

Amendment No. 443

Senate Amendment to Senate Bill No. 180	(BDR 27-739)
<b>Proposed by:</b> Senate Committee on Government Affairs	
<b>Amends:</b> Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

SJQ/AAK



Date: 4/19/2019

S.B. No. 180—Requires certain contractors to post a performance bond before being awarded by a governmental entity certain contracts related to information technology. (BDR 27-739)





## SENATE BILL NO. 180—SENATOR SETTELMAYER

FEBRUARY 18, 2019

Referred to Committee on Government Affairs

SUMMARY—~~[Requires certain contractors to post a performance bond before being awarded by a governmental entity certain]~~ Revises provisions relating to the awarding of certain state purchasing contracts related to information technology. (BDR 27-739)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

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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; requiring a ~~[contractor to post a performance bond before a governmental entity may award]~~ state agency who awards a large contract for the procurement of an information system, information service or information technology, ~~[and]~~ to either withhold a certain percentage of any amount due under the contract as retainage or require the contractor to furnish a performance bond; requiring such a state agency to submit certain reports concerning the contract; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law governs state ~~[and local governmental]~~ purchasing contracts. (Chapters ~~[332,]~~ 333 and 334 of NRS) This bill requires a ~~[contractor to furnish a performance bond before a governmental entity may award]~~ state agency who awards a contract for an amount that exceeds \$10,000,000 for the procurement of an information system, information service or information technology ~~[. This bill requires the governmental entity that will award the contract to fix the]~~ to either: (1) withhold a certain percentage of any amount due under the contract as retainage; or (2) require the contractor to furnish a performance bond in a certain amount [of the bond in an amount equal to not less than 50 percent of the contract amount] to be fixed by the state agency. This bill also requires such a state agency to enter into an agreement with the contractor that specifies certain expectations, benchmarks and penalties relating to the contract. Finally, this bill requires the state agency to submit a quarterly report to the Interim Finance Committee concerning the status of the information system, information service or information technology.

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

**Section 1.** ~~[NRS 332.105 is hereby amended to read as follows:~~  
~~332.105 Except as otherwise provided in section 3 of this act:~~

~~1. A bid bond, performance bond, payment bond or any combination thereof, with sufficient surety, in such amount as may be determined necessary by the governing body or its authorized representative, may be required of each bidder or contractor on a particular contract.~~

~~2. Any such bonds may be to insure proper performance of the contract and save, indemnify and keep harmless the local government against all loss, damages, claims, liabilities, judgments, costs and expenses which may accrue against the local government in consequence of the awarding of the contract.~~

~~3. If a local government requires such a bond, it shall not also require a detailed financial statement from each bidder on the contract.~~ (Deleted by amendment.)

**Sec. 2.** NRS 333.360 is hereby amended to read as follows:

333.360 1. ~~[A]~~ *Except as otherwise provided in section 3 of this act, a bond furnished by a surety company authorized to do business in this state may be required by the Administrator for the proper performance of the contract. The Administrator may request a certified check, cashier's check or bond, in an amount not to exceed the total amount of the contract, before entering into a contract with a person who submits a successful bid or proposal.*

2. No division or department of the State is liable for any expense incurred by or loss of income sustained by any person because of a request made pursuant to subsection 1.

**Sec. 3.** Chapter 334 of NRS is hereby amended by adding thereto a new section to read as follows:

1. ~~[Before]~~ *For any contract for an amount which exceeds \$10,000,000 for the procurement of an information system, information service or information technology for a contracting body [is awarded to any contractor,] the contracting body shall either:*

*(a) Withhold as retainage not less than 10 percent of any amount due under the contract until final acceptance of the information system, information service or information technology; or*

*(b) Require the contractor [shall] , before being awarded the contract, to furnish to the contracting body a performance bond in an amount to be fixed by the contracting body, but not less than [50] 100 percent of the contract amount [;] that is attributable to services and not less than 20 percent of the contract amount that is attributable to hardware or software, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. [The bond must be solely for the protection of the contracting body which awarded the contract. The bond becomes binding upon the award of the contract to the contractor.]*

2. ~~[The]~~ *If a performance bond is required by a contracting body pursuant to [this section] subsection 1, the performance bond must [be] :*

*(a) Remain in effect at least until the acceptance date of the information system, information service or information technology.*

*(b) Be solely for the protection of the contracting body which awarded the contract.*

*(c) Be executed by one or more surety companies authorized to do business in the State of Nevada. [If the contracting body is the State of Nevada or any officer, employee, board, bureau, commission, department, agency or institution thereof, the bond must be]*

*(d) Be payable to the State of Nevada. [If the contracting body is other than one of those enumerated in this subsection, the bond must be payable to the other contracting body.]*

~~3. The performance bond required pursuant to this section must be]~~

*(e) Be filed in the office of the contracting body which awarded the contract for which the bond was given.*

~~443~~ 3. A performance bond required pursuant to subsection 1 becomes binding upon the award of the contract to the contractor.

4. In addition to the requirements of subsection 1, a contracting body that awards a contract for an amount which exceeds \$10,000,000 for the procurement of an information system, information service or information technology shall:

(a) Enter into an agreement with the contractor that specifies:

(1) The level of service expected throughout the life of the contract.

(2) Benchmarks for the performance of the contractor.

(3) Penalties to be imposed if the contractor fails to comply with the terms of the contract.

(b) At least once each calendar quarter submit to the Interim Finance Committee a report concerning the status of the information system, information service or information technology.

5. As used in this section:

(a) "Acceptance date" means the date on which the contracting body who has awarded a contract for the procurement of an information system, information service or information technology provides a written notice of acceptance of the information system, information service or information technology to the contractor or otherwise provides its final acceptance of the information system, information service or information technology in accordance with the provisions of the contract.

(b) "Contracting body" means the State ~~[, county, city, town or school district]~~ or any public agency of the State ~~[or its political subdivisions]~~ which has the authority to contract for the procurement of an information system, information service or information technology.

~~[(b)]~~ (c) "Information service" has the meaning ascribed to it in NRS 242.055.

~~[(c)]~~ (d) "Information system" has the meaning ascribed to it in NRS 242.057.

~~[(d)]~~ (e) "Information technology" has the meaning ascribed to it in NRS 242.059.

(f) "Retainage" means the amount authorized to be withheld from a contract payment pursuant to subsection 1.

**Sec. 4.** This act becomes effective on July 1, 2019.