

ASSEMBLY BILL NO. 424—ASSEMBLYMAN GEDDES (BY REQUEST)

MARCH 17, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to public works and state purchasing. (BDR 28-959)

FISCAL NOTE: Effect on Local Government: No.
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 public works and state purchasing; providing in skeleton form for the revision of certain provisions relating to public works and state purchasing; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 338 of NRS is hereby amended by adding
- 2 thereto the provisions set forth as sections 2 and 3 of this act.
- 3 **Sec. 2.** *Notwithstanding any other provision of law to the*
- 4 *contrary, no change orders may be allowed with respect to any*
- 5 *public works project for which the estimated cost is more than*
- 6 *\$500,000.*
- 7 **Sec. 3.** *The State Contractors’ Board shall establish by*
- 8 *regulation a program pursuant to which a contractor who*
- 9 *demonstrates to the satisfaction of the Board that he has*
- 10 *completed in a satisfactory manner:*
- 11 1. *The five most recent public works projects on which the*
- 12 *contractor performed work, each of which projects had an*
- 13 *estimated cost of more than \$500,000; or*
- 14 2. *All public works projects on which the contractor*
- 15 *performed work in the preceding 3-year period, each of which*
- 16 *projects had an estimated cost of more than \$500,000,*
- 17 *may apply to the Board to receive indicia of qualification to*
- 18 *receive a 30 percent preference in bidding on public works. Such*



1 *indicia of qualification is separate from any certificate of*
2 *eligibility to receive a preference in bidding on public works that*
3 *the contractor may have received from the Board pursuant to NRS*
4 *338.1389 or 338.147.*

5 **Sec. 4.** NRS 338.1385 is hereby amended to read as follows:
6 338.1385 1. Except as otherwise provided in subsection ~~7~~ 8
7 and NRS 338.1906 and 338.1907, this state, or a local government
8 that awards a contract for the construction, alteration or repair of a
9 public work in accordance with paragraph (a) of subsection 1 of
10 NRS 338.1373, or a public officer, public employee or other person
11 responsible for awarding a contract for the construction, alteration
12 or repair of a public work who represents the State or the local
13 government, shall not:

14 (a) Commence such a project for which the estimated cost
15 exceeds \$100,000 unless it advertises in a newspaper of general
16 circulation in this state for bids for the project; or

17 (b) Divide such a project into separate portions to avoid the
18 requirements of paragraph (a).

19 2. Except as otherwise provided in subsection ~~7~~ 8, a public
20 body that maintains a list of properly licensed contractors who are
21 interested in receiving offers to bid on public works projects for
22 which the estimated cost is more than \$25,000 but less than
23 \$100,000 shall solicit bids from not more than three of the
24 contractors on the list for a contract of that value for the
25 construction, alteration or repair of a public work. The public body
26 shall select contractors from the list in such a manner as to afford
27 each contractor an equal opportunity to bid on a public works
28 project. A properly licensed contractor must submit a written
29 request annually to the public body to remain on the list. Offers for
30 bids which are made pursuant to this subsection must be sent by
31 certified mail.

32 3. Each advertisement for bids must include a provision that
33 sets forth:

34 (a) The requirement that a contractor must be qualified pursuant
35 to NRS 338.1379 to bid on the contract or must be exempt from
36 meeting such qualifications pursuant to NRS 338.1383; and

37 (b) The period during which an application to qualify as a bidder
38 on the contract must be submitted.

39 4. Approved plans and specifications for the bids must be on
40 file at a place and time stated in the advertisement for the inspection
41 of all persons desiring to bid thereon and for other interested
42 persons. Contracts for the project must be awarded on the basis of
43 bids received.



1 5. *Except as otherwise provided in subsection 6 and NRS*
2 *338.1389, a public body shall award a contract to the lowest*
3 *responsive and responsible bidder.*

4 6. Any bids received in response to an advertisement for bids
5 may be rejected if the ~~person responsible for awarding the contract~~
6 *public body or its authorized representative* determines that:

7 (a) The bidder is not a qualified bidder pursuant to NRS
8 338.1379, unless the bidder is exempt from meeting such
9 qualifications pursuant to NRS 338.1383;

10 (b) The bidder is not responsive ~~;~~ *or responsive;*

11 (c) The quality of the services, materials, equipment or labor
12 offered does not conform to the approved plan or specifications; or

13 (d) The public interest would be served by such a rejection.

14 ~~6.7.~~ 7. Before the State or a local government may commence a
15 project subject to the provisions of this section, based upon a
16 determination that the public interest would be served by rejecting
17 any bids received in response to an advertisement for bids, it shall
18 prepare and make available for public inspection a written statement
19 containing:

20 (a) A list of all persons, including supervisors, whom the State
21 or the local government intends to assign to the project, together
22 with their classifications and an estimate of the direct and indirect
23 costs of their labor;

24 (b) A list of all equipment that the State or the local government
25 intends to use on the project, together with an estimate of the
26 number of hours each item of equipment will be used and the hourly
27 cost to use each item of equipment;

28 (c) An estimate of the cost of administrative support for the
29 persons assigned to the project;

30 (d) An estimate of the total cost of the project; and

31 (e) An estimate of the amount of money the State or the local
32 government expects to save by rejecting the bids and performing the
33 project itself.

34 ~~7.8.~~ 8. This section does not apply to:

35 (a) Any utility subject to the provisions of chapter 318 or 710 of
36 NRS;

37 (b) Any work of construction, reconstruction, improvement and
38 maintenance of highways subject to NRS 408.323 or 408.327;

39 (c) Normal maintenance of the property of a school district;

40 (d) The Las Vegas Valley Water District created pursuant to
41 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
42 District created pursuant to chapter 477, Statutes of Nevada 1983 or
43 the Virgin Valley Water District created pursuant to chapter 100,
44 Statutes of Nevada 1993; or



1 (e) The design and construction of a public work for which a
2 public body contracts with a design-build team pursuant to NRS
3 338.1711 to 338.1727.

4 **Sec. 5.** NRS 338.1385 is hereby amended to read as follows:

5 338.1385 1. Except as otherwise provided in subsection ~~8,~~
6 **9**, this state, or a local government that awards a contract for the
7 construction, alteration or repair of a public work in accordance with
8 paragraph (a) of subsection 1 of NRS 338.1373, or a public officer,
9 public employee or other person responsible for awarding a contract
10 for the construction, alteration or repair of a public work who
11 represents the State or the local government, shall not:

12 (a) Commence such a project for which the estimated cost
13 exceeds \$100,000 unless it advertises in a newspaper of general
14 circulation in this state for bids for the project; or

15 (b) Divide such a project into separate portions to avoid the
16 requirements of paragraph (a).

17 2. Except as otherwise provided in subsection ~~8,~~ **9**, a public
18 body that maintains a list of properly licensed contractors who are
19 interested in receiving offers to bid on public works projects for
20 which the estimated cost is more than \$25,000 but less than
21 \$100,000 shall solicit bids from not more than three of the
22 contractors on the list for a contract of that value for the
23 construction, alteration or repair of a public work. The public body
24 shall select contractors from the list in such a manner as to afford
25 each contractor an equal opportunity to bid on a public works
26 project. A properly licensed contractor must submit a written
27 request annually to the public body to remain on the list. Offers for
28 bids which are made pursuant to this subsection must be sent by
29 certified mail.

30 3. Each advertisement for bids must include a provision that
31 sets forth:

32 (a) The requirement that a contractor must be qualified pursuant
33 to NRS 338.1379 to bid on the contract or must be exempt from
34 meeting such qualifications pursuant to NRS 338.1383; and

35 (b) The period during which an application to qualify as a bidder
36 on the contract must be submitted.

37 4. Approved plans and specifications for the bids must be on
38 file at a place and time stated in the advertisement for the inspection
39 of all persons desiring to bid thereon and for other interested
40 persons. Contracts for the project must be awarded on the basis of
41 bids received.

42 5. *Except as otherwise provided in subsection 6 and NRS*
43 *338.1389, a public body shall award a contract to the lowest*
44 *responsive and responsible bidder.*



1 6. Any bids received in response to an advertisement for bids
2 may be rejected if the ~~person responsible for awarding the contract~~
3 *public body or its authorized representative* determines that:

4 (a) The bidder is not a qualified bidder pursuant to NRS
5 338.1379, unless the bidder is exempt from meeting such
6 qualifications pursuant to NRS 338.1383;

7 (b) The bidder is not responsive ~~or~~ *or responsible*;

8 (c) The quality of the services, materials, equipment or labor
9 offered does not conform to the approved plan or specifications; or

10 (d) The public interest would be served by such a rejection.

11 ~~6.7~~ 7. Before the State or a local government may commence
12 a project subject to the provisions of this section, based upon a
13 determination that the public interest would be served by rejecting
14 any bids received in response to an advertisement for bids, it shall
15 prepare and make available for public inspection a written statement
16 containing:

17 (a) A list of all persons, including supervisors, whom the State
18 or the local government intends to assign to the project, together
19 with their classifications and an estimate of the direct and indirect
20 costs of their labor;

21 (b) A list of all equipment that the State or the local government
22 intends to use on the project, together with an estimate of the
23 number of hours each item of equipment will be used and the hourly
24 cost to use each item of equipment;

25 (c) An estimate of the cost of administrative support for the
26 persons assigned to the project;

27 (d) An estimate of the total cost of the project; and

28 (e) An estimate of the amount of money the State or the local
29 government expects to save by rejecting the bids and performing the
30 project itself.

31 ~~7.7~~ 8. In preparing the estimated cost of a project pursuant to
32 subsection ~~6.7~~ 7, the State or a local government must include the
33 fair market value of, or, if known, the actual cost of, all materials,
34 supplies, labor and equipment to be used for the project.

35 ~~8.7~~ 9. This section does not apply to:

36 (a) Any utility subject to the provisions of chapter 318 or 710 of
37 NRS;

38 (b) Any work of construction, reconstruction, improvement and
39 maintenance of highways subject to NRS 408.323 or 408.327;

40 (c) Normal maintenance of the property of a school district; or

41 (d) The Las Vegas Valley Water District created pursuant to
42 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
43 District created pursuant to chapter 477, Statutes of Nevada 1983 or
44 the Virgin Valley Water District created pursuant to chapter 100,
45 Statutes of Nevada 1993; or



1 (e) The design and construction of a public work for which a
2 public body contracts with a design-build team pursuant to NRS
3 338.1711 to 338.1727, inclusive.

4 **Sec. 6.** NRS 338.1389 is hereby amended to read as follows:

5 338.1389 1. Except as otherwise provided in NRS 338.1385
6 and 338.1711 to 338.1727, inclusive, a public body shall award a
7 contract for a public work to the contractor who submits the best
8 bid.

9 2. Except as otherwise provided in subsection 10 or limited by
10 subsection 11, ~~for the purposes of this section, a contractor who:~~

11 ~~—(a) Has] a bid that is submitted by a contractor who has~~ been
12 determined by the public body to be a qualified bidder pursuant to
13 NRS 338.1379 or is exempt from meeting such requirements
14 pursuant to NRS 338.1373 or 338.1383 ~~[- and~~

15 ~~—(b) At the time he submits his bid, provides to the public body a]~~
16 ~~and that is:~~

17 (a) Accompanied by:

18 (1) A copy of a *valid* certificate of eligibility to receive a
19 preference in bidding on public works issued to him by the State
20 Contractors' Board pursuant to subsection 3 or 4 ~~[-]~~; or

21 (2) *Indicia of qualification to receive a 30 percent*
22 *preference in bidding on public works issued to him by the State*
23 *Contractors' Board pursuant to section 3 of this act; and*

24 (b) *Not more than:*

25 (1) *Five percent higher than the bid submitted by the next*
26 *lowest responsive and responsible bidder whose bid is not*
27 *accompanied by a copy of a valid certificate of eligibility to receive*
28 *a preference in bidding on public works issued to him by the State*
29 *Contractors' Board pursuant to subsection 3 or 4; or*

30 (2) *Thirty percent higher than the bid submitted by the next*
31 *lowest responsive and responsible bidder whose bid is not*
32 *accompanied by indicia of qualification in bidding on public*
33 *works issued to him by the State Contractors' Board pursuant to*
34 *section 3 of this act,*

35 shall be deemed to ~~have submitted a better bid than a competing~~
36 ~~contractor who has not provided a copy of such a valid certificate of~~
37 ~~eligibility if the amount of his bid is not more than 5 percent higher~~
38 ~~than the amount bid by the competing contractor.]~~ *be the best bid*
39 *for the purposes of this section.*

40 3. The State Contractors' Board shall issue a certificate of
41 eligibility to receive a preference in bidding on public works to a
42 general contractor who is licensed pursuant to the provisions of
43 chapter 624 of NRS and submits to the Board an affidavit from a
44 certified public accountant setting forth that the general contractor
45 has, while licensed as a general contractor in this state:



1 (a) Paid directly, on his own behalf:

2 (1) The sales and use taxes imposed pursuant to chapters
3 372, 374 and 377 of NRS on materials used for construction in this
4 state, including, without limitation, construction that is undertaken
5 or carried out on land within the boundaries of this state that is
6 managed by the Federal Government or is on an Indian reservation
7 or Indian colony, of not less than \$5,000 for each consecutive 12-
8 month period for 60 months immediately preceding the submission
9 of the affidavit from the certified public accountant;

10 (2) The governmental services tax imposed pursuant to
11 chapter 371 of NRS on the vehicles used in the operation of his
12 business in this state of not less than \$5,000 for each consecutive
13 12-month period for 60 months immediately preceding the
14 submission of the affidavit from the certified public accountant; or

15 (3) Any combination of such sales and use taxes and
16 governmental services tax; or

17 (b) Acquired, by purchase, inheritance, gift or transfer through a
18 stock option plan, all the assets and liabilities of a viable, operating
19 construction firm that possesses a:

20 (1) License as a general contractor pursuant to the provisions
21 of chapter 624 of NRS; and

22 (2) Certificate of eligibility to receive a preference in bidding
23 on public works.

24 4. The State Contractors' Board shall issue a certificate of
25 eligibility to receive a preference in bidding on public works to a
26 specialty contractor who is licensed pursuant to the provisions of
27 chapter 624 of NRS and submits to the Board an affidavit from a
28 certified public accountant setting forth that the specialty contractor
29 has, while licensed as a specialty contractor in this state:

30 (a) Paid directly, on his own behalf:

31 (1) The sales and use taxes pursuant to chapters 372, 374 and
32 377 of NRS on materials used for construction in this state,
33 including, without limitation, construction that is undertaken or
34 carried out on land within the boundaries of this state that is
35 managed by the Federal Government or is on an Indian reservation
36 or Indian colony, of not less than \$5,000 for each consecutive 12-
37 month period for 60 months immediately preceding the submission
38 of the affidavit from the certified public accountant;

39 (2) The governmental services tax imposed pursuant to
40 chapter 371 of NRS on the vehicles used in the operation of his
41 business in this state of not less than \$5,000 for each consecutive
42 12-month period for 60 months immediately preceding the
43 submission of the affidavit from the certified public accountant; or

44 (3) Any combination of such sales and use taxes and
45 governmental services tax; or



1 (b) Acquired, by purchase, inheritance, gift or transfer through a
2 stock option plan, all the assets and liabilities of a viable, operating
3 construction firm that possesses a:

4 (1) License as a specialty contractor pursuant to the
5 provisions of chapter 624 of NRS; and

6 (2) Certificate of eligibility to receive a preference in bidding
7 on public works.

8 5. For the purposes of complying with the requirements set
9 forth in paragraph (a) of subsection 3 and paragraph (a) of
10 subsection 4, a contractor shall be deemed to have paid:

11 (a) Sales and use taxes and governmental services taxes that
12 were paid in this state by an affiliate or parent company of the
13 contractor, if the affiliate or parent company is also a general
14 contractor or specialty contractor, as applicable; and

15 (b) Sales and use taxes that were paid in this state by a joint
16 venture in which the contractor is a participant, in proportion to the
17 amount of interest the contractor has in the joint venture.

18 6. A contractor who has received a certificate of eligibility to
19 receive a preference in bidding on public works from the State
20 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
21 for the annual renewal of his contractor's license pursuant to NRS
22 624.283, submit to the Board an affidavit from a certified public
23 accountant setting forth that the contractor has, during the
24 immediately preceding 12 months, paid the taxes required pursuant
25 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
26 applicable, to maintain his eligibility to hold such a certificate.

27 7. A contractor who fails to submit an affidavit to the Board
28 pursuant to subsection 6 ceases to be eligible to receive a preference
29 in bidding on public works unless he reapplies for and receives a
30 certificate of eligibility pursuant to subsection 3 or 4, as applicable.

31 8. If a contractor holds more than one contractor's license, he
32 must submit a separate application for each license pursuant to
33 which he wishes to qualify for a preference in bidding. Upon
34 issuance, the certificate of eligibility to receive a preference in
35 bidding on public works becomes part of the contractor's license for
36 which the contractor submitted the application.

37 9. If a contractor who applies to the State Contractors' Board
38 for a certificate of eligibility to receive a preference in bidding on
39 public works submits false information to the Board regarding the
40 required payment of taxes, the contractor is not eligible to receive a
41 preference in bidding on public works for a period of 5 years after
42 the date on which the Board becomes aware of the submission of the
43 false information.

44 10. If any federal statute or regulation precludes the granting of
45 federal assistance or reduces the amount of that assistance for a



1 particular public work because of the provisions of subsection 2,
2 those provisions do not apply insofar as their application would
3 preclude or reduce federal assistance for that work. The provisions
4 of subsection 2 do not apply to any contract for a public work which
5 is expected to cost less than \$250,000.

6 11. If a bid is submitted by two or more contractors as a joint
7 venture or by one of them as a joint venturer, the provisions of
8 subsection 2 apply only if both or all of the joint venturers
9 separately meet the requirements of that subsection.

10 12. The State Contractors' Board shall adopt regulations and
11 may assess reasonable fees relating to the certification of contractors
12 for a preference in bidding on public works.

13 13. A person or entity who believes that a contractor
14 wrongfully holds a certificate of eligibility to receive a preference in
15 bidding on public works may challenge the validity of the certificate
16 by filing a written objection with the public body to which the
17 contractor has submitted a bid or proposal on a contract for the
18 construction of a public work. A written objection authorized
19 pursuant to this subsection must:

20 (a) Set forth proof or substantiating evidence to support the
21 belief of the person or entity that the contractor wrongfully holds a
22 certificate of eligibility to receive a preference in bidding on public
23 works; and

24 (b) Be filed with the public body at or after the time at which the
25 contractor submitted the bid or proposal to the public body and
26 before the time at which the public body awards the contract for
27 which the bid or proposal was submitted.

28 14. If a public body receives a written objection pursuant to
29 subsection 13, the public body shall determine whether the objection
30 is accompanied by the proof or substantiating evidence required
31 pursuant to paragraph (a) of that subsection. If the public body
32 determines that the objection is not accompanied by the required
33 proof or substantiating evidence, the public body shall dismiss the
34 objection and may proceed immediately to award the contract. If the
35 public body determines that the objection is accompanied by the
36 required proof or substantiating evidence, the public body shall
37 determine whether the contractor qualifies for the certificate
38 pursuant to the provisions of this section and may proceed to award
39 the contract accordingly.

40 **Sec. 7.** NRS 338.140 is hereby amended to read as follows:

41 338.140 1. An agency of this state, a political subdivision,
42 municipal corporation or district, a public officer or a person
43 charged with the letting of contracts for the construction, alteration
44 or repair of public works shall not draft or cause to be drafted



1 specifications for bids, in connection with the construction,
2 alteration or repair of public works:

3 (a) In such a manner as to limit the bidding, directly or
4 indirectly, to any one specific concern.

5 (b) Except in those instances where the product is designated to
6 match others in use on a particular public improvement either
7 completed or in the course of completion, calling for a designated
8 material, product, thing or service by specific brand or trade name
9 unless the specification lists at least two brands or trade names of
10 comparable quality or utility and is followed by the words "or
11 equal" so that bidders may furnish any equal material, product, thing
12 or service.

13 (c) In such a manner as to hold the bidder to whom such
14 contract is awarded responsible for extra costs incurred as a result of
15 errors or omissions by the public agency in the contract documents.

16 (d) In such a manner as to require a bidder to furnish to the
17 public agency, whether before or after the bid is submitted,
18 documents generated in the preparation or determination of prices
19 included in the bid, except when requested by the public agency for:

20 (1) A determination of the price of additional work
21 performed pursuant to a change order;

22 (2) An evaluation of claims for costs incurred for the
23 performance of additional work;

24 (3) Preparation for arbitration or litigation; or

25 (4) Any combination thereof.

26 A document furnished to a public agency pursuant to this paragraph
27 is confidential and must be returned to the bidder.

28 2. *In addition to the requirements of subsection 1, with*
29 *respect to any specification for bids drafted or caused to be drafted*
30 *by an agency of this state, a political subdivision, municipal*
31 *corporation or district, a public officer or a person charged with*
32 *the letting of contracts for the construction, alteration or repair of*
33 *public works, if the estimated cost of the applicable public works*
34 *project is more than \$500,000, the State Public Works Board shall*
35 *ensure that the specification for bids:*

36 (a) *Is not drafted or caused to be drafted until there has been*
37 *comprehensive communication regarding the contents of the*
38 *specification for bids between the Board and the governmental*
39 *entity, officer or person who will draft that specification for bids;*

40 (b) *Is developed in consultation and cooperation with*
41 *recognized experts in the particular area of public works to which*
42 *the specification for bids pertains;*

43 (c) *Is developed in accordance with guidelines developed by*
44 *the recognized experts described in paragraph (b), which*
45 *guidelines must specify how much the applicable public works*



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1 *project should cost, based upon comparisons with similar public*
2 *works projects carried out by other governmental entities; and*

3 *(d) To substantiate the amounts that are bid, requires bidders*
4 *to set forth the various hourly rates that will be paid to the*
5 *workmen who will perform work on the applicable public works*
6 *project.*

7 **3.** In those cases involving a unique or novel product
8 application required to be used in the public interest, or where only
9 one brand or trade name is known to the specifying agency, it may
10 list only one.

11 ~~3.~~ **4.** Specifications must provide a period of time of at least 7
12 days after award of the contract for submission of data
13 substantiating a request for a substitution of "an equal" item.

14 **Sec. 8.** Chapter 341 of NRS is hereby amended by adding
15 thereto a new section to read as follows:

16 *The Board shall appoint an official to coordinate and oversee*
17 *all public works projects for which the estimated cost is more than*
18 *\$500,000.*

19 **Sec. 9.** Chapter 333 of NRS is hereby amended by adding
20 thereto a new section to read as follows:

21 *The Chief shall not authorize a change order for a contract,*
22 *the estimated value of which exceeds \$500,000.*

23 **Sec. 10.** NRS 333.100 is hereby amended to read as follows:

24 333.100 1. The Chief shall have such technical and clerical
25 assistance as the execution of his duties requires.

26 2. Technical assistants shall have a minimum of 6 years of
27 practical experience in purchasing, merchandising, stock control and
28 methods of inventory management.

29 *3. The Chief shall assign one of his technical assistants to*
30 *coordinate and oversee the awarding of contracts, the estimated*
31 *value of which exceeds \$500,000.*

32 **Sec. 11.** NRS 333.311 is hereby amended to read as follows:

33 333.311 1. Each request for proposals must include minimum
34 requirements that the successful bidder must meet for the awarding
35 of a contract pursuant to the provisions of this chapter. A contract
36 may not be awarded to a bidder who does not comply with the
37 requirements set forth in the request for proposals.

38 *2. The Chief may request assistance in preparing a request*
39 *for proposals for a contract, the estimated value of which exceeds*
40 *\$500,000, from a person who possesses expert knowledge or*
41 *special expertise related to the subject of the request for proposals.*

42 **Sec. 12.** NRS 333.335 is hereby amended to read as follows:

43 333.335 1. Each proposal must be evaluated by:

44 (a) The chief of the using agency, or a committee appointed by
45 the chief of the using agency in accordance with the regulations



1 adopted pursuant to NRS 333.135, if the proposal is for a using
2 agency; or

3 (b) The Chief of the Purchasing Division, or a committee
4 appointed by the Chief in accordance with the regulations adopted
5 pursuant to NRS 333.135, if he is responsible for administering the
6 proposal.

7 2. A committee appointed pursuant to subsection 1 must
8 consist of not less than two members. A majority of the members of
9 the committee must be state officers or employees. The committee
10 may include persons who are not state officers or employees and
11 possess expert knowledge or special expertise that the chief of the
12 using agency or the Chief of the Purchasing Division determines is
13 necessary to evaluate a proposal. The members of the committee are
14 not entitled to compensation for their service on the committee,
15 except that members of the committee who are state officers or
16 employees are entitled to receive their salaries as state officers and
17 employees. No member of the committee may have a financial
18 interest in a proposal.

19 3. In making an award, the chief of the using agency, the Chief
20 of the Purchasing Division or each member of the committee, if a
21 committee is established, shall consider and assign a score for each
22 of the following factors for determining whether the proposal is in
23 the best interests of the State of Nevada:

24 (a) The experience and financial stability of the person
25 submitting a proposal;

26 (b) Whether the proposal complies with the requirements of the
27 request for proposals as prescribed in NRS 333.311;

28 (c) The price of the proposal; ~~and~~

29 (d) *For a contract the estimated value of which exceeds*
30 *\$500,000, the performance history of the person submitting the*
31 *proposal:*

32 (1) *On the previous five contracts awarded to that person by*
33 *the Purchasing Division; or*

34 (2) *During the immediately preceding 3 years on contracts*
35 *awarded to that person by the Purchasing Division; and*

36 (e) Any other factor disclosed in the request for proposals.

37 4. The chief of the using agency, the Chief of the Purchasing
38 Division or the committee, if a committee is established, shall
39 determine the relative weight of each factor set forth in subsection 3
40 before a request for proposals is advertised. The weight of each
41 factor must not be disclosed before the date proposals are required
42 to be submitted.

43 5. *In evaluating the total scores assigned pursuant to*
44 *subsection 3 to a local bidder and a competing bidder a contract,*
45 *the estimated value of which exceeds \$500,000, a proposal*



1 *submitted by a local bidder shall be deemed to be in the best*
2 *interest of the State if the total score of the competing bidder is not*
3 *5 percent better than the local bidder. As used in this subsection:*

4 (a) "Competing bidder" means a person who submits a
5 proposal other than a local bidder.

6 (b) "Local bidder" means a person who submits with his
7 proposal an affidavit from a certified public accountant setting
8 forth that the person submitting the proposal has paid taxes
9 imposed by this state or a political subdivision of this state during
10 the 2 years immediately preceding the submitting of the proposal.

11 6. In evaluating a proposal by a bidder on a contract, the
12 estimated value of which exceeds \$500,000, the committee shall
13 give such weight to the factor set forth in paragraph (d) of
14 subsection 3 as to allow the proposal submitted by the bidder to be
15 deemed to be in the best interest of the State if the total score of
16 the bidder is not more than 30 percent higher than the next
17 highest bidder.

18 7. The chief of the using agency, the Chief of the Purchasing
19 Division or the committee, if a committee is established, shall award
20 the contract based on the best interests of the State, as determined by
21 the total scores assigned pursuant to subsection 3 ~~and~~ and in
22 compliance with subsection 5 or 6, and is not required to accept the
23 lowest-priced proposal.

24 ~~6.~~ 8. Each proposal evaluated pursuant to the provisions of
25 this section is confidential and may not be disclosed until the
26 contract is awarded.

27 **Sec. 13.** NRS 333.340 is hereby amended to read as follows:

28 333.340 1. ~~Every~~ Except as otherwise provided in NRS
29 333.335, every contract or order for goods must be awarded to the
30 lowest responsible bidder. To determine the lowest responsible
31 bidder, the Chief may consider:

- 32 (a) The location of the using agency to be supplied.
- 33 (b) The qualities of the articles to be supplied.
- 34 (c) The total cost of ownership of the articles to be supplied.
- 35 (d) Except as otherwise provided in paragraph (e), the
36 conformity of the articles to be supplied with the specifications.
- 37 (e) If the articles are an alternative to the articles listed in the
38 original request for bids, whether the advertisement for bids
39 included a statement that bids for an alternative article will be
40 considered if:

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

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



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

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

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

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

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

12 (a) The history of maintenance or repair of the articles;

13 (b) The cost of routine maintenance and repair of the articles;

14 (c) Any warranties provided in connection with the articles;

15 (d) The cost of replacement parts for the articles; and

16 (e) The value of the articles as used articles when given in trade
17 on a subsequent purchase.

18 **Sec. 14.** NRS 333.370 is hereby amended to read as follows:

19 333.370 1. A person who makes an unsuccessful bid or
20 proposal may file a notice of appeal with the Purchasing Division
21 ~~[and with the Hearings Division of the Department of~~
22 ~~Administration]~~ within 10 days after:

23 (a) The date of award as entered on the bid record; and

24 (b) The notice of award has been posted in at least three public
25 buildings, including the location of the using agency.

26 The notice of appeal must include a written statement of the issues
27 to be addressed on appeal.

28 2. A person filing a notice of appeal must post a bond with
29 good and solvent surety authorized to do business in this state or
30 submit other security, in a form approved by the Chief by
31 regulation, to the Purchasing Division, who shall hold the bond or
32 other security until a determination is made on the appeal. Except as
33 otherwise provided in subsection 3, a bond posted or other security
34 submitted with a notice of appeal must be in an amount equal to 25
35 percent of the total value of the successful bid submitted.

36 3. If the total value of the successful bid cannot be determined
37 because the total requirements for the contract are estimated as of
38 the date of award, a bond posted or other security submitted with a
39 notice of appeal must be in an amount equal to 25 percent of the
40 estimated total value of the contract. Upon request, the Chief shall
41 provide:

42 (a) The estimated total value of the contract; or

43 (b) The method for determining the estimated total value of the
44 contract,



1 based on records of past experience and estimates of anticipated
2 requirements furnished by the using agency.

3 4. Within 20 days after receipt of the notice of appeal, a
4 ~~[hearing officer of the Hearings Division of the Department of~~
5 ~~Administration]~~ *panel consisting of a member of the State Board*
6 *of Examiners, a member of the committee appointed pursuant to*
7 *NRS 333.335 that evaluated the proposals for the contract and a*
8 *person who possesses expert knowledge or special expertise that*
9 *was a member of that committee, if any,* shall hold a ~~[contested]~~
10 hearing on the appeal . ~~[in substantial compliance with the~~
11 ~~provisions of NRS 233B.121 to 233B.1235, inclusive, 233B.125~~
12 ~~and 233B.126.]~~ The successful bidder must be given notice of the
13 hearing in the same manner as the person who filed the notice of
14 appeal. The successful bidder may participate in the hearing.

15 5. The ~~[hearing officer]~~ *panel* may cancel the award for lack of
16 compliance with the provisions of this chapter. A cancellation of the
17 award requires readvertising for bids and a new award in accordance
18 with the provisions of this chapter.

19 6. A notice of appeal filed in accordance with the provisions of
20 this section operates as a stay of action in relation to any contract
21 until a determination is made by the ~~[hearing officer]~~ *panel* on the
22 appeal.

23 7. A person who makes an unsuccessful bid or proposal may
24 not seek any type of judicial intervention until the ~~[hearing officer]~~
25 *panel* has made a determination on the appeal.

26 8. The Chief may make as many open market purchases of the
27 commodities or services as are urgently needed to meet the
28 requirements of the Purchasing Division or the using agency until a
29 determination is made on the appeal. With the approval of the Chief,
30 the using agency may make such purchases for the agency.

31 9. Neither the State of Nevada, nor any agency, contractor,
32 department, division, employee or officer of the State is liable for
33 any costs, expenses, attorney's fees, loss of income or other
34 damages sustained by a person who makes an unsuccessful bid or
35 proposal, whether or not the person files a notice of appeal pursuant
36 to this section.

37 10. If the appeal is upheld and the award is cancelled, the bond
38 posted or other security submitted with the notice of appeal must be
39 returned to the person who posted the bond or submitted the
40 security. If the appeal is rejected and the award is upheld, a claim
41 may be made against the bond or other security by the Purchasing
42 Division and the using agency to the ~~[Hearings Division of the~~
43 ~~Department of Administration]~~ *panel* in an amount equal to the
44 expenses incurred and other monetary losses suffered by
45 the Purchasing Division and the using agency because of the



1 unsuccessful appeal. The ~~hearing officer~~ *panel* shall hold a hearing
2 on the claim in the same manner as prescribed in subsection 4. Any
3 money not awarded by the ~~hearing officer~~ *panel* must be returned
4 to the person who posted the bond or submitted the security.

5 **Sec. 15.** 1. This section and sections 1 to 4, inclusive, and 6
6 to 14, inclusive, of this act become effective on October 1, 2003.

7 2. Section 4 of this act expires by limitation on April 30, 2013.

8 3. Section 5 of this act becomes effective on May 1, 2013.

