



Administrative Services – Materiel Division

# Proof of Need Analysis Guide

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# Proof of Need Analysis Guide

## Overview

### Contracts Requiring Proof of Need Analysis:

This requirement applies to all service contracts with a dollar amount in excess of \$15 million unless otherwise exempted.

#### Service Contracts:

- Per §73-803(3), A contract for services shall mean a “contract that directly engages the time or effort of an independent contractor whose purpose is to perform an identifiable task, study, or report rather than to furnish an end item of supply, goods, equipment, or material.
- All contracts secured through the Request for Proposal Process (RFP).

#### Dollar Amount: In Excess of \$15 million:

- This amount is inclusive of estimated expenditures during the term of the contract, including all optional renewal periods specified in the contract. **Note: This amount is not representative of a single year’s expenditures.**

#### Examples:

If the proposed contract has an original term of three years and two additional one year renewal options, the dollar amount would include projected expenditures for all five years.

If the proposed contract has an original term of five years and three additional one year renewal options, the dollar amount would include projected expenditures for all eight years.

### Contracts Not Requiring Proof of Need Analysis:

The following types of contracts for services are not subject to the requirements for Proof of Need Analysis:

- Contracts for goods or commodities
- Contracts for services with a dollar amount of \$15 Million or less
- Contracts for services exempted by § 73-813(2):
  - (a) Contracts for services subject to the Nebraska Consultants’ Competitive Negotiation Act;
  - (b) Contracts for services subject to federal law, regulation, or policy or state statute, under which a state agency is required to use a different selection process or to contract with an identified contractor or type of contractor;
  - (c) Contracts for professional legal services and services of expert witnesses, hearing officers, or administrative law judges retained by state agencies for administrative or court proceedings;
  - (d) Grant agreements or cooperative agreements;

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- (e) Contracts with a value of fifteen million dollars or less with direct providers of medical, behavioral, or developmental health services, child care, or child welfare services to an individual;
- (f) Agreements for services to be performed for a state agency by another state or local government agency or contracts made by a state agency with a local government agency for the direct provision of services to the public;
- (g) Agreements for services between a state agency and the University of Nebraska, the Nebraska state colleges, the courts, the Legislature, or other officers or state agencies established by the Constitution of Nebraska;
- (h) Department of Insurance contracts for financial or actuarial examination, for rehabilitation, conservation, reorganization, or liquidation of licensees, and for professional services related to residual pools or excess funds under the agency's control;
- (i) Department of Transportation contracts for all road and bridge projects;
- (j) Nebraska Investment Council contracts;
- (k) Contracts under section 57-1503;
- (l) Contracts for the erection of, construction of, renovation of, repair or, or addition to any building, for original equipment for any building, for the construction of any road or bridge or for the performance of any work related to such contracts;
- (m) Subject to section 83-146, contracts for the purchase or use of the products of the labor of the inmates of any charitable reformatory, or penal institution of the state;
- (n) Contracts for leases by the state or a state agency of real property;
- (o) Contracts for works of art;
- (p) Contracts for advertising or public announcements; and
- (q) Direct or miscellaneous purchases pursuant to section 73-814.

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## Required Content for the Proof of Need Analysis

When submitting a Proof of Need Analysis to the Materiel Division, the submitting agency is required to provide the following information:

- (a) A description of the service that is the subject of the proposed contract
- (b) The reason for purchase of the service rather than the use or hiring of state employees, including, but not limited to, whether there is an administrative restriction on hiring additional state employees
- (c) A review of any long-term actual cost savings of the contract and an explanation of the analysis used to determine such savings
- (d) An explanation of the process by which the state agency will include adequate control mechanisms to ensure that the services are provided pursuant to the terms of the contract, including a description of the method by which the control mechanisms will ensure the quality of services provided by the contract
- (e) Identification of the specific state agency employee or position who will monitor the contract for services for performance
- (f) Identification and description of whether the service requested is temporary or occasional. Temporary is defined as “a finite period of time with respect to a specific task or result relating to a contract for services.” Occasional is defined as being “seasonal, irregular or fluctuating in nature”.
- (g) An assessment of the feasibility of alternatives within the state agency to contract for performance of the services
- (h) A justification for entering into the contract for services if the proposed contract will not result in cost savings to the state; and the public’s interest in having the particular service performed directly by the state agency exceeds the public’s interest in the proposed contract
- (i) Any federal requirements that the service be provided by a person other than the state agency
- (j) Demonstration by the state agency that it has taken formal and positive steps to consider alternatives to such contract, including reorganization, reevaluation of services, and reevaluation of performance
- (k) A description of any relevant legal issues, including barriers to contracting for the service or requirements that the state agency contract for the service.

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## Certification Process

### Incorporating the Proof of Need Analysis into the Procurement Process

The Proof of Need Analysis is a detailed review of steps to be completed by an agency as they make the business decision to secure a service contract with a dollar amount in excess of \$15 million.

Some elements of the analysis should be completed before the agency commits to an effort to secure the proposed contract. Other components such as the financial comparison of actual savings may only be completed after bids have been received and evaluated as part of the Request for Proposal (RFP) formal sealed bidding process.

The Proof of Need Analysis should be reflective of the significance found in the dollar amount threshold of \$15 million. It is essential the submitting agency incorporate the development of the analysis in the procurement process from the beginning. This is to reduce the potential of delays at the end of the RFP process stemming from the submitting agency having to complete the entire analysis after the proposed contract has been developed.

### Analysis Form and Format

A Proof of Need Analysis Template is available for use by submitting agencies. The template contains a listing and description of required elements. Submitting agencies may submit their Proof of Need Analysis without using the template. However, all submissions must provide information for each required element. Submissions without information clearly identified for each required element will prolong the review period.

### Required Materials to be Submitted to the Materiel Division

The agency seeking to enter into a service contract in excess of \$15 million is to submit to the Administrative Services – Materiel Division (Materiel Division):

1. The completed Proof of Need Analysis
2. A copy of the proposed Contract

### Materiel Division Certification:

Certification of receipt means all information required in the Proof of Need Analysis and a copy of the proposed contract has been provided to the Materiel Division by the submitting agency.

The Materiel Division will provide the submitting Agency Director and point of contact a letter stating the date the Proof of Need Analysis was received and that a response will be provided within the 10 business days.

### Materiel Division Response to Agency:

The Materiel Division shall certify receipt of the Proof of Need Analysis to the submitting agency within 10 business days of receipt.

If the Materiel Division does not certify receipt of the Proof of Need Analysis, including all other required documentation, it shall inform the submitting agency of the additional information required.

### Post Certification Agency Actions:

Once the Materiel Division provides the submitting agency with the Certification of Receipt for the Proof of Need Analysis, the submitting agency may enter into the contract.