

**Title 12
Chapter 1**

**NEBRASKA ADMINISTRATIVE CODE
TITLE 12, CHAPTER 1**

DEPARTMENT OF ADMINISTRATIVE SERVICES

**RULES AND REGULATIONS CONCERNING THE
APPROVAL OF CONTRACTS FOR PERSONAL SERVICES**

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Statutory Authority

These rules are adopted pursuant to the provisions of sections 73-301 through 73-306, Reissue Revised Statutes of Nebraska 1996.

- 001** **Scope and Application.** These rules designate the Director of the Department of Administrative Services to review and approve or disapprove any contract for personal services between the State and a private entity if the services are performed by permanent state employees and will be replaced by the private entity.
- 002** **Applicability.** These rules apply equally to all state agencies. They do not apply to the (1) University of Nebraska, (2) the Nebraska State Colleges, (3) any other board, commission, or agency established by the Nebraska Constitution. Nor do these rules

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apply to the provisions set forth in the Nebraska Consultants= Competitive Negotiation Act (sections 81-1701 et seq., Reissue Revised Statutes of Nebraska 1994).

003 **Definitions.**

003.01 **C** ADAS@ shall mean the Department of Administrative Services.

003.02 **C** ADirector@ shall mean the Director of Administrative Services.

003.03 **C** AContract for personal services@ shall mean an agreement by a private entity to provide human labor but does not mean a contract to supply only goods or personal property.

003.04 **C** APrivate entity@ shall mean private services providers, consultants and independent service contractors.

003.05 **C** ADisplaced employee@ shall have the same meaning as an employee affected by a layoff, i.e., involuntary separation or reduction of hours.

004 **Agency Responsibilities.** Any state agency that seeks to enter into a contract for personal services which, as of the effective date of such proposed contract, are performed by permanent state employees and will be replaced by a private entity, must submit to the DAS Director the proposed contract and the following information on the form incorporated by reference and attached hereto (the **A**Public Contract Proposal Form@):

004.01 **C** A review of the actual long-term costs or cost savings, based on twelve and sixty month projections, to include the following:

004.01 **A** CDirect costs or savings, including salary and fringe benefits;

004.01 **B** CIndirect overhead costs or savings, including the pro rata share of existing administrative salaries and benefits, rents, equipment, utilities, and materials. Such costs or savings shall include only those attributable to the work in question and realizable only if the work is done by a private entity;

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004.01CCContinuing and/or transitional costs or savings, including unemployment compensation and the cost of transitional services;

004.01DCAdditional costs or savings of performance of the work by state employees, including salaries and benefits of additional staff performing inspection, supervision, and monitoring duties and the cost of the additional space, equipment, and materials needed to perform these services.

004.02CMeasurable goals for improving the quality of the service.

004.03CAn assessment of the feasibility of alternatives within the agency to contracting for the performance of the service.

004.04CAn assessment of how the proposed contract will affect affirmative action goals and objectives.

005 **Displaced State EmployeesCPlan of Assistance**. Any state agency that seeks to enter into a contract for personal services must also submit a formal plan of assistance to the DAS State Personnel Division or DAS Employee Relations Division for its review and approval. Upon review, the DAS State Personnel Division or the DAS Employee Relations Division will then make its recommendation to the DAS Director.

005.01CIn formulating the plan of assistance, a state agency shall include, but not be limited to, the following:

005.01ACPlans to place displaced employees into vacant positions in the agency or other agencies;

005.01BCProvisions in the contract, if feasible, to hire displaced employees by the private entity;

005.01CCDemonstrative evidence that the agency has taken formal and positive steps in considering alternatives to the contract, including reorganization, reevaluation of service, and reevaluation of performance.

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005.02CFor Classified System rules employees, the agency must submit the plan of assistance to the DAS-State Personnel Director.

005.03CFor labor contract employees, the agency must submit the plan of assistance to the DAS-Employee Relations Administrator.

006 **Director's Responsibilities.** The DAS Director has within forty-five (45) days after receipt of an agency's request in which to review and approve or disapprove such request. The forty-five day period will not commence until all the required elements in an agency's request are submitted in full.

006.01CThe DAS Director's evaluation of any submitted contract shall be based on the following criteria:

006.01ACThe potential economic advantage of contracting is not outweighed by the public's interest in having the services performed by the state agency. Such evaluation shall take into consideration and be based on the items submitted under section 004 of these rules, including an analysis of long term, measurable cost savings and long term, measurable improvements in the quality of services being delivered;

006.01BCAffirmative action is not adversely affected;

006.01CCContractual provisions, which may include financial guarantees and penalty clauses, to ensure adequate performance of the contract;

006.01DCTime lines for periodic review for compliance by the state agency;

006.01ECA return or cancellation of all payments for services that are not provided pursuant to the terms of the contract;

006.01FCNon-renewal of the contract in the event the economic advantage provided for in section 006.01A is not realized;

006.01GCThe employees of the private entity are fairly compensated.

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006.02CIf approved, the requesting agency will receive confirmation in writing from the Director. The agency may then commence with the contracting effort.

006.03CIf disapproved, the requesting agency will receive confirmation in writing stating the reasons for denial.

006.04CThe DAS Director shall submit a report detailing why a proposed contract was approved or disapproved to the Chairperson of the Appropriations Committee and the Legislative Fiscal Analyst.