

Amendment No. 704

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| Senate Amendment to Senate Bill No. 445 | (BDR 27-1075) |
| Proposed by: Senate Committee on Government Affairs | |
| Amends: Summary: No 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.



SENATE BILL NO. 445—COMMITTEE ON FINANCE

(ON BEHALF OF THE OFFICE OF FINANCE
IN THE OFFICE OF THE GOVERNOR)

MAY 10, 2021

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to state purchasing. (BDR 27-1075)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Executive Budget.

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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; prohibiting certain provisions in certain contracts; ~~authorizing the Administrator of the Purchasing Division of the Department of Administration to suspend or debar certain persons from eligibility to submit a bid or proposal on or be awarded certain contracts for a certain period; requiring the Administrator to post a list of such suspended or debarred persons on an Internet website;~~ revising provisions relating to advertisements for certain bids or proposals; revising certain requirements relating to the purchase of prescription drugs, pharmaceutical services or medical supplies from an entity other than the Purchasing Division; revising the authority of the Clerk of the State Board of Examiners to approve certain contracts; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The State Purchasing Act governs the purchasing of services, supplies, materials and equipment by agencies of the Executive Department of the State Government, with certain exceptions. (Chapter 333 of NRS) **Section 2** of this bill prohibits any contract entered into or renewed under the Act from: (1) requiring the filing of any action or the arbitration of any dispute that arises from the contract to be instituted or heard in another state or nation; or (2) requiring the State to indemnify another party against liability for damages.

~~Existing law makes a person who has entered into a contract with the Purchasing Division of the Department of Administration or another agency of this State and who does not perform according to the terms of the contract liable for certain penalties for a breach of contract. Existing law additionally authorizes the Administrator of the Purchasing Division to refuse to accept a bid from such a person or refuse to award a contract to the person for not more than 2 years. (NRS 333.365) Section 3 of this bill authorizes the Administrator to suspend or debar a person from eligibility to submit a bid or proposal on or be awarded a contract under the State Purchasing Act if he or she determines that the person: (1) provided false or misleading information to the Purchasing Division; (2) entered into a contract with the Purchasing Division or another agency and did not perform according to the terms of the contract; or (3) failed to comply with any provision of the State Purchasing Act. Section 3 authorizes the~~

~~Administrator or a using agency to refuse to accept a bid or proposal from a suspended or debarred person or refuse to award a contract to such a person for not more than 2 years. Section 3 also: (1) requires the Administrator to post a list of suspended or debarred persons on the Internet website maintained by the Purchasing Division; and (2) authorizes a person who is suspended or debarred to apply to the Administrator to review the decision. Section 5 of this bill makes a conforming change by removing certain provisions of law that are now addressed by section 3.]~~

With certain exceptions, existing law requires the Administrator to advertise for bids or proposals and prescribes the required contents of an advertisement. (NRS 333.310) **Section 4** of this bill removes an obsolete requirement relating to quotation forms in the contents of an advertisement. Existing law requires the Administrator to publish each advertisement in at least one newspaper of general circulation in this State and on the Internet website of the Purchasing Division. (NRS 333.310) **Section 4** removes the requirement that the Administrator publish an advertisement in a newspaper.

Existing law requires an agency that is subject to the State Purchasing Act to purchase prescription drugs, pharmaceutical services and medical supplies and related services through the Purchasing Division unless the agency can obtain the best value from an entity other than the Purchasing Division. Existing law requires an agency that purchases prescription drugs, pharmaceutical services or medical supplies and related services from an entity other than the Purchasing Division to report certain information relating to the purchase to the Purchasing Division. (NRS 333.435) **Section 6** of this bill instead requires such an agency to maintain a record of that information and provides that any such record is a public record.

With certain exceptions, existing law requires contracts for the services of an independent contractor to be approved by the State Board of Examiners before becoming effective. Existing law authorizes the State Board of Examiners to allow its Clerk, who is the Director of the Office of Finance in the Office of the Governor, or a designee to approve such contracts for amounts less than \$50,000. (NRS 333.700) **Section 7** of this bill increases the maximum amount of the contracts that the Clerk of the Board or designee may be authorized to approve from \$50,000 to \$100,000.

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

Section 1. ~~[Chapter 333 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.]~~ **(Deleted by amendment.)**

Sec. 2. Chapter 333 of NRS is hereby amended by adding thereto a new section to read as follows:

Any contract that is entered into or renewed pursuant to this chapter may not:

1. Require the filing of any action or the arbitration of any dispute that arises from the contract to be instituted or heard in another state or nation; or
2. Require the State to indemnify another party against liability for damages.

Sec. 3. ~~[1. The Administrator may suspend or debar a person from eligibility to submit a bid or proposal on or be awarded a contract pursuant to this chapter if the Administrator determines that the person:~~

~~—(a) Provided false or misleading information to the Purchasing Division or a using agency;~~

~~—(b) Entered into a contract with the Purchasing Division or another agency of this State and did not perform according to the terms of the contract, including, without limitation, by delivering goods that did not conform in all respects with the requirements prescribed in the contract; or~~

~~—(c) Failed to comply with any provision of this chapter.~~

~~2. If the Administrator suspends or debar a person pursuant to subsection 1, the Administrator or a using agency may refuse to accept a bid or proposal from the person, refuse to award a contract to the person, or both, for not more than 2 years.~~

~~3. The Administrator shall post a list of persons who have been suspended or debarred pursuant to subsection 1 on the Internet website maintained by the Purchasing Division.~~

~~4. A person who is suspended or debarred pursuant to subsection 1 may apply to the Administrator to review the decision pursuant to chapter 233B of NRS.] (Deleted by amendment.)~~

Sec. 4. NRS 333.310 is hereby amended to read as follows:

333.310 1. An advertisement must contain a general description of the classes of commodities or services for which a bid or proposal is wanted and must state:

(a) The name and location of the department, agency, local government, district or institution for which the purchase is to be made.

(b) Where and how specifications ~~[and quotation forms]~~ may be obtained.

(c) If the advertisement is for bids, whether the Administrator is authorized by the using agency to be supplied to consider a bid for an article that is an alternative to the article listed in the original request for bids if:

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

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

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

(d) Notice of the preferences set forth in NRS 333.3354 and 333.3366.

(e) Notice of the written certification required pursuant to NRS 333.338.

(f) The date and time not later than which responses must be received by the Purchasing Division.

(g) The date and time when responses will be opened.

➤ The Administrator or a designated agent of the Administrator shall approve the copy for the advertisement.

2. Each advertisement must be published ~~[-~~

~~(a) In at least one newspaper of general circulation in the State. The selection of the newspaper to carry the advertisement must be made in the manner provided by this chapter for other purchases, on the basis of the lowest price to be secured in relation to the paid circulation; and~~

~~(b) On] on~~ the Internet website of the Purchasing Division.

Sec. 5. ~~[NRS 333.365 is hereby amended to read as follows:~~

~~333.365 1. [A] In addition to any penalty imposed pursuant to section 3 of this act, a person who has entered into a contract with the Purchasing Division or another agency of this state and who does not perform according to the terms of the contract is liable for, in addition to any other applicable damages for breach of contract, a penalty of not more than 5 percent of the total value of the bid or contract. The penalty must be recovered in a civil action upon the complaint of the Administrator in any court of competent jurisdiction. [In addition to recovering the penalty and any other applicable damages, the Administrator may refuse to accept a bid from the person or refuse to award a contract to the person, or both, for not more than 2 years.]~~

~~2. If the Administrator does not bring an action to recover the penalty prescribed by subsection 1, he or she may [-~~

~~(a) Refuse to accept a bid from the person, refuse to award a contract to the person, or both, for not more than 2 years; and~~

~~1. (b) Impose] impose an administrative penalty, in an amount not to exceed 5 percent of the total value of the bid or contract. Such a penalty may be recovered only after notice is given to the person by mail.~~

~~2. 3. A penalty imposed pursuant to subsection 1 or 2 may be deducted from any payment due the person or, if a bond has been issued or a check received, a claim may be made against the bond or check. If no payment is due and no bond was issued or check received, the Administrator may issue a claim for payment of the penalty. The claim must be paid within 30 days.] (Deleted by amendment.)~~

Sec. 6. NRS 333.435 is hereby amended to read as follows:

333.435 1. Except as otherwise provided in subsection 2, a using agency shall purchase prescription drugs, pharmaceutical services, or medical supplies and related services, or any combination thereof, only through the Purchasing Division.

2. A using agency may, on its own behalf or in cooperation with one or more other using agencies or other governmental entities within or outside this State, purchase prescription drugs, pharmaceutical services, or medical supplies and related services from an entity other than the Purchasing Division if the using agency or using agencies or other governmental entities, as applicable, can obtain the best value for prescription drugs, pharmaceutical services, or medical supplies and related services from the other entity and the Purchasing Division is unable to match or exceed that best value in a timely manner.

3. If a using agency purchases prescription drugs, pharmaceutical services, or medical supplies and related services from an entity other than the Purchasing Division pursuant to subsection 2, the using agency shall ~~report to the Purchasing Division, within 10 days after the initial purchase;~~ **maintain a record of:**

(a) The purchase price for the prescription drugs, pharmaceutical services, or medical supplies and related services; and

(b) The name, address and telephone number of the entity that sold the using agency the prescription drugs, pharmaceutical services, or medical supplies and related services.

4. Any record created pursuant to subsection 3 is a public record.

Sec. 7. 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.

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

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

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

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

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

17 7. Except as otherwise provided in subsection 8, and except for contracts
18 entered into by the Nevada System of Higher Education, each proposed contract
19 with an independent contractor must be submitted to the State Board of Examiners.
20 The contracts do not become effective without the prior approval of the State Board
21 of Examiners, except that the State Board of Examiners may authorize its Clerk or a
22 designee to approve contracts which are:

23 (a) For amounts less than ~~[\$50,000;]~~ **\$100,000;** or

24 (b) Entered into by the Nevada Gaming Control Board for the purposes of
25 investigating an applicant for or holder of a gaming license.

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

28 (a) Contracts executed by the Department of Transportation, other than
29 contracts subject to the provisions of NRS 333.705 or 408.353.

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

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

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

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

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

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

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

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

51 11. Except as otherwise provided in this subsection, a contract for the services
52 of an independent contractor may be performed in parts or phases. A contract for

1 the services of an independent contract must not be split into separate contracts for
2 the purpose of avoiding any requirements for competitive bidding.

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