

NEBRASKA DEPARTMENT OF ADMINISTRATIVE SERVICES

NOTICE OF PUBLIC HEARING

December 23, 2020

9:00 a.m. Central Time

Fourth Floor – Conference Room D

1526 K Street, Lincoln, Nebraska

The purpose of this hearing is to receive comments on proposed changes to Title 12, Chapter 1 of the Nebraska Administrative Code – Rules and Regulations Concerning the Approval of Contracts for Personal Services. The purpose of the proposed changes is to eliminate provisions that mirror statute(s), reduce regulatory burden, and to simplify and clarify the rules. There is no expected fiscal impact on state agencies, political subdivisions, or persons being regulated.

The proposed rules as amended are available at the offices of the Secretary of State, Regulations/Licensing Division, Room 1305, State Capitol, Lincoln, Nebraska 68509, and online at <http://www.sos.ne.gov>.

All interested persons are invited to attend and make oral or written comments at the hearings. Interested persons may also submit written comments prior to the hearings, which will be made part of the hearing record at the time of the hearing if received by the Department of Administrative Services on or before the hearing time on December 18, 2020. Written comments should be sent to the General Counsel of the Department of Administrative Services by mail to 1526 K Street, Suite 140, Lincoln, Nebraska 68509 or by email to [amara.block@nebraska.gov](mailto:amara.block@nebraska.gov).

Due to COVID-19, members of the public may participate in the public hearing by calling the phone conference line at 888-820-1398; Participant Code 8181679#.

Reasonable accommodations will be provided to persons with disabilities by contacting Amara Block at (402) 471-4114 or [amara.block@nebraska.gov](mailto:amara.block@nebraska.gov) by December 17, 2020.

## FISCAL IMPACT STATEMENT

Agency: DAS	
Title: 12	Prepared by: Kenny Zoeller
Chapter: 1	Date prepared: 8/28/2020
Subject: Rules and regulations concerning the approval of contracts for personal services	Telephone: 531-207-2944

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	( X )	( X )	( X )
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )
Indeterminable	( )	( )	( )

Provide an Estimated Cost & a Description of Impact:

State Agency:

Political  
Subdivision:

Regulated  
Public:

If indeterminable, explain why:

## **TITLE 12     DIRECTOR'S OFFICE**

### **CHAPTER 1   APPROVAL OF CONTRACTS FOR PERSONAL SERVICES**

001. STATUTORY AUTHORITY. These rules are adopted pursuant to the provisions of sections 73-301 through section 73-306, Reissue Revised Statutes of Nebraska 2018.

002. SCOPE AND APPLICATION. These rules follow the scope and application of section 73-301 through section 73-306.

003. DEFINITIONS. Terms are defined as they are in sections 73-301 through 73-306.

004. AGENCY RESPONSIBILITIES. Agencies have the responsibilities as described in sections 73-301 through 73-306.

005. DISPLACED STATE EMPLOYEES PLAN OF ASSISTANCE. Any state agency that seeks to enter into a contract for personal services is directed to also submit a formal plan of assistance to the DAS Employee Relations Division for its review and approval. Upon review, Employee Relations will then make its recommendation to the DAS Director.

005.01 In formulating the plan of assistance, a state agency will include, but not be limited to the items mentioned in section 73-303.

006. DIRECTOR'S RESPONSIBILITIES. The DAS Director's responsibilities are described in sections 73-301, 73-304, and 73-305.

006.01 The DAS Director's evaluation of any submitted contract will be based on the criteria in section 73-304 along with timelines for periodic review for compliance by the state agency and a return or cancellation of all payments for services that are not provided pursuant to the terms of the contract;

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

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

~~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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Applicability	73-301	002
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Director's Responsibilities	73-301, 73-304, 73-305	006

## **NEBRASKA ADMINISTRATIVE CODE**

### **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

~~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~~ DAS shall mean the Department of Administrative Services.

~~003.02~~ Director shall mean the Director of Administrative Services.

~~003.03~~ Contract 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~~ Private entity shall mean private services providers, consultants and independent service contractors.

~~003.05~~ Displaced 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 Public Contract Proposal Form):

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

~~004.01A~~ Direct costs or savings, including salary and fringe benefits;

~~004.01B~~ Indirect 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;

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

~~004.01D~~ Additional 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.

~~004.02~~ Measurable goals for improving the quality of the service.

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

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

~~005 — **Displaced State Employees Plan 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.

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

~~005.01A~~ Plans to place displaced employees into vacant positions in the agency or other agencies;

~~005.01B~~ Provisions in the contract, if feasible, to hire displaced employees by the private entity;

~~005.01C~~ Demonstrative 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.



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

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

~~006~~ — **~~Directors 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.

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

~~006.01A~~ The 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;

~~006.01B~~ Affirmative action is not adversely affected;

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

~~006.01D~~ Time lines for periodic review for compliance by the state agency;

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

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

~~006.01G~~ The employees of the private entity are fairly compensated.

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

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

~~006.04~~ The 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.