
SENATE BILL NO. 39—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE PURCHASING DIVISION
OF THE DEPARTMENT OF ADMINISTRATION)

PREFILED NOVEMBER 16, 2016

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to state purchasing.
(BDR 27-122)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

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

AN ACT relating to state purchasing; revising provisions governing the provision of notice and advertisement of certain proposed purchases of commodities and services by the State and notice of award of certain purchasing contracts by the State; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires the Administrator of the Purchasing Division of the
2 Department of Administration to give reasonable notice by advertising and by
3 written notice to vendors of proposed purchases of certain supplies, materials and
4 equipment by the State. Under existing law, the Purchasing Division is required to
5 give written notice of proposed purchases by the State of supplies, materials and
6 equipment with an estimated cost of \$50,000 or less to at least three persons in a
7 position to furnish the materials, supplies or equipment and to the Office of
8 Economic Development. (NRS 333.300) **Section 2** of this bill requires that such
9 notice be provided electronically to those persons and the Office as well as posted
10 on the Internet website of the Purchasing Division. Existing law requires
11 publication of an advertisement of a proposed purchase by the State of services and
12 commodities with an estimated cost of more than \$50,000 in at least one newspaper
13 of general circulation in this State and on the Internet website of the Purchasing
14 Division. (NRS 333.300, 333.310) **Section 3** of this bill removes the requirement of
15 the publication of such an advertisement in a newspaper and therefore
16 advertisements of such proposed purchases are only required to be published on the
17 Internet website of the Purchasing Division.

18 Existing law authorizes a person who makes an unsuccessful bid or proposal on
19 a purchasing contract to file a notice of appeal with the Purchasing Division within



20 10 days after the: (1) date of the award of the contract; and (2) notice of award has
21 been posted in at least three public buildings. (NRS 333.370) **Section 4** of this bill
22 removes the posting requirement with regard to public buildings and instead
23 requires publication of the notice of award on the Internet website of the Purchasing
24 Division.

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

1 **Section 1.** NRS 333.280 is hereby amended to read as follows:
2 333.280 1. Except as otherwise provided in this subsection,
3 the Administrator may enter into a contract using a standard form of
4 contract, by solicitation in accordance with the provisions of NRS
5 333.300 or by advertising in accordance with the provisions of NRS
6 **333.300 and** 333.310, for the furnishing of supplies, materials and
7 equipment for not more than 2 years. If an extended contractual
8 period is necessary to promote the use of a manufacturing process
9 which emphasizes the efficient use of energy or to promote the
10 manufacture of products which use recycled materials, the
11 Administrator may enter into such a contract for not more than 3
12 years.

13 2. The original terms of a contract may be extended annually
14 thereafter if the conditions for extension are specified in the original
15 solicitation, and the Administrator determines that an extension is in
16 the best interest of the State.

17 **Sec. 2.** NRS 333.300 is hereby amended to read as follows:

18 333.300 1. Except as otherwise provided in NRS 333.375,
19 the Administrator shall give reasonable notice ~~by advertising and~~
20 ~~by written notice provided~~ **in accordance with this section** to
21 persons in a position to furnish the classes of commodities involved,
22 as shown by its records, of all proposed purchases of supplies,
23 materials and equipment to be purchased in accordance with a
24 schedule prepared in conformity with the provisions of
25 NRS 333.250.

26 2. All such materials, supplies and equipment, except as
27 otherwise provided in this section, if the estimated cost thereof
28 exceeds \$50,000, must be purchased by formal contract from the
29 lowest responsible bidder after ~~notice~~ **advertisement** inviting the
30 submission of sealed **bids or** proposals to the Administrator of
31 the Purchasing Division at the date, hour and location set forth in the
32 ~~proposal~~ **advertisement**, and at that date, hour and location the
33 **bids or** proposals must be publicly opened. The Purchasing Division
34 may reject any or all **bids or** proposals, or may accept the **bid or**
35 proposal determined best for the interest of the State. The ~~notice~~
36 **advertisement** must be published as prescribed in NRS 333.310.



1 3. The Administrator may solicit the purchase of materials,
2 supplies and equipment, if the estimated cost thereof is \$50,000 or
3 less, by written contract from the lowest responsible bidder if notice
4 of the proposed purchase is *posted on the Internet website of the*
5 *Purchasing Division and* provided *electronically* to:

6 (a) At least three persons in a position to furnish the materials,
7 supplies or equipment; and

8 (b) The Office of Economic Development.

9 4. In case of emergencies caused by acts of God or the national
10 defense or other unforeseeable circumstances, the provisions for
11 advertisements on competitive bids *or proposals* may be waived by
12 the Administrator, but every effort must be made to secure the
13 maximum competitive bidding under the circumstances. In no case
14 may contracts be awarded until every possible effort has been made
15 to secure at least three bona fide competitive bids *H or proposals*.

16 5. In awarding contracts for the purchase of supplies, materials
17 and equipment, if two or more lowest bids *or proposals* are
18 identical, the Administrator shall:

19 (a) If the lowest bids *or proposals* are by bidders resident in the
20 State of Nevada, accept the *bid or* proposal which, in the discretion
21 of the Administrator, is in the best interests of this State.

22 (b) If the lowest bids *or proposals* are by bidders resident
23 outside the State of Nevada:

24 (1) Accept the *bid or* proposal of the bidder who will furnish
25 goods or commodities produced or manufactured in this State; or

26 (2) Accept the *bid or* proposal of the bidder who will furnish
27 goods or commodities supplied by a dealer resident in the State of
28 Nevada.

29 **Sec. 3.** NRS 333.310 is hereby amended to read as follows:

30 333.310 1. An advertisement must contain a general
31 description of the classes of commodities or services for which a bid
32 or proposal is wanted and must state:

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

36 (b) Where and how specifications and quotation forms may be
37 obtained.

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

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



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

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

5 (d) Notice of the preference set forth in NRS 333.3366.

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

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

9 ➔ The Administrator or a designated agent of the Administrator
10 shall approve the copy for the advertisement.

11 2. Each advertisement must be published ~~+~~

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

17 ~~—(b) On~~ *on* the Internet website of the Purchasing Division.

18 **Sec. 4.** 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 Administration
22 within 10 days after:

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

25 (b) The notice of award has been posted ~~[in at least three public
26 buildings, including the location of the using agency.]~~ *on the
27 Internet website of the Purchasing Division.*

28 ➔ The notice of appeal must include a written statement of the
29 issues to be addressed on appeal.

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

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

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



1 (b) The method for determining the estimated total value of the
2 contract,
3 ↪ based on records of past experience and estimates of anticipated
4 requirements furnished by the using agency.

5 4. Within 20 days after receipt of the notice of appeal, a
6 hearing officer of the Hearings Division of the Department of
7 Administration shall hold a contested hearing on the appeal in
8 substantial compliance with the provisions of NRS 233B.121 to
9 233B.1235, inclusive, 233B.125 and 233B.126. The successful
10 bidder must be given notice of the hearing in the same manner as the
11 person who filed the notice of appeal. The successful bidder may
12 participate in the hearing.

13 5. The hearing officer may cancel the award for lack of
14 compliance with the provisions of this chapter. A cancellation of the
15 award requires readvertising for bids *or proposals* and a new award
16 in accordance with the provisions of this chapter.

17 6. A notice of appeal filed in accordance with the provisions of
18 this section operates as a stay of action in relation to any contract
19 until a determination is made by the hearing officer on the appeal.

20 7. A person who makes an unsuccessful bid or proposal may
21 not seek any type of judicial intervention until the hearing officer
22 has made a determination on the appeal.

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

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

35 10. If the appeal is upheld and the award is cancelled, the bond
36 posted or other security submitted with the notice of appeal must be
37 returned to the person who posted the bond or submitted the
38 security. If the appeal is rejected and the award is upheld, a claim
39 may be made against the bond or other security by the Purchasing
40 Division and the using agency to the Hearings Division of the
41 Department of Administration in an amount equal to the expenses
42 incurred and other monetary losses suffered by the Purchasing
43 Division and the using agency because of the unsuccessful appeal.
44 The hearing officer shall hold a hearing on the claim in the same
45 manner as prescribed in subsection 4. Any money not awarded by



- 1 the hearing officer must be returned to the person who posted the
- 2 bond or submitted the security.
- 3 **Sec. 5.** This act becomes effective on July 1, 2017.

Ⓢ



* S B 3 9 *

