

Legal Notice of Rule Making
Nebraska Department of Transportation
Public Hearing
Friday, August 24, 2018, 1:00 - 3:00 PM
Nebraska Department of Transportation
Central Headquarters Bldg., Rm. 103
1500 Highway 2, Lincoln, Nebraska



The Nebraska Department of Transportation (NDOT) has commenced rule making and will hold a public hearing concerning the repeal of the following regulations:

- **17 NAC 7** - Practice and Procedure for Hearings in Contested Cases
- **407 NAC 1** - Hearing Practice and Procedure of the Department of Roads
- **408 NAC 2** - Roadside Trees, Shrubs, Bushes and Vines
- **411 NAC 6** - Snowmobiles on State Highways
- **413 NAC 1** - Consultant Services
- **428 NAC 5** - Hearing Practice and Procedure of the Board of Public Roads
Classifications and Standards

NDOT completed a detailed review of its rules and regulations by directive of the Governor's Executive Order 17-04; the above regulations were determined to be unnecessary, outdated, or both. NDOT may issue guidance documents covering some of the subject matter these regulations relate to if determined necessary.

Interested persons are invited to attend the public hearing. Comments and recommendations may be presented orally or in writing at the hearing. They may also be mailed, faxed, or e-mailed prior to the hearing until the public comment date close (September 3, 2018). Pre-hearing and post-hearing comments should be directed in writing to NDOT's Public Hearings Officer, Tony Bui, P.O. Box 94759, Lincoln, Nebraska 68509-4759; tony.bui@nebraska.gov; voice telephone (402) 479-4994, TDD telephone (402) 479-3834, fax (402) 479-3989. Comments may also be posted online through the Secretary of State's website (see below).

The proposed changes to the regulations may be viewed, downloaded, or commented on at: www.sos.state.ne.us/rules-and-regs/regtrack ("Agency": Transportation). To obtain a free paper copy of the proposed changes, the Proposed Regulation Policy Pre-Review Checklists, or the Fiscal Impact Statements, contact NDOT's Government Affairs Office at PO Box 94759,

Lincoln, Nebraska 68509-4759; erich.strack@nebraska.gov; voice telephone (402) 479-4324, TDD telephone (402) 479-3834, fax (402) 479-3758. Copies may be viewed or picked up in person at the NDOT Director's Office, 1500 Highway 2, Lincoln, NE.

NDOT will make every reasonable accommodation to provide an accessible meeting facility for all persons. Appropriate provisions for the hearing and visually challenged or persons with limited English proficiency (LEP) will be made if NDOT is notified by August 17, 2018. Notification should be submitted to Tony Bui, Public Hearings Officer (see contact information above).

This notice is provided pursuant to the Administrative Procedure Act.

RULE & REGULATION PRELIMINARY FISCAL IMPACT STATEMENT

AGENCY:	Nebraska Department of Transportation		
TITLE:	413	PREPARED BY:	Erich Strack
CHAPTER:	1	DATE PREPARED:	May 23, 2018
SUBJECT:	Consultant Services	TELEPHONE:	402-479-4324

TYPE OF FISCAL IMPACT:

	STATE AGENCY	POLITICAL SUBDIVISION	REGULATED PUBLIC
No Fiscal Impact	X	X	X
Increased Costs			
Decreased Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable			

PROVIDE AN ESTIMATED COST AND DESCRIPTION OF IMPACT:

State Agency	
Political Subdivision	
Regulated Public	

IF INDETERMINABLE, EXPLAIN WHY:

TITLE 413, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 1

NEBRASKA DEPARTMENT OF ROADS
PLANNING AND PROJECT DEVELOPMENT DIVISION

RULES AND REGULATIONS CONCERNING
CONSULTANT SERVICES

Title 413 - NEBRASKA DEPARTMENT OF ROADS - PLANNING AND PROJECT DEVELOPMENT DIVISION

Chapter 1 - Consultant Services

Alphabetical Table of Contents

<u>Subject</u>	<u>Statutory Authority</u>	<u>Code Section</u>
Consultant Selection Procedures and Consultant Certification	81-1701 through 81-1721	001

Numerical Table of Contents

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NEBRASKA ADMINISTRATIVE CODE

Title 413 - NEBRASKA DEPARTMENT OF ROADS - PLANNING AND PROJECT DEVELOPMENT DIVISION

Chapter 1 - Consultant Services

001 CONSULTANT SELECTION PROCEDURES AND CONSULTANT CERTIFICATION. Under authority of, and in compliance with the Nebraska Consultants' Competitive Negotiation Act, Neb. Rev. Stat. §§81-1701 through 81-1721, the following rules and regulations are prescribed by the Nebraska Department of Roads.

001.01 PURPOSE. To provide procedures to be followed for the selection of consultants to perform professional architecture, engineering, landscape architecture or land surveying services for the Nebraska Department of Roads.

001.02 SCOPE. Procedures outlined herein are intended to be in accordance with Neb. Rev. Stat. §§81-1701 through 81-1721. Such procedures are to be followed when professional services are required to be contracted for a project whose basic construction cost is estimated to be more than the threshold amount of five hundred eighty thousand dollars, or for professional services when the estimated fee for such services exceeds the threshold amount of sixty thousand dollars. The threshold dollar amounts are subject to adjustment by the Department of Administrative Services pursuant to Neb. Rev. Stat. §81-1712. After any subsequent adjustment is made by the Department of Administrative Services, the adjusted threshold dollar amount will apply for all purposes of Chapter 1 of this rule and regulation.

001.03 GENERAL. Highway related projects for design or study may be required to be performed by consulting firms when the current workload of the State of Nebraska, Department of Roads staff is such as to preclude the timely completion by State of Nebraska, Department of Roads forces or when such work is of such a highly technical nature that specialized professional services are required. To provide managerial control over competitive negotiations, the following procedures will be observed for the selection of consultants, when such services are required.

001.04 NOTICE OF INTENT. Public notice shall be given for any project whose basic construction cost is estimated to be more than the threshold amount, currently five hundred eighty thousand dollars, or if the estimated fee for professional services exceeds the threshold amount, currently sixty thousand dollars, except in cases when the Director-State Engineer certifies that a public emergency exists. The public notice shall include a general description of the project and shall indicate how interested firms can apply for consideration for such projects. As a minimum, said notice shall be given for three consecutive weeks in a newspaper of statewide circulation.

001.05 CONSULTANT STATEMENT OF QUALIFICATIONS.

001.05A DR FORM 497, ARCHITECT, ENGINEER AND RELATED SERVICES ANNUAL CERTIFICATION FORM. Firms interested in providing professional services for the Department of Roads shall annually submit a DR Form 497 "Architect, Engineer and Related Services Annual Certification Form." Such information may be updated before the anniversary date to reflect changed conditions of the firm.

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Chapter 1 - Consultant Services (Continued)

A firm must have a current DR Form 497 and have received certification from the Department of Roads in order to be eligible to respond to a notice of intent. Firms wishing to perform work on Federal-Aid projects for local public agencies must be certified.

001.05B DR FORM 498, ARCHITECT, ENGINEER AND RELATED SERVICES SUPPLEMENT TO STATEMENT QUALIFICATIONS. A firm must submit DR Form 498 "Architect, Engineer and Related Services Supplement to Statement of Qualifications" with the letter of interest when responding to a notice of intent.

001.06 WHERE TO OBTAIN FORMS. DR Forms 497 and 498 may be obtained on the Nebraska Department of Roads' website, in person, or by mail from the Nebraska Department of Roads, Agreements Engineer, PO Box 94759, Lincoln, Nebraska 68509-4759.

Completed forms are to be returned to the Department by U.S. mail or the email address noted on the form.

001.07 COMMITTEE REVIEW. A committee consisting of the appropriate Deputy State Engineer, the Division Head of the Division for which services are being provided, the Agreements Engineer, or their designated representatives, and two members-at-large as designated by the Director-State Engineer, will be responsible for the review and evaluation of consultants responding to the public notice of intent. The Agreements Engineer or his or her designated representative shall act as a facilitator of the committee. This individual will perform such duties as managing the meetings, moderating the questions and collecting evaluation forms to assist in the consistent treatment of all firms.

001.08 SELECTION PROCESS AND EVALUATION FACTORS.

001.08A SHORT LIST. For each proposed project, the committee designated by the Department of Roads shall evaluate current statements of qualifications and performance data, together with those that may be submitted by the firms, using the evaluation factors established pursuant to section 001.08B.

001.08B EVALUATION FACTORS. Evaluation factors will be specific to each proposed project. These factors will be used to reduce the number of proposals (if necessary) and to determine the final selection for the project. These factors will be provided with the public notice for each project. In reviewing the qualifications of the interested firms, the committee will consider the firms based on such factors as, the ability of professional personnel, past performance, willingness to meet time and budget requirements, location of the firms' offices in proximity to the project, recent, current and projected workloads of the firms, and the volume of work previously awarded to the firms by the Department, with the object of effecting an equitable distribution of contracts among qualified firms, as long as such distribution does not violate the principle of selection of the most highly qualified firms.

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Chapter 1 - Consultant Services (Continued)

001.08C. FINAL SELECTION. The committee shall then conduct discussions with a minimum of the three most qualified firms regarding their qualifications, approach to the project, and ability to furnish the required services. Following the discussions, the committee shall select, in order of preference, a minimum of three firms deemed to be the most highly qualified to perform the required services after considering the evaluation factors established pursuant to section 001.08B.

001.09. NEGOTIATIONS. The committee designated by the Department of Roads shall negotiate a contract with the most qualified firm for professional services at compensation which the Department determines is fair and reasonable. In making such determination, the committee shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. Negotiations shall continue until an agreement is reached or officially terminated.

In the event negotiations are terminated, the second most qualified firm will be contacted and negotiations will be initiated. The procedure will be repeated until an agreement is reached. In all cases where negotiations are terminated, the reasons and facts surrounding those negotiations shall be recorded in writing and submitted to the Director-State Engineer and to the engineering firm.

Should the Department be unable to negotiate a satisfactory contract with any of the three selected firms, the committee shall select additional firms in order of qualification according to procedures prescribed in section 001.08. Negotiations shall then continue until an agreement is reached or until all firms have been contacted. Should no agreement be reached, the terms of the contract under negotiation shall be reviewed to determine the possible cause(s) for failure to achieve an agreement.

ANNOTATION

**Title 413
Chapter 1
Section 001**

**Enabling Legislation
81-1701 through 81-1721
Neb. Rev. Stat.**

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