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|  Administrative Services |
| Personal Services Guide |
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## Applicable Statutes:

 73-301 through 73-307, 73-509

## Overview:

In addition to existing statutory requirements related to the procurement process, there are additional requirements to be completed prior to entering into a contract with a private entity if the personal services provided under the proposed contract are now being or have been performed by a state employee within the year immediately preceding the date of the proposed contract.

### Pre-Process

If the personal services at issue are now being performed or have been performed by a permanent state employee within the year prior to or on the effective date of the proposed contract, and the proposed contract is in excess of fifty thousand dollars ($50,000), the Agency must follow the Pre-Process established by Administrative Services – Materiel Division. Documentation must be submitted to the Materiel Division as outlined in this Guide.

### Replacement of Service without Displacement of State Personnel

If on the effective date of the proposed contract, the personal services at issue are being performed by a permanent state employee who will be replaced (but retained by the Agency) by the services of the private entity, that contract is subject to the bidding process. Furthermore, in anticipation of the bidding process, the Agency affected is obligated to obtain approval from the Director of Administrative Services, following the Replacement of Service without Displacement of State Personnel process as outlined in this Guide.

### Replacement of Service with Displacement of State Personnel

If on the effective date, or during the year prior to the effective date of the proposed contract, the personal services at issue are or have been performed by a permanent state employee who will be displaced (no longer employed by the Agency) by the services of the private entity, that contract is subject to the bidding process. The Agency affected is obligated to obtain approval from the Director of Administrative Services by complying with the statutory requirements as outlined in this Guide and will be required to include in the materials submitted for review and approval, a plan of assistance for the displaced employee, following the Replacement of Service with Displacement of State Personnel process as outlined in this Guide.

This Guide has been created to better identify these requirements and assist agencies through the submission, review and approval processes.

## Pre-Process for Contracts in Excess of $15,000,000.00 (Proof-of-Need Analysis):

Pursuant to § 73-510, this process places additional requirements on state agencies when contracting for services in excess of $15 million. One of the most notable changes requires agencies to complete a Proof-of-Need Analysis. The completed Proof-of-Need Analysis and a copy of the proposed contract are required to be submitted to Administrative Services – Materiel Division prior to entering into the contract. Additional information on Proof-of-Need Analysis requirements can be found at: <http://das.nebraska.gov/materiel/purchase_bureau/agency-info.html>

Please note: The completion of any Personal Services procedures outlined in this Guide does not preclude the requirement for the completion of Proof-of-Need documentation should it also be required.

## Definition of Personal Services

In general, a “contract for personal services means an agreement by a contractor to provide human labor but does not mean a contract to supply only goods or personal property. The term includes contracts with private service providers, consultants, and independent service contractors.”

## Contracts Exempted from this Procedure

In general, the following types of contracts are exempted from this procedure:

* Contracts between a private entity and the University of Nebraska;
* Contracts between a private entity and the Nebraska state colleges;
* Contracts between a private entity and any other board, commission, or agency established by the Constitution of Nebraska;
* Contracts under the Nebraska Consultants’ Competitive Negotiation Act; or
* Renewals of contracts already approved pursuant to or not subject to such sections, to amendments to such contracts, or to renewals of such amendments unless the amendments would directly cause or result in the replacement by the private entity of additional permanent state employees or positions greater than the replacement caused by the original contract.

Furthermore, certain other contracts will also be exempted from the Pre-Process outlined in this Guide, including:

* Sole source and emergency contracts;
* Contracts under the Nebraska Consultants’ Competitive Negotiation Act;
* Contracts for services subject to Federal law regulation or policy;
* Contracts for professional legal services;
* Contracts involving state or Federal financial assistance passing through a state agency to a political subdivision;
* Contracts with direct providers of health services;
* Agreements for services between a state agency and the University of Nebraska, the Nebraska State Colleges, or any constitutional office;
* Certain Department of Insurance contracts;
* Department of Roads contracts dealing with road and bridge projects; or
* Nebraska Investment Council contracts.

PLEASE CONTACT ADMINISTRATIVE SERVICES - MATERIEL DIVISION IF YOU ARE UNSURE IF ANY OF THESE EXEMPTIONS ARE APPLICABLE.

## Pre-Process

If the personal services at issue are now being performed **or have been previously performed by a permanent state employee within the year** **prior** to the effective date of the proposed contract, **and the proposed contract is in excess of fifty thousand dollars ($50,000)**, the Agency must follow the Pre-Process established by the Materiel Division as outlined below.

This process is similar to the steps outlined in the process outlined for Replacement without Displacement of State Personnel, however no approval is required by the Director of Administrative Services. This process shall also include evaluations of additional factors related to the effect of the proposed contract on the employees and the Agency. Documentation materials and each evaluation shall be maintained in the contract file by the Agency.

### Step 1: Requesting Agency must compile the following required information and maintain it in their contract file

1. A copy of the proposed contract;
2. A review of the long-term cost savings - In calculating the cost savings the Agency shall project, for twelve (12) months and sixty (60) months, the following:
	1. Direct costs, including salary and fringe benefits;
	2. Indirect overhead costs which shall include only those costs that can be attributed solely to the work in question and that would not exist if the work were not performed by state employees. Indirect overhead costs shall include the pro rata share of existing administrative salaries and benefits, rents, equipment costs, utilities, and materials;
	3. Any continuing or transitional costs that are directly associated with contracting for the work, including unemployment compensation and the cost of transitional services; and
	4. Additional costs of performance of the work by state employees, including the salaries and benefits of additional staff performing inspection, supervision, and monitoring duties and the cost of additional space, equipment, and materials needed to perform the services.
3. Measurable goals for improving the quality of the services;
4. An assessment of the feasibility of alternatives within the Agency to contracting for performance of the contract;
5. This pre-process shall also include an evaluation of the displacement of any employee of the Agency or position held by that employee within the preceding year, and of the disadvantages of such a contract for services against the expected advantages, whether economic or otherwise.

## Replacement of Service without Displacement of State Personnel

If on the effective date of a proposed contract, the personal services at issue are being performed by a permanent state employee who will be replaced (but retained by the Agency) by the services of the private entity, that contract is subject to the bidding process. Furthermore, in anticipation of the bidding process, the Agency affected is obligated to obtain approval from the Director of Administrative Services by complying with the statutory requirements as outlined below:

### Step 1: Requesting Agency must submit the following required information to Administrative Services – Materiel Division

1. A copy of the proposed contract;
2. A review of the long-term cost savings - In calculating the cost savings the Agency shall project, for twelve (12) months and sixty (60) months, the following:
	* 1. Direct costs, including salary and fringe benefits;
		2. Indirect overhead costs which shall include only those costs that can be attributed solely to the work in question and that would not exist if the work were not performed by state employees. Indirect overhead costs shall include the pro rata share of existing administrative salaries and benefits, rents, equipment costs, utilities, and materials;
		3. Any continuing or transitional costs that are directly associated with contracting for the work, including unemployment compensation and the cost of transitional services; and
		4. Additional costs of performance of the work by state employees, including the salaries and benefits of additional staff performing inspection, supervision, and monitoring duties and the cost of additional space, equipment, and materials needed to perform the services.
3. Measurable goals for improving the quality of the services;
4. An assessment of the feasibility of alternatives within the Agency to contracting for performance of the contract;

The requesting Agency submission should be submitted electronically via e-mail to: as.materielpurchasing@nebraska.gov, or in the alternative mailed to:

 Attn: Materiel Administrator

 Administrative Services - Materiel Division

 1526 K Street, Suite 130

 Lincoln, NE 68508

### Step 2: Receipt of Information Submitted

Upon receipt of the information submitted by the requesting Agency, the Materiel Division will compare submission to the required information identified in Step 1. Should the submission not include all of the required elements, the Materiel Division will notify the requesting Agency in writing of the missing elements. When all required elements have been received, the Materiel Division will send an Acknowledgement of Receipt to the requesting Agency in the same format as the original Agency submission, indicating the submission contains all required elements.

### Step 3: Notification of Approval/Denial

The Director of Administrative Services shall, within forty-five (45) days after receipt of the information described, prepare a report detailing why the proposed contract was approved or disapproved.

### Step 4: Process Completed

If approved, the requesting Agency is now authorized to continue with the process to secure the proposed contract.

## Replacement of Service with Displacement of State Personnel

If on the effective date, or during the year prior to the effective date of the proposed contract, the personal services at issue are being performed by a permanent state employee who will be displaced (no longer with the Agency) by the services of the private entity, that contract is subject to the bidding process. Furthermore, in anticipation of the bidding process, the Agency affected is obligated to obtain approval from the Director of Administrative Services by complying with the statutory requirements as outlined below. In addition, this process includes the requirement of a Formal Plan of Assistance for displaced employees.

### Step 1: Requesting Agency must submit the following required information to Administrative Services – Materiel Division

1. A copy of the proposed contract;
2. A review of the long-term cost savings - In calculating the cost savings the state Agency shall project, for twelve (12) months and sixty (60) months, the following:
	1. Direct costs, including salary and fringe benefits;
	2. Indirect overhead costs which shall include only those costs that can be attributed solely to the work in question and that would not exist if the work were not performed by state employees. Indirect overhead costs shall include the pro rata share of existing administrative salaries and benefits, rents, equipment costs, utilities, and materials;
	3. Any continuing or transitional costs that are directly associated with contracting for the work, including unemployment compensation and the cost of transitional services; and
	4. Additional costs of performance of the work by State employees, including the salaries and benefits of additional staff performing inspection, supervision, and monitoring duties and the cost of additional space, equipment, and materials needed to perform the services.
3. Measurable goals for improving the quality of the services;
4. An assessment of the feasibility of alternatives within the Agency to contracting for performance of the contract; and
5. Formal Plan of Assistance to include:
	1. Efforts by the Agency to place displaced employees in vacant positions in that Agency or another state agency;
	2. Provisions in the contract for personal services, if feasible, for the hiring of displaced employees by the contractor; and
	3. Demonstration by the Agency that it has taken formal and positive steps in considering alternatives to such contract, including reorganization, reevaluation of services, and reevaluation of performance

The requesting Agency submission should be submitted electronically via e-mail to as.materielpurchasing@nebraska.gov, or in the alternative mailed to:

 Attn: Materiel Administrator

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### Step 3: Notification of Approval/Denial

The Director of Administrative Services shall, within forty-five (45) days after receipt of the information described, prepare a report detailing why the proposed contract was approved or disapproved.

### Step 4: Process Completed

If approved, the requesting Agency is now authorized to continue with the process to secure the proposed contract.

DOCUMENTATION MATERIALS AND EACH EVALUATION SHALL BE MAINTAINED IN THE CONTRACT FILE BY THE STATE AGENCY