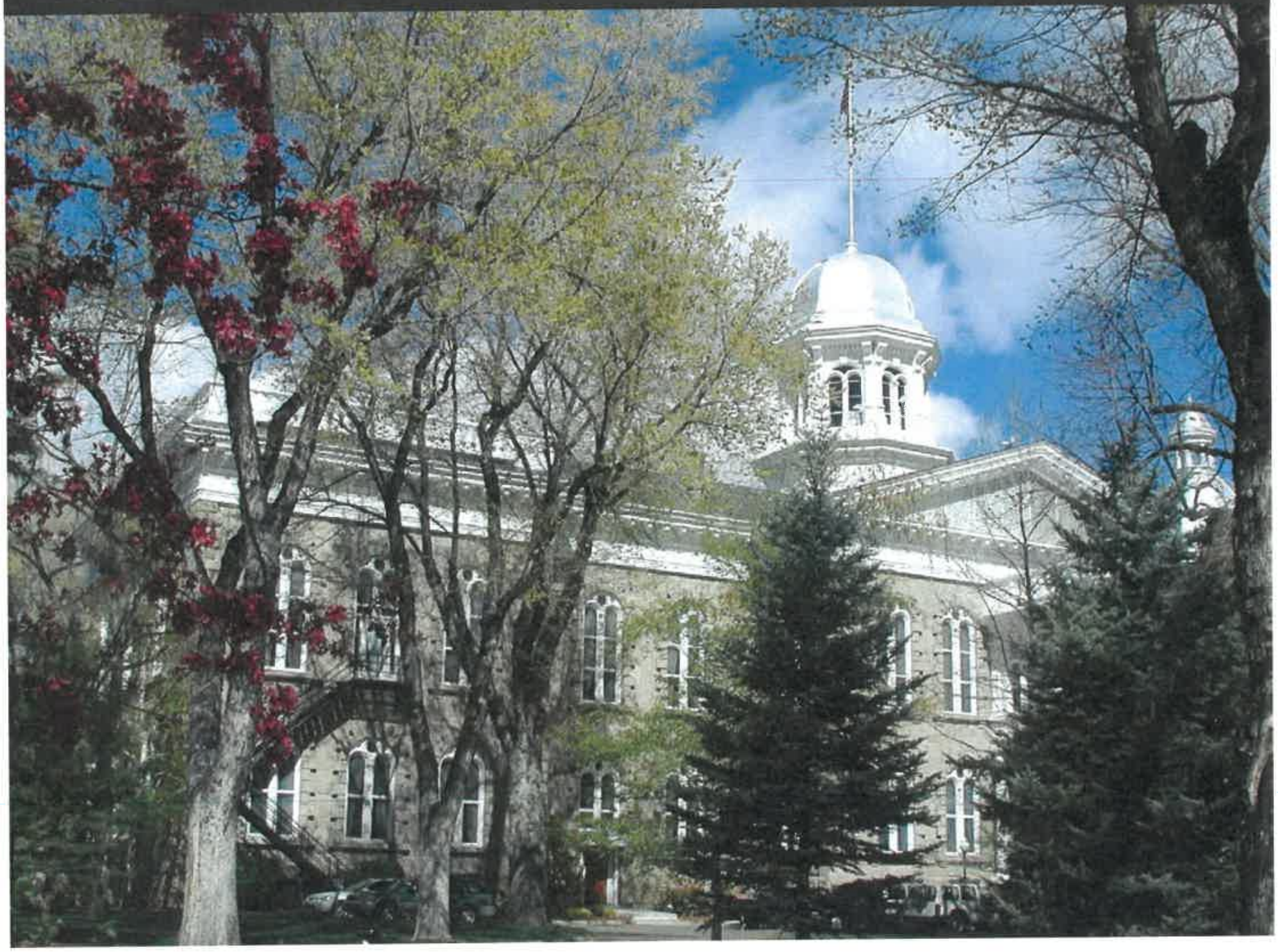
State Administrative Manual



State Administrative Manual (SAM)

~~Revised August 14, 2018~~
October 13, 2020

Governor's Finance Office
Budget Division
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STATE ADMINISTRATIVE MANUAL

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0324 Independent Contract Review Procedure

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 include signatures of the Attorney General or representative, the responsible agency representative and the contractor. The signature requirement may be met in counterparts and with facsimile and/or electronically scanned copies of the signature page with the use of electronic symbols to substitute or supplement the handwritten or facsimile signature of an authorized signer. Contract distribution is as follows: one copy for the Fiscal AnalysisDivision of the Legislative Counsel Bureau; one copy to be returned to the agency; and one copyfor the independent contractor. Access to all submitted proposals shall be made available by thesoliciting agency and will be retained for the life of the contract or six (6) years, or for a period oftime 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.**
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.
9. All applicable contracts placed on the agenda for Board approval or the Clerk of the Board approval must provide satisfactory proof from the Secretary of State's Office (SoS) that the contractors have a current Nevada State Business License (SBL), and if they are a Nevada corporation, LLC, LP, LLP, or LLLP, or non-profit corporation, that their corporation is active and in good standing. Satisfactory proof may include one of the following: from the contractor; a copy of the certificate of good standing or of an unexpired business license or a print-out from the SoS free Business Entity Search showing active status. Additionally, if they are a corporation, LLC, LP, LLP, or LLLP, or non-profit corporation based out of state, they must be registered as a foreign equivalent in Nevada, in active status and in good standing. Any business, except non-profit organizations organized pursuant to NRS Chapters 82 Non Profit Corporations and Chapter 84 Corporations Sole that qualifies for an exemption from the business license requirement must file a notice of exemption which will be on record with the SoS's Office.

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REQUEST FOR CHANGES TO THE STATE ADMINISTRATIVE MANUAL (SAM)

Agency Code: 015/1342
Department: Governor's Finance Office
Division (if applicable): Division of Internal Audits
Appointing authority: Warren K. Lowman
Agency contact (name, phone and e-mail): Vita Ozoude, 775-233-9576, vcozoude@finance.nv.gov
Budget Division Analyst (name, phone and e-mail): Michael Rankin, 775-684-0203, mjrankin@finance.nv.gov
Proposed BOE date: September 8, 2020
Proposed effective date: October 1, 2020

1. Reason/purpose for requested change:

   Per DIA Audit Report No. 20-12, SAM needs to be revised to reflect IRS treatment of cell phone stipends. Although SAM states a "stipend will be taxable income to the employee and will be reported on their W-2, Wage and Tax Statement", IRS guidelines and OAG indicate cell phone stipends are non-taxable and non-reportable. Revising SAM to reflect IRS guidelines on cell phone stipends will ensure SAM is properly updated and aligned with federal guidelines.

2. Explain how the recommended change(s) will benefit agencies or create consistencies or efficiencies, etc. (provide examples if applicable):

   The recommended change will ensure SAM is properly updated and is aligned with federal guidelines regarding non-taxability of cell phone stipends.

3. Will recommended change have a fiscal impact (if yes, explain):

   No. The recommended change will have no fiscal impact.

4. Existing and recommended language in SAM (***blue bold italics*** is new language being proposed and ~~red strikethrough~~ is deleted language being proposed). **(please provide requested change as an attachment):**

Appointing Authority: ______________________________

BOARD OF EXAMINERS APPROVAL DATE: ______________________
(for BOE use only)

1616 Cellular Telephones

Each department of the State of Nevada must develop a cellular telephone, portable tablet, or other mobile device policy that meets the department's specific needs regarding the necessary use of such devices for work-related activities while operating within budget authority, addressing the potential legal issues regarding access to the record of the devices' use, and being compliant with the State's personnel rules associated with requiring employees to be available for contact after their regular working hours.

The departmental policy must fully address security issues and must specifically identify criteria to determine eligibility to receive a cellular telephone, portable tablet, or other mobile device at state expense or a stipend for the use of a personal device. There must be a compelling reason directly related to efficiencies to be gained and the employee's job duties and responsibilities that necessitates a cellular telephone, tablet or other mobile device for business purposes.
There are 3 acceptable methods to provide for employee use of a cell phone, tablet, or other mobile device:

1. State issued device – the agency provides the employee with an approved State device pursuant to the state contract for such services and pays the monthly charges directly to the service provider. The device remains the property of the Stater and the employee must comply with all policies regarding personal use of state devices. If the employee's personal use of the device results in additional costs to the State, the employee must reimburse the State for such charges at least monthly. Agencies must take care to choose the appropriate plan level for the needed us for State purposes. This may include prepaid phones that only include voice services. Upon separation from the agency that issued the device, the employee shall return the device. Departmental policy must include acknowledgement of receipt of device and terms and conditions of use that should be retained in employee file.

2. Stipend paid by State for employee using personal device for State purposes – the State pays an employee a monthly stipend to use their personal device to conduct State business. The base plan cost is understood to include cellular telephone, internet, and/or data services. ~~The stipend amount will remain the same regardless of the amount of State business conducted on the personal device.~~ The employee is responsible for contracting with a service provider, paying for any initial plan charges, the cost of the device, and paying the monthly bills. The State is not responsible for any penalties should the employee terminate the contract with the service provider.

   Because the cellular telephone, tablet or other mobile device is owned personally by the employee, the employee may use the device for both personal and business purposes as needed. Use of the device in any manner contrary to local, state or federal laws will constitute misuse and will result in immediate termination of the stipend. ***The stipend will not be taxable to the employee and will not be reported on their W-2, Wage and Tax Statement.*** ~~The stipend will be taxable income to the employee and will be reported on their W-2, Wage and Tax Statement.~~ The stipend amount will be established by each Department director when they develop the policy for their respective Department.

3. Employee voluntarily uses personal device to conduct State business without compensation.

Employees must be aware that it is possible the record of use for any device used for State business, could be considered a public record.
Regardless of the reimbursement method used, each employee using a device for State business or connected to the State's IT infrastructure must sign an "Acceptable Use Agreement" and an Agreement for Use of a Mobile Device." The respective Department policy must be attached to each Acceptable Use Agreement" and Agreement for Use of a Mobile Device" and shall be retained in the employee's file.
An agency may rescind a state issued device or stipend any time if the business necessity or budget authority no longer exists.
Employees are expected to comply with all applicable laws regarding the use of cellular devices while operating a motor vehicle. Each department policy shall include a reference to SAM ~~1320~~ ***1307.***

4.23.5.15.3.1 (11-22-2017)
Employer Provided Cell Phones

For taxable years after December 31, 2009, cell phones were removed from the definition of listed property by Section 2043 of the Small Business Jobs Act of 2010. The Act did not otherwise alter the requirement that an employer-provided cell phone was a fringe benefit, the value of which must be included in the employee's gross income unless an exclusion applies.

Notice 2011-72, *Tax Treatment of Employer-Provided Cell Phones*, issued September 14, 2011 in Internal Revenue Bulletin 2011-38, provides guidance on the treatment of employer-provided cell phones or other similar telecommunications equipment (collectively "cell phones").

The Notice provides that, when an employer provides an employee with a cell phone primarily for noncompensatory business reasons, the IRS will treat the employee's use of the cell phone for reasons related to the employer's trade or business as a working condition fringe benefit. The value of this use will be considered excludable from the employee's income and, solely for purposes of determining whether the working condition fringe benefit provision in IRC 132(d) applies, the substantiation requirements that the employee would normally have to meet in order for a deduction to be allowable under IRC 162 are deemed to be satisfied.

In addition, the IRS will treat the value of any personal use of a cell phone provided by the employer primarily for noncompensatory business purposes as excludable from the employee's income as a de minimis fringe benefit.

The application of the working condition and de minimis fringe benefit exclusions under the notice apply solely to employer-provided cell phones and should not be interpreted as applying to any other fringe benefits.

Tablet devices, such as iPads, are considered "similar telecommunications equipment."

The rules of the Notice apply to any use of an employer-provided cell phone occurring after December 31, 2009.

4.23.5.15.3.2 (11-22-2017)
Employer Payments for Employee Cell Phones

In cases where employers, for substantial non-compensatory business reasons, require employees to maintain and use their personal cell phones for business purposes and reimburse the employees for the business use of their personal cell phones, examiners should analyze reimbursements of employees' cell phone expenses in a manner that is similar to the approach described in Notice 2011-72 .

Specifically, in cases where employers have substantial business reasons, other than providing compensation to the employees, for requiring the employees' use of personal cell phones in connection with the employer's trade or business and reimbursing them for their use, examiners should not necessarily assert that the employer's reimbursement of expenses incurred by employees after December 31, 2009, results in additional income or wages to the employee. Conditions include that:

- The employee must maintain the type of cell phone coverage that is reasonably related to the needs of the employer's business,
- The reimbursement must be reasonably calculated so as not to exceed expenses the employee actually incurred in maintaining the cell phone, and
- The reimbursement for business use of the employee's personal cell phone must not be a substitute for a portion of the employee's regular wages.

Arrangements that replace a portion of an employee's previous wages with a reimbursement for business use of the employee's personal cell phone and arrangements that allow for the reimbursement of unusual or excessive expenses should be examined closely.

Examples of substantial non-compensatory business reasons for requiring employees to maintain personal cell phones and reimbursing them for their use include:

- The employer's need to contact the employee at all times for work-related emergencies, and
- The employer's requirement that the employee be available to speak with clients at times when the employee is away from the office or at times outside the employee's normal work schedule (i.e., clients are in different time zones).

An example of a reimbursement arrangement that does **not** result in additional income or wages:

An employer has a substantial non-compensatory business reason for requiring the employee to maintain a personal cell phone to facilitate communication with the employer's clients during hours outside the employee's normal tour of duty in the office and reimburses the employee for the use of the phone. The employee uses the cell phone for both business purposes and personal purposes and the employee's basic coverage plan charges a flat-rate per month for a certain number of minutes for domestic calls. The employer reimburses the employee for the monthly basic plan expense to enable the employee to maintain contact with business clients throughout the United States after hours.

Examples of reimbursement arrangements that **may** be in excess of the expenses reasonably related to the needs of the employer's business and should be examined more closely include:

a. Reimbursement for international or satellite cell phone coverage to a service technician whose business clients and other business contacts are all in the local geographic area where the technician works, or
b. A pattern of reimbursements that deviates significantly from a normal course of cell phone use in the employer's business (e.g., an employee received reimbursements for cell phone use of $100/quarter in quarters 1 through 3, but receives a reimbursement of $500 in quarter 4

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