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# PROPOSED AMENDMENT TO ASSEMBLY BILL NO. 424

PREPARED FOR ASSEMBLYMEN GEDDES  
APRIL 7, 2003

PREPARED BY THE RESEARCH DIVISION

**NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.**

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

Delete Current Sections 1-14.

Insert New Sections as follows:

Sec. 1. NRS 333.365 is hereby amended to read as follows:

333.365 1. 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 Chief in any court of competent jurisdiction. In addition to recovering the penalty and any other applicable damages, the Chief may ~~remove the name of the person from the list of bidders and~~ refuse to accept a bid from ~~him~~ the person or refuse to award a contract to the person, or both, for not more than 2 years.

2. If the Chief does not bring an action to recover the penalty prescribed by subsection 1, he may:

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

and

(b) 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.

3. ~~If the Chief has removed the name of a person from the list of bidders, that person must apply to the Chief to have his name reinstated on the list of bidders.~~

~~If~~ 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

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check. If no payment is due and no bond was issued or check received, the Chief may issue a claim for payment of the penalty. The claim must be paid within 30 days.

**Sec. 2 NRS 333.340 Award of contract or order for goods: Determination of lowest responsible bidder; written statement to be provided if contract or order is not awarded to lowest bidder.**

1. Every contract or order for goods must be awarded to the lowest responsible bidder. To determine the lowest responsible bidder, the chief may consider:

- (a) The location of the using agency to be supplied.
- (b) The qualities of the articles to be supplied.
- (c) The total cost of ownership of the articles to be supplied.
- (d) Except as otherwise provided in paragraph (e), the conformity of the articles to be supplied with the specifications.

(e) If the articles are an alternative to the articles listed in the original request for bids, whether the advertisement for bids included a statement that bids for an alternative article will be considered 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 chief deems the purchase of the alternative article to be in the best interests of the State of Nevada.

(f) The purposes for which the articles to be supplied are required.

(g) The dates of delivery of the articles to be supplied.

2. If a contract or an order is not awarded to the lowest bidder, the chief shall provide the lowest bidder with a written statement which sets forth the specific reasons that the contract or order was not awarded to him.

3. As used in this section, "total cost of ownership" includes, but is not limited to:

- (a) The history of maintenance or repair of the articles;
- (b) The cost of routine maintenance and repair of the articles;
- (c) Any warranties provided in connection with the articles;
- (d) The cost of replacement parts for the articles; and
- (e) The value of the articles as used articles when given in trade on a subsequent purchase.

4. There shall be a 5% in-state residency preference on purchases of custom printed materials not printed by State Printing

[23:333:1951]—(NRS A 1997, 486, 1562; 1999, 464, 465, 1027)

**Sec. 3.** If a state other than Nevada imposes a residential preference on Nevada vendors for a procurement of specific materials, supplies, services or equipment, then the chief shall impose an identical residential preference penalty on vendors submitting bids or proposals for such from that state.

**Sec. 4.** 1. Sections 1 to 3, inclusive, of this act become effective on October 1, 2003.