

ASSEMBLY BILL NO. 39—ASSEMBLYMAN PARKS

PREFILED FEBRUARY 4, 2005

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions governing purchasing by state and local governments. (BDR 27-560)

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 purchasing; providing a procedure for a bidder to file a notice of protest regarding certain contracts; expanding the criteria that may be used to select the lowest responsive and responsible bidder on certain contracts; expanding the types of contracts which by nature are not adapted to award by competitive bidding; clarifying the requirements concerning contracting by public officers and employees; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides a procedure for bidders on state purchasing contracts and public works contracts to appeal or protest the awarding of the contract. (NRS 333.370, 338.142)

This bill provides a procedure for bidders on certain local governmental purchasing contracts to file a notice of protest with the governing body of the local government or its authorized representative concerning the awarding of the contract.

Under existing law, the Local Government Purchasing Act provides procedures and requirements for the purchase of supplies, materials, equipment and services by the governing body of a local government. (Chapter 332 of NRS) In relevant part, the Act provides criteria for awarding purchasing contracts and exempts certain types of purchasing contracts from the requirements of competitive bidding. (NRS 332.065, 332.115)

This bill authorizes a governing body to establish additional criteria for the awarding of a contract in the advertisement or request for bids for the contract. This bill also provides that contracts relating to systems of communication are not subject to the requirements of competitive bidding.



Existing law authorizes the Chief of the Purchasing Division of the Department of Administration, on behalf of the State of Nevada and certain local governments in Nevada, to purchase supplies, materials and equipment from a vendor who has entered into an agreement with the United States General Services Administration or another governmental agency. (NRS 333.480)

This bill provides notice in the Local Government Purchasing Act that the State of Nevada has authority to enter into purchasing contracts with local governments within and outside Nevada.

Existing law requires a public officer, including a Legislator, or public employee to meet certain requirements to contract with a governmental entity. To bid on or enter into such a contract, the sources of supply must be limited, the contracting process must be controlled by rules of open competitive bidding, the public officer or employee must not have taken part in developing the contract plans or specifications and the public officer or employee must not have been personally involved in opening, considering or accepting any bids for the contract. (NRS 218.605, 281.505)

This bill clarifies that a public officer, including a Legislator, or a public employee must not bid on or enter into a contract with a governmental entity if the contract is exempt from the requirements of competitive bidding.

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

**Section 1.** Chapter 332 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A person who submits a bid on a contract that is required to be advertised pursuant to paragraph (a) of subsection 1 of NRS 332.039 may, after the bids are opened and within the period specified by the governing body or its authorized representative, file with the governing body or its authorized representative a notice of protest regarding the awarding of the contract.*

*2. A notice of protest must include a written statement setting forth with specificity the reasons the person filing the notice believes the applicable provisions of law were violated.*

*3. A person filing a notice of protest may be required by the governing body or its authorized representative, at the time the notice of protest is filed, to post a bond with a good and solvent surety authorized to do business in this State or submit other security, in a form approved by the governing body or its authorized representative, to the governing body or its authorized representative who shall hold the bond or other security until a determination is made on the protest. A bond posted or other security submitted with a notice of protest must be in an amount equal to the lesser of:*

*(a) Twenty-five percent of the total value of the bid submitted by the person filing the notice of protest; or*

*(b) Two hundred fifty thousand dollars.*



1     **4. A notice of protest filed in accordance with the provisions**  
2 **of this section operates as a stay of action in relation to the**  
3 **awarding of any contract until a determination is made by the**  
4 **governing body or its authorized representative on the protest.**

5     **5. A person who submits an unsuccessful bid may not seek**  
6 **any type of judicial intervention until the governing body or its**  
7 **authorized representative has made a determination on the protest**  
8 **and awarded the contract.**

9     **6. A governing body or its authorized representative is not**  
10 **liable for any costs, expenses, attorney's fees, loss of income or**  
11 **other damages sustained by a person who submits a bid, whether**  
12 **or not the person files a notice of protest pursuant to this section.**

13     **7. If the protest is upheld, the bond posted or other security**  
14 **submitted with the notice of protest must be returned to the person**  
15 **who posted the bond or submitted the security. If the protest is**  
16 **rejected, a claim may be made against the bond or other security**  
17 **by the governing body or its authorized representative in an**  
18 **amount equal to the expenses incurred by the governing body or**  
19 **its authorized representative because of the unsuccessful protest.**  
20 **Any money remaining after the claim has been satisfied must be**  
21 **returned to the person who posted the bond or submitted the**  
22 **security.**

23     **Sec. 2.** NRS 332.039 is hereby amended to read as follows:

24     332.039 1. Except as otherwise provided by specific statute:

25     (a) A governing body or its authorized representative shall  
26 advertise all contracts for which the estimated amount required to  
27 perform the contract exceeds \$25,000.

28     (b) A governing body or its authorized representative may enter  
29 into a contract of any nature without advertising if the estimated  
30 amount required to perform the contract is \$25,000 or less.

31     (c) If the estimated amount required to perform the contract is  
32 more than \$10,000 but not more than \$25,000, requests for bids  
33 must be submitted **or caused to be submitted** by the governing body  
34 or its authorized representative to two or more persons capable of  
35 performing the contract, if available. The governing body or its  
36 authorized representative shall maintain a record of all requests for  
37 bids and all bids received for the contract for at least 7 years after  
38 the date of execution of the contract.

39     2. This section does not prohibit a governing body or its  
40 authorized representative from advertising for or requesting bids  
41 regardless of the estimated amount to perform the contract.

42     **Sec. 3.** NRS 332.045 is hereby amended to read as follows:

43     332.045 1. The advertisement required by paragraph (a) of  
44 subsection 1 of NRS 332.039 must be published at least once and



1 not less than 7 days before the opening of bids. The advertisement  
2 must be by notice to bid ~~[ ]~~ and must be published in a newspaper  
3 ~~[published and having]~~ *qualified pursuant to chapter 238 of NRS*  
4 *that has a* general circulation within the county wherein the local  
5 government, or a major portion thereof, is situated. ~~[If no such~~  
6 ~~newspaper is published in the county, then publication must be in~~  
7 ~~any newspaper published in the State having general circulation in~~  
8 ~~the county.]~~

9 2. The notice must state:

10 (a) The nature, character or object of the contract.

11 (b) If plans and specifications are to constitute part of the  
12 contract, where the plans and specifications may be seen.

13 (c) The time and place where bids will be received and opened.

14 (d) Such other matters as may properly pertain to giving notice  
15 to bid.

16 **Sec. 4.** NRS 332.047 is hereby amended to read as follows:

17 332.047 1. A governing body or its authorized representative  
18 may use on-line bidding to receive bids submitted in response  
19 to a request for bids. The governing body *or its authorized*  
20 *representative* shall not use on-line bidding as the exclusive means  
21 of receiving bids for the request for bids.

22 2. A request for bids for which bids may be submitted pursuant  
23 to subsection 1 must designate a date and time at which bids may be  
24 submitted and may designate a date and time after which bids will  
25 no longer be received.

26 3. A governing body or its authorized representative may  
27 require bidders to:

28 (a) Register before the date and time at which bids may be  
29 submitted; and

30 (b) Agree to terms, conditions or requirements of the request for  
31 bids to facilitate on-line bidding.

32 4. The procedures established by a governing body or its  
33 authorized representative for the purposes of conducting on-line  
34 bidding must not conflict with the provisions of this chapter.

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

39 **Sec. 5.** NRS 332.061 is hereby amended to read as follows:

40 332.061 1. Except as otherwise provided in this subsection,  
41 proprietary information ~~[regarding a trade secret]~~ does not constitute  
42 public information and is confidential. A person shall not disclose  
43 proprietary information ~~[regarding a trade secret unless the]~~ *unless:*



1     ***(a) The*** disclosure is made for the purpose of a civil,  
2 administrative or criminal investigation or proceeding ~~[-and the]~~ ;  
3 ***and***

4     ***(b) The*** person receiving the information represents in writing  
5 that protections exist under applicable law to preserve the integrity,  
6 confidentiality and security of the 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  
9 disclosed until the bid is recommended for the award of a contract.

10    **Sec. 6.** NRS 332.065 is hereby amended to read as follows:

11    332.065 1. If a governing body or its authorized  
12 representative has advertised for or requested bids in letting a  
13 contract, the governing body or its authorized representative must,  
14 except as otherwise provided in subsection 2, award the contract to  
15 the lowest responsive and responsible bidder. The lowest responsive  
16 and responsible bidder may be judged on the basis of:

17    (a) Price;

18    (b) Conformance to specifications;

19    (c) Qualifications;

20    (d) Past performance;

21    (e) Performance or delivery date;

22    (f) Quality and utility of services, supplies, materials or  
23 equipment offered and the adaptability of those services, supplies,  
24 materials or equipment to the required purpose of the contract; ~~[and]~~

25    (g) The best interests of the public ~~[-]~~ ; ***and***

26    ***(h) Such other criteria as may be set forth by the governing***  
27 ***body or its authorized representative in the advertisement or***  
28 ***request for bids, as applicable, that pertains to the contract.***

29    2. The governing body or its authorized representative:

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

31       (1) The product meets the applicable standards;

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

34       (3) The product costs no more than a comparable  
35 nonrecycled product.

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

37       (1) The product meets the applicable standards;

38       (2) The product can be substituted for a comparable  
39 nonrecycled product; and

40       (3) The product costs no more than 5 percent more than a  
41 comparable nonrecycled product.

42    (c) May purchase recycled paper products if the specific  
43 recycled paper product is:

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



1 (2) Of adequate quality; and  
2 (3) Available to the purchaser within a reasonable period.  
3 3. If after the lowest responsive and responsible bidder has  
4 been awarded the contract, during the term of the contract he does  
5 not supply goods or services in accordance with the bid  
6 specifications, or if he repudiates the contract, the governing body  
7 or its authorized representative may reaward the contract to the next  
8 lowest responsive and responsible bidder without requiring that new  
9 bids be submitted. Reawarding the contract to the next lowest  
10 responsive and responsible bidder is not a waiver of any liability of  
11 the initial bidder awarded the contract.

12 4. As used in this section:

13 (a) "Postconsumer waste" means a finished material which  
14 would normally be disposed of as a solid waste having completed its  
15 life cycle as a consumer item.

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

19 (1) Postconsumer waste; and

20 (2) Secondary waste,

21 ➔ but does not include fibrous waste generated during the  
22 manufacturing process such as fibers recovered from wastewater or  
23 trimmings of paper machine rolls, wood slabs, chips, sawdust or  
24 other wood residue from a manufacturing process.

25 (c) "Secondary waste" means fragments of products or finished  
26 products of a manufacturing process which has converted a virgin  
27 resource into a commodity of real economic value.

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

29 332.115 1. Contracts which by their nature are not adapted to  
30 award by competitive bidding, including contracts for:

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

32 (b) Professional services;

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

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

39 (e) Perishable goods;

40 (f) Insurance;

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

43 (h) Software for computers;

44 (i) Books, library materials and subscriptions;



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

(k) Motor vehicle fuel for use in a vehicle operated by a local law enforcement agency or local fire department if such fuel is not available within the vehicle's assigned service area from a fueling station owned by the State of Nevada or a local government;

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

(m) Supplies, materials or equipment that are available pursuant to an agreement with a vendor that has entered into an agreement with the General Services Administration or another governmental agency located within or outside this State;

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

(o) Commercial advertising within a recreational facility operated by a county fair and recreation board; ~~and~~

(p) Goods or services purchased from organizations or agencies whose primary purpose is the training and employment of handicapped persons ~~and~~; and

*(q) The design of, and equipment and services associated with, systems of communication,*

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

2. The purchase of equipment for use by a local law enforcement agency in the course of an undercover investigation is not subject to the requirements of this chapter for competitive bidding, as determined by the governing body or its authorized representative, if:

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

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

3. The purchase of personal safety equipment for use by a local fire department or local law enforcement agency is not subject to the requirements of this chapter for competitive bidding, as determined by the governing body or its authorized representative, if:

(a) The personal safety equipment will be used by personnel of the fire department or law enforcement agency in responding to emergencies in which the health, safety or welfare of those personnel may be compromised, impaired or otherwise threatened; and



(b) The cost of the personal safety equipment is comparable to the cost of similar personal safety equipment that is available for purchase by the public.

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

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

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

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

5. This section does not prohibit a governing body or its authorized representative from advertising for or requesting bids.

6. As used in this section, "personal safety equipment" means safety equipment that is worn or otherwise carried on a regular basis by personnel of a fire department or law enforcement agency. The term includes, but is not limited to, firearms, boots, bulletproof vests or other types of body armor, protective garments, gloves and helmets.

**Sec. 8.** NRS 332.195 is hereby amended to read as follows:

332.195 1. A governing body or its authorized representative *and the State of Nevada* may join or use the contracts of ~~other~~ local governments located within or outside this State with the authorization of the contracting vendor. The originally contracting local government is not liable for the obligations of the ~~local government~~ *governmental entity* which joins or uses the contract.

2. A governing body or its authorized representative may join or use the contracts of the State of Nevada or another state with the authorization of the contracting vendor. The State of Nevada or other state is not liable for the obligations of the local government which joins or uses the contract.

**Sec. 9.** NRS 332.820 is hereby amended to read as follows:

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

2. Advance disclosures of *proprietary information or other* information to any particular bidder which would give that particular bidder any advantage over any other interested bidder in advance of the opening of bids, whether in response to advertising





1 or an informal request for bids, made or permitted by a member of  
2 the governing body or an employee or representative thereof, shall  
3 operate to void all bids received in response to that particular  
4 request for bids.

5 **Sec. 10.** NRS 218.605 is hereby amended to read as follows:

6 218.605 1. Except as otherwise provided in subsection 2, it is  
7 unlawful for any member of the Legislature to:

8 (a) Become a named contractor or named subcontractor under  
9 any contract or order for supplies or any other kind of contract paid  
10 for in whole or in part by money appropriated by the Legislature of  
11 which he is a member for the State or any of its departments, or the  
12 Legislature or either of its houses, or to be interested, directly or  
13 indirectly, as principal, in any kind of contract so paid.

14 (b) Be interested in any contract made by the Legislature of  
15 which he is a member, or be a purchaser or interested in any  
16 purchase or sale made by the Legislature of which he is a member.

17 2. Any member of the Legislature may:

18 (a) Sell or enter into a contract to sell, to the State or any of its  
19 departments any item, commodity, service or capital improvement,  
20 if:

21 (1) The sources of supply for the item, commodity, service or  
22 capital improvement are limited;

23 (2) The contracting process is controlled by rules of open  
24 competitive bidding;

25 (3) He has not taken part in developing the plans or  
26 specifications for the sale or contract; and

27 (4) He will not be personally involved in opening,  
28 considering or accepting any bids for the sale or contract.

29 *↪ If the sale or contract is exempt from the requirements of open  
30 competitive bidding, the member must not sell or enter into the  
31 contract to sell the item, commodity, service or capital  
32 improvement.*

33 (b) If he is not named in a contract, receive, as direct salary or  
34 wages, compensation for which the original source was a legislative  
35 appropriation to any governmental entity or a private entity not  
36 owned or controlled by the Legislator.

37 (c) Receive, for services as an instructor or teacher from any  
38 county school district or the University and Community College  
39 System of Nevada, compensation for which the original source was  
40 a legislative appropriation to any governmental entity or a private  
41 entity not owned or controlled by the Legislator.

42 3. Any contract made in violation of subsection 1 may be  
43 declared void at the instance of the State or of any other person  
44 interested in the contract except the member of the Legislature



1 prohibited in subsection 1 from making or being interested in the  
2 contract.

3 4. Any person violating subsection 1 is guilty of a gross  
4 misdemeanor and forfeits his office.

5 **Sec. 11.** NRS 281.505 is hereby amended to read as follows:

6 281.505 1. Except as otherwise provided in this section and  
7 NRS 281.555 and 332.800, a public officer or employee shall not  
8 bid on or enter into a contract between a governmental agency and  
9 any private business in which he has a significant pecuniary interest.

10 2. A member of any board, commission or similar body who is  
11 engaged in the profession, occupation or business regulated by such  
12 board or commission, may, in the ordinary course of his business,  
13 bid on or enter into a contract with any governmental agency, except  
14 the board, commission or body of which he is a member, if he has  
15 not taken part in developing the contract plans or specifications and  
16 he will not be personally involved in opening, considering or  
17 accepting offers.

18 3. A full- or part-time faculty member or employee of the  
19 University and Community College System of Nevada may bid on  
20 or enter into a contract with a governmental agency, or may benefit  
21 financially or otherwise from a contract between a governmental  
22 agency and a private entity, if the contract complies with the  
23 policies established by the Board of Regents of the University of  
24 Nevada pursuant to NRS 396.255.

25 4. A public officer or employee, other than an officer or  
26 employee described in subsection 2 or 3, may bid on or enter into a  
27 contract with a governmental agency if the contracting process is  
28 controlled by rules of open competitive bidding, the sources of  
29 supply are limited, he has not taken part in developing the contract  
30 plans or specifications and he will not be personally involved in  
31 opening, considering or accepting offers. *If the contract is exempt  
32 from the requirements of open competitive bidding, the public  
33 officer or employee must not bid on or enter into the contract.* If a  
34 public officer who is authorized to bid on or enter into a contract  
35 with a governmental agency pursuant to this subsection is a member  
36 of the governing body of the agency, the public officer, pursuant to  
37 the requirements of NRS 281.501, shall disclose his interest in the  
38 contract and shall not vote on or advocate the approval of the  
39 contract.

40 **Sec. 12.** This act becomes effective on July 1, 2005.





