

**PROPOSED REGULATION OF THE
CHIEF OF THE PURCHASING DIVISION OF THE
DEPARTMENT OF ADMINISTRATION**

LCB File No. R099-99

September 28, 1999

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1 and 4-9, NRS 333.130 and section 2 of chapter 225, Statutes of Nevada
1999; §2, NRS 333.130 and 333.220; §3, NRS 333.130 and 333.372.

Section 1. Chapter 333 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. 1. *Except as otherwise provided in subsection 4, if the chief has transferred or sold personal property, including forfeited personal property, pursuant to subsection 3 of NRS 333.220 or NRS 334.040 to a governmental agency within this state or to an entity that is eligible to acquire federal donable surplus property, and that agency or entity determines that the personal property is of no further use to it, the agency or entity may only dispose of the personal property by:*

(a) Transferring the personal property to another governmental agency within this state or to another entity that is eligible to acquire federal donable surplus property;

(b) Returning the personal property to the division for sale on consignment; or

(c) Selling the personal property pursuant to the provisions of chapters 332, 333 and 334 of NRS.

2. If an agency or entity disposes of personal property pursuant to subsection 1, any money realized therefrom that exceeds the amount originally paid for the personal property by the agency or entity must be deposited in the state purchasing fund.

3. The provisions of subsection 2 apply to an agency or entity that acquires personal property in the manner described in subsection 1 regardless of the number of times the agency or entity transfers the personal property.

4. If an agency or entity that acquires personal property in the manner described in subsection 1 retains the personal property for a period of at least 2 years, the agency or entity is not required to follow the procedures set forth in subsection 1.

Sec. 3. *The forms of security that may be submitted with a notice of appeal filed pursuant to NRS 333.370 are a certified check or a cashier's check.*

Sec. 4. *1. Except as otherwise provided by specific statute, a contract entered into pursuant to NRS 284.173 for the services of an independent contractor must:*

(a) Be awarded pursuant to the provisions of this chapter and chapter 333 of NRS;
(b) Conform to the form, terms and conditions prescribed by the attorney general; and
(c) Include any provisions related to insurance that the state risk manager determines are required.

2. Such a contract which by its nature is not adapted to be awarded by competitive selection, including, without limitation, a contract for:

(a) Services which may only be contracted from a sole source as determined by the chief;
or

(b) Professional services, including, without limitation, a contract for the services of:

(1) An expert witness;

- (2) A professional engineer;*
- (3) A registered architect;*
- (4) An attorney;*
- (5) An accountant; or*
- (6) Any professional, if the services of that professional are not adapted to competitive selection as determined by the chief,*

FLUSH *is not subject to the requirements of this chapter and chapter 333 of NRS for competitive selection.*

3. If such a contract is required to be awarded by competitive selection and the estimated value of the contract exceeds \$25,000, it must be solicited through a request for proposals. The request for proposals must conform to the form for a request for proposals prescribed by the attorney general.

Sec. 5. 1. *Before advertising a request for proposals, the chief or the using agency must designate a person to answer questions concerning the contract to be awarded by competitive selection pursuant to the request for proposals. Except as otherwise provided in section 7 of this regulation, that person must be the only contact person throughout the process of awarding the contract.*

2. A person who wishes to submit a proposal or a representative of such a person shall not ask questions of or otherwise discuss the contents of a request for proposals with an employee or representative of a using agency identified in the request for proposals as the agency for which the purchase is to be made unless the employee or representative of the using agency is the person designated by the using agency as the contact person pursuant to subsection 1.

3. The chief of the division or the chief of the using agency may disqualify a proposal submitted by a person who violates the provisions of subsection 2.

4. The provisions of this section do not prohibit discussions between a person who wishes to submit a proposal and an employee or representative of a using agency identified in a request for proposals as the agency for which the purchase is to be made if those discussions relate to conducting business unrelated to the contract to be awarded pursuant to the request for proposals.

Sec. 6. 1. In addition to the requirement set forth in subsection 1 of section 5 of this regulation, before advertising a request for proposals, the chief of the using agency, the chief of the division, or the committee to evaluate proposals, if such a committee is established, must determine the evaluation criteria for awarding the contract.

2. In addition to the factors set forth in NRS 333.335, before making an award, the chief of the using agency, the chief of the division or each member of the committee to evaluate proposals must review, consider and consistently score each responsive proposal in accordance with the evaluation criteria determined pursuant to subsection 1.

Sec. 7. 1. The chief of the using agency, the chief of the division, or the committee to evaluate proposals may discuss the proposals submitted with those persons who submitted proposals and who are reasonably likely to be selected for an award to clarify the requirements and specifications of the contract to be awarded.

2. To obtain the best offers, the chief of the using agency, the chief of the division, or the committee to evaluate proposals may permit revised proposals to be submitted after the date proposals are required to be submitted and before the contract is awarded.

3. The chief of the division will, and the chief of the using agency and each member of the committee to evaluate proposals shall:

(a) Treat the persons who submit proposals fairly and equally with regard to giving them an opportunity to:

(1) Discuss the proposals as described in subsection 1; and

(2) Submit revised proposals.

(b) Not discuss with a person who submitted a proposal any information that was derived from a proposal submitted by another person who is in competition with that person.

Sec. 8. 1. *If the chief of the using agency, the chief of the division, or the committee to evaluate proposals selects a proposal for the award of the contract, the person designated by the chief or the using agency as the contact person pursuant to section 5 of this regulation shall provide to each person who submitted a proposal a written notice of intent to award the contract. The notice of intent to award the contract must:*

(a) Identify the proposal selected for the award of the contract; and

(b) State that the award of the contract is contingent upon the successful negotiation of the final terms of the contract with the person selected for the award of the contract.

2. After the contract has been awarded on a contingency basis, the negotiations of the final terms of the contract are confidential and must not be disclosed to any other person who has submitted a proposal until a final contract is agreed upon.

3. If a final contract is not agreed upon:

(a) The person designated by the chief or the using agency as the contact person pursuant to section 5 of this regulation shall:

(1) Provide written notice to each person who submitted a proposal; and

(2) Issue a written withdrawal of the award to the person whose proposal was selected for the award of the contract and with whom the chief of the using agency, the chief of the division, or the committee to evaluate proposals was unable to agree upon a final contract.

(b) The chief of the division will, and the chief of the using agency and the committee to evaluate proposals shall:

(1) Negotiate, in a manner consistent with the provisions of subsection 2, the final terms of the contract with the person who submitted the proposal that received the next highest score; or

(2) Withdraw the request for proposals.

4. After the contract has been executed by all the appropriate parties and submitted to the state board of examiners for approval, if required pursuant to NRS 284.173, the person designated by the chief or the using agency as the contact person pursuant to section 5 of this regulation shall provide to each person who submitted a proposal a written notice of the award of the contract. The notice of the award of the contract must:

(a) Identify the proposal pursuant to which the contract will be awarded provided that, if applicable, the contract is approved by the state board of examiners;

(b) State that the 10-day period after which a person who makes an unsuccessful proposal may file a notice of appeal as set forth in subsection 1 of NRS 333.370 has commenced; and

(c) State that a person who made an unsuccessful proposal may file a notice of appeal pursuant to NRS 333.370.

Sec. 9. *A using agency may participate in the award of a contract on a multistate basis if:*

1. The contract is awarded pursuant to an interlocal contract entered into by the using agency and a public agency pursuant to NRS 277.180.

2. *The contract is awarded by competitive selection pursuant to:*
 - (a) *The provisions of this chapter and chapter 333 of NRS; or*
 - (b) *The law of another state or federal law in a manner that substantially complies with this chapter and chapter 333 of NRS.*
3. *The document used to solicit proposals for the contract is advertised in accordance with the provisions of NRS 333.310.*
4. *Participation in the award of the contract on a multistate basis is in the best interest of the State of Nevada as determined by the chief.*
5. *As used in this section, “public agency” has the meaning ascribed to it in subsection 1 of NRS 277.100.*