** May 4, 2017  
**Re:** Sole Provider Exception for Contract Review

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This memo is in response to your request that the Legislative Fiscal Office provide information about the sole provider exception for contract review.

The Code of Alabama 1975, Section 41-16-75 states that sole source purchases must be approved by the Department of Finance, through the Division of Purchasing, unless the purchasing agency is authorized by law to conduct its own purchasing activities. This section also says, "Approval for sole source purchases shall be given only if the purchasing state entity establishes that no other goods or service can meet its needs and that no other vendor offers substantially equivalent goods or service that can accomplish the purpose for which the goods or service is required."

According to the Division of Purchasing website,

"The declaration of a 'sole source' purchase must be exercised judicially and always with good faith. The following test must be applied and all criteria met when a declaration is made. 'Sole Source' – A good's or service's 'uniqueness' alone cannot qualify the producer or supplier of the good or service as a 'sole service' of a good or service under Alabama's competitive bidding laws; instead, to so qualify under subdivision (a)(11), the good or service offered must be unique; that uniqueness must be substantially related to the intended purpose, use and performance of the good or service sought; the entity seeking to be declared a 'sole source' must show that other similar goods or services cannot perform the desired objectives of the entity seeking the goods or services. *GE Co. v. City of Mobile*, 585 So. 2d 1311 (Ala. 1991)"

The Purchasing Division of the Alabama Department of Finance requires the purchasing agency to submit a letter stating 1) what is unique about the product or service, 2) how this uniqueness is tied to the agency's business need (i.e. why does the agency have to have the particular product or service in question), and 3) that the vendor is the only source. In addition, the vendor must provide a letter confirming it is the only source for the purchase of the product or service. Both of these letters are attached to the sole source procurement document for review by the Purchasing Division.

The Purchasing Division is then responsible for deciding if the vendor meets the requirements to be declared a sole provider and as a result, exempt from contract review.

If you have questions or would like additional information, please contact our office at 334-242-7950.

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**EXECUTIVE ORDER NUMBER 51**  
**AMENDMENT NO. 1**

**WHEREAS**, Executive Order Number 51 was issued on August 10, 2010, requiring the approval of the Governor for all legal contracts for all state agencies.

**NOW THEREFORE**, I, Bob Riley, Governor of the State of Alabama, by virtue of the authority vested in me by the Constitution and laws of the State of Alabama, do hereby order that Executive Order Number 51, signed August 10, 2010, shall be amended to read as follows:

**BE IT ORDERED**, that no legal contracts for any state agency shall exceed a rate of one hundred and ninety five dollars (\$195) per hour, unless it falls within an exception stated herein and is approved by the Governor.

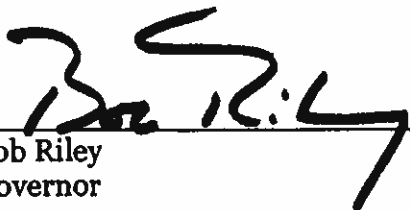
**BE IT FURTHER ORDERED**, that absolutely no legal contracts with any state agency that contains a contingency fee agreement will be valid unless it fits within an exception herein and is approved by the Governor.

**BE IT FURTHER ORDERED**, that legal contracts with state agencies providing for an hourly rate exceeding one hundred and ninety five dollars (\$195), will only be approved under extraordinary circumstances, and a written explanation of those circumstances must be provided to the Governor. The Governor will only approve such a contract if, under his discretion, he determines the hourly rate is reasonable.

**BE IT FURTHER ORDERED**, that legal contracts with any state agency providing for contingency fee agreements will be considered invalid, unless the legal contract concerns extraordinary circumstances under which the only reasonable form of payment is a contingency fee, and a written explanation of the circumstances is provided to the Governor. The Governor will only approve such a contract if, under his discretion, he determines that a contingency fee agreement is the only reasonable means of payment available.

**DONE AND ORDERED** this 12<sup>th</sup> day of August 2010.



  
\_\_\_\_\_  
Bob Riley  
Governor

Attested:

  
\_\_\_\_\_  
Beth Chapman  
Secretary of State