

ASSEMBLY BILL NO. 588—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF PURCHASING DIVISION)

MARCH 17, 1999

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions relating to state purchasing. (BDR 27-431)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to state purchasing; requiring the chief of the purchasing division of the department of administration to adopt regulations that establishes procedures for the awarding of contracts and the evaluation of proposals; requiring contracts for services that are provided by independent contractors to certain agencies and elected officers to be awarded in the same manner as contracts for services for state agencies are awarded; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 333 of NRS is hereby amended by adding thereto
2 a new section to read as follows:
3 **Sec. 2.** *The chief shall adopt regulations establishing procedures for*
4 *awarding contracts pursuant to this chapter. The regulations must*
5 *include, without limitation, provisions that set forth requirements*
6 *relating to:*
7 1. *The establishment and membership of committees to evaluate*
8 *proposals.*
9 2. *Notices that must be given to persons who submit proposals before*
10 *and after a contract is awarded;*
11 3. *The confidentiality of information submitted in proposals and any*
12 *communication between a person who submits a proposal and the chief*
13 *of a using agency, the chief of the purchasing division or a member of a*
14 *committee to evaluate proposals;*

1 **4. The submission of revised proposals; and**

2 **5. The awarding of contracts on a contingency basis.**

3 **Sec. 3.** NRS 333.020 is hereby amended to read as follows:

4 333.020 As used in this chapter, unless the context otherwise requires:

5 1. "Chief" means the chief of the purchasing division.

6 2. "Director" means the director of the department of administration.

7 3. **"Invitation to bid" means a written statement which sets forth the**
8 **requirements and specifications of a contract to be awarded by**
9 **competitive selection.**

10 4. "Proprietary information" means:

11 (a) Any trade secret or confidential business information that is
12 contained in a bid **or proposal** submitted on a particular contract; or

13 (b) Any other trade secret or confidential business information
14 submitted ~~by a bidder~~ **in a bid or proposal** and designated as proprietary
15 by the chief.

16 As used in this subsection, "confidential business information" means any
17 information relating to the amount or source of any income, profits, losses
18 or expenditures of a person, including data relating to cost or price
19 submitted in support of a bid or proposal. The term does not include the
20 amount of a bid or proposal.

21 ~~4.~~ 5. "Purchasing division" means the purchasing division of the
22 department of administration.

23 ~~5.~~ 6. "Purchasing officer" means a person who is authorized by the
24 chief or a using agency to participate in:

25 (a) The evaluation of bids or proposals for a contract;

26 (b) Any negotiations concerning a contract; or

27 (c) The development, review or approval of a contract.

28 ~~6.~~ 7. "Request for ~~a proposal~~" **proposals**" means a **written**
29 statement which sets forth the requirements and specifications of a contract
30 to be awarded by competitive selection.

31 ~~7.~~ 8. "Trade secret" has the meaning ascribed to it in NRS
32 600A.030.

33 ~~8.~~ 9. "Using agencies" means all officers, departments, institutions,
34 boards, commissions and other agencies in the executive department of the
35 state government which derive their support from public money in whole
36 or in part, whether the money is provided by the State of Nevada, received
37 from the Federal Government or any branch, bureau or agency thereof, or
38 derived from private or other sources . ~~except~~ **The term does not**
39 **include** the Nevada rural housing authority, local governments as defined
40 in NRS 354.474, conservation districts, irrigation districts, the state
41 industrial insurance system and the University and Community College
42 System of Nevada.

~~19.1~~ 10. "Volunteer fire department" means a volunteer fire department which pays premiums for industrial insurance pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS.

Sec. 4. NRS 333.120 is hereby amended to read as follows:

333.120 The state purchasing fund, in the sum of \$1,250,000 is hereby created as an internal service fund for the use of the chief in purchasing supplies, materials and equipment ~~and~~ **and services.**

Sec. 5. NRS 333.162 is hereby amended to read as follows:

333.162 1. The chief may designate the method of obtaining a contract, including:

(a) An invitation ~~for a~~ **to** bid;

(b) A request for ~~a proposal;~~ **proposals;**

(c) A request for a quotation; or

(d) Any other accepted method of purchasing that complies with the ~~requirements~~ **provisions** of this chapter.

2. The chief shall adopt regulations governing the ~~various~~ methods of obtaining a contract.

Sec. 6. NRS 333.165 is hereby amended to read as follows:

333.165 ~~The~~

1. Except as otherwise provided by specific statute, the chief shall contract for services whose estimated value is \$100,000 or more, and may ~~upon request from~~ authorize a using agency ~~to~~ contract for such services ~~needed by that agency~~ if he determines that to do so would ~~benefit the public or cause some other beneficial effect.~~ be in the best interests of the state.

2. A using agency may contract for services if the estimated value of the services is less than \$100,000. The chief may, upon the request of a using agency, contract for such services on behalf of the agency if he determines that to do so would be in the best interests of the state.

3. The chief shall, upon the request of a using agency, provide assistance to the using agency for any contract for services whose estimated value is less than \$100,000.

4. For the purposes of this section, a contract for goods and services whose estimated value:

(a) Is \$100,000 or more, shall be deemed a contract for services; or

(b) Is less than \$100,000, shall be deemed a contract for goods with respect to that part of the contract that represents goods. Those goods must be procured in a manner authorized by the chief.

Sec. 7. NRS 333.335 is hereby amended to read as follows:

333.335 1. ~~After receiving proposals and before~~ **Each proposal must be evaluated**

by:

1 (a) *The chief of the using agency, or a committee appointed by the*
2 *chief of the using agency in accordance with the regulations adopted*
3 *pursuant to section 2 of this act, if the proposal is for a using agency; or*

4 (b) *The chief of the purchasing division, or a committee appointed by*
5 *the chief in accordance with the regulations adopted pursuant to section*
6 *2 of this act, if he is responsible for administering the proposal.*

7 2. *A committee appointed pursuant to subsection 1 must consist of*
8 *not less than two members. A majority of the members of the committee*
9 *must be state officers or employees. The committee may include persons*
10 *who are not state officers or employees and possess expert knowledge or*
11 *special expertise that the chief of the using agency or the chief of the*
12 *purchasing division determines is necessary to evaluate a proposal. The*
13 *members of the committee are not entitled to compensation for their*
14 *service on the committee, except that members of the committee who are*
15 *state officers or employees are entitled to receive their salaries as state*
16 *officers and employees. No member of the committee may have a*
17 *financial interest in a proposal.*

18 3. *In making an award, the chief of the using agency, the chief of the*
19 *purchasing division or each member of the committee, if a committee is*
20 *established, shall consider* ~~1:~~

21 ~~—(a) The~~ *and assign a score for each of the following factors for*
22 *determining whether the proposal is in the* best interests of the State of
23 Nevada ~~1:~~

24 ~~—(b) :~~

25 (a) *The experience and financial stability of the person submitting a*
26 *proposal;*

27 ~~1(e)~~ (b) *Whether the proposal conforms with the terms of the request*
28 *for proposals;*

29 ~~1(d)~~ (c) *The price of the proposal; and*

30 ~~1(e)~~ (d) *Any other factor disclosed in the request for proposals.*

31 ~~2.—The chief~~

32 4. *The chief of the using agency, the chief of the purchasing division*
33 *or the committee, if a committee is established, shall determine the*
34 *relative weight of each factor set forth in subsection 3 before a request for*
35 *proposals is advertised. The weight of each factor must not be disclosed*
36 *before the date proposals are required to be submitted .* ~~1to the purchasing~~
37 ~~division.~~

38 5. *The chief of the using agency, the chief of the purchasing division*
39 *or the committee, if a committee is established, shall award the contract*
40 *based on the best interests of the state and is not required to accept the*
41 *lowest-priced proposal.*

42 6. *Each proposal evaluated pursuant to the provisions of this section*
43 *is confidential and may not be disclosed until the contract is awarded.*

1 **Sec. 8.** NRS 333.340 is hereby amended to read as follows:

2 333.340 1. Every contract or order *for goods* must be awarded to the
3 lowest responsible bidder. To determine the lowest responsible bidder, the
4 chief may consider:

5 (a) The location of the using agency to be supplied.

6 (b) The qualities of the articles to be supplied.

7 (c) The total cost of ownership of the articles to be supplied.

8 (d) Except as otherwise provided in paragraph (e), the conformity of the
9 articles to be supplied with the specifications.

10 (e) If the articles are an alternative to the articles listed in the original
11 request for bids, whether the advertisement for bids included a statement
12 that bids for an alternative article will be considered if:

13 (1) The specifications of the alternative article meet or exceed the
14 specifications of the article listed in the original request for bids;

15 (2) The purchase of the alternative article results in a lower price; and

16 (3) The chief deems the purchase of the alternative article to be in the
17 best interests of the State of Nevada.

18 (f) The purposes for which the articles to be supplied are required.

19 (g) The dates of delivery of the articles to be supplied.

20 2. If a contract or an order is not awarded to the lowest bidder, the
21 chief shall provide the lowest bidder with a written statement which sets
22 forth the specific reasons that the contract or order was not awarded to
23 him.

24 3. As used in this section, "total cost of ownership" includes, but is not
25 limited to:

26 (a) The history of maintenance or repair of the articles;

27 (b) The cost of routine maintenance and repair of the articles;

28 (c) Any warranties provided in connection with the articles;

29 (d) The cost of replacement parts for the articles; and

30 (e) The value of the articles as used articles when given in trade on a
31 subsequent purchase.

32 **Sec. 9.** NRS 284.173 is hereby amended to read as follows:

33 284.173 1. Elective officers and heads of departments, boards,
34 commissions or institutions may contract for the services of persons as
35 independent contractors. *Except as otherwise provided by specific statute,*
36 *each contract for services must be awarded pursuant to the provisions of*
37 *chapter 333 of NRS.*

38 2. An independent contractor is a natural person, firm or corporation
39 who agrees to perform services for a fixed price according to his or its own
40 methods and without subjection to the supervision or control of the other
41 contracting party, except as to the results of the work, and not as to the
42 means by which the services are accomplished.

- 1 3. For the purposes of this section:
- 2 (a) Travel, subsistence and other personal expenses may be paid to an
- 3 independent contractor, if provided for in the contract, in such amounts as
- 4 provided for in the contract. Those expenses must not be paid pursuant to
- 5 the provisions of NRS 281.160.
- 6 (b) There must be no:
- 7 (1) Withholding of income taxes by the state;
- 8 (2) Coverage for industrial insurance provided by the state;
- 9 (3) Participation in group insurance plans which may be available to
- 10 employees of the state;
- 11 (4) Participation or contributions by either the independent contractor
- 12 or the state to the public employees' retirement system;
- 13 (5) Accumulation of vacation leave or sick leave; or
- 14 (6) Coverage for unemployment compensation provided by the state
- 15 if the requirements of NRS 612.085 for independent contractors are met.
- 16 4. An independent contractor is not in the classified or unclassified
- 17 service of the state, and has none of the rights or privileges available to
- 18 officers or employees of the State of Nevada.
- 19 5. Except as otherwise provided in this subsection, each contract for
- 20 the services of an independent contractor must be in writing. The form of
- 21 the contract must be first approved by the attorney general, and, except as
- 22 otherwise provided in subsection 7, an executed copy of each contract
- 23 must be filed with the fiscal analysis division of the legislative counsel
- 24 bureau and the clerk of the state board of examiners. The state board of
- 25 examiners may waive the requirements of this subsection in the case of
- 26 contracts which are for amounts less than \$750.
- 27 6. Except as otherwise provided in subsection 7, and except contracts
- 28 entered into by the University and Community College System of Nevada,
- 29 each proposed contract with an independent contractor must be submitted
- 30 to the state board of examiners. The contracts do not become effective
- 31 without the prior approval of the state board of examiners, but the state
- 32 board of examiners may authorize its clerk to approve contracts which are:
- 33 (a) For amounts less than \$5,000 or, in contracts necessary to preserve
- 34 life and property, for amounts less than \$25,000.
- 35 (b) Entered into by the state gaming control board for the purposes of
- 36 investigating an applicant for or holder of a gaming license.
- 37 The state board of examiners shall adopt regulations to carry out the
- 38 provisions of this section.
- 39 7. Copies of the following types of contracts need not be filed or
- 40 approved as provided in subsections 5 and 6:

- 1 (a) Contracts executed by the department of transportation for any work
- 2 of construction or reconstruction of highways.
- 3 (b) Contracts executed by the state public works board or any other
- 4 state department or agency for any work of construction or major repairs of
- 5 state buildings if the contracting process was controlled by the rules of
- 6 open competitive bidding.
- 7 (c) Contracts executed by the housing division of the department of
- 8 business and industry.
- 9 (d) Contracts executed by the state industrial insurance system.
- 10 (e) Contracts executed with business entities for any work of
- 11 maintenance or repair of office machines and equipment.
- 12 8. The state board of examiners shall review each contract submitted
- 13 for approval pursuant to subsection 6 to consider:
- 14 (a) Whether sufficient authority exists to expend the money required by
- 15 the contract; and
- 16 (b) Whether the service which is the subject of the contract could be
- 17 provided by a state agency in a more cost-effective manner.
- 18 If the contract submitted for approval continues an existing contractual
- 19 relationship, the board shall ask each agency to ensure that the state is
- 20 receiving the services that the contract purports to provide.
- 21 9. If the services of an independent contractor are contracted for to
- 22 represent an agency of the state in any proceeding in any court, the
- 23 contract must require the independent contractor to identify in all pleadings
- 24 the specific state agency which he is representing.
- 25 **Sec. 10.** NRS 333.275 is hereby repealed.

TEXT OF REPEALED SECTION

333.275 Contract for services in amount of \$100,000 or more: Preparation of request for proposals; report to legislature or interim finance committee.

1. If the legislature requires a using agency to contract for the provision of services in an amount of \$100,000 or more, a representative of that agency shall, as soon as practicable after the contracting of those services has been authorized by the legislature, meet with a representative of the purchasing division, a representative of the attorney general and any other person he considers necessary to discuss the preparation of a request for a proposal.

2. The representative from the using agency which is responsible for contracting for the services described in subsection 1 shall, not later than 90 days after the contracting of those services has been authorized by the

legislature, submit a report to the legislature if the legislature is in session, or to the interim finance committee, if the legislature is not in session. The report must include information concerning the status of the request for the proposal and the proposed date of its completion.

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