

ASSEMBLY BILL NO. 649—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 26, 2001

Referred to Committee on Government Affairs

SUMMARY—Revises certain provisions regarding governmental purchasing.
(BDR 27-1127)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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 governmental purchasing; authorizing a local government and the chief of the purchasing division of the department of administration to receive bids on secure websites on the Internet or its successor; removing the provision requiring notice of the expiration of the insurance coverage of a local government; authorizing a local government to charge fees for the use of a credit card or debit card or the electronic transfer of money when remitting fees or payments to the local government; 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 332 of NRS is hereby amended by adding thereto a
2 new section to read as follows:
3 1. *A governing body or its authorized representative may use on-line*
4 *bidding to receive bids submitted in response to a request for bids. The*
5 *governing body shall not use on-line bidding as the exclusive means of*
6 *receiving bids for the request for bids.*
7 2. *A request for bids for which bids may be submitted pursuant to*
8 *subsection 1 must designate a date and time at which bids may be*
9 *submitted and may designate a date and time after which bids will no*
10 *longer be received.*
11 3. *A governing body or its authorized representative may require*
12 *bidders to:*
13 *(a) Register before the date and time at which bids may be submitted;*
14 *and*
15 *(b) Agree to terms, conditions or requirements of the request for bids*
16 *to facilitate on-line bidding.*
17 4. *The procedures established by a governing body or its authorized*
18 *representative for the purposes of conducting on-line bidding must not*
19 *conflict with the provisions of this chapter.*



1 5. *As used in this section, "on-line bidding" means a process by*
2 *which bidders submit bids for a contract on a secure website on the*
3 *Internet or its successor, if any, which is established and maintained for*
4 *that purpose.*

5 Sec. 2. NRS 332.025 is hereby amended to read as follows:

6 332.025 As used in this chapter, unless the context otherwise requires:

7 1. "Authorized representative" means ~~the~~ a person *designated by the*
8 *governing body to be* responsible for the *development, award and* proper
9 administration of all purchases and contracts ~~or either of them, under~~ *for*
10 *a local government or a department, division, agency, board or unit of a*
11 *local government made pursuant to* this chapter.

12 2. "Chief administrative officer" means the person directly responsible
13 to the governing body for the administration of that particular entity.

14 3. *"Evaluator" means an authorized representative officer,*
15 *employee, representative, agent, consultant or member of a governing*
16 *body who has participated in:*

17 (a) *The evaluation of bids;*

18 (b) *Negotiations concerning purchasing by a local government; or*

19 (c) *The review or approval of the award, modification or extension of*
20 *a contract.*

21 4. "Governing body" means the board, council, commission or other
22 body in which the general legislative and fiscal powers of the local
23 government are vested.

24 ~~4.1~~ 5. "Proprietary information" means:

25 (a) Any trade secret or confidential business information that is
26 contained in a bid submitted to a governing body or its authorized
27 representative on a particular contract; or

28 (b) Any other trade secret or confidential business information
29 submitted to a governing body or its authorized representative by a bidder
30 and designated as proprietary by the governing body or its authorized
31 representative.

32 As used in this subsection, "confidential business information" means any
33 information relating to the amount or source of any income, profits, losses
34 or expenditures of a person, including data relating to cost, ~~or~~ price, *or*
35 *the customers of a bidder which is* submitted in support of a bid. The term
36 does not include the amount of a bid submitted to a governing body or its
37 authorized representative.

38 ~~5. "Purchasing officer" means an authorized representative, officer,
39 *employee, representative, agent, consultant or member of a governing body*
40 *who has participated in:*~~

41 ~~— (a) The evaluation of bids;~~

42 ~~— (b) Negotiations concerning purchasing by a local government; or~~

43 ~~— (c) The review or approval of the award, modification or extension of a~~
44 ~~contract.~~

45 6. "Trade secret" has the meaning ascribed to it in NRS 600A.030.

46 Sec. 3. NRS 332.061 is hereby amended to read as follows:

47 332.061 1. Except as otherwise provided in *this* subsection, ~~2,~~
48 proprietary information regarding a trade secret does not constitute public
49 information and is confidential.



1 ~~{2-}~~ A person shall not disclose proprietary information regarding a
2 trade secret unless the disclosure is made for the purpose of a civil,
3 administrative or criminal investigation or proceeding, and the person
4 receiving the information represents in writing that protections exist under
5 applicable law to preserve the integrity, confidentiality and security of the
6 information.

7 *2. A bid which contains a provision that requires negotiation or*
8 *evaluation by the governing body or an evaluator may not be disclosed*
9 *until the bid is recommended for the award of a contract.*

10 **Sec. 4.** NRS 332.065 is hereby amended to read as follows:

11 332.065 1. If a governing body or its *authorized* representative has
12 advertised for or requested bids in letting a contract, the ~~{award}~~ *governing*
13 *body or its authorized representative* must, except as otherwise provided
14 in subsection 2, ~~{be made}~~ *award the contract* to the lowest responsive and
15 responsible bidder. The lowest responsive and responsible bidder must be
16 judged on the basis of price, conformance to specifications, ~~{bidders'}~~
17 qualifications, including ~~{the bidders'}~~ , *without limitation*, past
18 performance , ~~{in such matters,}~~ quality and utility of services, supplies,
19 materials or equipment offered and ~~{their}~~ adaptability to the required
20 purpose and ~~{in}~~ the best ~~{interest}~~ *interests* of the public . ~~{each of the~~
21 ~~factors being considered.}~~

22 2. The governing body ~~{}~~ *or its authorized representative:*

23 (a) Shall give preference to recycled products if:

24 (1) The product meets the applicable standards;

25 (2) The product can be substituted for a comparable nonrecycled
26 product; and

27 (3) The product costs no more than a comparable nonrecycled
28 product.

29 (b) May give preference to recycled products if:

30 (1) The product meets the applicable standards;

31 (2) The product can be substituted for a comparable nonrecycled
32 product; and

33 (3) The product costs no more than 5 percent more than a comparable
34 nonrecycled product.

35 (c) May purchase recycled paper products if the specific recycled paper
36 product is:

37 (1) Available at a price which is not more than 10 percent higher than
38 that of paper products made from virgin material;

39 (2) Of adequate quality; and

40 (3) Available to the purchaser within a reasonable period.

41 3. If after the lowest responsive and responsible bidder has been
42 awarded the contract, during the term of the contract he does not supply
43 goods or services in accordance with the bid specifications, or if he
44 repudiates the contract, the governing body *or its authorized*
45 *representative* may reaward the contract to the next lowest responsive and
46 responsible bidder without requiring that new bids be submitted.
47 Reawarding the contract to the next lowest responsive and responsible
48 bidder is not a waiver of any liability of the initial bidder awarded the
49 contract.



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1 4. As used in this section:

2 (a) "Post-consumer waste" means a finished material which would
3 normally be disposed of as a solid waste having completed its life cycle as
4 a consumer item.

5 (b) "Recycled paper product" means all paper and wood-pulp products
6 containing in some combination at least 50 percent of its total weight:

7 (1) Post-consumer waste; and

8 (2) Secondary waste,

9 but does not include fibrous waste generated during the manufacturing
10 process such as fibers recovered from waste water or trimmings of paper
11 machine rolls, wood slabs, chips, sawdust or other wood residue from a
12 manufacturing process.

13 (c) "Secondary waste" means fragments of products or finished
14 products of a manufacturing process, which has converted a virgin resource
15 into a commodity of real economic value.

16 **Sec. 5.** NRS 332.085 is hereby amended to read as follows:

17 332.085 In determining the responsibility of any bidder, the governing
18 body or its authorized representative shall consider the possession of and
19 limit on any required license and may consider the financial responsibility,
20 experience, adequacy of equipment , *past performance* and ability of the
21 bidder to ~~complete performance.~~ *perform the contract.*

22 **Sec. 6.** NRS 332.095 is hereby amended to read as follows:

23 332.095 1. No contract awarded may be assigned to any other person
24 without the consent of the governing body or its authorized representative.

25 2. No contract awarded or any portion thereof may be assigned to any
26 person who was declared by the governing body *or its authorized*
27 *representative* not to be a responsible person to perform the particular
28 contract.

29 **Sec. 7.** NRS 332.115 is hereby amended to read as follows:

30 332.115 1. Contracts which by their nature are not adapted to award
31 by competitive bidding, including contracts for:

32 (a) Items which may only be contracted from a sole source;

33 (b) Professional services;

34 (c) Additions to and repairs and maintenance of equipment which may
35 be more efficiently added to, repaired or maintained by a certain person;

36 (d) Equipment which, by reason of the training of the personnel or of an
37 inventory of replacement parts maintained by the local government is
38 compatible with existing equipment;

39 (e) Perishable goods;

40 (f) Insurance;

41 (g) Hardware and associated peripheral equipment and devices for
42 computers;

43 (h) Software for computers;

44 (i) Books, library materials and subscriptions;

45 (j) Motor vehicle fuel purchased by a local law enforcement agency for
46 use in an undercover investigation;

47 (k) Motor vehicle fuel for use in a vehicle operated by a local law
48 enforcement agency or local fire department if such fuel is not available



1 within the vehicle's assigned service area from a fueling station owned by
2 the State of Nevada or a local government;

3 (l) Purchases made with money in a store fund for prisoners in a jail or
4 local detention facility for the provision and maintenance of a canteen for
5 the prisoners;

6 (m) Supplies, materials or equipment that are available from *contracts*
7 *with* the General Services Administration or another governmental agency
8 in the regular course of its business; ~~and~~

9 (n) Items for resale through a retail outlet operated in this state by a
10 local government or the State of Nevada ~~and~~;

11 *(o) Goods or services purchased from organizations or agencies*
12 *whose primary purpose is the training and employment of handicapped*
13 *persons; and*

14 *(p) Energy,*

15 are not subject to the requirements of this chapter for competitive bidding
16 as determined by the governing body or its authorized representative.

17 2. The purchase of equipment for use by a local law enforcement
18 agency in the course of an undercover investigation is not subject to the
19 requirements of this chapter for competitive bidding if:

20 (a) The equipment is an electronic or mechanical device which by
21 design is intended to monitor and document in a clandestine manner
22 suspected criminal activity; ~~and~~ *or*

23 (b) Purchasing the equipment pursuant to such requirements would limit
24 or compromise the use of such equipment by an agency authorized to
25 conduct such investigations.

26 3. The governing body of a hospital required to comply with the
27 provisions of this chapter, or its authorized representative, may purchase
28 goods commonly used by the hospital, under a contract ~~properly~~ awarded
29 pursuant to NRS 332.065, without additional competitive bidding even if at
30 the time the contract was awarded:

31 (a) The vendor supplying such goods to the person awarded the contract
32 was not identified as a supplier to be used by the person awarded the
33 contract; or

34 (b) The vendor was identified as a supplier but was not identified as the
35 supplier of such goods.

36 The governing body of the hospital shall make available for public
37 inspection each such contract and records related to those purchases.

38 4. ~~Except in cases of emergency, at least 60 days before the expiration~~
39 ~~of an existing contract for insurance in which the local government is the~~
40 ~~insured, the governing body shall cause to be given, by advertising or in~~
41 ~~another manner deemed adequate and desirable by the governing body,~~
42 ~~notice of the date the contract for insurance expires.~~

43 ~~5.1~~ This section does not prohibit a governing body or its authorized
44 representative from advertising for or requesting bids.

45 **Sec. 8.** NRS 332.146 is hereby amended to read as follows:

46 332.146 1. Except as otherwise provided by law, if the ~~chief~~
47 ~~administrative officer of the local government concurs with the~~ *governing*
48 *body or its* authorized representative *determines* that the supplies, materials
49 or equipment can be purchased at any public auction, closeout sale,



1 bankruptcy sale, sale of merchandise left after an exhibition, or other
2 similar sale at a reasonable savings over the cost of like merchandise and
3 below the market cost in the community, a contract or contracts may be let
4 or the purchase made without complying with the requirements of this
5 chapter for competitive bidding.

6 2. The documentation for the purchase or acquisition must be
7 summarized for the next regularly scheduled meeting of the governing
8 body, together with written justification showing the savings involved.

9 **Sec. 9.** NRS 332.155 is hereby amended to read as follows:

10 332.155 1. No member of the governing body may be interested,
11 directly or indirectly, in any contract entered into by the governing body ,
12 ~~+~~ but the governing body may purchase supplies, not to exceed \$300 in
13 the aggregate in any 1 calendar month from a member of such governing
14 body, when not to do so would be of great inconvenience due to a lack of
15 any other local source.

16 2. An ~~authorized representative of a governing body~~ *evaluator* may
17 not be interested, directly or indirectly, in any contract *awarded* by such
18 governing body ~~+~~ *or its authorized representative.*

19 3. A member of a governing body who furnishes supplies in the
20 manner permitted by subsection 1 ~~+~~ may not vote on the allowance of the
21 claim for such supplies.

22 4. A violation of this section is a misdemeanor and, in the case of a
23 member of a governing body, cause for removal from office.

24 **Sec. 10.** NRS 332.161 is hereby amended to read as follows:

25 332.161 1. Before a contract is awarded, a person who has bid on the
26 contract or an officer, employee, representative, agent or consultant of such
27 a person shall not:

28 (a) Make an offer or promise of future employment or business
29 opportunity to, or engage in a discussion of future employment or business
30 opportunity with, ~~the purchasing officer~~ *an evaluator* or member of the
31 governing body offering the contract;

32 (b) Offer, give or promise to offer or give money, a gratuity or any other
33 thing of value to ~~the purchasing officer~~ *an evaluator* or member of the
34 governing body offering the contract; or

35 (c) Solicit or obtain from an officer, employee or member of the
36 governing body offering the contract, any proprietary information
37 regarding the contract.

38 2. A person who violates any of the provisions of subsection 1 is guilty
39 of a gross misdemeanor and shall be punished by imprisonment in the
40 county jail for not more than 1 year, or by a fine of not less than \$2,000 nor
41 more than \$50,000, or by both fine and imprisonment.

42 **Sec. 11.** NRS 332.165 is hereby amended to read as follows:

43 332.165 1. Any agreement or collusion among bidders or prospective
44 bidders in restraint of freedom of competition by agreement to bid a fixed
45 price, or otherwise, shall render the bids of such bidders void.

46 2. Advance disclosures of any information to any particular bidder
47 which would give that particular bidder any advantage over any other
48 interested bidder in advance of the opening of bids, whether in response to
49 advertising or an informal request for bids, made or permitted by a member



1 of the governing body or an employee or representative thereof, shall
2 operate to void all ~~proposals or~~ *bids received in response to* that
3 particular ~~bid solicitation or request~~ *request for bids.*

4 **Sec. 12.** NRS 332.175 is hereby amended to read as follows:

5 332.175 ~~When purchasing personal property, the~~ *A* governing body
6 or its authorized representative may solicit and accept ~~advantageous~~
7 trade-in allowances for personal property of the public entity which has
8 been determined by the governing body or its authorized representative to
9 be no longer required for public use ~~, and may award any bid to the bidder~~
10 ~~submitting the lowest net bid after deduction of the trade-in allowance.~~ *in*
11 *a manner that best serves the interests of the local government.*

12 **Sec. 13.** NRS 332.185 is hereby amended to read as follows:

13 332.185 1. Except as otherwise provided in subsection 2 , *NRS*
14 *244.1505* and NRS 334.070, all sales ~~for leases~~ of personal property of the
15 local government must be made, as nearly as possible, under the same
16 conditions and limitations as required by this chapter in the purchase of
17 personal property. The governing body or its authorized representative may
18 ~~sell any such~~ *dispose of* personal property *of the local government by*
19 *any manner, including, without limitation,* at public auction , if ~~the~~ *the*
20 *governing body or its authorized representative* determines that the
21 property is no longer required for public use and deems such ~~a sale~~ *action*
22 desirable and in the best interests of the local government.

23 2. The board of trustees of a school district may donate surplus
24 personal property of the school district to a charter school that is located
25 within the school district without regard to:

- 26 (a) The provisions of this chapter; or
27 (b) Any statute, regulation, ordinance or resolution that requires:
28 (1) The posting of notice or public advertising.
29 (2) The inviting or receiving of competitive bids.
30 (3) The selling or leasing of personal property by contract or at a
31 public auction.

32 3. The provisions of this chapter do not apply to the purchase, sale,
33 lease or transfer of real property by the governing body.

34 **Sec. 14.** NRS 332.195 is hereby amended to read as follows:

35 332.195 1. ~~Local governments~~ *A governing body or its authorized*
36 *representative* and the State of Nevada may join or use the contracts of
37 other local governments within this state with the authorization of the
38 contracting vendor. The originally contracting local government is not
39 liable for the obligations of the local government which joins or uses the
40 contract.

41 2. ~~Local governments~~ *A governing body or its authorized*
42 *representative* may join or use the contracts of the State of Nevada with the
43 authorization of the contracting vendor. The State of Nevada is not liable
44 for the obligations of the local government which joins or uses the contract.

45 **Sec. 15.** Chapter 333 of NRS is hereby amended by adding thereto a
46 new section to read as follows:

47 *1. The chief may use on-line bidding to receive bids in response to a*
48 *request for proposals.*



1 2. *A request for proposals for which bids may be submitted pursuant*
2 *to subsection 1 must designate a date and time at which bids may be*
3 *submitted and may designate a date and time after which bids will no*
4 *longer be received.*

5 3. *The chief may require bidders to:*

6 (a) *Register before the date and time at which bids may be submitted;*
7 *and*

8 (b) *Agree to terms, conditions or requirements of the request for*
9 *proposals to facilitate on-line bidding.*

10 4. *The procedures established by the chief for the purposes of*
11 *conducting on-line bidding must not conflict with the provisions of this*
12 *chapter.*

13 5. *As used in this section, “on-line bidding” means a process by*
14 *which bidders submit bids for a contract on a secure website on the*
15 *Internet or its successor, if any, which is established and maintained for*
16 *that purpose.*

17 **Sec. 16.** NRS 333.330 is hereby amended to read as follows:

18 333.330 1. All bids on more than one item on which bids are called
19 for by the same notice must be itemized and give a price for each item.

20 2. All bids must:

21 (a) ~~Be~~ *Except as otherwise provided in section 15 of this act, be* in
22 writing and signed.

23 (b) Be sealed or, if the bid is submitted electronically, secured by an
24 electronic equivalent of a seal, as approved by the purchasing division.

25 (c) Be opened and read publicly by the chief or his designated agent as
26 they are opened.

27 **Sec. 17.** NRS 354.770 is hereby amended to read as follows:

28 354.770 1. A local government may enter into contracts with issuers
29 of credit cards or debit cards , *or operators of systems that provide for the*
30 *electronic transfer of money* to provide for the acceptance of credit cards ,
31 ~~for~~ debit cards *or electronic transfers of money* by the local government:

32 (a) For the payment of money owed to the local government for taxes,
33 interest, penalties or any other obligation; or

34 (b) In payment for goods or services.

35 2. If the issuer *or operator* charges the local government a fee for each
36 use of a credit card , ~~for~~ debit card ~~to a contract entered into pursuant to~~
37 ~~subsection 1 must include a provision that requires the local government to~~
38 ~~pay the fee charged by the issuer for the use of the credit card or debit card~~

39 ~~—3. The payment of fees charged by the issuer for each use of a credit~~
40 ~~card or debit card must be treated in the same manner as any other~~
41 ~~administrative cost of the local government.~~

42 ~~—4.~~ *or electronic transfer of money, the local government may require*
43 *the cardholder or the person requesting the electronic transfer of money*
44 *to pay a fee, which must not exceed the amount charged to the local*
45 *government by the issuer or operator.*

46 3. As used in this section:

47 (a) “Cardholder” means the person or organization named on the face of
48 a credit card or debit card to whom or for whose benefit the credit card or
49 debit card is issued by an issuer.



1 (b) “Credit card” means any instrument or device, whether known as a
2 credit card or credit plate, or by any other name, issued with or without a
3 fee by an issuer for the use of the cardholder in obtaining money, property,
4 goods, services or anything else of value on credit.

5 (c) “Debit card” means any instrument or device, whether known as a
6 debit card or by any other name, issued with or without a fee by an issuer
7 for the use of the cardholder in depositing, obtaining or transferring funds.

8 (d) *“Electronic transfer of money” has the meaning ascribed to it in*
9 *NRS 463.01473.*

10 (e) “Issuer” means a business organization, financial institution or
11 authorized agent of a business organization or financial institution that
12 issues a credit card or debit card.

13 ~~(e)~~ (f) “Local government” has the meaning ascribed to it in NRS
14 354.474, except that the term does not include a court that has entered into
15 a contract pursuant to NRS 1.113.

16 **Sec. 18.** This bill becomes effective on July 1, 2001.

