

ASSEMBLY BILL NO. 353—ASSEMBLYMEN DICKMAN, MOORE,
FIORE, TROWBRIDGE, JONES; ELLISON, MUNFORD,
OSCARSON, SEAMAN, SHELTON, TITUS AND WHEELER

MARCH 17, 2015

JOINT SPONSORS: SENATORS GUSTAVSON AND SETTELMAYER

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public purchasing and contracting. (BDR 27-920)

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 government purchasing; revising provisions relating to the competitive bidding process used by certain state and local governmental entities for procuring goods and services; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the governing body of a local governmental entity or its authorized representative must advertise all contracts for purchasing for which the estimated annual amount required to perform the contract exceeds \$50,000. (NRS 332.039) With some exceptions, such a contract must be awarded to the lowest responsive and responsible bidder. (NRS 332.065, 332.112-332.117) **Section 1** of this bill revises the list of contracts which are exempt from the competitive bidding process, requiring that certain types of contracts be competitively bid if the annual amount required to perform the contract exceeds \$50,000.

Existing law requires the Administrator of the Purchasing Division of the Department of Administration to contract for services whose estimated value is \$100,000 or more, and allows the Administrator to authorize most officers, agencies, departments, institutions, boards and commissions of the State to contract for such services if he or she determines that to do so would be in the best interests of the State. (NRS 333.165) **Section 2** of this bill requires that all such contracts be awarded through the competitive bidding process. **Section 3** of this bill applies that same competitive bidding requirement to a contract for the services of a person as an independent contractor.



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

Section 1. NRS 332.115 is hereby amended to read as follows:

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

- ~~(a) Items which may only be contracted from a sole source;~~
- ~~—(b) Professional services;~~
- ~~—(c) Additions to and repairs and maintenance of equipment which may be more efficiently added to, repaired or maintained by a certain person;~~
- ~~—(d) Equipment which, by reason of the training of the personnel or of an inventory of replacement parts maintained by the local government is compatible with existing equipment;~~
- ~~—(e) Perishable goods;~~
- ~~—(f) Insurance;~~
- ~~—(g) Hardware and associated peripheral equipment and devices for computers;~~
- ~~—(h) Software for computers;~~
- ~~—(i) Books, library materials and subscriptions;~~

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

~~{(k)}~~ **(b)** 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)}~~ **(c)** 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)}~~ **(d)** 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)}~~ **(e)** Items for resale through a retail outlet operated in this State by a local government or the State of Nevada; **and**

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

~~—(p)}~~ **(f)** Goods or services purchased from organizations or agencies whose primary purpose is the training and employment of persons with disabilities, ~~{-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 response agency or any other local governmental 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 response agency or other local governmental agency in preventing, responding to or providing services of recovery or relief in connection with emergencies, acts of terrorism or other natural or man-made disasters 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:

(a) "Act of terrorism" has the meaning ascribed to it in NRS 239C.030.



(b) "Personal safety equipment" means safety equipment that personnel of a response agency or other local governmental agency:

(1) Use in the course of preventing, responding to or providing services of recovery or relief in connection with emergencies, acts of terrorism or other natural or man-made disasters; or

(2) Wear or otherwise carry on a regular basis.

➤ The term includes, without limitation, firearms, boots, bulletproof vests or other types of body armor, protective garments, protective eyewear, gloves, helmets, and any specialized apparatus, equipment or materials approved or recommended by the United States Department of Homeland Security.

(c) "Response agency" means an agency of a local government that provides services related to law enforcement, firefighting, emergency medical care or public safety.

Sec. 2. NRS 333.165 is hereby amended to read as follows:

333.165 1. Except as otherwise provided by specific statute, the Administrator shall contract for services whose estimated value is \$100,000 or more, and may authorize a using agency to contract for such services if he or she determines that to do so would be in the best interests of the State. *Any contract for services governed by this subsection must be awarded through the process of competitive bidding.*

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

3. The Administrator 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 Administrator.

Sec. 3. NRS 333.700 is hereby amended to read as follows:

333.700 1. Except as otherwise provided in NRS 333.705, a using agency may contract for the services of a person as an independent contractor. Except as otherwise provided by specific statute, each such contract must be awarded pursuant to this chapter



and, if the estimated value of the contract exceeds \$100,000, controlled by the rules of open competitive bidding.

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

3. For the purposes of this section:

(a) Travel, subsistence and other personal expenses may be paid to an independent contractor, if provided for in the contract, in such amounts as provided for in the contract. Those expenses must not be paid pursuant to the provisions of NRS 281.160.

(b) There must be no:

(1) Withholding of income taxes by the State;

(2) Coverage for industrial insurance provided by the State;

(3) Participation in group insurance plans which may be available to employees of the State;

(4) Participation or contributions by either the independent contractor or the State to the Public Employees' Retirement System;

(5) Accumulation of vacation leave or sick leave; or

(6) Coverage for unemployment compensation provided by the State if the requirements of NRS 612.085 for independent contractors are met.

4. An independent contractor is not in the classified or unclassified service of the State and has none of the rights or privileges available to officers or employees of the State of Nevada.

5. If the contract is for services for which a license, certificate, registration, permit or other type of authorization is required by law, an independent contractor must hold the appropriate, current authorization that is required by law for the services.

6. Except as otherwise provided in this subsection, each contract for the services of an independent contractor must be in writing. The form of the contract must be first approved by the Attorney General, and except as otherwise provided in subsection 8, an executed copy of each contract must be filed with the Fiscal Analysis Division of the Legislative Counsel Bureau and the Clerk of the State Board of Examiners. The State Board of Examiners may waive the requirements of this subsection in the case of contracts which are for amounts less than \$2,000.

7. Except as otherwise provided in subsection 8, and except for contracts entered into by the Nevada System of Higher Education, each proposed contract with an independent contractor must be submitted to the State Board of Examiners. The contracts do not become effective without the prior approval of the State Board of



Examiners, except that the State Board of Examiners may authorize its Clerk or a designee to approve contracts which are:

- (a) For amounts less than \$50,000; or
- (b) Entered into by the State Gaming Control Board for the purposes of investigating an applicant for or holder of a gaming license.

8. Copies of the following types of contracts need not be filed or approved as provided in subsections 6 and 7:

(a) Contracts executed by the Department of Transportation for any work of construction or reconstruction of highways.

(b) Contracts executed by the State Public Works Division of the Department of Administration or any other state department or agency for any work of construction or major repairs of state buildings, if the contracting process was controlled by the rules of open competitive bidding.

(c) Contracts executed by the Housing Division of the Department of Business and Industry.

(d) Contracts executed with business entities for any work of maintenance or repair of office machines and equipment.

9. The State Board of Examiners shall review each contract submitted for approval pursuant to subsection 7 to consider:

(a) Whether sufficient authority exists to expend the money required by the contract; and

(b) Whether the service which is the subject of the contract could be provided by a state agency in a more cost-effective manner.

➤ If the contract submitted for approval continues an existing contractual relationship, the State Board of Examiners shall ask each agency to ensure that the State is receiving the services that the contract purports to provide.

10. If the services of an independent contractor are contracted for to represent an agency of the State in any proceeding in any court, the contract must require that the independent contractor identify in all pleadings the specific state agency which he or she is representing.

11. Except as otherwise provided in this subsection, a contract for the services of an independent contractor may be performed in parts or phases. A contract for the services of an independent contractor must not be split into separate contracts for the purpose of avoiding any requirements for competitive bidding.

12. The State Board of Examiners may adopt regulations to carry out the provisions of this section.

Sec. 4. 1. The provisions of NRS 332.115, as amended by section 1 of this act, do not apply to any contract entered into by a local government before July 1, 2015.



1 2. The provisions of NRS 333.165 and 333.700, as amended by
2 sections 2 and 3 of this act, do not apply to any contract entered into
3 by a using agency, a purchasing officer or the Administrator of the
4 Purchasing Division of the Department of Administration before
5 July 1, 2015. As used in this subsection, “using agency” has the
6 meaning ascribed to it in NRS 333.020.
7 **Sec. 5.** This act becomes effective on July 1, 2015.

