

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

LCB File No. R078-01

October 4, 2001

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

AUTHORITY: §§1, 6 and 7, NRS 333.130; §§2, 3, 5, 11 and 12, NRS 333.130 and 333.135; §4, NRS 333.130 and 333.372; §§8 and 9, NRS 333.130 and 333.380; §10, NRS 333.130 and 333.162.

Section 1. Chapter 333 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. 1. *The division shall prepare written instructions concerning the manner in which evaluations of proposals must be conducted by a committee to evaluate proposals established pursuant to NRS 333.335 and shall provide a copy of the instructions to each member of such a committee.*

2. Each member of a committee to evaluate proposals shall:

(a) Acknowledge that he has received, read and understands the written instructions provided pursuant to subsection 1. The acknowledgement must be on a form provided by the division.

(b) Comply with the written instructions prepared and provided by the division pursuant to subsection 1.

3. The written instructions must include, without limitation, a requirement that each member of a committee to evaluate proposals evaluate and score each proposal in a consistent manner by:

(a) Evaluating and scoring each section of the proposal assigned for his review using each criterion for evaluating the proposal; and

(b) Scoring each criterion for evaluating a proposal within the relative weight assigned for that criterion.

4. Each member of a committee to evaluate proposals must be prepared to provide a written explanation that details the score he assigned to a proposal upon request of the division.

5. Each committee to evaluate proposals must contain members that represent at least two using agencies.

6. The chief will not appoint a member to a committee to evaluate proposals who possesses direct supervisory authority over any other member of the committee.

Sec. 3. 1. A claim against a bond or other security pursuant to subsection 10 of NRS 333.370 must be made within 10 days after the hearing officer has rejected the appeal for which the bond or other security was posted.

2. If a claim is not made against a bond or other security pursuant to subsection 10 of NRS 333.370 within the time set forth in subsection 1, the division shall return the entire bond or other security to the person who posted the bond or other security and no other claims may be filed by the division or a using agency regarding that bond or security.

Sec. 4. If the division or a using agency undertakes a project that requires:

1. More than one request for proposals or invitation for bids; and

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2. An initial contract for the design of the project,

the person who is awarded the initial contract for the design of the project may not bid upon or otherwise materially participate in any subsequent contract related to that project, unless his participation in the subsequent contract is within the scope of the initial contract.

Sec. 5. 1. *Except as otherwise provided in NRS 333.333, the information contained in a bid or proposal submitted to the division or a using agency becomes a public record on the date of award as entered on the bid record or the date the notice of award is posted in at least three public buildings, whichever is later.*

2. Any person may:

(a) Review a bid or proposal that is a public record pursuant to subsection 1 at the offices of the division at no charge.

(b) Request from the division a copy of a bid or proposal that is a public record pursuant to subsection 1.

3. The division may, as it determines is in the best interest of the state, prepare a copy of a bid or proposal that is requested pursuant to subsection 2 by:

(a) Preparing the copy using the equipment and personnel of the division and charging a fee that does not exceed the actual cost to the division of preparing the copy; or

(b) Forwarding the bid or proposal to a private entity for preparation and delivery of a copy to the requester.

Sec. 6. 1. *A using agency shall inspect and count any goods it acquires pursuant to the provisions of this chapter and chapter 333 of NRS within 5 business days after the using agency receives the goods.*

2. If, after performing the inspection required pursuant to subsection 1, a using agency determines that the quantity or specifications of goods received does not comply with the purchase order for the goods, the using agency shall notify the division and the vendor of the goods within 5 business days after the using agency receives the goods. If the using agency fails to notify the division and the vendor of the goods of such an error within 5 business days after the using agency receives the goods, the order shall be deemed accepted by the using agency and the using agency shall comply with the provisions of NRS 333.460 for the payment of the vendor. If the using agency fails to comply with the provisions of NRS 333.460, the using agency is liable for any late fees assessed by the vendor.

3. If a using agency wishes to change the location at which goods are to be delivered, the using agency must notify the division in writing before the date on which the vendor ships the goods. If the division cannot change the location before the delivery of the goods, the using agency must receive the goods at the original location. If the using agency can change the location, the using agency must pay any additional fees charged by the vendor for changing the location of the delivery.

4. If a using agency refuses delivery of goods that were shipped in accordance with the purchase order for the goods, the using agency must pay the costs of shipping the goods to and from the location of the using agency and any fees assessed by the vendor for restocking.

5. If a using agency requests that goods be delivered to an additional location, the using agency must pay any costs in addition to the original delivery.

6. If a using agency has several organizational units at one location, the using agency is responsible for ensuring that the proper organizational unit receives the goods delivered to that location.

Sec. 7. 1. *The monetary limitations set forth in NRS 333.390 for items not scheduled for quantity purchasing:*

(a) Apply to the total amount of items purchased in an individual order; and

(b) Do not apply to each item in an individual order.

2. *If the chief authorizes local purchasing by using agencies pursuant to NRS 333.390, he will provide the using agency with written authorization that complies with the provisions of subsection 3 of NRS 333.390.*

Sec. 8. 1. *The chief will authorize an emergency purchase if an emergency, as that term is defined in NRS 414.0345, or any other situation that the chief identifies as a threat to the health, safety or welfare of the persons in this state occurs and he determines that the emergency purchase is in the best interests of the state.*

2. *The chief may authorize an emergency purchase for any amount.*

3. *If the chief authorizes an emergency purchase, he will provide the using agency with written authorization for the emergency purchase, including, without limitation, a description of the justification for authorizing the emergency purchase. The chief will provide a separate written authorization for each order relating to the emergency purchase.*

Sec. 9. *In addition to the methods of obtaining a contract set forth in NRS 333.162, the chief may use price agreements and purchases on the spot market.*

Sec. 10. NAC 333.150 is hereby amended to read as follows:

333.150 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;

(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 other professional, if the services of that professional are not adapted to competitive selection as determined by the chief; or

(c) Services necessitated by an emergency affecting the national defense or an emergency caused by an act of God or any other unforeseeable circumstances, 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 per fiscal year, 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.

4. If an effective date is not set forth in a contract for the services of an independent contractor awarded pursuant to NRS 333.173, the contract is effective on the date on which it is approved by the state board of examiners.

Sec. 11. NAC 333.170 is hereby amended to read as follows:

333.170 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 NAC 333.155 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 NAC 333.155 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. The chief of the division will, and the chief of the using agency and the committee to evaluate proposals shall, repeat the procedure set forth in this section until a final contract is agreed upon or the request for proposals is withdrawn.

5. 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 NAC 333.155 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. 12. NAC 333.175 is hereby amended to read as follows:

333.175 1. A using agency may participate in the award of a contract on a multistate basis if:

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

~~—(b)]~~ The contract is awarded by competitive selection pursuant to:

- (1) The applicable provisions of chapter 332 or 333 of NRS; or
- (2) The law of another state or federal law in a manner that substantially complies with chapter 332 or 333 of NRS.

~~[(e)]~~ (b) The document used to solicit proposals for the contract is advertised in accordance with the provisions of NRS 333.310.

~~[(d)]~~ (c) 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.

2. As used in this section, “public agency” has the meaning ascribed to it in subsection 1 of NRS 277.100.