

FEB 06 2026

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NEBRASKA DEPARTMENT OF JUSTICE

MICHAEL T. HILGERS

Opinion No. 26-002— February 6, 2026

OPINION FOR THE STATE AUDITOR

**Lawfulness of Transition Periods in
State Contracts**

Summary: Neb. Rev. Stat. § 73-812(2) prohibits state agencies from amending contracts to extend their duration for a term longer than half of the original contract period. A contractual “transition period,” wherein a contractor continues to provide services *after* the expiration of a contract to help the State transition to a new contract, does not violate § 73-812. Such period, if exercised in good faith, is neither an amendment nor an extension to the contract.

You requested our opinion “regarding the proper interpretation of” Neb. Rev. Stat. § 73-812(2). Specifically, your request concerned the application of that statute to a potential “transition period” under the contract between the State Records Board (the “Board”) and Nebraska Interactive, LLC (the “Interactive Contract” or the “Contract”) for the management and administration of the State’s online information portal (the “Portal”).

I.

At the outset, I write to explain the issuance of this opinion in the first instance, as it is a request from a single member of a multiple-member board. As State Auditor, you are statutorily designated as a member of the Board. Neb. Rev. Stat. § 84-1204(2)(c). The other members of the Board are: (1) the Secretary of State, designated as the State Records Administrator; (2) the Governor or his or her designee; (3) the Attorney General or his or her designee; (4) the State Treasurer or his or her designee; (5) the

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Director of Administrative Services or his or her designee; (6) three representatives appointed by the Governor to represent banking, insurance, and law groups; and (7) three representatives appointed by the Governor representing libraries, the general public, and professional members of the Nebraska news media. Neb. Rev. Stat. §§ 84-1203, 84-1204(2).

In the case of multi-member boards or commissions, our policy has been—as a general matter—to issue opinions only if formal action is taken by the body to request our opinion. *See* Op. Att’y Gen. No. 23-010 (Dec. 15, 2023). With respect to such boards or commissions, we represent and advise the body, not each individual member. Thus, everything else being equal, we usually do not provide an opinion based on the request of an individual member.

Everything, however, is not equal. The Attorney General is required to give “his or her opinion in writing upon all questions of law submitted to him or her by the Governor, head of any executive department, Secretary of State, State Treasurer, Auditor of Public Accounts, Board of Educational Lands and Funds, State Department of Education, Public Service Commission, or the Legislature” Neb. Rev. Stat. § 84-205(4). We issue opinions to executive branch officials and agencies “upon questions of law which arise ‘in the discharge of their duties.’” *See* Op. Att’y Gen. No. 137 at 1 (Dec. 24, 1985) (quoting *Follmer v. State*, 94 Neb. 217 (1913)) (explaining this requirement as applied to members of the Legislature). And where, as here, a request emanates from an office created under our Constitution and is related to the office’s constitutional duties, we find we have authority to issue a formal opinion. *See, e.g.*, Op. Att’y Gen. No. 15-010 (Aug. 10, 2015) (issuing a formal opinion to the Treasurer respecting the authority of the Records Board); Op. Att’y Gen. No. 09-003 (Jan. 27, 2009) (same). At a minimum, we conclude that your

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request relates to your duties as State Auditor. *See generally* Op. Att'y Gen. No. 93-012 (Mar. 4, 1993) (explaining the inherent constitutional duties of the State Auditor).

II.

Having addressed the propriety of issuing this written opinion, we now turn to the question itself. Your request inquired about the proper interpretation and application of Neb. Rev. Stat. § 73-812(2), which is part of the State Procurement Act. Specifically, you asked:

Would exercising a contract extension or a renewal option, or both, provided in the original agreement preclude ... subsequent utilization of a "transition period" also authorized by the original agreement? ... The same question is posed regarding the propriety of exercising the "transition period" provision after a contract renewal, whether alone or in conjunction with a consecutive or successive extension.

We analyze only the legal question presented to us. This opinion does not address the policy question of whether the Board *should* exercise a contract extension or transition period under the Interactive Contract or any other contract.

We find that Neb. Rev. Stat. § 73-812(2) does not preclude the Board from exercising a contractual "transition period," including after a contract has already been extended. Neb. Rev. Stat. § 73-812(2) provides that no state "contract shall be amended to extend the duration of the contract for a period of more than fifty percent of the initial contract term." The same section clarifies that it "does not prohibit the exercise of any renewal option

expressly provided in the original contract.” *Id.* The Department of Administrative Services has explained the difference between a “renewal” and an “extension”: a “renewal” “must be specifically named in the original solicitation or contract,” where “‘extensions’ are available to all State of Nebraska Contracts,” regardless of whether contemplated by the original terms of the contract. State Purchasing Bureau Policy 24-04, DAS (July 18, 2024), <https://perma.cc/W6X8-GPCP>.

A “transition period” is not mentioned in Nebraska statute but is a creature of contract. Under the Interactive Contract, the Board can require Nebraska Interactive to continue operating the Portal for up to 30 months after expiration of the Contract. The purpose is to ensure “the Portal remain[s] fully operational during the transition to a Subsequent Contractor upon termination or expiration” and to facilitate an “orderly transition of services.” Interactive Contract, § R at 36.

For at least two reasons, we find that the Board’s use of the transition period (even after an extension) would not violate Neb. Rev. Stat. § 73-812(2). *First*, the transition period is contemplated by the terms of the Contract. Like a renewal option, the transition clause was hammered out during the bid and negotiation process. The “transition” would not extend performance under the Contract beyond what was bid and negotiated; thus, it is not an “amend[ment] to extend” the Contract under Neb. Rev. Stat. § 73-812(2). *Second*, the transition period occurs *after* the contract “terminat[es] or expir[es],” as opposed to an extension which delays the termination or expiration of the Contract. Courts have recognized that “phase-in, phase-out services” do not “extend” contracts beyond termination, nor do they cause a contract’s duration to extend beyond legal limits. See *Arko Exec. Servs., Inc. v. United States*, 553 F.3d 1375, 1380–81 (Fed. Cir. 2009); *Comerica Bank v. Glob. Payments Direct, Inc.*, No. CIV.A. 9707-CB, 2014 WL

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3567610, at *11 (Del. Ch. July 21, 2014). Indeed, federal regulations expressly permit a transitional period for federal contracts. *See* 48 C.F.R. § 37.111. For good reason. When a government contract terminates or expires, it could harm the government if contractor services had to immediately shut down. Here, the State could lose access to the Portal. Thus, a transition period (exercised in good faith) is not an attempt to extend a contract beyond statutory limits, but prudent planning to ensure continuity of valuable government services from one contract to the next.

The analysis does not change if the “transition period” is utilized after a contract *renewal*. As mentioned, the transition period is triggered only after expiration or termination of the Contract. If the Contract expires or terminates after a renewal, we see no reason why a “transition period” would transform into an “extension” of the Contract. Whether after a renewal, an extension, or both, a negotiated period of transition is not an “amend[ment] to extend” a contract and does not trigger until after expiration or termination of the contract.

To be sure, merely labeling something as a “transition period” does not free the State from § 73-812(2)’s requirements. The State Procurement Act provides an anti-loophole provision: “State agencies shall not structure contracts to avoid any of the requirements of the State Procurement Act.” Neb. Rev. Stat. § 73-812(3). So, for example, if an agency agreed mid-contract to an indefinite “transition period” that allowed the parties to extend the contract in perpetuity, that would likely be an unlawful work-around of the duration limits under § 73-812(2). But where, as under the Interactive Contract, the “transition period” is a good-faith transition from one contract to the next, we do not think the period violates § 73-812(2).

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III.

A contractual “transition period”—bargained for and exercised in good faith—is not an amendment to extend the contract. Thus, it does not violate Neb. Rev. Stat. § 73-812(2).

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