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STATE *of* NEBRASKA

OFFICE OF THE GOVERNOR

LINCOLN

EXECUTIVE ORDER

No. 02-03

Selection of Contractual Services

1.01 Establishment. The Governor of the State of Nebraska, through Executive Order 02-03, hereby orders that all State agencies, constitutional officers, boards, and commissions (hereafter "agencies") shall immediately utilize an open competitive process for selecting recipients for contractual services. This Executive Order shall apply, under the terms and conditions set forth herein, to contracts entered into by state government for the purchase of services.

2.01 Purpose. The purpose of this order is to establish a standardized, open and fair process for selection of contractual services and to create an accurate reporting of expended funds for such services. This process shall promote a standardized method of selection in State contracts for services, assuring a fair assessment of qualifications and capabilities for project completion. There will also be an accountable, efficient reporting method of all expenditures for these services.

3.01 Definitions. For the purpose of this Executive Order, the following definitions apply:

3.1 Contracts for Services: Means service contracts and personal service contracts.

A. **Personal Service Contract** means any agency contract with an individual, either personally, or doing business as a sole proprietor or in corporate or other entity form, to perform a service or to render an opinion or recommendation. Multi-party contracts with one or more parties who are individuals are included in this definition.

B. **Service Contract** means all agency contracts for services other than personal service contracts.

- 3.2 **Emergency** means necessary to meet an urgent or unexpected requirement where health and public safety or the conservation of public resources is at risk.
- 3.3 **Sole source** means of such a unique nature that the person or firm is clearly and justifiably the only practicable source to provide the service. Determination that the person or firm is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required.

4.01 Charge.

- 4.1 All agencies shall process and document all contracts through the Nebraska Information System ["NIS"], the statewide accounting system. The Director of the Department of Administrative Services shall specify the format and type of information for agencies to provide.
- A. Beginning April 1, 2003, agencies shall enter data on new contracts and amendments to existing contracts on the NIS as they occur.
- B. By no later than August 31, 2003, all agencies shall have completed entry of information onto the NIS about all contracts made prior to April 1, 2003 that are still in effect.
- 4.2 All agencies, except those exempted in Section 5.01, must comply with the review and competitive solicitation processes provided in this section for service and personal service contracts. No agency, subject to this section, shall expend funds for contracts for services unless the agency has complied with this Order.
- A. Agency directors shall assure that each service contract and personal service contract in excess of \$25,000 is competitively bid at the agency level in the manner prescribed by the DAS Materiel *Procedures for the Procurement of Contractual Services* manual or a process approved by the DAS Director or designee.
- B. Agency directors shall assure that each service contract and personal service contract in excess of \$50,000 is pre-reviewed by DAS Materiel Division and competitively bid at the agency level in the manner prescribed by the DAS Materiel *Procedures for the Procurement of Contractual Service* manual or a process approved by the DAS Director or designee.
- C. For each personal service contract in excess of \$50,000, agency directors shall, in addition to the requirements of Section 4.2(B), use the pre-process prescribed by the *People Resource Management Guide* provided by the Department of Administrative Services Personnel

Division or an alternative process approved by the Director of the Department of Administrative Services.

D. Agency contracts for services subject to Sections 4.2 (A) through (C) shall meet the following requirements:

(1) All proposed sole source service contracts shall be pre-reviewed by the Department of Administrative Services, except in emergency situations. In case of an emergency, contract approval by the Agency Director or his or her designee is required. A copy of the contract and agency justification of the emergency must be provided to the Director of the Department of Administrative Services within three (3) business days.

(2) Agency directors will be responsible for maintaining an accurate accounting of the process used for selection of all contracts, which shall include, but not be limited to:

- i. A clear scope of work;
- ii. Cost comparisons to ensure reasonable fees; and
- iii. A defined work product.

(3) Agency directors will be responsible for ensuring contract compliance, which shall include, but not be limited to:

- i. Services required under the contract are being performed;
- ii. No payments shall be made until deliverables are received;
- iii. Coding contracts appropriately into the NIS system.

(4) Agencies may not enter into contracts for services with an unspecified duration or an unlimited duration.

(5) Agencies may not structure contracts to avoid any of the requirements of this Order.

(6) Agency directors are responsible for adequate public notice of an impending project in accordance with the *Procedures for the Procurement of Contractual Services* manual.

(7) Agency directors are responsible for ensuring preparation of a request for contracts for services to be filed with the DAS Materiel Division for dissemination or website access to vendors interested in competing for services.

4.3 The DAS Materiel Division shall provide procedures to grant limited exceptions for sole source and emergency situations and for other unique circumstances, subject to review by the Director of DAS.

- 4.4 The DAS Materiel Division shall be available to all agencies for assistance in providing vendor lists for specific services, for consultation, and for guidance in the process for the procurement of contractual services.
- 4.5 The Department of Administrative Services shall work with agency personnel to continually assess the process to ensure that it is open, fair, and standardized, and that it expedites delivery of needed services.

5.01 Agencies and Contracts for Services Exempt from Section 4.2 of this Order.

5.1 Agencies

- A. The University of Nebraska (also exempt from Section 4.1);
- B. The Nebraska State Colleges; and
- C. The Legislature, Courts, and Constitutional officers

5.2 Contracts for Services

- A. Architectural and engineering services for capital construction projects;
- B. Contracts for services required by federal law, regulation, or policy, or by state statute, to be bid using a particular process or to be entered into with an identified contractor;
- C. Professional legal services and services of expert witnesses, hearing officers, or administrative law judges retained by state agencies for administrative or court proceedings;
- D. Any state or federal financial assistance passed through by an agency to a local political subdivision;
- E. Medical provider or practitioner agreements for participation in the Medicaid program or child welfare program administered by HHSS;
- F. Agreements for services to be performed for one 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. Department of Insurance contracts for financial or actuarial examination, for rehabilitation, conservation, reorganization or liquidation of licensees, and for contracts for professional services related to residual pools or excess funds under the agency's control;
- H. Department of Roads contracts for all road and bridge projects.

6.01 Governance.

- 6.1 Each agency director shall have the responsibility and be held accountable for adherence to this procedure.
- 6.2 The Department of Administrative Services and its divisions shall be responsible for a timely response to agency requests, monitoring procedure compliance, and reporting to the Governor as requested.

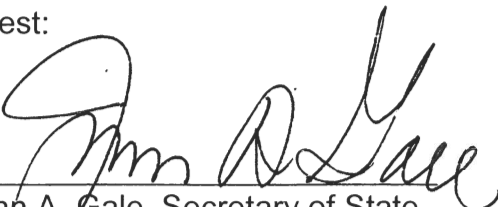
7.01 Sunset. This Executive Order becomes effective on December 20, 2002, and remains effective until rescinded. This Executive Order supercedes Executive Order 00-04, which is hereby repealed.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nebraska to be affixed this 20th day of December, in the year of our Lord Two Thousand and Two.



Mike Johanns, Governor
State of Nebraska

Attest:



John A. Gale, Secretary of State
State of Nebraska

