

# Nebraska Nonresident Contractor Program

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For more information,  
check our Web site.



The purpose of this information guide is to provide an overview of the Nebraska nonresident contractor registration procedures and to provide information on various tax programs and the bond requirements for construction contracts in Nebraska.

## Nonresident Contractor Registration

**Nonresident Contractor.** A nonresident contractor is any contractor (prime, general, or subcontractor) who:

- is not domiciled in Nebraska; or
- has not maintained a permanent place of business or residence in Nebraska for a period of at least six months.

All nonresident contractors engaging in the business of contracting in Nebraska must register their business with the Nebraska Department of Revenue. This applies even if they hold a certificate of authority from the Secretary of State to transact business in Nebraska. Registration includes:

- ✓ Completing the Nebraska Registration Application for Nonresident Contractor, Form 24;
- ✓ Completing the Nebraska Contract Permit Application for Nonresident Contractor's and Subcontractor's Construction Contracts, Form 24A, for each contract valued at \$10,000 or more;
- ✓ Supplying a bond or alternative security for contracts valued at \$10,000 or more by filing the Nebraska Tax Bond for Nonresident Contractor's and Subcontractor's Construction Contracts, Form 24B;
- ✓ Electing a contractor's option on the Nebraska Registration Application for Nonresident Contractor, Form 24; and
- ✓ Applying for licenses and permits in other tax programs, if required (e.g., withholding, income tax).

There are other tax reporting and filing requirements that affect nonresident contractors. Please see "Part II: Taxes Related to Doing Business in Nebraska."

The Nebraska Department of Revenue must be notified of any subsequent change of address or change in the type of ownership of the business. Notification may be made on a Nebraska Change Request, Form 22.

Other information guides, notices, and forms regarding the contracting industry are available on our Web site, [www.revenue.ne.gov](http://www.revenue.ne.gov), or contact us at one of the offices listed at the end of this information guide for personal assistance.

**Contractor.** Contractor shall include an individual, firm, partnership, limited liability company, corporation, or other association of persons engaged in the business of construction, alteration, repairing, dismantling, or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filtration systems, tanks and towers, airports, dams, levees and canals, water wells, pipelines, transmission and power lines, and every other type of structure, project, development, or improvement coming within the definition of real property and personal property, including construction, repairing, or alteration of such property to be held either for sale or rental. Contractor shall also include any individual, firm, partnership, limited liability company, corporation, or any other person who provides or arranges for other employees or independent contractors to perform labor for any contract that a nonresident contractor is required to register.

## Establishing Residency

Maintaining a permanent place of business includes, but is not limited to:

- maintaining a business office with a verifiable business name and address;
- payment of separate utilities; or
- registration of vehicles.

Using a motel address and telephone, or a mobile home at the construction site is not considered to be maintaining a permanent place of business in this state.

If a contractor has established residency but discontinues maintaining a permanent place of business in Nebraska after the contract has been awarded, the contractor's resident status is lost. The contractor immediately becomes subject to the nonresident registration and bonding requirements as a nonresident contractor.

## PART I: REGISTRATION AND BONDING REQUIREMENTS

### Contract Registration

All nonresident contractors must register **each** of their contracts (projects) that are \$10,000 or greater. Contracts are registered by filing a Nebraska Contract Permit Application for Nonresident Contractor, Form 24A. The registration fee of \$25 and required bond must be submitted with the application.

Contracts for under \$10,000 do not need to be registered or bonded. However, every nonresident contractor is still required to register his or her business with the Nebraska Department of Revenue, and to comply with all local permit and code requirements.

### Penalty for Failure to Register

Nonresident contractors who fail to register their business with the department or who fail to register a contract, can be denied the right to perform such contract until registration is made. An injunction can be sought to stop any activity in the performance of any contract until registration is made and the required bond is executed and filed. A temporary injunction enjoining the execution of any contract can be granted without notice and the contractor will not be entitled to maintain an action in the courts of this state to recover payment for performance on such contracts. Each day of activity or operation in violation of these requirements constitutes a separate offense.

### Security Requirement

**Nonresident General (Prime) Contractor.** Nonresident prime contractors must file a bond or alternative security with the department for each contract to be performed in this state. The Nebraska Tax Bond, Form 24B, or alternative security must be submitted with the Form 24A.

**Nonresident Subcontractors.** Nonresident subcontractors must file a bond or alternative security with the department for each contract to be performed in the state. Forms 24, 24A, and 24B should be submitted at the same time. If alternative security is supplied, it should be submitted prior to or at the same time as Forms 24 and 24A.

**Security Amount.** The required bond or alternative security amount is ten percent of the contract price up to the first \$100,000,

plus five percent of the contract price in excess of \$100,000, rounded up to the nearest multiple of \$1,000. Security is not required for contracts of under \$10,000.

The total contract amount can only be reduced by:

- ✓ Contracts awarded to Nebraska resident subcontractors;
- ✓ Contracts awarded to nonresident subcontractors who are properly registered and bonded with the Nebraska Department of Revenue for the total contract amount that has been awarded to them; and
- ✓ Contracts for less than \$10,000.

Nonresident prime contractors cannot reduce their total contract amount that must be bonded by any amounts awarded to nonresident subcontractors who are not properly registered and bonded at the time the prime contractor submits its Form 24A. Nonresident prime contractors may amend their bond amount as contracts are awarded to resident subcontractors, or to properly registered and bonded nonresident subcontractors.

### Bond or Alternative Security Computation

Total Contract Price	\$200,000
Amount awarded to a resident subcontractor	\$20,000
Amount awarded to a properly registered and bonded nonresident subcontractor	15,000
Total of contracts less than \$10,000 (2 contracts)	<u>16,000</u>
	\$ 51,000

**Amount subject to bonding** **\$149,000**

Computation of bond amount:

10% of \$100,000	\$10,000
5% of \$49,000	<u>2,450</u>
	\$12,450 (Round up to nearest \$1,000)

**Amount of Contract Bond** **\$13,000**

**Multiple-Project Bond.** A multiple-project bond or alternative security may be issued for all contracts to be performed within a particular period of time. For a multiple-project bond, add the total amount subject to bonding of all construction contracts simultaneously being performed in this state during a specific period of time.

If the department determines at any time that the required security will not cover the tax liabilities involved, it may require the security to be increased.

**Alternative Securities.** Alternative securities include, but are not limited to, the following:

- Certificates of deposit or certified checks covering at least the length of time of the construction project and a sufficient period of time in which to file the required tax returns. The certificates of deposit or certified checks must be issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, in amounts not exceeding the federally insured amount and in the total amount specified by the department.
- Investment certificates or share accounts issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation, in amounts not exceeding the federally insured amount and in the total amount specified by the department.

- Irrevocable Standby Letter of Credit (Letter) issued in favor of the Nebraska Department of Revenue. The Letter may be presented for payment in the event of default or other basis entitling the department to draw on the Letter. Multiple and partial drawings may be made pursuant to the Letter at any time prior to the expiration date of the Letter and in amounts not to exceed the maximum amount granted.

The ownership of securities other than a surety bond must indicate “Nebraska Department of Revenue **or**” and the contractor’s name. Securities indicating the “Nebraska Department of Revenue **and**” with the contractor’s name as owners will not be accepted.

Alternative security may be retained by this department for up to three years after completion of the contract. This insures security in the event of liability determined to be due as a result of an audit.

### Exceptions

- ✓ Nonresident contractors awarded construction contracts by the Nebraska Department of Roads or the University of Nebraska are not required to submit the Nebraska Tax Bond, Form 24B. In such cases, a performance bond amounting to 100 percent of the contract price, including all taxes and contributions due under the employment security law, is required to be furnished directly to these organizations. A copy of the performance bond must be submitted to the Nebraska Department of Revenue with the Form 24A. The nonresident contractor must still comply with the contractor registration requirements.
- ✓ A contract with a total value under \$10,000 need not be registered or bonded. However, every nonresident contractor is still required to register his or her business with the Nebraska Department of Revenue, and to comply with all local permit and code requirements.

**Bond Clearance.** After completion of a contract, the nonresident contractor must file a Nebraska Bond Clearance Request, Form 24C. Form 24C should not to be submitted when alternative security has been provided in-lieu-of filing a bond (Form 24B). Request for clearance of the alternative security is made by a letter or other document as determined by the specific type of alternative security that was provided.

The department will NOT release the bond or alternative security of the nonresident prime contractor until:

- All nonresident subcontractors have properly registered their business in this state;
- All nonresident subcontractors have registered and provided a bond or alternative security for their portion of the contract; and
- All required tax returns have been filed by the contractor and all its nonresident subcontractors working on the project.

Final payment to nonresident subcontractors must be withheld by a resident or nonresident prime contractor to guarantee that all taxes, contributions, penalties, and interest due from the subcontractors have been paid.

Failure to comply with these requirements will cause the prime contractor to be directly liable for all taxes, contributions, penalties, and interest due from nonresident subcontractors working on the project.

Each nonresident contractor must attach documentation from the county assessor of each county where work was performed showing that all local taxes assessed during the project period have

been paid, or that no local taxes have been assessed. Failure to provide such documentation will result in the Clearance Request being returned to the applicant.

In the case of a multiple-project bond, a separate Form 24C must be submitted for each contract as it is completed. The contract must be specifically identified on the form.

Upon payment of all taxes and contributions due this state for the effective dates of the contract, the request for bond or alternative security clearance will be approved.

Upon approval of the Form 24C by the department, the nonresident contractor is relieved from the security requirements of Nebraska Revised Statute Sections 77-3101 to 77-3113, for the completed contract, and the surety is authorized to cancel the bond. Approval of such clearance by the department does not relieve the surety or the nonresident contractor from a future assessment of any tax, penalty, or interest for the effective dates of the bond determined to be due as a result of an audit.

The surety company issuing bonds as required by sections 77-3101 to 77-3113 may cancel the bond(s) as provided in the conditions of Form 24B. The cancellation will only relieve the surety of liability for taxes or contributions which may accrue subsequent to the effective date of cancellation. The cancellation does not relieve the surety of liability for taxes or contributions which accrue during the effective dates of the bond. If cancellation occurs before completion of the project for which the bond was obtained, the nonresident contractor must provide new security for the remainder of the project.

## PART II: TAXES RELATED TO DOING BUSINESS IN NEBRASKA

### Employee Withholding

A nonresident contractor who has an office in or engages in business in Nebraska is required to deduct and withhold Nebraska income tax on all wages paid for services performed within Nebraska. For certain nonresident employees, the tax deducted and withheld may be determined pursuant to miles, time, or money earned in the state (see Withholding Regulations 21-004 and 21-006). Quarterly filing is required, along with a yearly reconciliation. Applicable forms include Forms 941N and W-3N.

### Withholding for Personal Services Paid to Other Nonresidents

- ✓ A nonresident contractor must withhold on such payments if the contractor is: (1) making a payment or payments in excess of \$5,000; or (2) maintaining an office or transacting business within Nebraska and making payments in excess of \$600. Withholding of personal service income is reported on Nebraska Withholding Certificate for Nonresident Individuals, Form W-4NA.
- ✓ Personal services do not include services performed where the capital furnished by the nonresident is a material income-producing factor. Capital will be considered a material income-producing factor whenever the value of the use of capital, or the value of the capital furnished, is in excess of 50 percent of the amount of the payment. An example of such services includes construction of improvements to real estate when the nonresident contractor furnishes the materials incorporated into the improvement.

## Nonresident Contractor Sole Proprietorship Income Tax Filing Requirements

A nonresident contractor who is a sole proprietorship or independent contractor must file a Nebraska Individual Income Tax Return, Form 1040N, to report income derived from the contractor's Nebraska contracts. Income derived from within this state also includes income distributions that the nonresident contractor receives from any S corporation, limited liability company, or partnership that is doing business in this state.

The form used to report individual income tax is Form 1040N, along with the Schedule III calculation for partial-year residents and nonresidents reporting Nebraska source income.

## Nonresident Contractor Corporation Income Tax Filing Requirements

If the nonresident contractor is a corporation doing business in this state, a Nebraska Corporation Income Tax Return, Form 1120N, must be filed to report the income of the corporation. The tax base is federal taxable income. If the business is multistate, the income is apportioned to Nebraska using a "sales only" factor. A single combined return is required if the business is part of a unitary group.

Businesses that are organized as partnerships, limited liability companies, or S corporations must file the appropriate Nebraska return to report the Nebraska share of federal taxable income distributed to partners, members, or shareholders.

## Sales and Use Tax Requirements

All nonresident contractors should elect a contractor option. The option selected determines how sales and use tax will be paid by the contractor on building materials and fixtures, and how sales tax will be collected by the contractor.

- **Option 1.** The contractor maintains a tax-free inventory of building materials and fixtures. The contractor must collect sales tax on the total amount charged for building materials and fixtures provided these charges are separately stated. If they are not billed separately, the entire amount charged is taxable.
- **Option 2.** The contractor maintains a tax-paid inventory of building materials and fixtures. The contractor does not collect sales tax on the amount charged.
- **Option 3.** The contractor maintains a tax-free inventory of building materials and fixtures and remits consumer's use tax when the items are withdrawn from inventory. The contractor does not collect sales tax on the amount charged.

## Contracts with Exempt Entities

A contractor engaging in a construction project with a governmental unit or exempt organization must receive a properly completed and signed Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, **before** any building materials are annexed.

Please refer to the following resources for more detailed information. These resources are available on the department's Web site.

- ✓ Regulations:
  - 1-017 Contractors;

- 1-090 Nonprofit Organizations;
- 1-091 Religious Organizations;
- 1-092 Educational Institutions;
- 1-093 Governmental Units.

- ✓ Information Guides:
  - Nebraska Taxation of Contractors General Information;
  - Nebraska Taxation of Contractors Option 1;
  - Nebraska Taxation of Contractors Option 2;
  - Nebraska Taxation of Contractors Option 3;
  - Nebraska Taxation of Nonprofit Organizations;
  - Governmental Entities.

## Installation and Repair of Manufacturing Machinery and Equipment

Contractors installing or repairing manufacturing machinery and equipment should refer to the Information Guides for Nebraska Taxation of Contractors — Option 1; Option 2; and Option 3.

## Unemployment Insurance Requirements

Additional registration and returns are required by the Nebraska Workforce Development, Department of Labor. Specific information is available from their Web site [www.dol.state.ne.us](http://www.dol.state.ne.us) or by writing them at Nebraska Workforce Development, Department of Labor, P.O. Box 94600, Lincoln NE 68509-4600.

## Liability for Taxes

Any contractor who contracts with any subcontractor who is or may become subject to Nebraska's nonresident contractor requirements must withhold from payments made under the contracts. The amount of withholding must be sufficient to guarantee that all taxes, including contributions due under the Employment Security Law and all taxes which may accrue to this state or to any political subdivisions on account of the execution and performance of such contracts, will be paid when due. Failure to comply with these requirements will cause the prime contractor to be directly liable for such taxes, contributions, penalties, and interest due from the nonresident subcontractors.

## General Information

**Record Keeping.** All nonresident contractors engaging in the business of contracting within this state must keep adequate records for a period of not less than three years as proof of all payments of wages, salaries, or other compensation, and payment of all taxes due. Records may include, but are not limited to: general ledgers, purchase journals, original purchase invoices, cash disbursement journals, bank statements, canceled checks, wage stubs, and tax returns.

**Other Information.** Contractors seeking additional information are encouraged to review the updated information contained in our other contractor information guides and Frequently Asked Questions which are available on our Web site, and to consider attending one of our educational seminars (dates are also posted on our Web site, [www.revenue.ne.gov](http://www.revenue.ne.gov)). You may also contact us by calling the telephone numbers listed below.

**Taxpayer Assistance.** For additional information, please contact the Nebraska Department of Revenue, P.O. Box 94818, Lincoln, NE 68509-4818, or call 1-800-742-7474 (toll free in NE and IA), or 1-402-471-5729.