

COOPERATIVE AGREEMENTS AND CONTRACTS Chapter 0300

CHAPTER CONTENTS

- 0302.0 - Cooperative Agreements/Interlocal Contracts
- 0304.0 - Definitions ~~of Public Agency~~
- 0306.0 - Cooperative Agreements
- 0308.0 - Contents of Agreements
- 0310.0 - Approval of Cooperative Agreements
- 0312.0 - Administrative Support of Cooperative Agreements
- 0314.0 - Interlocal Contracts
- 0316.0 - Approval of Interlocal Contracts
- 0318.0 - Board of Examiners' Requirements
- 0320.0 - Independent Contractors
- 0321.0 - Warranties for All Contracts
- 0322.0 - Independent Contract Review
- 0324.0 - Independent Contract Review Procedure
- 0325.0 - State Agencies, Boards and Commissions With Independent Contracts for Outside Legal Services
- 0326.0 - Independent Contracts Not Requiring Board of Examiners' Review
- 0328.0 - Lease Contracts
- 0330.0 - Minor Remodeling, Repair and Maintenance Contracts
- 0332.0 - Recording Construction Contracts
- 0333.0 - State Building Vending Machine Contracts
- 0334.0 - Volunteers in State Service
- 0336.0 - Amendments to Contracts
- 0338.0 - Bidding Requirements
- 0340.0 - Effective Dates of Contracts
- 0342.0 - Contract Forms
- 0343.0 - Contract Logs
- 0344.0 - Contract Summary Forms

COOPERATIVE AGREEMENTS AND CONTRACTS 0300

COOPERATIVE AGREEMENTS/INTERLOCAL CONTRACTS

0302.0

Cooperative Agreements and Interlocal Contracts are contracts between public agencies to provide services or facilities to one another or to the public in accordance with the "Interlocal Cooperation Act." (NRS §277.080 to §277.180)

DEFINITIONS ~~OF PUBLIC AGENCY~~

0304.0

DEFINITION OF PUBLIC AGENCY

1. "Public Agency" means:
 - A. Any political subdivision of this State, including without limitation, counties, incorporated cities and towns including Carson City, unincorporated towns, school districts and other districts.
 - B. Any agency of this State or of the United States.
 - C. Any political subdivision of another State.
 - D. Any Indian tribe, group of tribes, organized segment of a tribe or any organization representing two or more such entities."State" includes any of the United States and the District of Columbia.

DEFINITION OF CONSULTANT

2. A "consultant" is defined as a person who provides information, an opinion or advice for a fee.

COOPERATIVE AGREEMENTS

0306.0

A cooperative agreement is an agreement between two or more public agencies for the "joint exercise of powers, privileges and authority," including, but not limited to law enforcement. (NRS §277.080 to §277.170)

CONTENTS OF AGREEMENTS

0308.0

1. Any agreement made pursuant to NRS §277.110 that establishes a separate legal or administrative entity to conduct the joint or cooperative undertaking shall specify:
 - A. The precise organization, composition and nature of such entity and the powers delegated thereto.
 - B. The duration of the agreement.
 - C. The purpose of the agreement.
 - D. The manner of financing such undertaking and of establishing and maintaining a budget.
 - E. The method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.
 - F. Any other necessary or proper matters.
2. Any agreement so made which does not establish such an entity shall contain:
 - A. The provisions enumerated in paragraphs B to F, inclusive, of subsection 1.
 - B. Provision for an administrator or joint board responsible for administering the undertaking. In the case of a joint board, public agencies that are parties to the agreement shall be represented.
 - C. The manner of acquiring, holding and disposing of real and personal property used in such undertaking.
- Any agreement must be in writing.

APPROVAL OF COOPERATIVE AGREEMENTS

0310.0

1. Cooperative agreements become effective only upon:

- A. Ratification by appropriate official action of the governing body of each party to the contract as a condition precedent to its entry into force. Cooperative agreements ranging in cost from zero to \$1,999 require approval of the agency head; cooperative agreements ranging in cost from \$2,000 to \$9,999 require the approval of the Clerk of the Board of Examiners, or designee, on behalf of the Board of Examiners; and cooperative agreements totaling \$10,000 or more require the approval of the Board of Examiners; and
 - B. Ratification by appropriate ordinance, resolution or otherwise by law on the part of the governing bodies of the participating public agencies.
2. Cooperative agreements shall be submitted to the Attorney General before becoming effective for determination of proper form and compatibility with the laws of this State. If the Attorney General does not disapprove an agreement within 30 days after its submission, the failure to disapprove constitutes approval.
 3. Cooperative agreements must be recorded with the county recorder of each county in which a participating political subdivision of this State is located, and filed with the Secretary of State.
 4. Cooperative agreements dealing in whole or in part with services or facilities over which an officer or agency of this State has control must be submitted to that State officer or agency for approval or disapproval as to all matters within his/her or its jurisdiction before the agreement's entry into force. This requirement is in addition to the requirement of submission and approval by the Attorney General.

A Contract Summary Form must accompany all cooperative agreements submitted for review and approval.

ADMINISTRATIVE SUPPORT OF COOPERATIVE AGREEMENTS

0312.0

Any public agency that has entered into a cooperative agreement may support the administrative joint board or other legal or administrative entity created pursuant to NRS §277.080 to §277.170 in any one or more of the following ways:

1. By appropriating funds;
2. By selling, leasing, giving or otherwise supplying property; or
3. By providing such personnel or services as may be within its legal power to furnish.

INTERLOCAL CONTRACTS

0314.0

Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of its public agencies is authorized by law to perform. (NRS §277.180)

Interlocal contracts are distinguished from cooperative agreements in that cooperative agreements are for the "joint exercise of powers, privileges and authority" by public agencies and interlocal contracts are agreements by public agencies to "obtain a service" from another public agency.

Agencies are advised to work closely with the Attorney General to ensure compliance with the statutes governing any cooperative agreement or interlocal contract entered into pursuant to NRS §277.080 through §277.180.

APPROVAL OF INTERLOCAL CONTRACTS

0316.0

If an agency of this State is a party to the interlocal contract, the interlocal contract must be approved by the Attorney General as to form and compliance with law.

Interlocal contracts must be ratified by appropriate official action of the governing body of each party to the contract as a condition precedent to its entry into force. Interlocal contracts ranging in cost from zero to \$1,999 require approval of the agency head; interlocal contracts ranging in cost from \$2,000 to \$9,999 require the

approval of the Clerk of the Board of Examiners, or designee, on behalf of the Board of Examiners; interlocal contracts totaling \$10,000 or more require the approval of the Board of Examiners.

A Contract Summary Form must accompany all interlocal contracts submitted for review and approval.

BOARD OF EXAMINERS' REQUIREMENTS

0318.0

All State agencies are required to file one copy of any approved cooperative agreement or interlocal contract with the Clerk of the Board of Examiners.

The approval of the Board of Examiners and the Office of the Attorney General is required on cooperative agreements and interlocal contracts pursuant to SAM sections 0310.0 and 0316.0.

INDEPENDENT CONTRACTORS

0320.0

1. The determination as to whether an individual performing services for the State should be treated as an independent contractor or as a State employee is an important one. That determination can affect the individual's status in several regards, including:
 - A. His/Her treatment by the Internal Revenue Service for tax and Social Security withholding purposes;
 - B. His/Her treatment by the U.S. Department of Labor for purposes of overtime calculation under the Fair Labor Standards Act;
 - C. His/Her treatment by the insurance companies providing workers' compensation coverage relative to coverage for on-the-job injury; however, if the contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310, and has elected not to purchase industrial insurance for himself/herself, the sole proprietor must submit to the contracting State agency a signed and notarized affidavit so stating.
 - D. His/Her treatment by the Employment Security Department in the determination of unemployment benefits; and
 - E. His/Her treatment by the courts in determining possible liability to the State of Nevada for his actions.
2. The following is the definition of an independent contractor under NRS §284.173(2):

"An independent contractor is a natural person, firm or corporation who agrees to perform services for a fixed price according to his/her or its own methods and without subjection to the supervision or control of the other contracting party, except as to the results of the work, and not as to the means by which the services are accomplished."
3. There are several additional factors that should be balanced to determine whether the State, as an employer, has such control over the worker so as to render the relationship one of employment rather than that of independent contract.
 - A. The following factors indicate the creation of an employer-employee relationship rather than that of an independent contractor:
 - 1) The lack of any completion date, time limit or unit of work designation;
 - 2) The employer's right to hire and fire the person holding the contract;
 - 3) The payment of a regular salary;
 - 4) The delegation to the contractor of administrative powers over employees; and/or
 - 5) The level of control over the means and manner of accomplishment of the work.
 - B. A person is not an independent contractor simply because there is an agreement designating him/her as such or because the employer permits him/her considerable discretion and freedom of action. If a person performs services subject to the will and control of the employer, that person is an employee and his/her salary must come from the salary category.
 - C. Agencies unsure whether or not an employee-employer relationship exists in a potential contract should request the assigned Deputy Attorney General to review the contract for compliance with the provisions of NRS §284.173.
4. An independent contractor is not provided the following:
 - A. Withholding of income taxes or Social Security by the State;

- B. Participation in group insurance plans which may be available to employees of the State;
 - C. Participation or contributions by either the independent contractor or the State to the Public Employee's Retirement System;
 - D. Accumulation of vacation or sick leave; or
 - E. Coverage for unemployment compensation provided by the State.
5. Agencies contemplating the use of State employees as independent contractors must adhere to the following conditions:
- A. Contracts with State employees must meet the criteria for independent contractors outlined above.
 - B. All State permanent employees must devote full time attention and effort to State employment during official duty hours and not to contractual obligations. (NAC 284.766)
 - C. A State employee shall not enter into a contract with the State in any capacity that may be construed as an extension of his/her assigned duties or responsibilities to the State (NAC 284.754).
 - D. Contracts with public officers or employees are prohibited in instances in which the officer or employee "has a pecuniary interest." (NRS §281.221)
 - E. A member of any board, commission or similar body engaged in the profession occupation or business regulated by such board or commission and faculty members of the University and Community College System of Nevada, may bid on or enter into a contract with any governmental agency if he is not part of the development of contract plans or specifications, and if he/she is not personally involved in opening, considering or accepting offers. (NRS §281)
 - F. A public officer or employee may bid or enter into a contract with any governmental agency if the contracting process is governed by rules of open competitive bidding, the sources of supply are limited, and if he/she is not personally involved in opening, considering or accepting offers. (NRS §281)
 - G. An employee may be disciplined for a violation of NAC 284.738, "Conflicting Activities." An appointing authority has the power under the regulations to define which activities are in conflict with functions of an agency. (NAC §284.650)
 - H. State employees employed by one agency may lawfully work on contract for another State agency while on annual leave from the first agency.
 - I. Agencies contracting with State employees must provide a written justification as to why this individual was selected and a written description of the proposed work and the employee's normal job duties so the Board can make a determination as to whether or not the contract can be construed "as an extension of assigned job duties." The Board's favorable consideration of such requests would be assisted if the contract service and regular employment of the contractor benefit different agencies, or will be under the supervision of different individuals.
6. Travel expenses, per diem and other expenses may be paid to an independent contractor if provided for in the contract and must conform to the procedures and rates allowed for State officers and employees. It is the policy of the Board of Examiners to restrict contractors to the same rates and procedures allowed State employees.
7. While proposed independent contracts are reviewed by the Attorney General as to form under NRS §284.173 (5), that review is only as to the terms of the relationship that appear in the writing presented for review. If the actual relationship between the worker and the State later changes and does not comport with that writing, such as if the State subsequently provides office space, secretarial help or requires the worker to report to a supervisor, the nature of the agreement may well become one of employment and not contract. For this reason, it is important for agency heads to monitor the actual work relationships of persons hired pursuant to NRS §284.173 to ensure that an independent contract relationship is truly present under the above referenced standards. If there is some doubt as to that relationship, consult your assigned deputy attorney general.
8. If the services of an independent contractor are contracted to represent an agency of the State in any proceeding in any court, the contract must require the independent contractor to identify in all pleadings the specific State agency that he/she is representing.
9. Any person, firm or corporation who performs work under any contract with the State must furnish the State agency with a certificate of the insurer or other evidence certifying that the contractor has complied

with the provisions of law regarding providing workers compensation coverage. NRS Chapters 616A to 616D, inclusive.

WARRANTIES FOR ALL CONTRACTS

0321.0

It is the Board of Examiners recommendation that, in the negotiations of all contracts, warranties as set forth in the model contract form approved by the Attorney General, remain as stipulated unless negotiated with the assistance of and approved by the agency's Deputy Attorney General.

INDEPENDENT CONTRACT REVIEW

0322.0

1. Contracts must be ratified by appropriate official action of the governing body of each party to the contract as a condition precedent to its entry into force. Contracts ranging in cost from zero to \$1,999 require the approval of the agency head or designee; contracts ranging in cost from \$2,000 to \$9,999 require the approval of the Clerk of the Board of Examiners, or designee, on behalf of the Board of Examiners; and contracts totaling \$10,000 or more require the approval of the Board of Examiners. All revenue-generating contracts require approval limits consistent with the dollar thresholds as set forth herein.
2. The Board of Examiners shall review each contract submitted for approval and consider whether sufficient authority exists to expend the money required by the contract and whether the services that are the subject of the contract could be provided by a State agency in a more cost effective manner.
3. State agencies shall identify an internal, professional level position to function as a contract monitor. This position would be responsible for facilitating the agency's RFPs, conducting complex agency solicitations or, in the event of decentralized agency purchasing procedures, the review and approval of agency solicitations and the resulting contracts for compliance with NRS Chapter 333, NAC Chapter 333, and SAM Chapter 300. Agency contract managers must become certified through the State Purchasing Division's Contract Certification Class. Contract managers will be responsible for completing a comprehensive training course that will cover all aspects of the RFP process, informal solicitation process, law pertaining to the State Purchasing Act, contract negotiations, interlocal contracts and cooperative agreements and other topics relevant to State contracting and reducing the State's exposure to risk. Contract monitors will need to contact State Training for a schedule of classes and registration.
4. All contracts submitted to the Board of Examiners which are less than \$10,000, those contracts necessary to preserve life and property in amounts less than \$25,000 and those contracts entered into by the State Gaming Control Board for the purposes of investigating an applicant for or holder of a gaming license MAY be approved on behalf of the Board by the Clerk of the Board of Examiners or his designee, which is appealable to the Board of Examiners. Such contracts are not effective until signed by the Clerk. (NRS §284.173)
5. All services provided to an agency by persons and/or firms falling under the definition of an independent contractor as enumerated in SAM 0320.0 must be supplied under a contract executed by the agency receiving the services. Examples of such services include, but are not limited to:
 - A. Medical services (does not include employee physicals).
 - B. Consultants.
 - C. Training.
 - D. Telephone answering services.
 - E. Repair, replacement or installation of parts for automobiles and light trucks more than \$5,000 and heavy equipment more than \$15,000.
 - F. Clipping services.
 - G. Data Processing Services, including hardware maintenance (must be reviewed and approved by the Department of Information Technology before submittal to the Board of Examiners).
 - H. Alarm System Monitoring (fire, burglar, etc.).
6. Whenever possible, agencies should anticipate and negotiate contracts for preventive services to eliminate the need for emergency services at some future date. Such contracts may include minor remodeling, repair

or preventive maintenance work. The following rules must be considered in the preparation of such contracts.

- A. All such contracts are subject to the requirements of SAM.
 - B. All such contracts must conform to the bidding requirements in SAM 0338.0 and the minor remodeling, repair and maintenance requirements in SAM 0338.0.
 - C. Funding must be available for payments against the contract.
7. The following contracts with consultants, as defined in SAM 0304.0, require the Interim Finance Committee (IFC) approval in accordance with NRS 284:
- a. The person is a current employee of an agency of this State;
 - b. The person is a former employee of an agency of this State and less than 1 year has expired since the termination of his employment with the State;
 - c. The term of the contract is for more than 2 years or is amended or otherwise extended beyond 2 years.

For exceptions and reporting requirements on contracts with consultants, please see NRS 284.

INDEPENDENT CONTRACT REVIEW PROCEDURE

0324.0

The following procedures should be adhered to when submitting a contract for review:

1. Contracts should be submitted to the Clerk of the Board of Examiners by the deadline established by the Clerk and disseminated to State agencies via agency memorandums.
2. Each contract must include a clause that specifically states that the State is not obligated under the agreement before approval by the Board of Examiners.
3. The contract should consist of the Attorney General's approved contract form for independent contractors, the State's solicitation and the successful vendor's proposal. Any negotiated items or clarifications should be reduced to writing and incorporated into the contract document as a separate attachment. It is important, when listing the order of the attachments within a contract, to give consideration to the order of precedence to prevent potential conflict in the terms.
4. Three copies of the contract must be submitted; each copy must have the original signatures of the Attorney General or representative, the responsible agency representative and the contractor. Contract distribution is as follows: one copy for the Fiscal Analysis Division of the Legislative Counsel Bureau; one copy to be returned to the agency; and one copy for the independent contractor. Access to all submitted proposals shall be made available by the soliciting agency and will be retained for the life of the contract or six (6) years, or for a period of time as determined by the soliciting agency's records retention schedule, whichever is longer.
5. The Board of Examiners requests agencies to substantiate all contracts entered into with former employees who would perform work similar to their State employment.
6. Bidding requirements for contracts are outlined in NRS Chapter 333, NAC Chapter 333 and SAM 0338.0.
7. Board of Examiners' policy is to review and approve contracts prior to the services being rendered. Agencies are to present contracts in a timely manner and prior to the obligation of State funds. Contracts with a retroactive effective date, e.g., work commenced prior to the Board of Examiners' approval date, must be accompanied by a memorandum clearly justifying the circumstances.
8. All contracts involving information systems must be reviewed and approved by the Department of Informational Services prior to submittal to the Board of Examiners.

STATE AGENCIES, BOARDS AND COMMISSIONS WITH INDEPENDENT CONTRACTS FOR OUTSIDE LEGAL OR PROFESSIONAL SERVICES

0325.0

Professional services shall include consultation or representative services within the professional's area of educational expertise performed by licensed practitioners as defined in NRS Chapter 439A, attorneys, accountants, engineers, architects, or experts (by education or experience) for judicial or administrative proceedings. It is the policy of the State of Nevada to limit and monitor costs associated with the hiring of

professional and expert services, including private attorneys who provide services to the State as independent contractors. Accordingly, all such contracts including those entered into between the State, its agencies, boards and commissions, must include the following contract terms. Further, no such contract may extend beyond a two-year term without review and approval of the Board of Examiners.

1. Notification of Attorney General's Office - Contractor shall notify and consult with the Attorney General's Office promptly regarding all significant developments in regard to any potential legal matters or legal services provided under this contract. Should litigation involving potential liability for the State commence or significantly change during the term of this contract, the Attorney General's Office shall be immediately informed in writing. Contractor shall promptly advise the Risk Management Division of the Department of Administration regarding changes in the status of litigation that may have a fiscal impact on the State.
2. Copies of Work Products Provided to Attorney General's Office - Contractor shall promptly provide the Attorney General's Office, 100 N. Carson Street, Carson City, NV 89701-4717, with copies of final versions of the written work product relevant to any legal matter, including correspondence and executed counterparts of any original pleadings or other matters of importance. Contractor shall also provide to the Attorney General's Office written, quarterly reports summarizing significant developments in regard to the subject matter of the contract and significant services performed under the contract.
3. Work Product the Property of the State - All work products of the Contractor resulting from this contract are the exclusive property of the State. If any work remains in progress at the termination of this agreement, the Contractor shall surrender originals of all documents, objects or other tangible items related to the work to the Attorney General's Office.
4. Conflicts of Interest - Contractor shall not accept other representation or work known to be in direct conflict with the subject matter of the contract without prior written approval of the Attorney General's Office and all attorneys will consult with the Attorney General's Office regarding potential conflicts of interest, at all times acting in accordance with the Nevada Rules of Professional Conduct, Supreme Court Rules 157 - 159.
5. Copies of professional liability insurance will be attached to the contract with proof of policy of professional liability insurance for errors and omissions that is issued by an admitted insurance company authorized to transact insurance in the State of Nevada or by an insurance company authorized to transact surplus lines in the State of Nevada in an amount not less than \$1 million, or as otherwise determined or waived by the Division of Risk Management, Department of Administration, 201 S. Roop Street, Suite #201, Carson City, NV 89701.
6. Billing - In the absence of an agreed upon flat rate or per diem, contractor shall submit monthly billings for work performed, billing only for actual time spent performing a task, and not for unit charge (e.g., no automatic billing of one-third hour for a phone call that may take only five minutes). In every case all billings shall describe all work performed with particularity and by whom it was performed. Billings shall be attached to payment vouchers and processed, as are other claims against the State. Such billings are subject to the following guidelines:
 - A. Unless otherwise agreed in advance, it is expected that only one professional from contractor's organization will attend meetings, depositions and arguments and other necessary events, although a second person may be needed for trials and major hearings or meetings;
 - B. Charges for professional time during travel will not normally be reimbursable unless the time is actually used performing professional services or as otherwise arranged in advance.In addition, the State will not pay:
 - A. Fees for the training of personnel incurred as a result of staffing changes or increases during the term of the contract;
 - B. Fees for time spent educating junior professionals or associates;
 - C. Fees for more than ten hours of work per day for any individual, except during trial or another extraordinary event.
7. Expense Statements - If the contract provides for specific reimbursement for expenses, contractor shall submit monthly statements to the Contracting Agency itemizing all expenses for which reimbursement is claimed. Certain disbursements will not be paid unless agreed to in advance. These include:
 - A. Secretarial or word processing services (normal, temporary, or overtime);

- B. Photocopy expenses of more than 15 cents per page;
- C. Photocopy costs in excess of \$2,000 for a single job;
- D. Any other staff charges, such as meals, filing, proofreading, regardless of when incurred;
- E. Computer time (other than computer legal research specifically authorized in advance).

The State will not reimburse expenses for the following:

- A. Local telephone expenses or office supply costs;
 - B. The costs of first-class travel (travel arrangements should be made in advance to take advantage of cost-effective discounts or special rates).
8. Disputes - In the event that a civil action is instituted to collect any payment due under this contract or to obtain performance under this contract, the State as a prevailing party shall recover, as the court deems appropriate, reasonable attorneys' fees and all costs and disbursements incurred in such action.

INDEPENDENT CONTRACTS NOT REQUIRING BOARD OF EXAMINERS' REVIEW 0326.0

The following types of contracts need not be filed with or approved by the Board of Examiners:

1. Contracts executed by the Department of Transportation for any construction or reconstruction of highways.
2. Contracts executed by the State Public Works Board or any other department or agency for any construction or major repairs, which includes without limitation anticipatory repairs such as remodeling or maintenance, of State buildings, or State improvements (i.e., dams, boat ramps, camp grounds), including its leaseholds, if the contracting process was controlled by the rules of open competitive bidding. (SAM 0338.0 and 1908.0)
3. Contracts executed by the Housing Division of the Department of Business & Industry.
4. Contracts executed with business entities for any work or maintenance or repair of office machines and equipment. (Does not include computer hardware, computer hardware maintenance and computer software, or items listed in section 0330.0).
5. Contracts entered into by the University and Community College System of Nevada.
6. Contracts for similar services provided by the same contractor within the same fiscal year which if combined would not exceed \$1,999.
7. Repair, replacement and installation of parts on automobiles and light trucks , including aircraft, heating and air conditioning refer to SAM 1552.
8. Computer software maintenance that consists of the following: license agreements, right to download updates remotely and/or off site technical support.

LEASE CONTRACTS

0328.0

1. **State Offices** - The Chief of the Buildings and Grounds Division has the authority to lease and equip office rooms outside of State buildings whenever sufficient space cannot be provided within State buildings. No such lease may extend beyond the term of one (1) year unless it is reviewed and approved by the Board of Examiners. (NRS §331.110). The Attorney General shall approve each lease entered into pursuant to this section as to form and compliance with law.
2. **Land** - The Division of State Lands acquires and holds all lands and interests in land owned or required by the State except:
 - A. Lands or interests used or acquired for highway purposes;
 - B. Lands or interests the title to which is vested in the Board of Regents of the University and Community College System of Nevada.
 - C. Office buildings leased by the Chief of Buildings and Grounds; or
 - D. Lands used or acquired for the Legislature or its staff.

Agencies contemplating leases of State land should contact the Division of State Lands for advice. (NRS 322.010)

3. **Equipment** - The Purchasing Administrator has sole authority to contract for equipment unless otherwise specifically provided by law (NRS §333.150). Agencies requiring equipment lease contracts should contact the Purchasing Division. (SAM 1500.0)

MINOR REMODELING, REPAIR AND MAINTENANCE CONTRACTS

0330.0

1. Contracts are required for all minor remodeling, repair and maintenance work and must be submitted to and approved by the Board of Examiners unless exempted in SAM 0326.0.
2. Contractors, as defined by NRS 624, must be licensed before they can submit a bid or proposal on any minor remodeling, repair and maintenance work, pursuant to NRS 624.700 unless specifically exempt under NRS 624.031. All buildings requiring minor non-structural remodeling, repair and maintenance work requiring the use of outside labor and having an estimated cost of less than \$5,000 that will NOT be executed by the Public Works Board may be negotiated by the agency controlling the building. (SAM 1908.0) Where the building is under control of the Buildings and Grounds Division, see SAM 1004.0.
3. All non-structural repairs costing more than \$5,000 and less than \$25,000 must have at least three bids or proof that the bids have been requested from at least three firms. All project requirements and specifications must be submitted in writing to all prospective bidders.
Exception: On jobs the agency estimates to cost between \$5,000 and \$25,000, the agency may negotiate work on a time and material basis if it submits statements by at least two reputable firms licensed to perform the work that the job cannot be bid.
4. Non-structural remodeling, repair and maintenance work is defined as work estimated to cost less than \$25,000 for which an agency has budgeted funds, and which does not affect the safety of the building and does not change, in any manner, its structural elements. If an agency has questions, it should contact the Public Works Board.

Examples of jobs that may be included under this section, and requiring contracts, are as follows:

- A. Asphalt repair
 - B. Electrical repairs
 - C. Floor refinishing/repair
 - D. Landscape services
 - E. Painting of buildings/rooms
 - F. Plumbing repairs
 - G. Repair of heat plant boilers over \$15,000.00
 - H. Repair of refrigerators/freezers
 - I. Repair/replacement of air conditioners over \$15,000.00
 - J. Repair/replacement of bathroom tiles
 - K. Replacement of broken windows
 - L. Exterminator services
 - M. Maintenance and/or repair of elevators
5. Solicitation Requirements: Refer to SAM 0338.0

RECORDING CONSTRUCTION CONTRACTS

0332.0

State construction contracts must be in writing, signed by the contracting parties and delivered to the Secretary of State. The Secretary of State files and records the contracts in the State's agreement and contract book. This does not apply to contracts for maintenance or with independent contractors.

STATE BUILDING VENDING MACHINE CONTRACTS

0333.0

Any future contract, renewal of a contract, or amendment of a contract with a vendor who supplies to a State building a vending machine that dispenses soft drinks in aluminum cans must include:

1. A provision that requires the vendor to provide a bin or other suitable receptacle for the collection of empty cans; and

2. A provision that requires the vendor to periodically collect the empty cans for delivery to an appropriate recycling center or nonprofit organization that collects cans.

VOLUNTEERS IN STATE SERVICE

0334.0

Volunteers in State service should be treated like contract employees and a contract should be processed.

If the volunteer is treated like an independent contractor, then see SAM 0320.0. If there is a question as to whether or not the volunteer is or should be treated like an independent contractor, contact the Risk Management Division or your Deputy Attorney General.

If the volunteer is not an independent contractor consider the following legal ramifications of using volunteers in programs directed by public agencies:

1. Most persons who volunteer their services and participate in a program sponsored by the State of Nevada are not automatically covered by worker's compensation coverage. Certain types of "volunteers" are specifically defined by law to be "employees" and must be covered. (NRS §616A.160 Volunteer Peace Officers)
2. Volunteers MAY be covered by Workmen's Compensation under NRS §616A.130 "The process of discretionary coverage under NRS §616.067 is a two-step process by design. Initially, an insurer must make a determination that such volunteers are to be 'deemed' employees, and secondly, the employing organization must elect coverage and comply with the provisions of Chapter 616 of NRS." (AGO 80-15) Applications for volunteer coverage can be obtained by calling Risk Management.
3. When a volunteer is covered under workers' compensation the State "is relieved from other liability for recovery of damages or other compensation for those personal injury, unless otherwise provided by the terms of Chapters 616A to 616D, inclusive, of Nevada Revised Statutes otherwise provided." (NRS §616B.612)
4. The State may be liable for the negligent acts of its volunteers who injure third parties.
5. The Attorney General may be responsible for defending a volunteer who is sued in civil proceedings relating to that person's voluntary service.
6. In most cases, the State will be liable and the volunteer will be entitled to a defense if the alleged wrongful act of the volunteer was done under the direction and control of the State, in good faith, in furtherance of the State's business and within the course and scope of the public duty assumed by the volunteer.

AMENDMENTS TO CONTRACTS

0336.0

All contracts requiring Board of Examiners' review may be amended if such an amendment is deemed to be in the best interest of the State. Amendments include, but are not limited to, additional money or time required to complete the scope of work of the of the contract, any change in the basis of payment for the contract or any substantive change to the scope of work which would affect the anticipated results of the contract.

Except for those contracts waived under SAM 0326.0, all amendments to contracts require Board review and approval. Such review may determine that it is in the best interest of the State to have a new contract with another contractor rather than amend the contract with the current contractor. The Clerk or his designee may, on behalf of the Board, approve amendments that which extend the time of the contract with no additional money and amendments that increase the contract by less than \$10,000. Amendments increasing the total amount of the contract above \$10,000 will need to be submitted to the Board of Examiners. The Clerk may also approve contract amendments that change the scope of work if such a change is deemed to not adversely affect the State's interest.

All amendments must include language that clearly identifies the applicable change/revision; i.e., amount of monetary increase and new maximum amount, change of effective/termination date from 00/00/00 to 00/00/00, etc.

Amendments should be submitted in the following format: one copy of the amendment with a copy of the original contract, complete with any prior amendments to the contract and all attachments (e.g. the State's solicitation, contractor's response, etc.) attached as Exhibit A. All remaining copies of the amendment should be submitted with a copy of the original contract and any prior amendments attached as Exhibit A.

Three copies of the amendment must be submitted for Board of Examiners' approval. Each copy must have the original signatures of the Attorney General or representative, the responsible agency representative and the contractor. Contract distribution is as follows: One copy for the Fiscal Analysis Division of the Legislative Counsel Bureau; one copy to be returned to the agency; and one copy for the independent contractor.

A Contract Summary Form must accompany all contract amendments submitted for review and approval.

SOLICITATION REQUIREMENTS

0338.0

1. Particular attention should be given to proposals and bids. Except as provided in subsection (3), an agency shall, whenever possible, solicit and review at least three bids or proposals for each contract.

Because the State Purchasing Act, NRS Chapter 333 is applicable to all procurements within the scope of NRS §284.173, a published Request for Proposal (RFP) (or authorized alternative publication) shall be the required form of agency-direct solicitation for contracts of \$25,000 per fiscal year or more primarily for services (materials, supplies, or equipment provided as an integral part of a RFP for services need not be solicited separately by the Purchasing Division). An agency must work with the Attorney General's Office, the Risk Management Division and should consult with the Purchasing Division, or if structural the Public Works Board, in constructing a solicitation document for services. An agency using the RFP process must request a query of the Purchasing Division's database when developing a mailing list for the solicitation. An agency may request posting of the solicitation document on the Purchasing Division's website at <http://purchasing.state.nv.us>.

Pursuant to NRS§333.165, except as otherwise provided by statute, the Purchasing Administrator shall contract for services whose estimated value is \$100,000 or more, and may authorize an agency to contract for such services if he determines that to do so would be in the best interest of the State.

Prior to releasing any solicitation, an agency should define its needs, giving consideration to the development of the Scope of Work, identifying deliverables and deadlines.

A. The Request for Proposal process:

This process is applicable to solicitations of service or service with goods whose estimated contract value is \$25,000 per fiscal year or more. Agencies must use the approved RFP template, which may be obtained at the State Purchasing Division's website at <http://purchasing.state.nv.us>. Prior to an RFP being released, the evaluation criteria must be determined and listed in the RFP document in order of importance; weight factors for the evaluation criteria must be established and maintained confidential until a contract has been awarded; and the evaluation committee should be identified and appointed by the agency head. Additionally, it is at this time that agencies should have the draft RFP reviewed by their Deputy Attorney General for approval of the document as to form and content and seek minimum insurance limit requirements from Risk Management. The minimum insurance limits are to be entered into the Contract for Service of an Independent Contractor, which is then appended to the RFP document for the vendor's information.

When establishing the timeline for the RFP, it is recommended that the amount of time from the date the RFP is released until the proposal submission deadline (proposal opening) be six to eight weeks. The minimum timeline as recommended by the State Purchasing Division is four weeks.

RFPs must be advertised one time in a paper of general circulation. Consideration should be given as to whom the agency is trying to target for this solicitation, i.e., services in rural Nevada should be advertised in a paper serving that area.

Agencies need to allow for a question and answer period within the RFP timeline. The agency must receive all questions in writing, placing them anonymously into an RFP amendment with the subsequent State response to the questions. This RFP amendment is then forwarded to all prospective vendors who submitted questions and made available to any other interested parties. The template for an amendment to the RFP is available from the Purchasing Division.

The RFP opening is public; the only information that is made available is the names of the vendors who submitted proposals. Submitted information is confidential and should only be shared with the evaluation committee members. Evaluation committee members are to evaluate the technical proposal individually, with the contract monitor setting a group evaluation committee meeting in order for there to be a consensus meeting to rank the technical proposals. The next step in the group meeting is to present and score the cost proposals. This may be done at the same meeting; however, when dealing with difficult or complex scopes of work it may require an additional meeting. The outcome of these meetings is the determination of the overall ranking after factoring in the technical proposal and cost proposal scores. The highest-ranking vendor is then issued a letter of intent to contract, at which time the negotiation process may begin.

Following successful negotiations, a contract is drafted which incorporates the State's solicitation (RFP), the contractor's response and any written negotiated or clarified items. Agency policy determines the order that signatures on the contract are obtained. A contract that has been signed by the agency's Deputy Attorney General, the awarded vendor and the agency head is then ready to be submitted to the Budget Division for placement on the Board of Examiners' agenda. When the contract with all required attachments is submitted to the Budget Division, the agency must issue a Notification of Award (NOA). Pursuant to NAC §333.170, the Notification of Award is comprised of a notice posted in three public locations and a letter to the unsuccessful vendors notifying them of who was awarded the contract and the contract amount. The ten-calendar day appeal period, as defined in NRS §333.370, begins the day the notice is posted and the letters are sent. It is at this time that all information pertaining to the solicitation becomes public information. Agencies must be diligent in protecting any information labeled by the vendors as confidential and giving them timely access to any requested information. Templates for the Notification of Intent and Notification of Award letters may be obtained from the State Purchasing Division's website at <http://purchasing.state.nv.us>.

The contract summary form requires an explanation of why the contractor was selected. (SAM 0344.0) Each proposal by a proposed independent contractor shall include in the proposal a complete disclosure, or a written affirmation of the lack thereof, of any alleged significant prior or ongoing contractual failures, any civil or criminal litigation or investigation pending which involves the vendor or in which the vendor has been judged guilty or liable regarding either a State or federal contract. The State of Nevada reserves the right and discretion to reject any proposal or terminate any contract upon notification of any past, current or future abuse of any government contract.

B. The Informal Solicitation (or Quote) Process:

This process is applicable to solicitations of services or services with goods whose estimated contract value is more than \$1,999 but less than \$25,000 per fiscal year. Agencies may obtain a template for an informal solicitation from the State's Purchasing Division website at www.purchasing.state.nv.us. Prior to a solicitation being released, the evaluation criteria that will be used to evaluate all proposals received must be determined. It is at this time that the evaluation committee should be identified. Additionally, agencies should consider having the draft solicitation reviewed by their Deputy Attorney General for approval of the document as to form and content and seek minimum insurance limit requirements from Risk Management. The minimum insurance limit requirements are to be entered into the Contract for Services of an

Independent Contractor Contract, which is then appended to the solicitation document for the vendor's information.

When establishing the timeline for the solicitation, it is recommended that the contract monitor determine a reasonable amount of time from the date the solicitation is released to the date the potential vendors are required to submit their proposals.

It is recommended that agencies contact the Purchasing Division to request a query of the Purchasing Division's database to assist in the development of a mailing list.

Agencies should allow for a question and answer period within the solicitation timeline. The agency must receive all questions in writing, placing them anonymously into a response letter, with the subsequent State answers to the questions. This letter is then forwarded to all prospective vendors who submitted questions and made available to any other interested parties.

The solicitation opening is public; the only information that is made available is the names of the vendors who submitted proposals submitted information is confidential . Proposals may be evaluated based on lowest responsible vendor or by an evaluation committee. Evaluation committee members are to evaluate the proposals individually, with the contract monitor collecting the score sheets and tabulating the totals. The highest-ranking vendor is contracted, at which time the negotiation process may begin.

Following successful negotiations, a contract is drafted which incorporates the State's solicitation, the contractor's response and any written negotiated or clarified items. Agency policy determines the order that signatures on the contract are obtained. A contract that has been signed by the agency's Deputy Attorney General, the awarded vendor and the agency head is then ready to be submitted to the Budget Division for placement on the Board of Examiners' agenda. Upon delivery of the signed contract to the Budget Division, all information pertaining to the solicitation becomes public information. Agencies must be diligent in protecting any information labeled by the vendors as confidential and giving them timely access to any requested information. A template for the Notification of Intent to contract may be obtained from the State of Nevada Purchasing Division.

2. It is the Board of Examiners' general policy that contracts be solicited at least every four years. A contract which is determined by the Purchasing Administrator to be a sole source, a contract specifically authorized by legislative act or a contract contingent upon prior approval by a federal agency shall be solicited at least every four years in the absence of any longer or shorter authorized period under State or federal law.

A "sole source" shall mean any contractor who, at the time of entering the current contract, was reasonably believed to be the only known qualified source.

A "qualified source" shall be one meeting or exceeding the minimum statutory, regulatory, and published or solicited minimum contractor qualifications.

For each respective contract an "only qualified available source" shall be deemed to mean:

- A. The only qualified respondent to a State initiated quote solicitation, proposal solicitation or notice of intent to bid;
- B. The only qualified respondent to a published RFP;
- C. The only qualified source otherwise demonstrable in fact.

3. Solicitations are not required for services performed by independent contractors exempted by law . Proposals may be evaluated based on lowest responsible vendor or by an evaluation committee. (NRS 625.530) or as determined by the Purchasing Administrator pursuant to regulation. (NAC 333.150 (2)(a)(b))
4. Minor non-structural remodeling, repair and maintenance contracts, projects exempt pursuant to NRS 341.141 through 341.148 or State non-building projects.
 - A. All minor non-structural remodeling, repair and maintenance work requiring the use of outside labor and having an estimated cost of less than \$5,000 may be negotiated by the agency either on a single quotation basis or on a time and material basis without the necessity of formal bidding.
 - B. Repairs costing more than \$5,000 and less than \$25,000 must have at least three bids or proof that the bids have been requested from at least three firms. All project requirements and specifications must be submitted in writing to all prospective bidders.
Exceptions: On jobs the agency estimates to cost between \$5,000 and \$25,000 the agency may negotiate work on a time and material basis if it submits statements by at least two reputable firms licensed to perform the work that the job cannot be bid.
 - C. Projects estimated to cost \$25,000 but less than \$50,000 must be advertised once a week for at least two consecutive weeks in a local newspaper.
 - D. Projects that cost \$35,000 or more must be protected by a performance and payment bond as required by NRS §339.025. If a general contractor has been awarded a contract, each of his/her subcontractors who will perform work on the contract that exceeds \$50,000 or 1 percent of the proposed project, whichever amount is greater, shall also be required to furnish a bond in an amount to be fixed by the Public Works Board as required by NRS §339.025.
 - E. The Public Works Board can assist agencies in drafting specifications and bid proposals, evaluating bids and preparing contracts.
 - F. Most contracts and agreements contain a schedule of insurance requirements and hold harmless (indemnification) provisions that affect the State's insurance or self-insurance. To ensure that the terms in the contracts or agreements provide adequate protection to the State, the proper insurance and hold harmless agreements should be reviewed by the Risk Management Division and must be previously approved by the Attorney General's Office and included in the bid documents or requests for proposals.
5. It is the Board of Examiners' policy that all RFP's or other solicitation documents for services comply with the model forms as approved by the Attorney General's office and available on the State Purchasing Division's website.
Any appeal of a contract award must be filed in strict compliance with NRS §333.370 and NAC 333.170. In the case of an appeal of an agency-direct procurement, the Purchasing Administrator will promptly forward the notice of appeal to the contracting agency, which will be responsible for defending the contract award.

EFFECTIVE DATES OF CONTRACTS

0340.0

Unless specifically exempt from Board of Examiners' review and approval, contracts entered into under the provisions of NRS §284.173 do not become effective without the prior approval of the Board. Therefore, agencies are to present contracts for Board review and approval before any work is started on the contract or any funds are obligated to the contract. Contracts presented to the Board with a start date prior to the date of Board approval will be denied unless sufficient written justification as to the reason for the delay accompanies the contract.

CONTRACT FORMS

0342.0

All contracts should conform to the form, terms and conditions set forth in the most current version of the Attorney General's contract for services of an independent contractor. This form can be found on the State Purchasing Division's website at <http://purchasing.state.nv.us>.

Agencies are encouraged to work closely with their Deputy Attorney General when drafting contracts and to use the most current version of the Office of the Attorney General's interlocal contract and cooperative agreements found on the Purchasing Division's website at <http://purchasing.state.nv.us>.

In the event an agency is proposing to use a contract form other than the approved contract for services of an independent contractor or enter into interlocal contracts that are in any way unusual in nature, these documents should be prepared with the joint cooperation of the agency and their Deputy Attorney General.

CONTRACT LOGS AND DATABASE

0343.0

Agencies shall maintain contract log sheets and enter data into the State Purchasing Division's Contract Database Management System for all agency contracts (BOE, Non-BOE, interagency and interlocal) of \$2,000 and over. A contract log sheet should include the agency name, vendor name, approved budget and category authority (initial contract and all amendments), contract beginning and ending dates, and the total amount of the contract. Each payment should be recorded on the log and include the document number and the remaining balance. Travel payments must be detailed separately.

Agencies shall maintain this log as justification for each payment voucher. Contract data can only be entered into the Purchasing Division's contract database by certified contract monitors (see SAM 0322.3).

CONTRACT SUMMARY FORMS

0344.0

Completed Contract Summary Forms must be attached to all contracts and agreements. The most current version, as approved by the Board of Examiners, can be found on the State Purchasing Division's website at <http://purchasing.state.nv.us>.

The Contract Summary Form provides the Board of Examiners with an accurate description of the contract document. All information displayed on the summary form must agree with the contents of the contract. Agencies are to complete all applicable sections answering all questions and clearly identify why a specific section is not applicable. Agencies should not include any acronyms in the information they provide nor should they refer to any attachments.

The following paragraphs match the numbered sections found on the revised summary forms. The lines for "number" and "date" on the upper right hand corner and on the left for under \$10,000 and Review are for Board of Examiners use only.

I. Description of Contract

1. Enter the full name of the agency, the agency code and the appropriation unit (budget account number and the expenditure category number) that will be charged. Indicate whether or not funds are budgeted in the referenced budget account and category with which to provide payment for the contractual services contemplated, indicate the State fiscal year(s) the contract will be charged to and indicate the source of funds that will be used to pay the contractor and the percentage applicable to the source if more than one funding source is identified.

Enter the contractor's name and address as shown on the contract and as will be used on the payment voucher. In addition, enter the vendor number assigned to the contractor by the Controller's Office (a "T" number for contracts and a "D" number for interlocal contracts).

2. Contract Start Date

- a. All contracts are only valid upon the approval of the Board of Examiners.
- b. If the effective date for work to commence is different than the date the Board of Examiners approves the contract, enter that date. Contracts with an effective date prior to the Board of Examiners' approval date, e.g. retroactive contracts, must be accompanied by a memorandum explaining the reason.

3. Enter the date the contract terminates and enter the length of the contract in terms of years.
4. Indicate the type of contract; e.g., New Contract, Interlocal Contract, Contract Amendment, etc.
5. Explain the purpose of the contract and how it will be accomplished. For example, a medical contract might be "for dental work consisting of two examinations per year for 20 clients at the Las Vegas Center."
6.
 - a. This section is to be completed for new contracts only. Enter the maximum amount of the contract for the total term of the contract, and the exact rate that payments will be made and the time interval applicable to the rate (i.e., hour, month, year). Check calculations to ensure accuracy. If there is a valid reason for the rate not equaling the total amount payable, you must state the reason. As far as practicable, both the contract and the summary form must include a maximum dollar amount obligated for the term of the contract. The agency should specify any other basis for payment in the space provided if a rate and time interval do not apply.
 - b. This section is to be completed for contract amendments only. If the contract is an amendment to an existing contract, identify which amendment it is, such as #1, #2, etc., enter the amount of the increase/decrease to the prior amount approved, and/or enter the new termination date of the contract if the termination date will change as a result of the amendment, and/or enter any other change that will occur as a result of the amendment

II. Justification

7. Explain why the contract is necessary.
8. Justify why a contractor is being used rather than a State employee. This justification should include the reasons why you chose a contractor over the hiring of a new or existing State employee. State employees in your own agency or another State agency may be able to perform the needed work.
9. Identify whether the contract amount is over \$100,000 and if the Purchasing Division issued a Request for Proposal (RFP). If the contract is over \$100,000 and the Purchasing Division did not issue an RFP, explain why (Reference NRS § 333.165).
 - a. Specify whether or not a bid or proposal was solicited. In the event bids or proposals were solicited, include a listing of the vendors that submitted proposals.
If bids were not solicited, explain why not. The fact that the contract is an amendment does not necessarily preclude the soliciting of new bids. If a sole source, include a copy of the sole source approval memo from the Purchasing Division (SAM § 0338.)
 - b. Identify the date of the last bid and anticipated re-bid date.
 - c. Explain why the contractor's bid was accepted over others.

III. Other information

10. Indicate whether or not the contractor is employed by the State of Nevada, any of its political subdivisions or by any other government and, if applicable, indicate the jurisdiction by which the contractor is employed and how the contractor will account to his/her employer for his/her time spent as a contractor to the State.
11. If the contractor has been under contract with a State agency before, indicate when and for which agency. Contact the listed agency and verify the quality of service the contractor provided. Ask the contractor for this information as a reference within the solicitation or at the time of negotiation.
12. This question requires State agencies to identify when a contractor has any pending litigation with the State of Nevada. This information should be provided by proposing vendors in response to the State's approved template for Request for Proposals (RFP template), which requires vendors to identify the case name, case number, jurisdiction and cause of action of any pending litigation they may have with the State of Nevada. Agencies are encouraged to consult with their Deputy Attorney General for review and recommendation as to any pending litigation between the vendor and the State of Nevada.
13. Identify the name, title and phone number of the assigned contract compliance monitor. Each contract must be monitored and each agency must designate a contract monitor who will have primary responsibility to document all aspects of contract compliance.
14. The certified contract monitor must sign the contract summary form.
15. The agency head must sign the contract summary form.

16. Enter the date the contract summary was prepared.