

# Special Report

## Arkansas Legislative Audit

### Review of Procurement Process for Selecting Legal Counsel

Arkansas Department of Corrections – Board of Corrections

For the Period December 1, 2023 through April 30, 2024



## INTRODUCTION

This report is issued in response to a legislative request, approved by the Legislative Joint Auditing Committee (LJAC), for Arkansas Legislative Audit (ALA) to conduct a review of the procurement process used by the Arkansas Department of Corrections (Department) – Board of Corrections (Board) for selecting outside legal counsel (i.e., an attorney employed by a private firm, rather than a Department employee or the Attorney General [AG]). A timeline of events is provided in **Appendix A**.

## OBJECTIVES

The objectives of this review were to:

1. Document the process required of a state agency for procuring outside legal counsel.
2. Establish and document the timeline surrounding the Board's decision to procure, and the process used to select, outside legal counsel.

## SCOPE AND METHODOLOGY

The review was conducted primarily for the period December 1, 2023 through April 30, 2024. The review consisted principally of inquiries, observations, and analysis, as well as review of correspondence, state laws and purchasing regulations, contracts, and other procurement documents. Records examined included Board meeting minutes; emails and other correspondence among the Board and Department management; engagement agreements; State Service Contracts; invoices; and the State of Arkansas Procurement Laws and Rules, issued by the Department of Transformation and Shared Services – Office of State Procurement (DTSS-OSP). Finally, based upon the approval provided by the LJAC for performing this review, legal issues active in litigation, including compliance with Ark. Code Ann. §§ 25-16-701 and 25-19-101 et seq., were excluded from this review. (See *Griffin v. Ark. Bd. of Corrs.*, No.: CV-24-147 and *Sanders v. Ark. Bd. of Corrs.*, No.: CV-24-199.)

## BACKGROUND AND FINANCIAL INFORMATION

According to Ark. Code Ann. § 12-27-105, the purpose of the Board is “to manage correctional resources in the state such that offenders are held accountable for their actions, victims’ needs are addressed in a positive manner, and the safety of society is enhanced.” In addition to other responsibilities, the Board has general supervisory control over the Division of Correction (DOC) and the Division of Community Correction (DCC), including management and control of the adult correctional institutions and community correction options, as indicated in Ark. Const. amend. 33. The Board is comprised of seven members, each of whom serves a term of seven years: (a) five citizen members appointed by the Governor, (b) the Chair of the Post-Prison Transfer Board, and (c) one member of a criminal justice faculty who is employed at any four-year university in Arkansas.

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Ark. Code Ann. § 12-27-104(j)(2) states, “All expenses that may be reimbursed to members of the Board of Corrections and stipends provided in accordance with Ark. Code Ann. § 25-16-901 et seq. shall be payable from the maintenance funds appropriated for the Division of Correction and the Division of Community Correction.” Ark. Code Ann. § 12-27-105(b)(15) allows the Board to reassign staff from the divisions it governs for short- or long-term service to the Board. Operating costs and salary associated with Board staff for fiscal years 2023 and 2024 are shown in **Exhibits I and II**, respectively.

**Exhibit I**

**Arkansas Department of Corrections (Department) – Board of Corrections (Board)  
Operating Costs by Fiscal Year (Note)  
For Fiscal Years 2023 and 2024**

Account Description	Costs by Fiscal Year	
	2023	2024
Salary and benefits	\$ 610,286	\$ 637,295
Communication and transportation of commodities	13,654	8,157
Utilities and rent	32,494	34,308
Travel and subsistence	18,440	18,772
Commodities, materials, and supplies	15,730	12,157
Other expenses and services	1,824	1,194
<b>Totals</b>	<b>\$ 692,428</b>	<b>\$ 711,883</b>

**Note:** Only those cost centers identified by the Department's Chief Fiscal Officer (CFO) as being used for Board expenses are included in the above figures.

**Source:** Arkansas Administrative Statewide Information System (AASIS) and Department CFO (unaudited by Arkansas Legislative Audit)

**Exhibit II**

**Arkansas Department of Corrections (Department) – Board of Corrections (Board)  
Salary by Position (Excluding Benefits) (Note 1)  
For Fiscal Years 2023 and 2024**

Position	Salary by Fiscal Year	
	2023 (Note 2)	2024
Compliance Attorney	\$ 150,794	\$ 162,389
Attorney Specialist	117,069	116,856
Planning and Management Services Administrator	96,683	93,341
Senior Auditor	71,725	72,029
Internal Affairs Investigator (Note 3)	64,540	61,250
Legal Support Specialist	59,252	56,124
<b>Totals</b>	<b>\$ 560,063</b>	<b>\$ 561,989</b>

**Note 1:** Only those cost centers identified by the Department's Chief Fiscal Officer (CFO) as being used for Board expenses are included in the above figures.

**Note 2:** Fiscal year 2023 included 27 pay periods.

**Note 3:** Position was vacant January 1, 2024 through March 16, 2024.

**Source:** Arkansas Administrative Statewide Information System (AASIS) and Department CFO (unaudited by Arkansas Legislative Audit)

## RESULTS OF REVIEW

### **Objective 1: Document the Process Required of a State Agency for Procuring Outside Legal Counsel**

According to Ark. Code Ann. § 19-11-203, Arkansas procurement law applies to "...any agency, institution, authority, department, board, commission, bureau, council, or other agency of the state supported by appropriation of state or federal funds, except an exempt agency..." Exempt agencies include "...the constitutional departments of the state, the elected constitutional offices of the state, the General Assembly, including the Legislative Council and the Legislative Joint Auditing Committee and supporting agencies and bureaus thereof, the Supreme Court, the Court of Appeals, circuit courts, prosecuting attorneys, and the Administrative Office of the Courts."

In the event a state agency needs the services of an attorney, Ark. Code Ann. § 25-16-702 requires the matter to be certified to the Attorney General (AG) for attention. If certain circumstances exist and the AG is unable to assist an agency, the AG may approve the hiring of outside legal counsel.

Once the AG has been consulted and concurs that legal services are needed, the mandated procurement method, under Ark. Code Ann. §§ 19-11-801, -802, is a request for qualifications (RFQ). An RFQ is a solicitation document that requires interested parties to submit qualifications or specialized expertise in response to the scope of work or services required; an RFQ does not include pricing information. Under Arkansas procurement law and rule R1:19-11-802, the RFQ is sent to (a) those vendors registered with DTSS-OSP for the scope of work or services required or (b) vendors recommended to DTSS-OSP as best suited to perform the work specified. Additionally, the public must be notified in accordance with Ark. Code Ann. § 19-11-229(d). An agency may, but is not required to, collaborate with DTSS-OSP in developing the RFQ; however, all information should be outlined and understandable in the RFQ documents, including scope of work, timelines, evaluation process, methods for awarding the contract, and any other relevant terms.

Once the solicitation parameters are finalized, all information and documents are posted to the DTSS-OSP website. At the conclusion of the response period, responses are received either by DTSS-OSP or the agency. The agency should evaluate the vendor responses and select three qualified firms. From these three, the agency should begin contract negotiations with the best-qualified and most capable of performing the desired work. Only after the most qualified respondent is identified does cost become a factor in determining the award. At the conclusion of contract negotiations, both parties should complete a State Services Contract (Form SRV-1) and any relevant certification forms. If required, the agency should work with DTSS-OSP to ensure that the State Services Contract is on the agenda for legislative review.

### **Objective 2: Establish and Document the Timeline around the Board's Decision to Procure, and the Process Used to Select, Outside Legal Counsel**

Based on testimony provided to the Joint Performance Review Committee (JPR) of the General Assembly, the Board chose to hire outside legal representation due to changes in its authority with the passage of Acts 185 and 659 of the Regular Session of 2023. These Acts amended state law whereby the Secretary of the Department of Corrections would serve at the pleasure of the Governor, and the Directors of DOC and DCC would serve at the pleasure of the Secretary. Prior to the effective date of these Acts, the Secretary and the Division Directors served at the pleasure of the Board.

A Board member indicated that the Board began implementing a process for hiring outside counsel after its meeting held on April 25, 2023. After this meeting, the Board member and the Board Chair discussed the Board's potential need to hire outside counsel for guidance on personnel issues with the Secretary, based on the passage of the previously mentioned Acts, and the Board member offered to make some inquiries. Article II, Section Five, of the Board's bylaws states, in part, "The Chair appoints all committees, executes all documents authorized by the Board, and generally performs all duties associated with that office" (The Board bylaws are provided in their entirety in **Appendix B**.) Additionally, Article III, Section Three, states, in part, "The Chair may designate individual members as liaisons.... Liaisons have no line authority [sic] nor do they make policy for the Board. Their function is to facilitate communication between the Board and the Director(s)." However, as a best practice, decisions on appointments and other Board business should be made in an open forum prior to beginning activities commensurate with the position. **ALA staff were unable to verify the Board member's appointment as legal liaison prior to unanimous approval by the Board at its meeting held December 27, 2023.**

During JPR hearings, a Board member testified that, over several months, he considered multiple candidates to determine if one might be an appropriate attorney to advise the Board; however, the evaluation process was not documented. The Board did not receive an appropriation or funding in fiscal years 2023 or 2024; therefore, its only mechanism to pay for services provided was through the Department, a state agency that must comply with state procurement law issued by DTSS-OSP. Rule R1:19-11-802 states, in part, "Request for Qualifications (RFQ): The Request for Qualifications is...the procurement method recommended when contracting for...legal...services." **No documentation could be provided that the RFQ process was used to contract for legal services or to support any evaluations made by the Board in its vendor selection.** Based on ALA review of Board meeting minutes, the first discussion of the issue in an open meeting occurred on December 8, 2023, when the Board adopted two motions: (1) to hire outside legal counsel to represent and advise the Board regarding personnel matters and (2) to sign an engagement agreement with the attorney selected to represent the Board (see **Appendix C**).

**ALA reviewed Board meeting minutes, emails between state employees and Board members, and other documentation to corroborate the assertions provided by the Board member and noted no exceptions.** During this review, ALA noted one Board member did not have a state-provided email account maintained by DTSS-Division of Information Systems (DIS). **Based on ALA review of recordings, outside legal counsel was present and spoke at several Board meetings, which was not indicated in the meeting minutes.**

After a meeting held December 8, 2023, Department procurement staff expressed concerns regarding the Board's agreement with legal counsel, as the State's procurement process was not followed, and these concerns were brought to the attention of the Department's Chief Financial Officer (CFO). Litigation on behalf of the Board commenced on December 14, 2023, with the filing of a declaratory judgment lawsuit. Based on the timeline provided by the Department's CFO at the JPR meeting held on April 22, 2024 (see **Appendix D**), Department staff concerns were discussed with the Board Chair on December 21, 2023.

A special Board meeting was convened on December 22, 2023, at which time the Board adopted a motion to expand the scope of services to be provided by the attorney and his firm through a supplemental engagement agreement, which is provided in **Appendix E**. The purpose of the supplemental engagement agreement was to confirm that legal counsel had "...been retained to take all legal action necessary to protect and preserve the Board's interests..." which included representing the Board in the lawsuit claiming Freedom of Information Act (FOIA) violations. The agreement also defined hourly rates for various employees of the law firm, the employees who might assist in any legal action taken, and reimbursement of out-of-pocket expenditures incurred by the law firm.

Over the following weeks, Department staff, led by the CFO, researched the Board's potential violation of state procurement law and requested input from DTSS-OSP and the Department of Finance and Administration (DFA). During this same period, the Board received the first invoice, totaling \$51,706, for services provided by the law firm in December 2023. This invoice was provided to the Department CFO on January 18, 2024, and the next day, the CFO provided a memo (see **Appendix F**) to the Board Chair regarding the proper method for paying attorney fees incurred by the Board. As explained in the memo, the Board does not receive an appropriation and has no funding source, either through general revenue or self-generation. All expenditures incurred by the Board are paid by the Department, a state agency that must follow procurement law, as addressed in **Objective 1**.

Ark. Code Ann. § 19-11-270 states, "A person who purposely violates state procurement laws, Arkansas Code Title 19, Chapter 11, upon conviction is guilty of a Class D felony." Citing this Code section, the Department CFO stated in a memo, provided in **Appendix F**, that he could not approve payment of the invoice. The Board met on January 31, 2024, at which time the Department CFO was called into an executive session. After reconvening in open session and conducting extensive discussion, the Board adopted a motion to "...reaffirm the contract with [the law firm] and that we pay the bill, upon review, submitted by the firm, and this is ongoing representation so we understand there may be additional legal fees that are requested." Based on the discussions at this meeting, the choice was made to pursue ratification of the contract through Ark. Code Ann. § 19-11-247 (Remedies for unlawful solicitation or award).

As part of the ratification process, the Department CFO submitted a letter to DTSS-OSP on February 5, 2024, requesting legislative review of the Board's contract for legal services. On March 5, 2024, an incomplete State Services Contract was uploaded to the DTSS-OSP portal by Department procurement staff to serve as a placeholder. **This incomplete contract included a procurement method of request for qualifications (RFQ) that was not used by the Board. Because the State Services Contract and the Procurement Method section of the DTSS-OSP portal contain fixed options, there was no ability to enter an alternate method. This inaccurate information regarding procurement method was presented to the Legislature during the approval process.** Later the same day, Department procurement staff received an email from a DTSS-OSP contract specialist identifying the missing or incomplete information in the contract and stating that the Department had a deadline of 3:00 p.m. to provide DTSS-OSP with all information. As a result of communication among DTSS-OSP, the Department, the Board, and the outside legal counsel, the State Services Contract provided in **Appendix G** was completed on March 6, 2024. As shown in **Appendix G**, standardized terms within the State Services Contract were modified or amended, and based on reviewed testimony, these changes were made by the outside legal counsel. Based on DOC emails, outside legal counsel was the first person to review, sign, and return the State Services Contract to DOC personnel. Later the same day, the Board Chair signed the State Services Contract, and the completed, fully signed contract was forwarded to OSP by DOC personnel. It should be noted that the State Services Contract includes a procurement method of "emergency/exempt from law." **Additionally, the terms for the length of the contract and the total cost, including reimbursable expenses, were not addressed in the engagement agreements (see Appendices C and E). Furthermore, the Board never voted to approve the State Services Contract.**

The contract was reviewed by the Arkansas Legislative Council (ALC) Review Sub-Committee on March 12, 2024, and subsequently withdrawn from consideration as the Sub-Committee requested additional information. At the ALC meeting held on March 15, 2024, a motion was adopted to refer the contract to the LJAC and JPR for review. JPR held hearings over multiple days in April 2024 and, at the conclusion of its investigation, issued a letter (provided in **Appendix H**) to the co-chairs of the ALC – Review Sub-Committee, stating that the Board operated with disregard for public transparency and lacked financial and statutory authority to enter into a contract for legal services. The ALC – Review Subcommittee acknowledged the letter from JPR at its meeting on May 28,

2024. During a meeting held on November 4, 2024, the Board provided approval for the Board Chair and Secretary to sign a letter (**Appendix I**) with outside legal counsel that "...reflects our agreement and understanding to rescind the procurement document dated March 6, 2024 and to reaffirm my engagement agreements dated December 8...and December 22, 2023...retroactive to December 8, 2023" (**Appendices C and E**).

## **RECOMMENDATIONS**

ALA staff recommend the following:

- All Board business, including appointments, should be presented in a public meeting, with all members provided an equal opportunity to participate. Furthermore, the Board should consider amending its bylaws to include this requirement regarding liaison appointments.
- Prior to beginning any procurement of goods or services, the Board should consult with Department procurement staff and DTSS-OSP for direction on complying with all applicable rules and regulations.
- The Board, by an affirmative vote of the majority of the voting members, should adopt a motion approving all contracts for services and any other documents that obligate state resources. Additionally, contracts and related documents should include all relevant details, such as contract length and total cost, including reimbursable expenses.
- The Board should use complete and accurate information when submitting contracts for review by DTSS-OSP.
- DTSS-OSP should consider adding the option or ability to modify procurement method in its portal.

## **MANAGEMENT RESPONSE**

Management response from the Board is provided in **Appendix J**; the response with all referenced exhibits is available on the ALA website at [https://www.arklegaudit.gov/docs/Response\\_from\\_Board\\_of\\_Corrections\\_2025.pdf](https://www.arklegaudit.gov/docs/Response_from_Board_of_Corrections_2025.pdf). Management response from DTSS-OSP is provided in its entirety in **Appendix K**.

## **SUMMARY**

The Board signed engagement agreements with outside legal counsel without establishing how the Board would pay for these services, as the Board has no appropriation or funding. Based on the procedures performed by ALA, neither the Department nor DTSS-OSP was consulted prior to the execution of this agreement. As of report date, the State Services Contract, provided in **Appendix G**, had not been ratified. Outside legal counsel has submitted invoices totaling \$230,138 to the Board. As of February 11, 2025, all invoices were unpaid.

Based on ALA review of recordings, outside legal counsel was present and spoke at several Board meetings, which was not indicated in the meeting minutes.

# Appendices

**Appendix A** – Timeline of Events

**Appendix B** – Arkansas Department of Corrections – Board of Corrections Bylaws

**Appendix C** – Arkansas Department of Corrections – Board of Corrections – Engagement Letter for Legal Services – December 8, 2023

**Appendix D** – Arkansas Department of Corrections – Board of Corrections – Timeline of Events Provided at a Meeting of the Joint Performance Review Committee of the General Assembly – April 22, 2024

**Appendix E** – Arkansas Department of Corrections – Board of Corrections – Supplemental Engagement Letter for Legal Services – December 22, 2023

**Appendix F** – Arkansas Department of Corrections – Memorandum Regarding Procurement of Outside Legal Counsel by the Board of Corrections – January 19, 2024

**Appendix G** – Arkansas Department of Corrections – Board of Corrections – State Services Contract – March 6, 2024

**Appendix H** – Joint Performance Review Committee of the General Assembly – Findings and Recommendations Submitted to Arkansas Legislative Council – Review Subcommittee – May 31, 2024

**Appendix I** – Arkansas Department of Corrections – Board of Corrections – Letter from Outside Legal Counsel Rescinding Procurement Document and Reaffirming Engagement Agreement – November 4, 2024

**Appendix J** – Management Response – Arkansas Department of Corrections – Board of Corrections

**Appendix K** – Management Response – Department of Transformation and Shared Services – Office of State Procurement

## Appendix A

### Timeline of Events

Year/Day	Event
<b>2023</b>	
April 25	After the Board of Corrections (Board) meeting, the Board Chair and a Board member had a conversation regarding hiring outside counsel for guidance on personnel issues with the Secretary of the Department of Corrections (Department). <b>(Note 1)</b>
December 8	The Board passed a motion to hire outside legal counsel (Hall Booth Smith, P.C.) to provide legal advice regarding management of the Department Secretary regarding Act 185 of 2023. <b>(Note 2)</b> (See <b>Appendix C</b> for engagement letter for legal services.)
December 14	Outside legal counsel hired by the Board filed case 60CV-23-9598 in Pulaski County Circuit Court: <i>Arkansas Board of Corrections v. Sarah Sanders</i> . <b>(Note 3)</b>
December 22	The Board passed a motion to adopt the supplemental engagement agreement (see <b>Appendix E</b> ) that allows legal counsel to represent the Board in the lawsuit claiming Freedom of Information Act (FOIA) violations.
December 27	A Board member was appointed by the Board as a liaison with outside legal counsel. <b>(Note 4)</b>
<b>2024</b>	
January 17	Hall Booth Smith, P.C., submitted an invoice for services for December 2023.
January 19	The Department's Chief Financial Officer (CFO) submitted a memo ( <b>Appendix F</b> ) to the Board Chair explaining the avenues for paying invoice from Hall Booth Smith, P.C. Because the Board does not receive an appropriation or funding, it must rely on the Divisions it governs for funding.
January 31	The Board decided to move forward with the ratification of the contract for legal services through Arkansas Legislative Council (ALC).
February 5	The Department CFO submitted a letter to the Department of Transformation and Shared Services - Office of State Procurement (DTSS-OSP) requesting legislative review of the Board contract for legal services.
March 5	Department procurement staff uploaded an incomplete State Services Contract to the DTSS - OSP portal as a placeholder. That same day, Department procurement staff were alerted by DTSS - OSP of incomplete or missing information.
March 6	The Department provided a completed and signed State Services Contract ( <b>Appendix G</b> ) to DTSS - OSP.
March 12	Board members and Department staff appeared before the ALC Review Sub-Committee for contract ratification.
April 1, April 11, and April 22	The Joint Performance Review (JPR) Committee heard testimony from Board members and their outside legal counsel, Department staff, and the Director of DTSS - OSP.
April 23	The JPR Committee adopted a motion recommending that the ALC Review Sub-Committee not review the contract based on JPR's findings ( <b>Appendix H</b> ).
May 28	The ALC Review Sub-Committee took no action on the Board contract.
<p><b>Note 1:</b> "Outside legal counsel" is defined as an attorney employed by a private firm, rather than a Department of Corrections employee or the Attorney General.</p> <p><b>Note 2:</b> Act 185 of the Regular Session of 2023 amended state law whereby the Secretary of the Department of Corrections would be appointed by the Board of Corrections and serve at the pleasure of the Governor. Prior to the effective date of the Act, the Secretary served at the pleasure of the Board.</p> <p><b>Note 3:</b> Full case name is <i>Arkansas Board of Correction; and Benny Magness, in his official capacity as Chairman of the Arkansas Board of Corrections v. Sarah Sanders, in her official capacity as Governor of Arkansas; Joe Profiri, in his official capacity as Secretary of the Arkansas Department of Corrections; and the Arkansas Department of Corrections.</i></p> <p><b>Note 4:</b> Article III, Section Three, of the Board's bylaws states, in part, "The Chair may designate individual members as liaisons.... Liaisons have no line authority [sic] nor do they make policy for the Board. Their function is to facilitate communication between the Board and the Director(s)."</p>	

**Source:** Board meeting minutes, emails, invoices, and legislative documents (unaudited by Arkansas Legislative Audit)

## Appendix B

### Arkansas Department of Corrections – Board of Corrections Bylaws

#### ARTICLE I Statutory Creation

The Board of Correction and Community Punishment is established by Act 549 of 1993 and subsequent Amendments.

#### ARTICLE II Officers

##### Section One:

The members of the Board of Correction and Community Punishment are appointed by the governor subject to the limitations imposed in Arkansas Statute 12-27-104.

##### Section Two:

The officers shall include a Chair, a Vice-Chair, and a Secretary. All voting members are eligible to hold office and to vote in the election of officers.

##### Section Three:

Officers shall be elected annually for one year, and are eligible for re-election. The annual election shall be held as early as possible in each fiscal year. All officers shall continue to hold their respective offices until their successors are elected.

##### Section Four:

Officers may be removed with cause by a 5/7 vote of the voting members.

##### Section Five:

The Chair shall preside at all meetings of the Board. The Chair appoints all committees, executes all documents authorized by the Board, and generally performs all duties associated with that office. The Chair does not normally vote on matters coming before the Board. However, the Chair may, as a point of personal privilege, vote yea or nay or abstain on any specific issue. If the vote is a tie, then the Chair shall vote to break the tie.

The Vice-Chair, in the event of the absence or disability of the Chair or of a vacancy in that office, shall assume and perform all duties and functions of the Chair.

##### Section Seven:

The Secretary, as specified in Arkansas Statute 12-27-113, shall see that a true and correct record of the Board's meetings are kept. The Secretary shall also see that the record is signed by all Board members present.

#### ARTICLE III Committees, Advisory Groups, and Liaisons

##### Section One:

The Chair shall appoint all advisory groups (AG) and committees. Committees and advisory groups may consist of one or more members of

the Board and other such persons needed to assist with the business of the Board. The advisory groups and committees may be standing or ad hoc according to the specific business that the Board may require. All advisory group and committee members, not appointed by the Governor per the originating legislation, serve at the pleasure of the Chair.

Section Two:

All advisory and committee meetings shall be conducted within the letter and spirit of the Arkansas Freedom of Information Act as amended.

Section Three:

The Chair may designate individual members as liaisons. Liaisons are individuals who have a particular knowledge and/or interest in some aspect of operations within the Department of Correction and/or Department of Community Punishment. The liaisons shall advise the Director(s) and/or Board members on their particular areas of interest. Liaisons have no line authority nor do they make policy for the Board. Their function is to facilitate communication between the Board and the Director(s).

ARTICLE IV  
Board Meetings

Section One:

Generally, the Board shall meet monthly but regular meetings shall be held at least quarterly with the date, hour, and place set by the Board.

Section Two:

Special meetings may be called by the Chair; upon written notice from three of the six other Board members, the Chair shall call a special meeting. Seven days notice shall be given for special meetings. In an emergency, the seven day notice may be waived by the Chair, subject to the later approval of the Board at its special meeting.

Section Three:

All meetings shall be conducted in keeping with both the letter and spirit of the Arkansas Freedom of Information Act as amended.

Section Four:

A quorum for the transaction of business at any meeting shall consist of four voting members of the Board.

Section Five:

An affirmative vote by the majority of the voting members of the Board shall be necessary to approve any action by the Board.

Section Six:

Attendance at the regular meeting of the Board of Correction and Community Punishment is governed by Annotated Statute 25-17-211, which requires the following actions by members:

(a) Any Board or commission member who shall be absent from two (2) successive regular meetings shall be subject to removal from the board or commission in the event he shall fail to present to the Governor a satisfactory excuse for his absence. In that event, the unexcused absence shall constitute sufficient cause for removal.

(b) Any board or commission member who shall be absent from three (3) successive regular meetings for any reason other than illness of the member, verified by a written sworn statement by his attending physician and entered in the minutes of the board or commission, shall thereby forfeit and vacate his membership on the board or commission. This forfeiture and vacancy shall be forthwith certified to the Governor or other appointing authority by the secretary of the board or commission, who shall fill the vacancy in the manner prescribed by law.

Section Seven:

The proceedings of all meetings shall be governed by Robert's Rules of Order.

ARTICLE V  
Board Duties

The Board of Correction and Community Punishment's duties are defined in Annotated Statutes 12-27-101 and 12-27-103 and Act 549 of 1993. The Board is specifically charged with (1) establishing the "policies, rules and regulations" for the Department of Correction and the Department of Community Punishment (DCP) and, (2) supervising, controlling, and directing the Department of Correction and Department of Community Punishment. Item (1) shall be discharged directly by the Board of Correction and Community Punishment. Item (2) shall be discharged by the Board of Correction and Community Punishment through the Director of the Department of Correction and the Director of the Department of Community Punishment.

ARTICLE VI  
Duties of the Director

Section One:

After initial appointment by the Governor, the Board of Correction and Community Punishment shall appoint a qualified Director for each department who shall serve as the executive and administrative officer of the Department of Correction and the Department of Community Punishment on behalf of the Board of Correction and Community Punishment. The Directors shall be responsible for

implementing all "policies, rules and regulations" established by the Board of Correction and Community Punishment.

Section Two:

The Directors serve at the pleasure of the Board. Performance of the Directors shall be reviewed annually by the Board in Executive Session. Evaluation shall be based on performance of the Director according to duties as specified in the job description set out for said position. Such job description shall be reviewed annually by the Board.

ARTICLE VII  
Compliance Officer

Section One:

The Board of Correction and Community Punishment shall appoint a qualified Compliance Officer. The Compliance Officer shall ascertain that all board policies and applicable state laws, federal laws, and judicial rulings are being enforced by the Department of Correction and the Department of Community Punishment.

Section Two:

The Compliance Officer serves at the pleasure of the Board and shall report findings and recommendations regularly. In addition, the Compliance Officer shall when appropriate report his/her findings and recommendations to the Director for purposes of information and making recommendations to implement the policies of the Board.

Section Three:

The Compliance Officer shall have reasonable access to any and all documents, inmates, and employees that are necessary to carry out the duties of the office.

Section Four:

The Compliance Officer serves at the pleasure of the Board. Performance of the Compliance Officer shall be reviewed annually by the Board in Executive Session. Evaluation shall be based on performance of the Compliance Officer according to duties as specified in the job description set out for said position. Such job description shall be reviewed annually by the Board.

ARTICLE VIII  
Per Diem

Section One:

Members are authorized to receive per diem and out-of-pocket expenses when they are "attending official Board meetings."

Section Two:

Official Board meetings are hereby defined as, "full meetings of the Board, committee meetings as required by Board business, meetings with departmental directors and staff by Board members in furtherance of Board business, and other official activities of

Board members in futherance of the interests of the Board and the Departments."

Section Three:

Per diem requests shall be included in the pre-meeting agenda packet and shall be approved by majority vote of the Board.

ARTICLE IX  
Conflict of Interest

Section One:

No member of the Board shall use such membership for purposes which are motivated by private gain, including gain for individuals, organizations, or institutions with which the individual is associated in any capacity.

Section Two:

Each member is responsible for filing a Financial Disclosure Statement as required by Arkansas Statutes 21-8-301 through 21-8-309.

ARTICLE X  
Miscellaneous

Section One:

The bylaws may be amended by majority vote of the voting members provided written notice of the proposes amendment is mailed to the members at least 14 days prior to the meeting at which such action shall be taken.

Section Two:

Any provision of the bylaws may be suspended temporarily in connection with the business at hand by an affirmative vote of six of the voting members.

ARTICLE XI  
Board of Education

Within the statutory authority for the Board of Correction and Community Punishment to act as Board of Education; that officers elected in Article II shall also serve as officers on Board of Education; and that bylaws adopted for Board of Correction and Community Punishment also apply to Board of Correction and Community Punishment acting as Board of Education.

BYLAWS (pc)

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## Appendix C

### Arkansas Department of Corrections – Board of Corrections Engagement Letter for Legal Services December 8, 2023



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Office: 501.214.3499  
Fax: 501.604.5566  
www.hallboothsmith.com

Arkansas Board of Corrections  
P.O. Box 20550  
White Hall, AR 71612

**RE: Engagement Letter for Legal Services**

This letter serves as an engagement agreement for legal services. Specifically, this letter will confirm that I have been retained as Special Counsel to the Arkansas Board of Corrections pursuant to Ark. Code Ann. § 25-16-711 in light of recent legislation impacting the Board's power and the conflicting positions of the Attorney General regarding Amendment 33's application to the Board.

My standard hourly rate for government clients is currently \$285.00. Our fees and costs will be billed monthly and are payable pursuant to the Board's extant policies. Our invoices will be submitted monthly, and they will itemize the time expended on this matter and provide a description of services rendered. Without prior approval, I will not associate any other attorneys to assist me in this matter. If another attorney's assistance is necessary, I will obtain prior approval of their hourly rate before they conduct any work. Each invoice will also request reimbursement of any actual out-of-pocket disbursements expended by this Firm in connection with our representation. We will not incur third-party expenses without advance approval. Please note that my rate may increase next year as part of my Firm's standard processes. If my rate increases on this matter, I will alert you of same.

As a client, you have the right at any time to terminate our services and representation upon written notice to the Firm. In the event of termination of representation, your file will be made available to you and will be retained and destroyed in accordance with our ethical obligations. Likewise, we reserve the right to withdraw from our representation if any fact or circumstance arises that would make our continuing representation unlawful or unethical. The above agreements will also apply to services rendered for such future matters that we mutually agree will be handled by the Firm.

#### **Additional Terms**

**Restriction of Boycott of Israel.** In accordance with Arkansas Code § 25-1-503, this Firm hereby certifies and agrees that it is not currently engaged in, and agrees for the duration of the Agreement not to engage in, a boycott of Israel.

LITTLE ROCK, AR

ALABAMA | ARKANSAS | COLORADO | FLORIDA | GEORGIA | MONTANA | NEW JERSEY | NEW YORK  
NORTH CAROLINA | OKLAHOMA | SOUTH CAROLINA | TENNESSEE

Page 2

**Governing Law.** This Agreement shall be governed by the laws of the State of Arkansas, without regard to Arkansas's conflict of law principles.

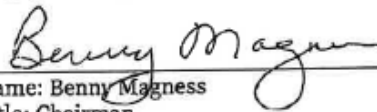
Thank you again for considering me for this engagement.

Sincerely,


  
Abtin Mehdiizadegan

**Acceptance of Engagement Agreement**

By signing below, I represent that the Board of Corrections accepts the terms of this engagement agreement for legal services.

By:   
Name: Benny Magness  
Title: Chairman

12/8/2023  
Date

By:   
Name: William "Dubs" Byers  
Title: Secretary

12/8/23  
Date

## Appendix D

### Arkansas Department of Corrections – Board of Corrections Timeline of Events Provided at a Meeting of the Joint Performance Review Committee of the General Assembly April 22, 2024

#### Timeline (Chad Brown DOC – CFO)

For clarity I have defined the names of those involved

- Benny Magness – Chairman of the Board of Corrections
- Lee Watson – member of Board of Corrections
- Shari Gray – Administrative Assistant to the Board of Corrections
- Mark Colbert – staff attorney for the Board of Corrections
- Abtin Mehdizadegan – private attorney for the Board of Corrections
- Ed Armstrong – Director of the Office of State Procurement (OSP)
- Heather Bailey – Chief Procurement Administrator for Department of Corrections
- Flora Johnson – Procurement Administrator for Department of Corrections

#### December

- 12/8/2023 (10:00am) – Board Meeting – voted to hire attorney.
- 12/8/2023 – Heather Bailey informed me that procurement law was not followed after the Board meeting.
- 12/14/2024 (2:00pm) – Board Meeting – Suspension of Joe Profiri
- 12/21/2023 (5:54pm) – 11 minute phone call with Benny Magness to discuss 2 issues
  - 1) Reimbursements for expiring Board member Whitney Gass
  - 2) Issues with payment of private counsel
- 12/22/2024 (5:00pm) – Board Meeting – Board agenda states retroactive engagement with Abtin Mehdizadegan.
- 12/27/2024 (5:00pm) – Board Meeting – Board agenda states Hearing Preparation.
- 12/28/2023 (4:04pm) – 12 minute phone call with Ed Armstrong to discuss potential violation of procurement law regarding the Board's hiring of an attorney.

#### January

- 1/2/2024 (12:11pm) – Text first, then had a phone conversation with Mark Colbert to discuss issues with procurement and paying attorney.
- 1/2/2024 (12:26pm) – Accidentally sent a text to Mark Colbert, but was intended for Wade Hodge, stating that Mark Colbert didn't want my questions in an email.
- 1/2/2024 (1:07pm) – Received call from Mark Colbert stating he did not want to be in the middle of this and to leave him out since he is being FOI'ed constantly.
- 1/9/2024 (5:00pm) – Text Andy Babbitt to schedule a time to discuss the procurement issue from an audit perspective. He replied to my text at 5:03pm.

## Appendix D (Continued)

- 1/10/2024 (9:30am) – Phone call with Andy Babbitt to discuss the procurement issue from an audit perspective.
- 1/10/2024 (4:30pm) – **Board Meeting** – Termination of Joe Profiri by teleconference
- 1/11/2023 – Wade Hodge, Heather Bailey, and I (Chad Brown) researching and discussing in prep to write a memo. (*Chad Brown and Heather Bailey texted as proof for this date*).
- 1/18/2024 (12:32pm) – Received the December (\$51,706) invoice, by email, from Shari Gray.
- 1/19/2024 (2:01pm) – Submitted procurement memo to Shari Gray and Benny Magness. Mark Colbert was copied on the email, along with Lindsay Wallace and Wade Hodge.
- 1/31/2024 (12:00pm) – **Board Meeting** – Interim Secretary selected. Ratification Letter was on the agenda, along with received invoice. I was called into Executive Session to explain my rationale for paying attorney. When the Board reconvened after Executive Session, I was instructed to get the invoices paid.

### February

- 2/2/2024 (12:50pm) – Received initial ratification letter draft from Heather Bailey for review.
- 2/2/2024 (4:09pm) – Received a call from Lee Watson. Read him the initial draft over the phone and he asked that revisions be made.
- 2/5/2024 (10:26am) – Text Benny Magness a screenshot of the ratification letter. He replied, "ok" at 11:43am. I replied at 11:47am that I made changes based on a board member's recommendation.
- 2/5/2024 (10:28am) – Phone call with Benny Magness notifying him of ratification being submitted before close of business and to be expecting it on March's REVIEW agenda.
- 2/5/2024 (11:54am) – Sent revised draft to Wade Hodge for review.
- 2/5/2024 (12:43pm) – Wade Hodge made minor edits and sent back to me.
- 2/5/2024 (2:00pm) – Received the January (\$71,552) attorney invoices from Shari Gray with all Board Members copied on email, along with Mark Colbert.
- 2/5/2024 (2:35pm) – Phone call with Ed Armstrong notifying him that I am sending ratification letter to him for REVIEW agenda. No mention of any other documents that would be needed.

## Appendix D (Continued)

- 2/5/2024 (3:01pm) – Email sent to Ed Armstrong with Ratification Letter attached.
- 2/5/2024 (3:04pm) – Emailed Shari Gray and asked that she disseminate Ratification Letter to Board Members.
- 2/7/2024 – Interim Secretary steps down
- 2/15/2024 (9:00am-ish) – Met with Lee Watson to provide update on paying attorney.
- 2/15/2024 (2:00pm) – **Board Meeting** – Lindsay Wallace’s appointment to Secretary of Corrections
- 2/28/2024 (3:30pm) – **Board Meeting** – teleconference to discuss vacant School Superintendent, ACC Director, and Board Compliance Attorney positions. (*Board Compliance Attorney is not yet vacant.*)

### March

- 3/4/2024 (3:09pm) – Text Lee Watson and asked if he had time for a question. (*Question was to ask what the Total Anticipated cost would be for the attorney*)
- 3/4/2024 (4:31pm) – Phone call with Lee Watson to get total anticipated cost from Abtin Mehdizadegan. He recommended I speak with Abtin Mehdizadegan.
- 3/4/2024 (5:49pm) – Phone call with Abtin Mehdizadegan to get potential total anticipated cost to add to OSP contract document. Abtin Mehdizadegan stated on the phone the amount of \$200,000 should be sufficient.
- 3/4/2024 (6:16pm) – Text Lee Watson tell let him know that I spoke to Abtin Mehdizadegan. He replied, “Good”.
- 3/4/2024 (6:37pm) – Received engagement letter that I requested from Shari Gray to put with OSP form.
- 3/5/2024 (7:25am) – Emailed Flora Johnson the engagement letter and told her to list \$200,000 as amount based on a phone call with Abtin Mehdizadegan.
- 3/5/2024 (7:37am) – Flora Johnson emailed me letting me know that OSP will kick back contract if things needed are not filled out.
- 3/5/2024 (7:43am) – Flora Johnson emailed me about procurement method and listed two options (RFP or RFQ).
- 3/5/2024 (7:44am) – I emailed Flora and said I would call her. I explained that we did not use either method because it was procured incorrectly from the start. She said we had to choose one or we could not enter it in the portal and it will not accept N/A. I instructed her to choose RFQ since that is the method that should have been used from the start.

## Appendix D (Continued)

- 3/5/2024 (10:06am) – Flora emailed to advise it was submitted in the portal. The contract entered into the portal without signature was used as a placeholder to meet the deadline. The goal was to get signatures on the same document and swap out.
- 3/5/2024 (1:07pm) – Email from OSP stating all the needed things to complete the contract document.
- 3/5/2024 (1:10pm) – Email notifying me of needed things from OSP and that deadline was 3:00 to get it submitted.
- 3/5/2024 (8:52pm) – Email to Shari Gray asking to send OSP forms (Grant Disclosure and Israel Boycott documents) to Board attorney for completion and signature. Shari Gray replied at 8:54pm that she would.
- 3/5/2024 (8:59pm) – Email to Shari Gray with contract attached for Abtin Mehdizadegan's signature. Benny Magness had not signed yet so Abtin was first signature requested. Also told her we cannot ratify anything without some sort of contract in the system.
- 3/6/2024 (8:58am) – Phone call to Benny Magness to explain time crunch and needing signatures. He asked that I work through Shari Gray.
- 3/6/2024 (11:39am) – Abtin Mehdizadegan returned contract to Shari Gray with his signature and copied Lee Watson and Benny Magness to email.
- 3/6/2024 (11:42am) – Shari Gray forwarded the signed contract, by Abtin Mehdizadegan, to me.
- 3/6/2024 (3:51pm) – Shari Gray forwarded fully signed contract, with both signatures.
- 3/6/2024 (3:52pm) – Forwarded fully signed contract to Heather Bailey, at which time Heather Bailey forwarded to OSP to be placed in OSP portal.
- 3/26/2024 (1:00pm) – Board Meeting – Interviews for Board Compliance Attorney
- 3/28/2024 – Board Meeting – Interviews for ACC Director.

**Source:** Department of Corrections Chief Fiscal Officer (unaudited by Arkansas Legislative Audit)

## Appendix E

### Arkansas Department of Corrections – Board of Corrections Supplemental Engagement Letter for Legal Services December 22, 2023

**H|B|S** HALL BOOTH SMITH, P.C.  
ATTORNEYS AT LAW

Abtin Mehdizadegan  
Phone: 501.503.4445  
abtin@hallboothsmith.com

200 River Market Avenue  
Suite 500  
Little Rock, AR 72201

Office: 501.214.3499  
Fax: 501.604.5566  
www.hallboothsmith.com

Arkansas Board of Corrections  
P.O. Box 20550  
White Hall, AR 71612

**RE: Engagement Letter for Legal Services and Supplement**

This letter serves as a supplement to my engagement agreement for legal services, retroactive to December 8, 2023. Specifically, this letter will confirm that I have been retained as Special Counsel to the Arkansas Board of Corrections pursuant to Ark. Code Ann. § 25-16-711 to challenge certain legislation impacting the Board's power in light of the conflicting positions of the Attorney General regarding Amendment 33's application to the Board.

This letter will also confirm that I have been retained to take all legal action necessary to protect and preserve the Board's interests. Pursuant to that authority, on December 14, 2023, I filed a declaratory judgment lawsuit to challenge the legislation at issue, and on December 15, 2023, the Attorney General filed a lawsuit alleging violations of the Arkansas Freedom of Information Act in which the Attorney General sought to disqualify me from continued representation of the Board in the Amendment 33 lawsuit. In light of the exigent circumstances caused by the Attorney General's actions, and because the FOIA lawsuit, my representation as special counsel, and the pending Amendment 33 litigation are interrelated, I entered an appearance in the FOIA lawsuit pursuant to the December 14, 2023 motion authorizing me to take all necessary legal action. Based on the pleadings, arguments, and developments to-date, I believe the Board of Corrections and the Attorney General have another conflicting opinion regarding the application of a statute. In particular, the Attorney General has a different opinion regarding the application of Ark. Code Ann. § 25-16-711 as well as the Arkansas FOIA. This engagement agreement will serve as supplemental authority to file a counterclaim in the FOIA lawsuit to challenge Ark. Code Ann. § 25-16-702's application to the Board, and to further resolve the question of whether the Attorney General has standing to sue for alleged civil violations of the FOIA.

My standard hourly rate for government clients is currently \$285.00. Associates will bill at a rate of \$240.00 per hour; and paralegals will be billed at a rate of \$200.00 per hour. Our fees and costs will be billed monthly and are payable pursuant to the Board's extant policies. Time spent responding to FOIA requests will be billed at the same rates. Our invoices will be submitted monthly, and they will itemize the time expended on this matter and provide a description of services rendered. This engagement agreement specifically authorizes me to request the assistance of any associate or partner in my law firm at the rates set forth herein, including but not limited to Todd Wooten, Julie Hill,

LITTLE ROCK, AR

ALABAMA | ARKANSAS | COLORADO | FLORIDA | GEORGIA | MONTANA | NEW JERSEY | NEW YORK  
NORTH CAROLINA | OKLAHOMA | SOUTH CAROLINA | TENNESSEE

HALL BOOTH SMITH, P.C.

Page 2

Joseph Kraska, Joseph Stepina, Allison Scott, and Garrett Bannister. Each invoice will also request reimbursement of any actual out-of-pocket disbursements expended by this Firm in connection with our representation. Except for filings or other exigencies, we will not incur third-party expenses in excess of \$500.00 without advance approval. Please note that our rates may increase next year as part of the Firm's standard processes. If rates increase on this matter, I will alert you of same.

As a client, you have the right at any time to terminate our services and representation upon written notice to the Firm. In the event of termination of representation, your file will be made available to you and will be retained and destroyed in accordance with our ethical obligations. Likewise, we reserve the right to withdraw from our representation if any fact or circumstance arises that would make our continuing representation unlawful or unethical. The above agreements will also apply to services rendered for such future matters that we mutually agree will be handled by the Firm.

**Additional Terms**

**Restriction of Boycott of Israel.** In accordance with Arkansas Code § 25-1-503, this Firm hereby certifies and agrees that it is not currently engaged in, and agrees for the duration of the Agreement not to engage in, a boycott of Israel.

**Restriction of Boycotts of Certain Products.** In accordance with Ark. Code Ann. § 25-1-1102, Hall Booth Smith, P.C. certifies that neither the law firm nor the attorneys assisting with this matter are currently engaged in, nor will become engaged in, any boycott of energy, fossil fuels, firearms, and ammunition industries.

**Governing Law.** This Agreement shall be governed by the laws of the State of Arkansas, without regard to Arkansas's conflict of law principles.

Thank you again for considering me for this engagement.

Sincerely,

HALL BOOTH SMITH, P.C.

  
Abtin Mehdi-zadegan

HALL BOOTH SMITH, P.C.

Page 3

**ACCEPTANCE OF ENGAGEMENT AGREEMENT**

By signing below, I represent that the Board of Corrections accepts the terms of this engagement agreement for legal services retroactive to December 8, 2023.

By: Benny Magness  
Benny Magness, Chairman of the Board

12-22-23  
Date

By: William Byers  
William "Dubs" Byers, Secretary of the Board

12-22-23  
Date

Source: Board of Corrections (unaudited by Arkansas Legislative Audit)

## Appendix F

### Arkansas Department of Corrections Memorandum Regarding Procurement of Outside Legal Counsel by the Board of Corrections January 19, 2024



SARAH HUCKABEE SANDERS  
GOVERNOR

#### ARKANSAS DEPARTMENT OF CORRECTIONS

1302 Pike Avenue, Suite C  
North Little Rock, AR 72114



OFFICE OF THE  
SECRETARY

TO: Benny Magness, Chairman, Board of Corrections

FROM: Chad Brown, Chief Financial Officer, Department of Corrections

DATE: January 19, 2024

SUBJECT: Procurement Analysis

---

Based on our last conversation regarding procurement and the Board's hiring of outside counsel, I have concluded that the Board is not exempt from the procurement process. I utilized our legal team to assist me in assessing the issue at hand. Below is the result of our research.

Question presented: What is the proper method for payment of attorney fees incurred by the Board of Corrections?

The Board of Corrections has entered into an employment agreement with a private attorney. No invitation for bids or other procurement procedures were utilized. A determination must be made regarding the applicability of Arkansas Procurement Law, Ark. Code Ann. § 19-11-201 *et seq.*, to the payment of the Board's attorney fees.

Ark. Code Ann. § 19-11-203(13) details the entities that are exempt from the procurement law. That provision reads as follows:

"Exempt agencies" means the constitutional **departments** of the state, the **elected** constitutional offices of the state, the General Assembly, including the Legislative Council and the Legislative Joint Auditing Committee and supporting agencies and bureaus thereof, the Arkansas Supreme Court, the Court of Appeals, circuit courts, prosecuting attorneys, and the Administrative Office of the Courts[.]

(Emphasis added.) The Eleventh Division of the Pulaski County Circuit Court recently ruled that the Board is a constitutional board and that its members are constitutional officers. While the procurement law provides that constitutional departments and elected constitutional offices are exempt, the Board is not a constitutional department, nor are its members elected.

Generally, the procurement law applies to state agencies. A "state agency" is defined as

any agency, institution, authority, department, board, commission, bureau, council, or other agency of the state supported by appropriation of state or federal funds, except an exempt agency pursuant to subdivision (13) of this section.

Ark. Code Ann. § 19-11-203(30)(A). So, every agency, specifically including every “board” that is not listed in the exempt agencies, is subject to the law.

Even if the Eleventh Division’s ruling that the Board is a constitutional board means that it is an exempt “constitutional department” under the procurement law, an additional problem arises in that the Board does not have its own appropriation. Any Board expenditures are paid from the appropriation and state general revenue funding for the Division of Correction. The Division is certainly subject to state procurement law. **So, even if the Board did not have to follow the procurement law in hiring outside legal counsel, the Division, as part of the Department of Corrections, must follow the procurement law in paying for the outside counsel.**

In addition to the above, a review of the law governing employment of outside counsel is instructive. Pursuant to Ark. Code Ann. § 25-16-702, the Attorney General (AG) shall be the attorney for all state officials, departments, institutions, and agencies. “Whenever any officer or department, institution, or agency of the state needs the services of an attorney, the matter shall be certified to the Attorney General for attention.” Ark. Code Ann. § 25-16-702(a). That statute also provides:

If, in the opinion of the Attorney General, it shall at any time be necessary to employ special counsel to prosecute any suit brought on behalf of the state or to defend a suit brought against any official, board, commission, or agency of the state, the Attorney General, with the approval of the Governor, may employ special counsel. The compensation for the special counsel shall be fixed by the court where the litigation is pending, with the written approval of the Governor and the Attorney General. The Attorney General shall not enter into any contract for the employment of outside legal counsel without first seeking prior review by the Legislative Council.

Ark. Code Ann. § 25-16-702(b)(2). If certification to the AG had been made, and the AG had determined that private counsel was necessary, the AG would have employed the private counsel. And, as an elected constitutional officer, the AG is exempt from the procurement process.

The Sixth Division of the Pulaski County Circuit Court recently cited § 25-16-702 as being applicable in the matter and has given the AG and the Board until January 17 to resolve the issue. Upon information and belief, as of the date of this writing, the Board has not certified the need for special counsel to the AG.

The Eleventh Division has ruled that § 25-16-711, not § 25-16-702, is applicable, holding that the Board is a constitutional board and its members are constitutional officers. Ark. Code Ann. § 25-16-711 provides the following procedure for disputes between the AG and a constitutional officer:

In the event that the Attorney General and a constitutional officer disagree on the interpretation of any constitutional provision, act, rule, or regulation which affects the duties of that constitutional officer, the constitutional officer is authorized to employ special counsel to resolve the disagreement by litigation. This special counsel shall receive a reasonable compensation for his or her services.

Section 25-16-711 does not specifically address the procurement process, and as relevant here, only constitutional departments of the state and the elected constitutional offices of the state are “exempt agencies” for procurement purposes. Accordingly, the Board does not appear to be exempt from Arkansas procurement law.

Given the foregoing, it appears that the proper method for the Board to procure legal services would have been through one of the following procurement methods:

1. Special Procurement: According to Ark. Code Ann. § 19-11-263, this method may be used when an unusual or unique situation exists that makes application of all the requirements of competitive bidding, competitive sealed bidding, or competitive sealed proposals contrary to the public interest.
2. Emergency Procurement: As defined in Ark. Code Ann. § 19-11-233, emergency procurement means the acquisition of commodities or services, which if not immediately initiated, will endanger human life or health, state property, or the functional capability of a state agency. *See also* Ark. Code Ann. § 19-11-233.
3. Request for Qualifications: This is the procurement method authorized by the procurement law when contracting for legal services. *See* R1: 19-11-203(e); R1:19-11-802.

Ark. Code Ann. § 19-11-270 states as follows:

A person who purposely violates state procurement laws, Arkansas Code Title 19, Chapter 11, upon conviction is guilty of a Class D felony.

As Chief Financial Officer for the Department of Corrections, I cannot approve payment unless or until one of the following corrective options has been taken:

1. The Board may submit a letter to the Office of State Procurement requesting ratification of the contract, which will go before the Review Subcommittee of the Arkansas Legislative Council and then the full Council; or
2. Upon receipt of an invoice, the Board could instruct its private counsel (vendor) to file a claim with the Arkansas Claims Commission seeking payment for his services.

## Appendix G

### Arkansas Department of Corrections – Board of Corrections State Services Contract March 6, 2024

Contract #: 4600054260



### STATE OF ARKANSAS SERVICES CONTRACT

<b>Contract #</b>	4600054260	<b>Federal ID#</b>	58-1852659
<b>Service Type</b>	Professional Consultant Services (PCS) <input checked="" type="checkbox"/>	<b>Procurement Method</b>	Emergency / Exempt from Law

The Board of Corrections of the

1. **Contracting Parties** - State of Arkansas is hereinafter referred to as the Department and contractor is herein after referred to as the Contractor.

<b>Department No. &amp; Name</b>	9903 - Department of Corrections / Board of Corrections
<b>Division</b>	Not Applicable

<b>Contractor Name</b>	Hall Booth Smith, P.C.		
<b>Contractor Address</b>	191 Peachtree St., NE, Suite 2900, Atlanta, GA 30303-1775		
<b>Contractor Number</b>	100249276	<b>Minority/Women Owned Business</b>	<input type="radio"/> Yes <input checked="" type="radio"/> No

2. **Objectives, Scope, and Performance.** Identify, in reasonable detail, the objectives and scope of the contractual agreement and the methods the Department will use to determine whether the objectives of the contract (Contract) have been achieved. If space below is insufficient it may be supplemented with Attachment 4.

Provide legal counsel for the Board of Corrections regarding Amendment 33 and other matters within the ambit of Ark. Code Ann. 25-16-711, as voted on and approved by the Board of Corrections on December 8, December 14, and December 22, 2023. Contractor's engagement agreement dated December 22, 2023 is incorporated herein by reference. By signing this document, neither the Board of Corrections nor Contractor admit that the procurement process advanced by the Department of Corrections is correct or applicable, and they retain and reserve all defenses relating to the applicable process through which to secure representation under Ark. Code Ann. 25-16-711 or other applicable law. In the interest of cooperation, however, and to facilitate the payment of Contractor's outstanding and prospective invoices, Contractor and the Board of Corrections supply the information requested herein in good faith. The term of this agreement is difficult to anticipate due to the nature of pending litigation, as is the total contract amount; however, the information supplied is based on Contractor's best estimate at this time.

3. **Term Dates.** The original term (**Original Term**) of the Contract shall commence on 12/08/2023, and shall continue until 12/07/2024, unless earlier terminated or cancelled in accordance with the Contract or some other writing agreed to and signed by the parties, but in no event may the Original Term exceed a period of four (4) consecutive years from the effective date of the Original Term, unless exempt from Ark. Code Ann. § 19-11-238(c)(1). By written agreement of the parties, the term of the Contract may be extended or renewed for additional time beyond the Original Term. This allows for a total possible term (**Total Possible Term**) beyond the Contract's Original Term, as defined in the following paragraph.

Contract #: 4600054260

The **Total Possible Term** of the Contract is a period comprised of the Original Term plus any extensions or renewals that may be agreed to by the parties in writing, but in no event longer than a period of seven (7) consecutive years from the effective date of the **Original Term**, unless otherwise provided by law. Subject to applicable law, the terms hereof, and an appropriation of necessary funding, the Total Possible Term of this Contract expires no later than 12/07/2024 (mm/dd/yyyy).

**4. Contractor's Performance Obligations.** Contractor, for the duration of the Contract and as consideration for the Department's payment as set forth below, shall provide the following to the Department:

Contractor will continue representing the Board of Corrections in litigation and on appeal, taking all legal action necessary to protect and preserve the Board's interests under Amendment 33, pursuant to Ark. Code Ann. 25-16-711. Specifically, Contractor will defend the Board of Corrections in a lawsuit and appeal filed by the Attorney General against the Board and its chair, and Contractor will prosecute the Board and chair's Amendment 33 claims, and represent them as Appellees in the appeal filed by the Attorney General on behalf of the Governor, Department of Corrections, and Secretary of Corrections. Contractor's December 22, 2023 engagement agreement, which was executed by the Board, is incorporated herein by reference, as well as the January 2024 Order from Judge Patricia James.

The parties agree that this paragraph 4 of the Contract, and any incorporated attachment, fully sets forth the Contractor's performance upon which the Department's obligation to pay the Contractor is conditioned. (if the space provided is not enough to fully specify the Contractor's duty to perform and to identify the standards of satisfactory performance, the Contractor's covenant to perform must be set forth in Attachment 5 hereto, Performance Details, the terms of which, if any, are incorporated herein by reference.)

**5. Department's Payment Obligations.** Department, as consideration for the Contractor's satisfactory performance of the Contractor's Performance Obligations, as set forth above, shall pay the Contractor as follows:

Pursuant to Ark. Code Ann. 25-16-711, Contractor will present itemized invoices monthly for ongoing payment of legal services rendered, with hourly rates of \$200 for paralegals, \$240 for associates, and \$285 for partners. Payment shall be due within 10 days from receipt of an invoice. Contractor shall be reimbursed all expenses incurred in the representation. Contractor's December 22, 2023 engagement agreement and the January 2024 Order of Judge Patricia James are incorporated by reference. The Board of Corrections's litigation liaison shall be solely responsible for determining whether Contractor's performance is satisfactory, and the litigation liaison shall be responsible for authorizing payment under this Agreement.

The parties agree that this paragraph 5 of the Contract, and any incorporated attachment, fully sets forth all applicable rates, fees, charges, costs (transportation, per diem, subsistence, out-of-pocket allowances, and any other costs that may apply), and items for which the Contractor is entitled to payment under the Contract as consideration for Contractor's satisfactory performance of its obligations under the Contract. The Department shall not pay Contractor except as set forth. The parties also agree that the method(s) of determining the amount of payment corresponding to the Contractor's satisfactory performance is/are set forth in this paragraph 5 such that the total payment owed under the Contract can be determined by

Contract #: 4600054260

The **Total Possible Term** of the Contract is a period comprised of the Original Term plus any extensions or renewals that may be agreed to by the parties in writing, but in no event longer than a period of seven (7) consecutive years from the effective date of the **Original Term**, unless otherwise provided by law. Subject to applicable law, the terms hereof, and an appropriation of necessary funding, the Total Possible Term of this Contract expires no later than 12/07/2024 (mm/dd/yyyy).

**4. Contractor's Performance Obligations.** Contractor, for the duration of the Contract and as consideration for the Department's payment as set forth below, shall provide the following to the Department:

Contractor will continue representing the Board of Corrections in litigation and on appeal, taking all legal action necessary to protect and preserve the Board's interests under Amendment 33, pursuant to Ark. Code Ann. 25-16-711. Specifically, Contractor will defend the Board of Corrections in a lawsuit and appeal filed by the Attorney General against the Board and its chair; and Contractor will prosecute the Board and chair's Amendment 33 claims, and represent them as Appellees in the appeal filed by the Attorney General on behalf of the Governor, Department of Corrections, and Secretary of Corrections. Contractor's December 22, 2023 engagement agreement, which was executed by the Board, is incorporated herein by reference, as well as the January 2024 Order from Judge Patricia James.

The parties agree that this paragraph 4 of the Contract, and any incorporated attachment, fully sets forth the Contractor's performance upon which the Department's obligation to pay the Contractor is conditioned. (if the space provided is not enough to fully specify the Contractor's duty to perform and to identify the standards of satisfactory performance, the Contractor's covenant to perform must be set forth in Attachment 5 hereto, Performance Details, the terms of which, if any, are incorporated herein by reference.)

**5. Department's Payment Obligations.** Department, as consideration for the Contractor's satisfactory performance of the Contractor's Performance Obligations, as set forth above, shall pay the Contractor as follows:

Pursuant to Ark. Code Ann. 25-16-711, Contractor will present itemized invoices monthly for ongoing payment of legal services rendered, with hourly rates of \$200 for paralegals, \$240 for associates, and \$285 for partners. Payment shall be due within 10 days from receipt of an invoice. Contractor shall be reimbursed all expenses incurred in the representation. Contractor's December 22, 2023 engagement agreement and the January 2024 Order of Judge Patricia James are incorporated by reference. The Board of Corrections's litigation liaison shall be solely responsible for determining whether Contractor's performance is satisfactory, and the litigation liaison shall be responsible for authorizing payment under this Agreement.

The parties agree that this paragraph 5 of the Contract, and any incorporated attachment, fully sets forth all applicable rates, fees, charges, costs (transportation, per diem, subsistence, out-of-pocket allowances, and any other costs that may apply), and items for which the Contractor is entitled to payment under the Contract as consideration for Contractor's satisfactory performance of its obligations under the Contract. The Department shall not pay Contractor except as set forth. The parties also agree that the method(s) of determining the amount of payment corresponding to the Contractor's satisfactory performance is/are set forth in this paragraph 5 such that the total payment owed under the Contract can be determined by

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days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the State will advise the Contractor in writing of the reasons why the State is considering cancelling the Contract and may provide the Contractor with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. The parties may endeavor to agree to reasonable modifications in the Contract to accommodate the causes of the cancellation for cause and avoid the cancellation, to the extent permitted by law, and at the discretion of each party individually.

**8. Non-negotiable Governing Law and Venue.**

- A. This contract shall be governed by and construed in accordance with the Laws of the State of Arkansas. Exclusive venue arising under this Contract is Pulaski County, Arkansas.
- B. Any legislation that may be enacted subsequent to the date of this Contract, which may cause all or any part of the Contract to be in conflict with the laws of the State of Arkansas, will be given proper consideration if and when this contract is renewed or extended. At such time, the parties agree that the Contract shall be amended to comply with any applicable laws in effect.
- C. Under Arkansas law, the release of public records is governed by the Arkansas Freedom of Information Act found at Section 25-19-101 et. seq. of the Arkansas Code Annotated.

**9. Non-negotiable Sovereign Immunity.** Nothing in this Contract shall be construed as a waiver of the State's sovereign immunity. Any claims Contractor wishes to assert against the State in connection with this Contract if applicable, shall be brought in the Arkansas State Claims Commission, if applicable.

**10. Non-negotiable Intergovernmental/Cooperative Use.** In accordance with Arkansas Code Annotated § 19-11-249, any State public procurement unit may participate in this Contract with a participating addendum signed by the Contractor and approved by the chief procurement officer of the procurement agency issuing the contract.

**11. Non-negotiable Disclosure Required by Executive Order 98-04.** Any contract or amendment to a contract executed by an agency which exceeds \$10,000 shall require the Vendor to disclose information as required under the terms of Executive Order 98-04 and the Regulations pursuant thereto. The Vendor shall also require the subcontractor to disclose the same information. The Contract and Grant Disclosure and Certification Form shall be used for this purpose. Contracts with another government entity such as a state agency, public education institution, federal government entity, or body of a local government are exempt from disclosure requirements.

The failure of any person or entity to disclose as required under any term of Executive Order 98-04, or the violation of any rule, regulation or policy promulgated by the Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase

agreement, or grant and shall subject the party failing to disclose, or in violation, to all legal remedies available to the Agency under the provisions of existing law.

**12. Compliance.** The Contractor shall ensure, in cooperation with the Department, that the Contract adheres to the requirements of Arkansas procurement law, including without limitation the inclusion of any mandatory language and the submission of the contract for any required review. The signature of the Contractor on this Contract serves as an acknowledgement that the Contractor is:

- A. Equally responsible with the Department for adhering to the requirements of Arkansas Procurement

Contract #: 4600054260

Law related to the content and review of the Contract; and

B. Subject to the relevant ethical provisions of § 19-11-701 et seq., if applicable.

- 13. Indemnity.** The Contractor shall be fully liable for the actions of its agents, employees, partners, and assigns and shall fully indemnify, defend, and hold harmless the Department, and their officers, agents, and employees from third party suits, actions, damages, and costs of every name and description, including attorney's fees to the extent arising from or relating to personal injury and damage to real or personal property, caused in whole or in part by the negligence or willful misconduct of Contractor, its agents, employees, partners, or assigns.
- 14. Assignment/Subcontracting.** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Department.
- 15. Amendments.** The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without written approval of both parties. Any amendment that increases compensation or represents a material substantive change may require review by Legislative Council or Joint Budget Committee pursuant to Ark. Code Ann. § 19-11-265, if applicable.
- 16. Records.** Financial and accounting records reasonably relevant to State of Arkansas transactions under this Contract shall be subject to examination by appropriate Arkansas government authorities for a period of five (5) years from the date of expiration, termination or cancellation and final payment under this Contract, provided, however, that such government authorities will provide thirty (30) days written notice to the Contractor of its intent to conduct such examination contemplated by this section; and provided that such examination occurs pursuant to a mutually agreed upon location, during normal business hours and subject to reasonable confidentiality obligations.
- 17. Non-waiver.** The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Contract constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
- 18. Severability.** If any provision of this contract is held unenforceable, all remaining provisions of this Contract shall remain in full force and effect.
- 19. Attachments.**

  1. Certification of Contractor
  2. Calculation of Compensation, as applicable;
  3. Source of Funds
  4. Objectives, Scope, and Performance Standards, as applicable; and
  5. Performance Details, as applicable
  6. Additional Attachments as applicable
    - A. Engagement Agreement Dated December 22, 2023
    - B. Contract & Grant Disclosure
    - C. January 2024 Order of Judge Patricia James
    - D. Outstanding Invoices in line for payment.

Contract #: 4600054260

**20. Notices.**

- A. Method of Notice.** The parties shall give all notices and communications between the parties in writing by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid, (iv) fax, or (v) electronic mail to the party's address specified in this Contract, or to the address that a party has notified to be that party's address for the purposes of this section.
- B. Receipt of Notice.** A notice given under this Contract will be effective on
  - i. the other party's receipt of it, or
  - ii. if mailed, the earlier of the other party's receipt of it and the fifth business day after mailing it.
- C. Issuance of Notice.** All notices and communications between the parties in writing shall be directed to the respective parties in accordance with the following:

**Contact #1 – Department Representative submitting/tracking this contract**

Flora Johnson	Procurement Administrator
Name	Title
(870) 850-8502	Flora.Johnson@arkansas.gov
Telephone#	Email

**Contact #2 - Department Representative with knowledge of this project (for general questions and responses)**

Chad Brown	Chief Financial Officer
Name	Title
(501) 682-9510	Chad.Brown@arkansas.gov
Telephone#	Email

**Contact #3 - Department Representative Director or Critical Contact (for time sensitive questions and responses)**

Chad Brown	Chief Financial Officer
Name	Title
(501) 682-9510	Chad.Brown@arkansas.gov
Telephone#	Email

Contract No: 4600054260

21. Technology Access. If the Commodities are electronic information processing hardware or software, including telecommunications hardware or software ("Information Technology"), then the Contractor represents and warrants it shall comply with federal and state law relating to accessibility by persons with visual impairments and nonvisual access standards established by the Division of Information System, which standards can be found at <https://www.dfa.arkansas.gov/images/uploads/procurementOffice/technologyAccessClause.pdf> and are included herein by reference, as applicable.

22. SIGNATURES

DEPARTMENT SIGNATURE CERTIFIES NO OBLIGATIONS WILL BE INCURRED BY A STATE DEPARTMENT UNLESS SUFFICIENT FUNDS ARE AVAILABLE TO PAY THE OBLIGATIONS WHEN THEY BECOME DUE.

IN WITNESS WHEREOF, the Parties sign and cause this Contract to be executed. Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract shall be the date provided in Section 3 above.

CONTRACTOR AUTHORIZED SIGNATURE

DEPARTMENT AUTHORIZED SIGNATURE

Abtin Mehdizadegan

Benny Magness

Printed Name

Printed Name

Partner, Hall Booth Smith, P.C.

Chairman, Board of Corrections

Title

Title

200 River Market Avenue, Suite 500, Little Rock, AR 72201

1302 Pike Ave., North Little Rock, AR. 72114

Address

Address

  
Signature

  
Signature

3/6/2024

3/6/2024

Date

Date

Contract #: 4600054260

**Attachment #1**

**CERTIFICATION OF CONTRACTOR**

Sections A, B and C apply to all service contracts. Sections D and E apply to Professional and Consulting Services contracts only.

A. I, Abtin Mehdizadegan, a Partner with the law firm of Hall Booth Smith, P.C.  
 (Contractor) (Title)

certify under penalty of perjury that, to the best of my knowledge and belief, no regular full-time or part-time employee of the State of Arkansas will receive any personal, direct or indirect monetary benefits as a result of the execution of this contract that would violate the law." Where the Contractor is a widely-held public corporation, the term 'direct or indirect monetary benefits' "shall not apply to any regular corporate dividends paid to a stockholder of said corporation who is also a State employee and who owns less than ten percent (10%) of the total outstanding stock of the contracting corporation."

B. List any other contracts or subcontracts Contractor has with any other state government entities. (Not applicable to contracts between Arkansas state departments. If no contracts or subcontracts, please put "Not applicable" or "None.")

HBS provides immigration services to a number of state governmental entities, including to UAMS and ADFA. Abtin Mehdizadegan does not have access to that information but can provide contact information for another representative. Abtin Mehdizadegan previously served as an adjunct professor at UA Bowen School of Law; however, he has discontinued that service. Abtin also served as special counsel to the Executive Subcommittee of the ALC/BLR in February 2023.

C. Is Contractor currently engaged in any legal controversies with any state agencies or representing any clients engaged in any controversy with any Arkansas state department? If no controversies, please put "Not applicable" or "None.")

Contractor is not personally engaged in a legal controversy with any state agency; however, Contractor serves as legal counsel for the Board of Corrections and its chair in the legal controversies described above. Contractor also represents the BioGen plaintiffs in a separate regulatory challenge involving the Department of Agriculture et al., and Contractor represents 2600 Holdings in an appeal in which the ABC and MMC are parties, though not currently participating.

D. Contractor shall list below, or on an attachment hereto, names, addresses, and relationship of those persons who will be supplying services to the State at the time of the execution of the contract. If the names are not known at the time of the execution of the contract, the Contractor shall submit the names along with the other information as they become known. Such persons shall, for all purposes, be employees or independent contractors operating under the control of the Contractor (sub-contractors), and nothing herein shall be construed to create an employment relationship between the departments and the persons listed below.

Name	Address	Relationship
Abtin Mehdizadegan	200 River Market Avenue, Suite 500, Little Rock, AR 72201	Partner
Joseph Kraska	200 River Market Avenue, Suite 500, Little Rock, AR 72201	Associate
Joseph Stepina	200 River Market Avenue, Suite 500, Little Rock, AR 72201	Associate
Julie Hill	200 River Market Avenue, Suite 500, Little Rock, AR 72201	Associate
Lynsey Russell	200 River Market Avenue, Suite 500, Little Rock, AR 72201	Paralegal

Contract No: 4600054260

**CERTIFICATION OF CONTRACTOR CONT'D**

**E.** The State has no managerial responsibilities over the Contractor or Contractor's employees. In carrying out this contract, Contractor understands and represents that there is no employment relationship between the contracting parties.

**F.** By checking the box below, the Contractor certifies that Contractor: (1) does not boycott Israel and shall not boycott Israel during the aggregate term of the corresponding Contract.

Contractor does not and shall not boycott Israel

Contract #: 4600054260

**Attachment #2**

**Calculation of Compensation**

**Calculation of Compensation** (for Professional & Consulting Service Contracts Only):

A. In the table below, provide the various levels of expertise, the number of personnel for each level, the compensation rate, and total for each level, as applicable.

Level of Personnel	Number	Compensation Rate	Total for Level
Partner	1	\$285/hour	\$ 110,000.00
Associate	3	\$240/hour	\$ 75,000.00
Paralegal	1	\$200/hour	\$ 15,000.00
<b>TOTAL COMPENSATION EXCLUSIVE OF EXPENSE REIMBURSEMENT(S)</b>			<b>\$ 200,000.00</b>

B. In the table below, provide any allowable reimbursable expenses, estimated rates, and a total for each level.

Reimbursable Expense Items (Specify)	Estimated Rate of Reimbursement	Total
Filing fees and transcript costs	\$185 + \$0.10/page	\$ 5,000.00
Service of process	\$300	\$ 1,500.00
Special collections research	\$0.50/page	\$ 500.00
<b>TOTAL REIMBURSABLE EXPENSES</b>		<b>\$ 7,000.00</b>

Total compensation inclusive of expense reimbursement: \$ 207,000.00

Annual Contract Amount: \$ 207,000.00

**Calculation of Services and Commodities** (for Technical & General Service Contracts Only):

A. In the table below, as applicable, provide the various services to be rendered, the quantity, cost per item, and total cost.

Services	Quantity	Cost Per Item	Total Cost
<b>TOTAL SERVICES</b>			<b>\$ 0.00</b>

B. In the table below, as applicable, provide the various commodities, quantity, cost per item, and total cost.

Commodities	Quantity	Cost Per Item	Total Cost
<b>TOTAL COMMODITIES</b>			<b>\$ 0.00</b>

Total services inclusive of commodities: \$ 0.00

Annual Contract Amount:

Contract #: 4600054260

**Attachment #3**  
**Source of Funds**

Source of Funds the Department intends to draw on. This is provided for informational purposes only. It is required under Arkansas Procurement Law and is not a performance obligation of the Department or an unconditional promise to pay from the sources identified.

Fund Source	Identify Source of Funds *	Fund	Fund Center	Amount of Funding	% of Total Contract Cost
State Funds**	General Revenue	PAY9903	Z39	\$ 207,000.00	100 %
					%
					%
					%
					%
					%
<b>TOTALS</b>				<b>\$ 207,000.00</b>	<b>100.00 %</b>

Identify whether State general revenue funds (GRF), special revenue funds (SRF), federal funds (FED), or other public funds (Other) are the source. Identify each specific source of SRF, such as special taxes or fees, in the "Identify Source of Funds" column. Similarly, if Other public funds, such as tobacco funds, general improvement funds, etc., are being used to pay the Contractor, these should be specified in the "Identify Source of Funds" column.

Source: Meeting of the Joint Performance Review Committee of the General Assembly held on April 4, 2024 (unaudited by Arkansas Legislative Audit)

## Appendix H

### Joint Performance Review Committee of the General Assembly Findings and Recommendations Submitted to Arkansas Legislative Council – Review Subcommittee May 31, 2024

#### ARKANSAS GENERAL ASSEMBLY



Senator Kim Hammer  
Co-Chair

Representative Mark H. Berry  
Co-Chair

#### JOINT PERFORMANCE REVIEW COMMITTEE

May 31, 2024

The Honorable Scott Flippo, Co-Chair  
The Honorable Les D. Eaves, Co-Chair  
ALC Review  
State Capitol Building, Room 315  
Little Rock, Arkansas 72201

Dear Senator Flippo and Representative Eaves:

The Joint Performance Review Committee met during the month of April 2024 to investigate and hear reports regarding the Arkansas Board of Corrections. During the meeting on April 23, 2024, a motion was passed to submit the following findings and recommendations to the ALC – Review Subcommittee as a result of the investigation:

- The Board of Corrections operated with disregard for public transparency, including the apparent violations of the Freedom of Information Act and open meeting laws;
- The Board of Corrections lacked both financial and statutory authority to enter into a contract for legal services with Mr. Abtin Mehdizadegan;
- There were perceived and discussed violations of laws; and
- There was an acknowledged lack of process for Board of Corrections meetings and the procurement process.

As such, this Committee recommends, in the event that a contract between the Board of Corrections and Mr. Abtin Mehdizadegan for legal services rendered under the engagement letter, signed December 22, 2023, is presented for review and ratification before the ALC – Review Subcommittee, that the ALC – Review Subcommittee not review the contract.

Please do not hesitate to contact us if you have any questions concerning this report.

Respectfully submitted,

*Kim Hammer/cl*  
Senator Kim Hammer  
Co-Chair

*Mark Berry/cl*  
Representative Mark H. Berry  
Co-Chair

Appendix I

Arkansas Department of Corrections – Board of Corrections  
Letter from Outside Legal Counsel Rescinding Procurement Document  
and Reaffirming Engagement Agreement  
November 4, 2024



HALL BOOTH SMITH, P.C.  
ATTORNEYS AT LAW

Abtin Mehdizadegan  
Phone: 501.503.4445  
abtin@hallboothsmith.com

200 River Market Avenue  
Suite 500  
Little Rock, AR 72201

Office: 501.214.3499  
Fax: 501.604.5566  
www.hallboothsmith.com

Benny Magness, Chairman  
Rev. Tyrone Broomfield, Vice Chairman  
Dr. William "Dubs" Byers, Secretary  
Lee Watson, Litigation Liaison  
Pastor Alonza Jiles, Member  
Brandon Tollett, Member  
Lona McCastlain, Member  
Shari Gray, Executive Assistant  
Arkansas Board of Corrections  
P.O. Box 20550  
White Hall, AR 71612

**RE: Rescission of Procurement Document and Reaffirmation of  
Engagement Agreement**

Dear Board Members,

This letter reflects our agreement and understanding to rescind the procurement document dated March 6, 2024 and to reaffirm my engagement agreements dated December 8 (Original Engagement Agreement) and December 22, 2023 (Supplemental Engagement Agreement) (the Original and Supplemental Engagement Agreements are collectively referred to as the "Engagement Agreement"), retroactive to December 8, 2023. I believe this action is advisable because the procurement document was executed due to a misunderstanding of its purpose and potential effect.

In particular, due to a position taken by Chad Brown, Chief Financial Officer for the Department of Corrections, a ratification request for payment pursuant to the Engagement Agreement was submitted to the Office of State Procurement (OSP). Subsequently, Mr. Brown and/or OSP directed the Board and undersigned Special Counsel to execute a procurement document for the purpose of facilitating payment for services rendered and for payment of undersigned counsel's continuing representation of the Board throughout the litigations and their appeals. The procurement document was presented to undersigned Special Counsel late in the evening on March 5, 2024, and due to a deadline communicated by Mr. Brown, undersigned Special Counsel returned a revised counteroffer with his signature on March 6, 2024. Pursuant to the Board's prior votes from December 8, December 14, and December 22, 2023, as well as the Board's votes on or about January 31, 2024, Chairman Magness executed the procurement document. Both Chairman Magness and Special Counsel believed that the purpose of the

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procurement document was to simply facilitate the payment of outstanding and ongoing legal invoices pursuant to prior Board authorization.

The procurement document was not necessary or proper in this instance as we had already entered an agreement, and further to clarify any confusion, I request that with this document we formally nullify the procurement document and reaffirm the continuing validity of the Engagement Agreement, retroactive to December 8, 2023.

I respectfully request that the Board vote on this matter at its next public meeting and authorize Chairman Magness and Secretary Byers to execute this document on the Board's behalf.

Sincerely,



Abtin Mehdizadegan

AM

**Arkansas Board of Corrections**



Benny Magness, Chairman

11/4/24  
Date



Dr. William "Dubs" Byers, Secretary

11/4/24  
Date

Source: Board of Corrections (unaudited by Arkansas Legislative Audit)

## Appendix J

### Management Response Arkansas Department of Corrections – Board of Corrections



HALL BOOTH SMITH, P.C.  
ATTORNEYS AT LAW

Abtin Mehdizadegan  
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Little Rock, AR 72201

Office: 501.214.3499  
Fax: 501.604.5566  
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March 25, 2025

Arkansas Legislative Audit  
500 Woodlane Street, Suite 172  
Little Rock, AR 72201

**RE: APPENDIX J - Management Response to February 24, 2025 Draft  
Audit Report Entitled “Review of Procurement Process for  
Selecting Legal Counsel”**

To Whom It May Concern,

Please accept this letter on behalf of Lee Watson, Member and Litigation Liaison, Arkansas Board of Corrections, as the Management Response (Management Response) to the Arkansas Legislative Audit’s (ALA) February 24, 2025 draft audit report (Report).

#### **INTRODUCTION**

As a preliminary matter, we note our appreciation for the opportunity to provide this Management Response. We understand that ALA’s entire purpose is to promote transparency, accountability, and sound governance in state operations, and that its role is to provide neutral and unbiased assessments that enable the public and policymakers to make informed decisions. To help accomplish these ends, this Response serves to highlight the critical factual legal, and constitutional matters that were excluded from the Report, including the factual genesis of the controversy leading to the Board’s retention of special counsel, the Board’s authority under Amendment 33 of the Arkansas Constitution, the ability of constitutional officers to hire special counsel under Ark. Code Ann. § 25-16-711, the Pulaski County Circuit Court’s issuance of a preliminary injunction finding that section 25-16-711 governed and was the correct basis for the Board’s retention of special counsel, and the Attorney General’s direct conflict of interest in this matter.

We also take this opportunity to advise of a procedural matter. By statute, ALA’s draft Report is required to be maintained on a confidential basis until its official release by ALA. As a consequence, ALA did not present the Report to the Board because to do so would have required a public meeting, which would have otherwise prevented ALA and the Board from discussing the confidential draft Report given the statute’s requirements. Accordingly, ALA’s auditors met with Mr. Lee Watson, Board Member and Litigation Liaison, and with Abtin Mehdizadegan, the Board’s special counsel. As a condition precedent to receiving a copy of the Report, ALA required Watson and Mehdizadegan to execute confidentiality statements that promised not to release the Report. **Exhibits J-1 and J-2.** Mr. Watson signed the confidentiality statement on the Board’s behalf, and with

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**APPENDIX J**  
**Management Response to February 24, 2025 Draft Audit Report Entitled**  
**“Review of Procurement Process for Selecting Legal Counsel”**

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ALA’s approval, a copy of the Report was provided to the rest of the Board with instructions to maintain the Report’s confidentiality until its publication.

Notably, because the Report and its accompaniments are all treated as “confidential,” to ensure compliance with ALA’s confidentiality requirements, Mr. Watson and Mr. Mehdizadegan sought clarification from ALA regarding (a) whether the Management Response was subject to the confidentiality statement; and (b) if so, how to obtain the Board’s input in drafting this Response in the absence of a statutory basis to enter executive session, which would be necessary to maintain the Report’s confidentiality as required by ALA. Ms. Emily White, on ALA’s behalf, advised that the Board could not meet to discuss this Management Response, and that it was ALA’s expectation that Mr. Watson or Mr. Mehdizadegan provide the Board’s Management Response, thereby avoiding a conflict with the ALA confidentiality statute and the Freedom of Information Act.<sup>1</sup> **Exhibit J-3.**

While Mr. Watson and Mr. Mehdizadegan have provided this Management Response pursuant to the instructions they received, they believe the full Board should have the opportunity to participate in this process. Accordingly, please understand that the full Board has not reviewed this Management Response as of the date of submission. Notwithstanding, Mr. Watson intends to request a special board meeting after the Report is published to seek any additional input and, ultimately, to request retroactive approval of this Response. Therefore, we reserve the right to amend or supplement this Response after its review.

**FACTUAL NARRATIVE**

This entire dispute arises from unconstitutional legislation that diminished the Board’s Amendment 33 powers to manage the Department of Corrections. Emboldened by that unconstitutional legislation, then-current Secretary of Corrections Joe Profiri demonstrated active disdain for the Board’s appropriate constitutional oversight. At some point in or about April 2023, Chairman Magness and Lee Watson informally spoke after a meeting about their growing concerns regarding Profiri’s poor performance. During that discussion, one of them suggested that—given the direction of Profiri’s conduct and the unconstitutional legislation at issue—litigation may become necessary. On an informal basis, Watson said he would give some thought to which lawyers may be suitable for this

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<sup>1</sup> The Report’s first recommendation is for all Board business to be presented in a public meeting, with all members provided an equal opportunity to participate. The Board requested permission from ALA to present this Response during a public meeting. ALA instructed that this Response should not be discussed by the Board during a public meeting until after its publication by ALA.

HALL BOOTH SMITH, P.C.

**APPENDIX J**

**Management Response to February 24, 2025 Draft Audit Report Entitled  
“Review of Procurement Process for Selecting Legal Counsel”**

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unique type of litigation. But this was just a general discussion—there was no active design or intent to hire special counsel to represent the Board in April 2023.

But Profiri’s poor and inappropriate conduct continued. On November 6, 2023, just before the Board met for its regular meeting, then-current Secretary of Corrections Profiri proposed a plan to increase bedspace in existing prisons in a letter to the Board. However, Profiri did not attend that meeting and had his letter delivered to the Board by a proxy. Due to the lack of information available at the time, the Board exercised its constitutional duty of oversight to consider the propriety of that plan and delay its implementation.

Then, with no notice to the Board, on November 17, 2023, the Governor, Attorney General, and Profiri appeared at a press conference during which they attacked the Board for denying the rushed request to add new beds to the overcrowded and understaffed prison facilities that are the constitutional responsibility of the Board’s oversight. During the press conference, Attorney General Griffin expressed his disagreement regarding the proper application of Amendment 33, arguing that Amendment 33’s preservation of the Board’s power reflected a “terrible” manner in which to operate state government. Specifically, the Attorney General alleged:

. . . The solution that the legislature and the Governor worked on, and I was proud to be of that effort, a lot of other people. This is a revolutionary piece of legislation. . . . It passed the House super majority, passed the Senate super majority, signed into law. And now, we’re relitigating this [Act 659]. I understand what the statute says. I understand the role of the Board. I also understand that the Board could approve this. But the Governor referred to this. The Chairman of the Board of Corrections testified against the Protect Act. That’s so ridiculous. If he didn’t understand the need for it, he shouldn’t be in that job in my view. I’m not speaking for the Governor. . . . Let me read from their website what their purpose is. The purpose of the Board of Correction is to manage correctional resources in the state such that offenders are held accountable for their actions. Failure. Victim’s needs are addressed in a positive manner. Failure. And the safety of society is enhanced. Failure. They failed. They need to expand this.

And let me say as an aside. If you were to ask little Susie, little Jimmy, whatever their names are at school, ‘what’s the -- what -- how does something become law?’ They say, ‘well the legislature passes it maybe even passes it by a super majority. The governor signs it. The teacher would have to say, ‘well that’s normally the case but in

HALL BOOTH SMITH, P.C.

**APPENDIX J**  
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Arkansas if it's Department of Corrections, after the Governor signs it, Benny Magnus who's been over there for decades, he has to sign it.

That is a horrible way to run state government if that is in fact the case, which it appears to be. This is a clarion call for constitutional and statutory reform on this issue. Expand the beds Mr. Chairman[.]

On November 20, 2023, in an effort to avoid a constitutional crisis, Chairman Magness delivered a letter to Governor Sanders and Attorney General Griffin to correct several misstatements made at the press conference. In response, on November 21, 2023, Attorney General Griffin released a statement that reads as follows:

Allowing an unelected board to thwart the will of the Governor and the legislature is a horrible way to run state government and deserves a fresh examination. The Chairman has presided over decades of prison policy that has made us less safe and brought us to the breaking point. The best option for all Arkansans is for the Board to approve more prison beds now.

Sonny Albarado, *Arkansas Corrections Board Chair Responds to Criticism From Governor, Attorney General*, ARKANSAS ADVOCATE (Nov. 21, 2023), available at <https://arkansasadvocate.com/2023/11/21/arkansas-corrections-board-chair-responds-to-criticism-from-governor-attorney-general/> (last accessed March 14, 2025).

On December 8, 2023, the Board met in executive session to discuss many concerns and challenges involving the Secretary of Corrections, including his performance, what to do in response to his performance, and what options were available to address his employment in light of Act 185 of 2023, which unconstitutionally diminished the Board's powers to manage the Secretary in violation of Amendment 33 of the Arkansas Constitution. And given the Attorney General's public remarks on November 17, 2023, the Board acknowledged and discussed the Attorney General's conflicts of interest. *Id.*

Because Act 185 unconstitutionally diminished the Board's powers to manage the Department and its Secretary, it was suggested that the matter be resolved by a declaratory judgment action, not asking for damages, but instead for the sole purpose of having the court clarify the effect of Act 185 on Board's authority (and Act 659 regarding the Board's ability to manage the Department's 3 Directors). Mr. Watson then explained that he had consulted with a law professor and attorney, Abtin Mehdizadegan, in early to mid-November 2023, and after a recap of the conversation between Watson and Mehdizadegan, the Board exited executive session and proceeded to consider two

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motions: a motion to retain outside counsel to assist the Board in navigating the matter of the Secretary of Corrections’ employment; a second motion to execute Mr. Mehdizadegan’s engagement agreement.

On December 14, 2023, the matters discussed during the December 8, 2023 executive session were disclosed during the Board’s public meeting. After that discussion, Lee Watson made a motion for Mr. Mehdizadegan to pursue all legal action necessary to represent the Board’s interests in the constitutional litigation, and to approve the filing of a lawsuit seeking a declaratory judgment to resolve the obvious conflicts between Acts 185 and 659 with the Constitution, and an injunction enjoining appropriate state officials from enforcing sections 25-403(a)(2)(A), 12-27-107(c), and 12-27-126(c) of the Arkansas Code, as enacted and amended by Act 185 of 2023 and Sections 79 and 89 of Act 659 of 2023, until the declaratory judgment action was resolved.

Then, the Board entered into another executive session with the stated purpose of discussing an employment matter. During this second executive session, the Board spent extensive time discussing the Secretary of Corrections, and in particular, his flagrant decision on December 8, 2023 to ignore the Board’s explicit directive and to instead follow the direction of the Governor to open additional bedspace at existing and overcrowded prison facilities. After these discussions, the executive session ended, and the Board voted to suspend the Secretary of Corrections with pay pending further decision of the Board or of the Court.

On December 15, 2023—with no investigation, no factual basis, and no legitimate claim—the Attorney General filed a separate lawsuit as “an appeal from a denial of rights under the Arkansas Freedom of Information Act (FOIA) to redress two, independent FOIA violations: an illegal executive session held by the Board and a slew of improper responses to Plaintiff’s FOIA request to the Board for public records.” Notably, the Attorney General actively represents the Board of Corrections and its members in pending litigation and has an ethical duty to consider and address the conflict of interest this presents.

On December 22, 2023, the Board met and considered several motions relevant to this Audit. First, Lee Watson summarized the contents of the December 8 meeting, including the Board’s executive session, as follows:

Yes, I have a few comments I’d like to make about the December 8th Session. To begin with, the attorney general has falsely accused the board of violating rules about executive session. We haven’t done so and because we’re committed to transparency and explaining our process, I want to be straightforward and address precisely what was discussed.

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On December 8th, the board announced it would enter into an executive session to discuss an employment matter. So that was the specific and sole purpose of the executive session. The board has frequently discussed the Secretary of Corrections' Employment during prior executive sessions and on December 8th, we spent considerable time discussing our many concerns and challenges involving his performance, his outright disdain and insubordination for the board and the topics included his performance, what to do in response to his performance, and what options were available to address his employment.

The board considered whether and to what extent what appropriate employment action could be taken, especially in light of act 185 of 2023 which we believe unconstitutionally diminished the board's powers and in violation of Amendment 33 of the Constitution. In particular, the board discussed the Attorney General's conflicts of interest given his public remarks on November 17, 2023 and other remarks thereafter. Because Act 185 unconstitutionally diminished the board's powers regarding the management, I suggested that that issue should be addressed by litigation to resolve that conflict between Act 185 and the Constitution.

I disclosed that previously, I privately consulted with the law professor and attorney by the name of Abtin Mehdizadegan, and in particular about Amendment 33. I explained that to them that he was gracious with his time. And I described my consultation with him, and we pretty quickly thereafter exited executive session and voted on two motions. The first motion was to retain outside counsel generally to assist the board in navigating the matter of the secretary's employment. And that passed. The second motion was to execute an engagement agreement with Abtin Mehdizadegan at my recommendation. That also passed. Both motions were made and voted on during public meetings. And prior to those votes, we discussed in public the Attorney General's conflicts of interest. I pointed out that that was the reason I was making the motion. No other matters were discussed during executive session on December 8th beyond matters pertaining to secretary and the unique nature of his employment. Any portion of the session related in any way to outside counsel was exceedingly limited. At the same time, it should be obvious to anyone listening that the matter of hiring outside counsel and the Secretary of Corrections' employment are

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inextricably intertwined. Because we wanted to avoid even the semblance of any inappropriate action, after describing my consultation, we exited executive session and proceeded to discuss and vote on the matter in public. We would not be here if the Attorney General did not have a conflict of interest in representing the Board and that, that's pretty much what I have about December 8th.

*Excerpts of Board of Corrections Meeting Transcript of December 22, 2023*, at P. 1–2. After this statement, the Board voted to confirm that Mr. Watson’s comments reflected their discussions on December 8 and 14, 2023. The motions passed by a majority vote.

Then, the rules were suspended to consider multiple items at once, and Mr. Watson moved to retroactively: (a) approve hiring special counsel, and in particular, Abtin Mehdizadegan and his law firm; (b) approve placing Joe Profiri on leave with pay; and (c) approve moving Dina Tyler under the Board of Corrections for reporting purposes. That motion passed by a majority vote. The Board also voted to retain Abtin Mehdizadegan and his law firm, and to execute his supplemental engagement agreement, to challenge section 25-16-702 of the Arkansas Code as well as the Attorney General’s standing to sue the Board under the FOIA. That motion passed by a majority vote.

On January 4, 2024, Judge James conducted a hearing on pending motions, including motions to disqualify counsel filed on both sides as well as a motion for preliminary injunction. During this hearing, the Attorney General’s Office refused to argue the merits of the case and instead devoted the majority of their time arguing that the Board of Corrections was not a constitutional board and its members were not constitutional officers, which would therefore preclude the Board from hiring special counsel without approval from the Attorney General pursuant to section 25-16-702. But the Court rejected those arguments, instead finding that (1) the Board of Corrections was created by Amendment 33, Section 1, making the Board a constitutionally created Board, and making the Board members constitutional officers with the ability to hire special counsel pursuant to section 25-16-711; and (2) the Board of Corrections had met its burden on both requirements in order to grant a preliminary injunction, enjoining the enforcement of section 25-43-403(a)(2)(a), section 12-27-107(c), and section 12-27-126(c). In pertinent part, the Court ruled as follows:

This Court’s interpretation of [Amendment 33, Section 1] is quite clear that the Board is a constitutionally created board, making the Board members constitutional officers. Therefore, the Board of Corrections is authorized to hire special counsel pursuant to Arkansas Code Annotated, Section 25-16-711. From the pleadings, argument, and testimony presented today, it is clear that the A.G.’s

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Office and the Board of Corrections disagree on the interpretation of Amendment 33, Sections 25-16-702, and Section 25-16-711. ***The Court believes that the Board of Corrections had the legal authority to hire special counsel in this matter.***

**Exhibit J-4**, *Tr. Jan. 4, 2024, Ruling of the Court*, p. 199:5-18 (emphasis added).

Then, on January 19, 2024, the Court entered an order formalizing its January 4, 2024 bench ruling, to wit:

15. The Board of Corrections was created by Amendment 33 of the Arkansas Constitution.

16. Section 1 of Amendment 33 specially defines “the term of office of members of the boards or commissions charged with the management or control of all charitable, penal, or correctional institutions[.]” Ark. Const. amend. XXXIII. § 1.

17. The Court’s interpretation of Amendment 33 is quite clear: the Board of Corrections is a constitutionally created board, making the Board’s members constitutional officers for purposes of section 25-16-711 of the Arkansas Code. Thus, contrary to the Defendants’ arguments that section 25-16-702 applies, ***the Court finds that the Board of Corrections had the legal authority to hire special counsel pursuant to section 25-16-711*** of the Arkansas Code because the Board is a constitutional board, its members are constitutional officers, and from the pleadings, argument, and testimony presented, it is clear that the Attorney General and the Board of Corrections disagree about the proper interpretation of Amendment 33, section 25-16-702, and section 25-16-711.

**Exhibit J-5**, *Jan. 19, 2024 Order*, at ¶ 15–17 (emphasis added).

Notwithstanding the executed and supplemental engagement agreements, the Court’s January 4, 2024 bench ruling, and the January 19, 2024 Order, the Chief Financial Officer for Defendant Department of Corrections, Chad Brown, issued a “Procurement Analysis” outlining his opinion that, even if the Board is legally authorized to employ special counsel under section 25-16-711, it still cannot pay its counsel without “follow[ing] the procurement law.” In Mr. Brown’s view, the Board, although the Court ruled the Board is a constitutional board, is not a “constitutional department” within the meaning of Ark. Code Ann. § 19-11-203(13) and therefore exempt from procurement law.

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The analysis also takes the position that the Board cannot pay its special counsel because the Division of Correction, a part of Defendant Department of Corrections, is subject to procurement law.

Although Defendant Department of Corrections recognizes this Court’s January 4 bench ruling and its January 19 order, Mr. Brown’s procurement analysis suggests the Board’s special counsel isn’t entitled to reasonable compensation under section 25-16-711 unless:

1. The Board . . . submit[s] a letter to the Office of State Procurement requesting ratification of the contract . . . [to] go before the Review Subcommittee of the Arkansas Legislative Council and then the full Council; or
2. Upon receipt of an invoice, the Board . . . instruct[s] its private counsel (vendor) to file a claim with the Arkansas Claims Commission seeking payment for his services.

The Board and its special counsel took issue with Mr. Brown’s analysis. But nevertheless, they agreed in good faith to go through this process at the insistence of Defendant Department of Corrections. Accordingly, during the Board’s January 31, 2024 meeting, it voted unanimously to pay its special counsel on an ongoing basis until this matter is resolved:

**Watson:** Mr. Chairman, in effect, we entered into a contract with Mr. Mehdizadegan . . .

**Chairman Magness:** Exactly.

**Watson:** . . . by which we were obligated contractually to pay him for his services.

[. . .]

**Magness:** I think that right now we ought to have another vote to confirm that we want Mr. Mehdizadegan’s bill paid . . . I would like to confirm that we owe the bill. . . . This man needs to be paid. He worked. He did the work. He did it to our satisfaction.

[. . .]

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**Watson:** I make a motion that we reaffirm, that the Board reaffirms its contract with the Hall Booth law firm and that we pay the bill, upon review, submitted by the firm, and this is ongoing representation so we understand there may be additional legal fees that are requested.

[...]

**Brown:** I don't disagree that the bill is owed and needs to be paid. I agree with that. . . .

[...]

**Magness:** . . . If there are no other questions or comments, all those in favor say aye.

**Broomfield, Byers, Watson, Jiles, Jones, and Tollett:**  
Aye.

On February 5, 2024, Defendant Department of Corrections wrote to the Arkansas Legislative Council requesting ratification of the contract between the Board of Corrections and its special counsel. On March 4, 2024, Edward R. Armstrong, Director of the Office of State Procurement, wrote to Senator Flippo and Representative Eaves, informing them that (despite the Court's January 19 Order) the Board's contract was unlawfully awarded and required ratification.

Since February 2024, the Board and its special counsel have attempted to comply with the process purportedly required of them. The Board will not recount all those details in this Response and instead directs the reader to the letter that Dr. William "Dubs" Byers sent to the Arkansas Legislative Council on March 25, 2024 in his capacity as Secretary of the Board. This letter includes a detailed chronology of the procurement process and its accompanying attachments; however, to sum up: the Office of State Procurement (at the behest of Defendants) required the Board and special counsel to execute a procurement document for ratification by the Arkansas Legislative Council (whose members voted to pass the Challenged Legislation). Believing its purpose was to simply facilitate the payment of outstanding and ongoing legal invoices pursuant to prior Board authorization, because Chad Brown required its execution within approximately 24 hours, the special counsel submitted the procurement document with markups, Chairman Magness signed the marked-up document, and the marked-up version was submitted to the legislature for ratification.

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The Joint Performance Review Committee met in April 2024 and—again in spite of the Court’s January rulings—recommended that the ALC – Review Subcommittee refuse to review the contract to approve payment to special counsel.<sup>2</sup> The matter found its way to the Joint Budget Committee, and then to the Arkansas Legislative Audit. The procurement document never received ratification, and the Board withdrew the procurement document submitted for legislative approval because it was executed due to a misunderstanding of its purpose.

Subsequently, during the Board’s November 4, 2024 meeting, the Board voted to rescind the procurement document and reaffirm the original and supplemental engagement agreements with special counsel, retroactive to December 8, 2023. Chairman Magness and Secretary Byers formally nullified the procurement document by rescinding it, while simultaneously reaffirming the continuing validity of the engagement agreement as supplemented.

**LEGAL ANALYSIS**

The Board disputes that Arkansas Procurement Law applies in this instance because, as a constitutional body, the Board was and is lawfully authorized to hire special counsel under section 25-16-711 of the Arkansas Code. If the Board was not explicitly authorized to hire special counsel, then the extremely unique circumstances of this procurement—the exigent circumstances created by the Secretary unlawfully transferring human beings into dangerous prison conditions under the guise of authority provided by the unconstitutional legislation at issue—justified the Board’s actions.

**A. The Board is a Constitutional Board that is Exempt from Arkansas Procurement Law.**

Ark. Code Ann. § 19-11-203(13) exempts constitutional departments from general procurement law requirements:

[e]xempt agencies means the constitutional departments of the state, the elected constitutional offices of the state, the General Assembly, including the Legislative Council and the Legislative Joint Auditing Committee and supporting agencies and bureaus thereof, the

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<sup>2</sup> During the legislative hearings undergirding this matter, the Board’s testifying members were denied the opportunity and basic courtesy to be represented by counsel, and under highly unusual circumstances, members of the Board as well as their special counsel were subpoenaed to attend despite their preexisting agreement to attend and participate in that process in good faith on a voluntary basis.

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Supreme Court, the Court of Appeals, circuit courts, prosecuting attorneys, and the Administrative Office of the Courts.

Ark. Code Ann. § 19-11-203(13).

The term “constitutional departments of the state,” while undefined, necessarily encompasses the Board of Corrections. Article 4, section 1 of the Arkansas Constitution establishes three distinct departments of government: the executive, legislative, and judicial. Ark. Const. art. IV, § 1. The Board of Corrections must logically fit under one of those three umbrellas. The obvious answer is that the Board of Corrections is part of the executive department.

The term “constitutional departments” does not refer solely to those explicitly listed in Article 6, section 1 of the Constitution. If this were the case, then “constitutional departments” would be redundant, as the Governor, the Lieutenant Governor, the Secretary of State, the Treasurer of State, the Auditor of State, the Attorney General, and the Commissioner of Lands are already covered under the “elected constitutional offices” category. This means that “constitutional department” must refer to a broader category of executive agencies, commissions, boards, and departments that derive their authority from the Arkansas Constitution. Reading section 19-11-203(13) to exclude the Board of Corrections and other constitutional entities would render “constitutional departments” superfluous as applied to the executive branch. *See Ozark Gas Pipeline Corp. v. Arkansas Public Service Com’n*, 342 Ark. 591, 599, 29 S.W.3d 730,734 (2000) (interpretation of a statute should not render a word “void, superfluous, or insignificant.”).

The Board is part of the executive department. *See Richie v. State*, 2009 Ark. 602, at 11, 357 S.W.3d 909, 915; Ark. Code Ann. § 25-43-401(a) (explaining that the Department of Corrections is a cabinet-level department of the executive branch). And, according to Ark. Code Ann. § 25-43-401, the Board of Corrections: (1) is affiliated with the department; (2) the department’s governing authority; and (3) does everything “with respect to the management and control of the department as contemplated by [Amendment 33].” Ark. Code Ann. § 25-43-401. The Board of Corrections also has “[g]eneral supervisory power and control over the Division of Correction and the Division of Community Correction and shall perform all functions with respect to the management and control of [correctional facilities] contemplated by Arkansas Constitution, Amendment 33.” Ark. Code Ann. § 12-27-105. Because the Board is the governing authority of the Department of Corrections, it logically fits within the executive branch. Furthermore, the section of the Arkansas Code containing the Board’s purpose, duties, and other mandates is located within Title 12—“Law Enforcement, Emergency Management, and Military Affairs”—all of which are inherently executive functions. Like the Department of Corrections, the Board of Corrections is part of the executive branch, and because it has constitutional authority under Amendment 33 of the Arkansas

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Constitution, it is an exempt “constitutional department” for procurement law purposes. Ark. Code Ann. § 19-11-203(13).

There is no real question that the Board is a constitutional body exempt from Arkansas’s general Procurement Law. The Board gained its constitutional status in 1940, when everyday Arkansans came together to use “[t]he first right reserved to the people”—the initiative—to constitutionalize certain boards and commissions that manage Arkansas’s higher educational, charitable, and correctional institutions, all with the purpose of limiting the Governor and General Assembly’s power over those boards and commissions. ARK. CONST. Art. 5, §1; ARK. CONST. amend. XXXIII, § 1. Indeed, Amendment 33 established terms of office for members of these newly-recognized constitutional boards and commissions; prohibited their abolition or a transfer of their power except in limited circumstances; prohibited the legislature from changing the composition of these Amendment 33 boards; limited the grounds for which board members could be removed; and only approved the Governor’s ability to fill vacancies if the board itself approved of the new member. Notably, with the exception of the Challenged Legislation, the General Assembly has recognized the Board’s independence and authority each time it has passed legislation affecting the Board or Department since Amendment 33 was passed. Ark. Act 910 of 2019, §§ 2, 644, 735. And each time it has passed legislation that addresses the Board’s powers, the General Assembly has admitted and acknowledged that it lacks the power to “abridge, diminish, or curtail, in any respect, the authority vested in the Board of Corrections” by Amendment 33. Ark. Act 50 of 1968, § 2(c); Ark. Act 549 of 1993, § 4(b)(1); Ark. Act 910 of 2019, §§ 2, 644. Likewise, the General Assembly recognizes that any authority it granted to the Secretary of the Department of Corrections is “subject to Arkansas Constitution, Amendment 33[.]” Ark. Act 920 of 2019, § 644.

And if more support for the basic premise that the Board is a constitutional board were needed, in Chapter 1 of Title 25 (State Government), the General Assembly itself recognizes that the Board is a “[c]onstitutional board or commission,” which it defined to include “all boards or commissions charged with the management or control of all charitable, penal or correctional institutions, or institutions of higher learning under Arkansas Constitution, Amendment 33[.]” ARK. CODE ANN. § 25-1-106(a)(2). The General Assembly also recognizes that state boards and commissions are those “created by the General Assembly *except*” for the boards and commissions that are “constitutional board[s] or commission[s.]” ARK. CODE ANN. § 25-1-106(a)(2).

The Board of Corrections is a constitutional board that is exempt from Arkansas Procurement Law that applies specifically to non-constitutional state agencies.

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**B. The Board was Authorized to and Properly Hired Special Counsel to Challenge Unconstitutional Legislation that Violates Amendment 33.**

The Report’s reference to section 25-16-702 is entirely misplaced because the Board hired its special counsel pursuant to a different, later-enacted statute codified as section 25-16-711 of the Arkansas Code; however, some discussion is necessary.

Section 25-16-702 was codified by Act 14 of 1933, a law passed in the midst of the Great Depression. Act 14 is primarily focused on limiting the Attorney General’s power to retain outside counsel for the performance of office work. For instance, Section 2 of Act 14 explains that “[a]ll office work and advice for State officials, departments, institutions, and agencies shall be given by the Attorney General and his assistants and no special counsel shall be employed or additional expense paid for such services.” Act 14 of 1933, at § 2. Notably, the word “board” appears in Act 14 only once. While the Attorney General shall be the attorney for all “State Officials, departments, institutions and agencies,” Act 14 of 1933, at § 1, the Attorney General was only authorized to “employ special counsel to prosecute any suit brought on behalf of the State, **or**, defend a suit brought against any official, **board**, commission, or agency of the State” with the Governor’s approval. Act 14 of 1933, at § 5 (emphasis added). This provision of Act 14 has not changed since 1933, and section 25-16-702 of the Arkansas Code continues to delineate between the Attorney General’s representative authority over ordinary, non-constitutional government bodies, and his separate duty to defend “boards” like the Board of Corrections when they are sued. Ark. Code Ann. § 25-16-702(b)(2). But nothing in that statute requires the Attorney General to serve as litigation counsel to a constitutional Board in prosecuting a constitutional claim.

If the General Assembly intended for Act 14 to apply to the Board in every respect, it would have said as much. But the General Assembly only found it necessary that the Attorney General “defend a suit brought against any . . . board”—not to prosecute constitutional claims by the Board when the Attorney General has a deep and unquestionable conflict of interest. In any event, while it is abundantly obvious that the Attorney General is typically the lawyer for state agencies when they get sued, section 25-16-702 could not have contemplated a circumstance like the present where the Attorney General—as defense counsel in the Amendment 33 litigation—would attempt to weaponize the FOIA to sue his own clients for the purpose of preventing the Board from protecting its constitutional interests.

But section 25-16-702 is irrelevant for this procurement discussion because Act 246 of 1975 repealed section 25-16-702. Indeed, Arkansas was not facing the same financial tumult caused by the Great Depression in 1975 when the General Assembly enacted Act 246, and “for the immediate preservation of the public peace,” the General

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Assembly authorized constitutional officers like the Board of Corrections to employ special counsel. Act 246 codified section 25-16-711, and it provides as follows:

In the event that the Attorney General and a constitutional officer disagree on the interpretation of any constitutional provision, act, rule, or regulation which affects the duties of that constitutional officer, the constitutional officer is authorized to employ special counsel to resolve the disagreement by litigation. This special counsel shall receive a reasonable compensation for his or her services.

The codification, however, falls short of capturing the complete significance of Act 246. Specifically, Act 246 of 1975 states:

SECTION 1. In the event that the Attorney General and a Constitutional Officer disagree on the interpretation of **any Constitutional Provision**, Act, Rule or Regulation, which **affects the duties of that Constitutional Officer, said Constitutional Officer is hereby authorized to employ special counsel to resolve the disagreement by litigation**, and said special counsel shall receive a reasonable compensation for his services.

SECTION 2. **All laws and parts of laws in conflict herewith are hereby repealed.**

SECTION 3. EMERGENCY CLAUSE. It is hereby found and determined by the Seventieth General Assembly that it is essential for the best interest to (sic) the people of the State of Arkansas where there is a difference of opinion between a Constitutional Officer and the Attorney General as to a **conflict of interest between their Offices** that the Constitutional Officer could engage and employ special counsel to represent him or her in his official capacity. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

Section 246 expressly repealed all laws and parts of laws in conflict with it, including section 25-16-702(b)(2), but if that repeal was not explicit, it was likely repealed by implication. The first rule in considering the effect of Act 246 of 1975 on Act 14 of 1933, codified as section 25-16-702 of the Arkansas Code, is to construe Act 246 just as it reads

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and give words their ordinary meaning in common language. *Johnson v. Weiss*, 2022 Ark. 57, at 6, 640 S.W.3d 401, 405 (citing *3 Rivers Logistics, Inc. v. Brown-Wright Post No. 158 of the Am. Legion, Dep’t of Ark., Inc.*, 2018 Ark. 91, 548 S.W.d 137). If the language of a statute is unambiguous, courts determine the statute’s intent based on the ordinary meaning of the language used. The basic rule of statutory construction is that when two statutes “seemingly conflict, it is blackletter law for statutory construction to give effect to the specific statute over the general.” *Johnson*, 2022 Ark. 57, at 10, 640 S.W.3d 401, 407 (citing *Searcy Farm Supply, LLC v. Merchants & Planters Banks*, 369 Ark. 487, 256 S.W.3d 496 (2007)). “If two legislative acts relating to the same subject matter conflict with each other, the later controls.” *Id.* (citing *Kyle v. State*, 312 Ark. 274, 849 S.W.2d 935 (1993)). Thus, because Act 246 and Act 14 seemingly conflict, Act 246, the more specific law and later act, controls.

As controlling law on the issue of procuring special counsel to challenge unconstitutional legislation, the plain language of section 25-16-711 does two things: (a) it first authorizes constitutional officers to employ special counsel to use litigation to resolve disagreements about constitutional and statutory provisions, Ark. Code Ann. § 25-16-711; and (b) when constitutional officers are authorized “to employ special counsel,” the last sentence of the statute mandates the payment of reasonable compensation to special counsel: “[t]his special counsel *shall* receive a reasonable compensation for his or her services.” *Id.* (emphasis added). Because the special counsel statute is unambiguous, this language must be interpreted based on the clear meaning of the text. *Ark. Blue Cross & Blue Shield v. Freeway Surgery Ctr.*, 2024 Ark. App. 540, 7, 702 S.W.3d 376, 381 (2024), *review denied*, 2025 Ark. 12 (2025). The use of ‘shall’ in section 25-16-711 leaves no discretion regarding the payment of reasonable compensation. The statute mandates that special counsel “shall receive a reasonable compensation”—not that payment is contingent on any particular procurement process or approval by the Attorney General, Governor, or General Assembly. Ark. Code Ann. § 25-16-711. It was the disagreement between the Attorney General’s publicly stated opinion and the Board’s understanding of the Constitution that authorized the Board to hire special counsel to assist it in resolving this disagreement. The Attorney General’s own involvement in this matter precluded section 25-16-702’s application.

To be sure, nothing in the special counsel statute conditions retention or payment of counsel on:

- The Division or Department of Corrections (a Defendant in this case) releasing funds;
- Executing new procurement documents;
- Submitting a ratification request to the Office of State Procurement;

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- Review by the Arkansas Legislative Council or its Review Subcommittee;
- Ratification of the engagement agreement;
- Filing a claim with the Arkansas Claims Commission; or
- Approval by the Governor (another Defendant) and the Attorney General (counsel representing Defendants).

Respectfully, these additional steps are barriers likely manufactured by Defendants or their agents<sup>3</sup> to frustrate the Board’s ability to protect its constitutional interests. The plain language of section 25-16-711 does not support the imposition of administrative burdens on payment to special counsel, especially when those burdens are imposed by an adverse party holding the Board’s purse strings.<sup>4</sup>

An alternative reading of the statute would defeat the legislature’s objective in enacting the special counsel statute and produce nonsensical results. Arguing that payment is discretionary or contingent on clearing administrative barriers makes the statute self-defeating. The statute gives the Board and other constitutional officers the

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<sup>3</sup> We found it notable and surprising that the Audit failed to consider or request any information from any other parties involved in this matter, including from the Attorney General. ALA’s near-exclusive reliance on testimony from public hearings is also questionable. The Board’s testifying members were prohibited from having any legal representation during those hearings, and their testimony was not subject to cross examination. Upon information and belief, the Attorney General’s office prepared several members of the General Assembly for these hearings and assisted them in drafting questions to pose to the Board—ostensibly to gain an eventual advantage in litigation. Such action is improper and fails to conform to the Arkansas Rules of Professional Conduct. But the Board’s testifying members nevertheless answered the questions posed to them with the best information available at the time, and their testimony was only responsive to specific questions asked. As a consequence, their testimony does not tell the full story of what transpired in the process of selecting special counsel.

<sup>4</sup> ALA’s second recommendation is for the Board to consult with the Department of Corrections before beginning any procurement. It would make little sense to force the Board to consult with the Department over which it has constitutional authority in general, and even less sense when considering the practical application of this recommendation—e.g., that the Board would consult with Joe Profiri or his direct reports to discuss hiring a lawyer to assist them in enjoining a statute that prevented them from terminating Joe Profiri’s employment.

HALL BOOTH SMITH, P.C.

**APPENDIX J**  
**Management Response to February 24, 2025 Draft Audit Report Entitled**  
**“Review of Procurement Process for Selecting Legal Counsel”**

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statutory right to employ special counsel. Employed special counsel should not be expected to provide legal services without compensation. Without the guarantee of reasonable compensation to special counsel, the right to representation under section 25-16-711 would be nullified or at least seriously frustrated, as attorneys expect to be reasonably compensated for the legal services they provide. Any other reading would effectively provide the General Assembly with a veto over lawsuits that challenge the unconstitutional legislation it enacts. That is not how a democratic system of government works.

Ultimately, the authority to employ special counsel without the corresponding ability to pay that counsel leaves the right to employ special counsel hollow. In statutory interpretation, the authorization of an act (e.g., employing special counsel) also authorizes a necessary predicate act (e.g., authorization to pay special counsel). Here, the Board complied with section 25-16-711, and section 25-16-702—if it wasn’t repealed—is simply inapplicable to the extremely unique circumstances giving rise to the underlying litigation.

But even if section 25-16-702 or some other procurement process were applicable to the Board’s retention of special counsel, those statutes would be unconstitutional as applied under the circumstances here. Again, there was an extreme exigency underway on December 14, 2023 that gave rise to the need for the preliminary injunction when the Board filed its lawsuit. Profiri ordered the transfer of inmates committed to the Board’s custody to understaffed facilities—all in direct conflict with the Board’s instruction. Human lives were at stake, and the Board did not have the luxury of time to undertake a bureaucratic bidding process before seeking emergency relief from the Pulaski County Circuit Court. In other words, to exercise their constitutional power to manage Arkansas’s prison system, the Board had to take immediate action. While the Board had all the authority necessary to hire special counsel pursuant to section 25-16-711, if some other procedure were required, that procedure would have served to violate the constitutional structure that Amendment 33 was designed to protect. The Board’s members all swore the same oath to uphold and protect the Constitution, and that’s precisely what they did.

At bottom, this discussion is largely academic because, as made clear by the Pulaski County Circuit Court, no other process or procedure was required of the Board to retain its special counsel. The Court, after extensive briefing and argument, held that the Board’s retention of outside counsel pursuant to section 25-16-711 was lawful and appropriate. Interpretation of our laws is a function of the judicial branch in our system of separated government, and we are surprised that ALA—a legislative agency—did not adopt Judge James’ legal findings in its discussion of the appropriate procurement process.

**SCOPE OF AUDIT**

HALL BOOTH SMITH, P.C.

**APPENDIX J**  
**Management Response to February 24, 2025 Draft Audit Report Entitled**  
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While we understand that the Report’s scope is limited and excludes “legal issues active in litigation, including compliance with Ark. Code Ann. §§ 25-16-701 and 25-19-101 et seq.,” we struggle to understand how scope-related determinations were made. As a result, the audit’s decision to omit legal issues creates an inaccurate representation of the Board’s authority and obligations under the law. In particular, the Report does not address the Board’s rights under Ark. Code Ann. § 25-16-711, which explicitly grants constitutional officers the authority to retain special counsel in situations where there is a disagreement with the Attorney General. The audit further fails to account for the preliminary injunction granted by the Court that upheld the Board’s authority to retain independent legal counsel. And the only issue on appeal in the Amendment 33 litigation is whether there was sufficient evidence of imminent harm to secure the entry of a preliminary injunction. Therefore, ALA should have no difficulty relying on Judge James’ legal analysis on the issue of section 25-16-711’s application.

Notwithstanding the actual facts and law that govern the Board’s selection of outside counsel, the Report nevertheless implies that section 25-16-702 somehow applied to this unique circumstance. From there, the Report evaluates the Board’s procurement of legal services under a general framework applicable to executive state agencies, rather than recognizing the Board’s unique constitutional status. As a result, standard procurement laws applicable to executive branch agencies do not govern the Board in the same way. By failing to apply the correct legal framework, the Report mischaracterizes the Board’s procurement of special counsel as a statutory violation rather than a lawful exercise of constitutional authority as confirmed by a binding order from the Pulaski County Circuit Court.

The Report also seems to exceed its scope at times. For instance, the Report identifies instances where the Board’s minutes were allegedly not complete. The audit’s scope does not include a review of the manner in which the Board records its minutes. At the same time, the Report fails to acknowledge the most extraordinary issue in this entire case: **the Attorney General, while actively representing the Board and its members in multiple lawsuits, became adverse to the Board and subsequently sued the Board and its members.**<sup>5</sup>

Further, the Report ignores the obvious elephant in the room: while the Board’s lawsuit named the Governor as a defendant to satisfy a procedural requirement, its claims are really an indictment of unconstitutional legislation passed by the General Assembly.

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<sup>5</sup> Mr. Watson was required to certify the absence of any knowledge regarding fraud and abuse. This footnote amends Mr. Watson’s certification because the Attorney General’s conduct in this litigation appears to be abusive and likely intended to increase the Board’s costs in litigation. ALA should fully explore the propriety or impropriety of the Attorney General’s actions.

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The General Assembly thereby has an active interest in the outcome of the Board’s litigation, and that conflict should be recognized and acknowledged in ALA’s Report. While ALA may be an independent agency, it is still subject to the direction and control of the legislature. That inherent conflict was not identified in the Report.

Finally, the Report fails to note that this case marks only the second time in Arkansas history that a constitutional board has had to file suit to enforce its rights under Amendment 33. Rather than recognizing the historical and legal significance of this matter, the audit treats it as a routine procurement review and ignores the real questions at hand. Respectfully, the Report reflects an oversimplification of an extremely complex constitutional issue.

**RESPONSE TO RECOMMENDATIONS**

Footnote 1 generally addresses ALA’s first recommendation. Moreover, speaking affirmatively, the Board’s business is conducted and is intended to be conducted during public meetings, in conformity with the FOIA. The Board’s appointment of Mr. Watson as Litigation Liaison was made during a public meeting, and that appointment was also retroactively approved. Consequently, additional guidance as to ALA’s Recommendation No. 1 would be helpful.

Footnote 4 generally addresses ALA’s second recommendation. ALA’s Recommendation No. 2 is mistaken and unworkable under the specific circumstances here and does not begin to address what course the Board should take when presented with an emergency and complicated legal issue. Notwithstanding, the Board generally consults with its procurement staff for all routine and extraordinary procurement matters that do not involve its exigent constitutional litigation.

ALA’s third recommendation is for the Board to adopt motions approving contracts for services and other documents that obligate state resources. The Board did so on multiple occasions with regard to its contract with special counsel. The full Board voted to approve the first and supplemental engagement agreements. The full Board then retroactively voted to approve them. And the Board voted to take all action necessary to ensure that its special counsel was compensated for its services. Under this existing constellation of authority, when Chad Brown presented the procurement document for the Board and special counsel’s execution, the Board’s officers were acting pursuant to the prior authority granted to them by a majority of the Board. Matters regarding contract length and total cost cannot be supplied in a lawyer’s engagement agreement under the circumstances of this litigation, and the Board could not have predicted that the Attorney General would file suit against the Attorney General’s own client, the Board, and attempt to overwhelm the Board with FOIA requests and a substantial number of unnecessary motions spread across two cases and two appeals.

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With regard to ALA’s fourth recommendation, the Board does provide complete and accurate information when submitting contracts; however, the Department (not the Board) is generally responsible for making those submissions, and the Board was simply complying with the instructions it received from its procurement professionals when it submitted the procurement document at issue. That document, while marked-up, was complete and accurate to the Board and special counsel’s best knowledge, information, and belief at the time of its submission.

**CONCLUSION**

The Arkansas Board of Corrections is a constitutional entity that derives its authority from Amendment 33 of the Arkansas Constitution, which grants it supervisory control over the state’s correctional system. Unlike state agencies that fall under the Department of Transformation and Shared Services, the Board is vested with constitutional powers to manage and direct correctional institutions. As a result, standard procurement laws applicable to executive branch agencies do not govern the Board in the same way, and the Report should be supplemented with the applicable facts, law, and context supplied by this Management Response and the proper procedure, if any, that Ark. Code Ann. § 25-16-711 would require of the Board in such an emergency situation. As supplemented, ALA should revise its Report and find that the Board acted lawfully, reasonably, and appropriately in its selection of special counsel. Likewise, Mr. Watson intends to seek the Board’s retroactive approval for the submission of this Response. If the Board opts to provide additional commentary or information, that information will be supplied to you as soon as possible.

If you have any questions, please do not hesitate to contact me. Thank you again for your time.

Sincerely,

  
Abtin Mehdi Zadeh  
*Special Counsel to the*  
*Arkansas Board of Corrections*

# EXHIBIT J-1

## ARKANSAS LEGISLATIVE AUDIT SPECIAL REPORT MANAGEMENT REPRESENTATIONS AND EXIT CONFERENCE ACKNOWLEDGEMENT



Benny Magness, Chairman  
Lee Watson, Litigation Liaison  
Board of Corrections  
P.O. Box 20550  
White Hall, AR 71612

*Board of Corrections  
("Board")*

1. We, the Agency, have made available to Arkansas Legislative Audit all program and financial records related to the review of the Board of Corrections' procurement process for selecting legal counsel (Program) *x that were requested and in the Board's actual possession.*
2. We acknowledge our responsibility for the design and implementation of programs and controls to prevent fraud. We have no knowledge of any fraud or abuse, or suspected fraud or abuse, by management, employees, <sup>or</sup> others where the fraud or abuse could significantly affect the Program. (Abuse is defined as behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice, given the facts and circumstances. Abuse includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate.)
3. We have no knowledge of any allegations of fraud or abuse affecting the Program by management, employees, or others associated with the Program.
4. We have disclosed any plans or intentions that may significantly affect the operation of the Program.
5. *Reserved.*
6. We have no knowledge that, as the result of current or possible legislation or events, the Program will cease to exist or operate within the next year.
7. The findings and recommendations contained in the draft report have been discussed with us and are subject to change upon review by appropriate supervisory personnel prior to the report's presentation to the Legislative Joint Auditing Committee. We understand that draft copies of the report, including findings, conclusions, and recommendations, and copies of related documentation provided to us are not considered public documents and are exempt from the Arkansas Freedom of Information Act. We understand that we have been provided a draft copy of the report to afford us an opportunity to provide the views of the responsible officials concerning the report findings, conclusions, and recommendations, as well as planned corrective actions. We will address each finding and the proposed corrective action in a letter or email that we will provide by **March 26, 2025**, to:

**Charles Camp, Special Projects Manager**  
Email: [charles.camp@arklegaudit.gov](mailto:charles.camp@arklegaudit.gov)

We acknowledge that we may be requested to discuss our corrective action plans in person with the Legislative Joint Auditing Committee. **The report will be scheduled to be presented to the Committee at a future date. You will be notified of the meeting by mail within two weeks of the scheduled meeting time.**

8. We are aware that the report will be available on Arkansas Legislative Audit's website ([www.arklegaudit.gov](http://www.arklegaudit.gov)) after presentation at the respective meeting of the Legislative Joint Auditing Committee. After the report has been presented to the Legislative Joint Auditing Committee, the report and the related documentation will be open to public inspection, except those documents specifically exempted as outlined in Ark. Code Ann. § 10-4-422.

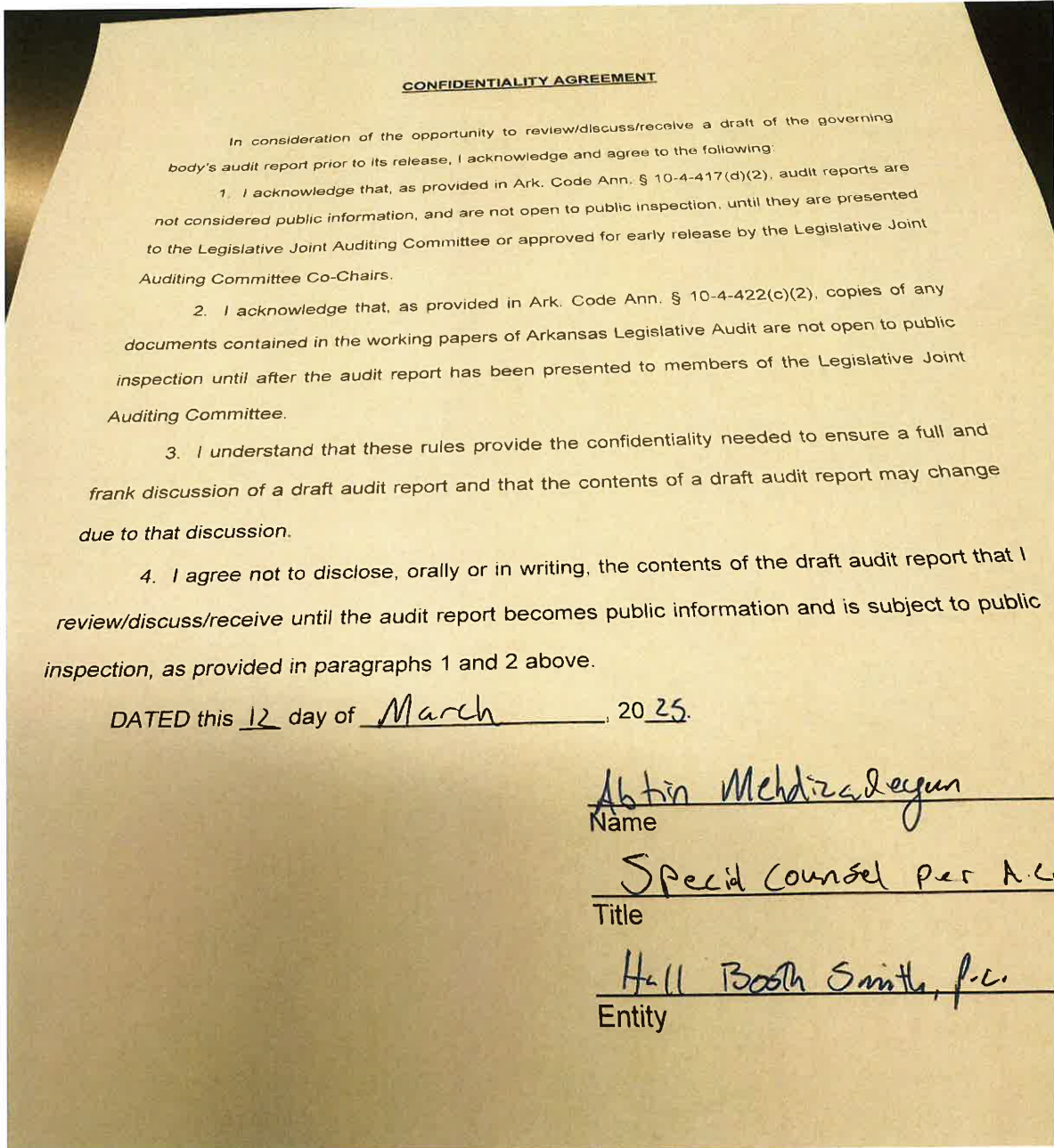
9. To the best of our knowledge and belief, no events, including instances of noncompliance, have occurred subsequent to the report date and through the date of this document that would require adjustment to, or disclosure in, the aforementioned report.

*[Handwritten Signature]*  
(Official)

*Board Member*  
(Title)

*2/12/2025*  
(Date)

**EXHIBIT J-2**



## EXHIBIT J-3

**Abtin Mehdizadegan**

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**From:** Emily White <Emily.White@arklegaudit.gov>  
**Sent:** Wednesday, March 19, 2025 12:41 PM  
**To:** Abtin Mehdizadegan  
**Subject:** RE: Board of Corrections

Abtin,

Thank you for the call on Monday. I do understand the plight within which your concern resides. However, the enabling legislation controlling Arkansas Legislative Audit (ALA) is quite clear regarding the confidential and privileged nature of all reports and supporting documentation to our reports, until such time as that report has been presented to the Legislative Joint Auditing Committee (LJAC). See *Ark. Code Ann. §§ 10-4-417(d)(1-2) and (e), and 10-4-422(c)(1-2)*. To clearly respond to Mr. Watson's inquiry, yes; presentation of this *draft* report during a board meeting would violate the confidentiality agreement signed during our exit conference on March 12, 2025. As the attorney for the Board of Corrections, we assumed you to be able to respond for the Board. Alternatively, as liaison for the Board regarding the issue with which we were asked to report, Lee Watson can also serve the board by assisting you with any response to our findings, if you believe a response is necessary.

In this particular situation, the Board has an attorney representative and a liaison in Mr. Watson. Both or either of you are accepted by ALA as a responsible person(s) for purposes of a Management Response. Once our report has been presented to the LJAC, our report is subject to FOIA, but not before then.

Additionally, I will respond to Mr. Watson's request for modifications to the draft report presented to you both at the exit conference.

Objective 1 – 2<sup>nd</sup> paragraph, we will not amend our finding language; the appropriate placement of this allegation is in the Management Response or in testimony before LJAC.

Objective 2 – 2<sup>nd</sup> paragraph, we will not amend our finding language; the appropriate placement of this allegation is in the Management Response or in testimony before LJAC.

Objective 2 – 5<sup>th</sup> paragraph, we will move the sentence as requested.

Objective 2 – 6<sup>th</sup> paragraph, we will not amend our finding language; the appropriate placement of this allegation is in the Management Response or in testimony before LJAC.

Objective 2 – 8<sup>th</sup> paragraph, we will not amend our finding language; the appropriate placement of this allegation is in the Management Response or in testimony before LJAC.

Finally, I did not find the language of our draft report to be particularly adversarial toward the Board. The language choices in this report present the facts in a neutral and unbiased fashion. Our auditors cite what is reflected in documents gathered from the entities we audit. We did not and will not report on the intent of the Board during these dealings. I suggest you clarify the intent of the Board in your Management Response or in testimony before the LJAC.

Thank you for your consideration of this matter. Should you have further questions or concerns, please do not hesitate to contact me directly.

With kindest regards,

Emily White, J.D.  
Legal Counsel  
Arkansas Legislative Audit  
500 Woodlane Street, Suite 172

Little Rock, AR 72201-1099  
Ph: (501)683-8600 Ext:1005  
Fax: (501)683-8605  
[emily.white@arklegaudit.gov](mailto:emily.white@arklegaudit.gov)  
[www.arklegaudit.gov](http://www.arklegaudit.gov)



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**From:** Abtin Mehdizadegan <abtin@hallboothsmith.com>  
**Sent:** Monday, March 17, 2025 3:10 PM  
**To:** Emily White <Emily.White@arklegaudit.gov>  
**Subject:** Board of Corrections

**Caution: This is not a Legislative Audit Email.**  
**Do not open links or attachments unless you recognize the sender and were expecting the message.**  
**Click the PHISH ALERT button if you are unsure about this email.**

Emily,

Thank you again for your time today. As discussed, the Board wants to satisfy its obligations under the FOIA while also complying with the agreement to maintain confidentiality of the draft report. Mr. Watson asked whether meeting and presenting the draft response to the audit report would violate that confidentiality agreement. Likewise, the Board will need to meet to approve the management response. Accordingly, the Board would like an extension through April 4, 2025 to supply same.

My cell is 501-529-1163 if you ever need to reach me.

Best,

Abtin

**Abtin Mehdizadegan**  
Attorney at Law | Hall Booth Smith, P.C.

**Appendix J (Continued)**

O: 501.214.3499

200 River Market Avenue, Suite 500

D: 501.503.4445

Little Rock, AR 72201

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**Abtin Mehdizadegan**

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**From:** Lee Watson (DOC) <Lee.Watson@doc.arkansas.gov>  
**Sent:** Monday, March 17, 2025 4:00 PM  
**To:** Charles Camp; Michael Knapp  
**Cc:** Abtin Mehdizadegan; Lee Watson (DOC)  
**Subject:** Special Report re Procurement Process for BoC's Selection of Legal Counsel - Requested Corrections

Dear Mr. Camp and Mr. Knapp,

Thank you for the explanation you provided last Wednesday of the draft of the Special Report you provided. I also appreciate being given the opportunity to point out several items which appear to be factually inaccurate or potentially misleading without more information.

I respectfully request the following corrections to the Special Report [my explanation follows each requested change and are not intended to be added to the Special Report]:

**Header and INTRODUCTION**

Please remove the phrase "Department of Corrections (Department)" in both instances.

*The Board of Corrections was the only body/actor involved in the Procurement Process for Selecting Legal Counsel reviewed in the Special Report.*

**RESULTS OF REVIEW**

**Objective 1 –**

**2nd paragraph –**

Please add to the end of the second paragraph: "In the event of a disagreement as to the laws of the state of Arkansas between the AG and a constitutional officer, Ark. Code Ann. § 25-16-711 provides that a constitutional officer is entitled to hire special counsel."

*This code section was the foundation of the process followed by the Board in hiring of special counsel and was stated by Judge James as the reason for her finding the Board to be allowed to and justified in hiring special counsel.*

*The text of 25-16-711 is:*

*"In the event that the Attorney General and a constitutional officer disagree on the interpretation of any constitutional provision, act, rule, or regulation which affects the duties of that constitutional officer, the constitutional officer is authorized to employ special counsel to resolve the disagreement by litigation. This special counsel shall receive a reasonable compensation for his or her services."*

**Objective 2**

**2nd paragraph -**

Please revise the first sentence of the second paragraph to state: "A Board member indicated that the Board member began implementing research to determine if the need should arise, the availability of outside counsel who might be appropriate and qualified to represent the Board regarding the personnel and constitutional issues created by the conflict of Acts 185 and 659 of the Regular Session of 2023 with Arkansas Constitution Amendment 33 after its meeting held on April 25, 2023."

*This is a factually accurate statement reflecting my conversation with Chairman Magness. There was no discussion of any process for hiring anyone at that time as we knew that such action would require Board discussion and vote.*

**5th paragraph -**

Please move the following sentence from the end of the 6th paragraph and place it in as the second sentence in the 5th paragraph:

"Litigation on behalf of the Board commenced on December 14, 2023, with the filing of a declaratory judgment lawsuit."

*This move is needed to make the recitation of facts chronologically accurate and to prevent any misunderstanding of the facts.*

**6th paragraph -**

Please revise the 2nd sentence of the 6th paragraph to state:

The purpose of the supplemental engagement agreement was to confirm that legal counsel had "...been retained to take all legal action necessary to protect and preserve the Board's interests..." to include representing the Board in the lawsuit filed by the Board's statutory attorney, the Attorney General, claiming Freedom of Information Act (FOIA) violations.

*These changes are to clarify and make factually accurate this statement.*

**8th paragraph -**

Please revise the 8th paragraph by revising it to state [underlined are added terms]:

After reconvening in open session and conducting extensive discussion in which it explained that the purpose of the executive session was to determine if the Department CFO had improperly colluded with an opposing party or its counsel in the lawsuits, the Board adopted a motion to "...reaffirm the contract with [the law firm] and that we pay the bill, upon review, submitted by the firm, and this is ongoing representation so we understand there may be additional legal fees that are requested." Based on the discussions at this meeting, the choice was made based on the advice of the Department CFO to pursue ratification of the contract through the normal procurement process.

*In the open session of the Board meeting referenced above and following its executive session, the Board clearly stated the reason the Department CFO was brought into the executive session was due to its personnel concern with the advice provided in the memo (Appendix F) by the Department CFO in that it appeared to have been written by an attorney and the Board's concern that an opposing party, the Attorney General, had provided legal advice to the Department CFO in a manner designed to undermine the Board's efforts to compensate its special counsel. It was specifically stated that the Board didn't want to question the integrity of the Department CFO in open session until after it had determined that he not engaged in improper behavior. Further, Appendix F contains no reference to Ark. Code Ann. § 19-11-*

**Appendix J (Continued)**

*247 and the Board absolutely did not direct the Department CFO to pursue ratification pursuant to this statute. I have been involved in every step of the litigation and the rescinded procurement process efforts and this statute was never discussed or considered.*

Sincerely,  
Lee Watson  
Board of Corrections  
Member and Litigation Liaison

## Appendix J (Continued)

The full Management Response is available on the ALA website at [https://www.arklegaudit.gov/docs/Response from Board of Corrections 2025.pdf](https://www.arklegaudit.gov/docs/Response_from_Board_of_Corrections_2025.pdf). This document includes the items provided on pages J-1 through J-29 of this report, as well as the following items not included in this report:

- Full transcript of hearing held January 4, 2024 in Pulaski County Circuit Court (case no. 60CV-23-9598): pages 30-231
- Plaintiff's exhibits: pages 232-277
- Order of the court on hearing held January 4, 2024: pages 278-285

## Appendix K

### Management Response Department of Transformation and Shared Services – Office of State Procurement



Department of Transformation and Shared Services  
Governor Sarah Huckabee Sanders  
Secretary Leslie Fiskin

March 25, 2025

Arkansas Legislative Audit  
500 Woodlane Street, Suite 172  
Little Rock, Arkansas 72201  
Via email: arklegaudit.gov

Re: Special Report, ID SP0700124  
Department of Corrections' Contract for Outside Legal Counsel

To whom it may concern,

Please allow this to serve as the Department of Transformation and Shared Services, Office of State Procurement's (DTSS-OSP) response to Legislative Audit's Special Report pertaining to the procurement process used by the Arkansas Department of Corrections for selecting outside legal counsel. Specifically, DTSS-OSP is responding to Arkansas Legislative Audit's recommendation that DTSS-OSP should consider adding the option or ability to modify the procurement method in its portal.

The special report contains the following recommendation:

*"DTSS-OSP should consider adding the option or ability to modify procurement methods in its portal."*

DTSS-OSP states that this recommendation is untenable for the following reasons. First, the procurement methods available in the portal can only include those purchasing methods proscribed by Arkansas Procurement Law, Ark. Code Ann. § 19-11-201 et seq. Procurement law does not allow agencies to create alternative methods that are not specifically prescribed.

In addition, the portal's options for procurement methods must complement those contained in the State's enterprise resource planning (ERP) system, AASIS. See Exhibit 1. The portal, like AASIS, contains fixed options and does allow an agency to create an "alternate method." Because AASIS serves as the system of record for all executive branch agencies' contracts, including the review of contracts by Arkansas Legislative Council as required by Ark. Code Ann. § 19-11-265, the portal's information cannot include options not available in AASIS. And, AASIS is controlled by the Department of

501 Woodlane St, Ste 201 - Little Rock, AR 72201 - 501-319-6565  
transform.ar.gov

**Appendix K (Continued)**

Finance and Administration (DFA), not DTSS-OSP. Therefore, any additional options available in the portal would have to be first approved by DFA and added to AASIS.

For these reasons, DTSS-OSP cannot include an alternate procurement method to the portal as recommended by Arkansas Legislative Audit's Special Report.

Respectfully,

A handwritten signature in black ink that reads "Jessica Patterson". The signature is written in a cursive, flowing style.

Jessica Patterson  
State Procurement Director

## Appendix K (Continued)

#	AASIS	Portal	Our Ref	Our Reference Text
1	X		AA	AGENCY CONTRACT AWARD
2	X	X	ABA	CAPITAL IMPROVEMENT PROJECTS
3	X		ABA-EL	DBA EXEMPT BY LAW
4	X		ABA-EM	CAPITAL IMPROVEMENT EMERGENCY
5	X		ABA-MB	CAPITAL IMPROVEMENT QUOTE BID- MINORITY
6	X		ABA-MO	CAPITAL IMPROVEMENT SMALL ORDER- MINORITY
7	X		ABA-QB	CAPITAL IMPROVEMENT QUOTE BID
8	X		ABA-SO	CAPITAL IMPROVEMENT SMALL ORDER
9	X		ABA-SP	CAPITAL IMPROVEMENT SPECIAL
10	X		ABA-SS	CAPITAL IMPROVEMENT SOLE SOURCE
11	X		AX	AGENCY QUANTITY FIXED
12	X		BU	BID UNSUCCESSFUL
13	X	X	CB	COMPETITIVE BID
14		X		COOPERATIVE CONTRACT
15	X	X	EL	*EXEMPT FROM PROCUREMENT LAW
16	X	X	EM	EMERGENCY PROCUREMENTS
17	X		ER	EXEMPT BY PURCHASING REGULATIONS
18	X	X	IG	INTERGOVERNMENTAL
19		X		INVITATION FOR BID
20	X		MA	AGENCY CONTRACT AWARD- MINORITY
21	X		MB	COMPETITIVE BID-MINORITY
22	X		MC	QUOTE CONSTITUTIONAL ITEM- MINORITY
23	X		MF	STATE FIRM- MINORITY
24	X		ML	*EXEMPT FROM PROCUREMENT LAW- MINORITY
25	X		MM	EMERGENCY PROCUREMENTS- MINORITY
26	X		MO	SMALL ORDER- MINORITY
27	X		MP	RESALE PURCHASE-MINORITY
28	X		MPL	REAL PROPERTY LEASES- MINORITY
29	X		MR	EXEMPT BY PURCHASING REGULATIONS- MINORITY
30	X		MS	SOLE SOURCE- MINORITY
31	X		MSA	PROFESSIONAL OR CONSULTANT SERVICES PREVIOUSLY APPROVED- MIN
32	X		MSC	PROFESSIONAL OR CONSULTANT SERVICES CONTRACTS- MINORITY
33	X		MSS	SOLE SOURCE PREVIOUSLY APPROVED- MINORITY
34	X		MT	STATE TERM- MINORITY
35	X		MU	BID UNSUCCESSFUL- MINORITY
36	X		MX	AGENCY QUANTITY FIXED- MINORITY
37	X		PL	REAL PROPERTY LEASES
38	X		PSA	PROFESSIONAL OR CONSULTANT SERVICES PREVIOUSLY APPROVED
39	X		PSC	PROFESSIONAL OR CONSULTANT SERVICES CONTRACTS
40	X		QC	QUOTE CONSTITUTIONAL ITEM
41	X		RP	RESALE PURCHASE
42	X		SF	STATE FIRM
43	X		SG	SUB-GRANTS
44	X	X	SO	SMALL ORDER
45	X	X	SPECIAL	ARK. CODE ANN. § 19-11-263
46	X		SPECIAL-APPR	SPECIAL PROCUREMENTS PREVIOUSLY APPROVED BY DFA-OSP
47	X		SS	SOLE SOURCE
48	X		SSA	SOLE SOURCE PREVIOUSLY APPROVED
49		X		SOLE SOURCE BY INTENT TO AWARD
50		X		SOLE SOURCE BY JUSTIFICATION
51		X		SOLE SOURCE BY LAW
52	X		ST	STATE TERM
53	X		WS	WORKSHOP PRODUCTS
54		X		REQUEST FOR PROPOSAL
55		X		REQUEST FOR QUALIFICATION

There are 48 Procurement Methods In AASIS  
 There are 14 Procurement Methods In the Portal

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