

STATE CONTRACTING BASICS

Types of Contracts

Procedures

Boards and Commissions Training

2019

Sources of Nevada Procurement Law

- NRS Chapters 333, 333A, 334
 - 332 (local governments)
 - 338 (Public Works)
 - 353.500-.630(Installment Purchase/Lease-Purchase); 277.080-.170, .180 (Interlocal Agreements) [NOTE: Chapter 353 does not apply to some boards]
- NAC (Nevada Administrative Code) Chapters 333, 333A, 334
- SAM (State Administrative Manual) [Dept of Admin – Budget – Documents]
 - <http://budget.nv.gov/uploadedFiles/budgetnvgov/content/Governance/SAM.pdf>

Main Types of Contracts

- Services of Independent Contractor NRS 333.700
- Purchase of Goods NRS 333.300 et seq.
- Installment Purchase and Lease Purchase Agreements NRS 353.500 -.630
- Interlocal Contracts Between Government Entities NRS 277.180, 277.080 -.170

Other Contracts and Agreements

- Leases
 - State as Lessor (State Lands, NRS 321.001, 322.010)
 - State as Lessee (B & G, NRS 331.110; certain boards exempt from B&G jurisdiction in 331.070, 353.005 – generally occupational and professional licensing boards)
- Revenue Contracts

Miscellaneous Contracts

- Volunteer Agreements
- Licenses to Use State Facilities
- Grants
 - Grants are contracts if any enforceable promise or performance is expected
 - SAM Chapter 3000 deals with procedures for distributing Federal grants

WHY IS THIS IMPORTANT?

- State policy is to secure the best value for the taxpayer dollar in all goods, supplies, equipment and services. See NRS 333.140.
- Knowing the process and potential issues will expedite your procurements
- AND

There is personal responsibility

- NRS 333.810 contracts contrary to Chapter 333 are void; head of using agency or employee who made the purchase may be personally liable
- NRS 353.260(2) It is unlawful to bind or attempt to bind the State in any amount in excess of the specific amount provided by law, or in any other manner than provided by law. (This is malfeasance in office or a misdemeanor.)

Contract for Services of Independent Contractor

- State contract forms can be found at <http://purchasing.nv.gov/Contracts/ToolBox/#Forms/Templates>
 - Standard Form
 - “Short” Form (<\$50,000)
 - Instructions for Short Form Contract

Importance of Standard Contracts

- Nonappropriation Clause
- Limits on State's Liability (NRS Ch 41)
- Indemnification from Contractor
- State Does Not Contractually Indemnify Contractor
- Insurance
- Warranties
- Choice of Nevada Law and Jurisdiction

Insurance Provisions on All Contracts Determined by Risk Manager NRS 333.337(1)

- Standard Form Contract Requires a separate Insurance Schedule
 - (from Risk Management Division; see <http://risk.nv.gov/Contracts/CR/>)
- Short Form Contract has insurance Requirements embedded
 - Worker's Comp
 - CGL
 - Auto
 - Professional Liability

Other Issues

- Contract with Current or Former State Employee (“privatization”)
 - NRS 333.705
 - Contractor or employee performing the services
 - Current or employed <2 years before
 - BOE Approval Required
- No boycott of Israel [**NEW**] NRS 333.338
 - Contractor must certify



Beware of Contractor Forms

- Contractor May Submit Its Own Form
- Will Contain Provisions Detrimental to State and May Violate Nevada Law
 - State Sovereign Immunity and Damages Limitations
 - Confidentiality/Public Records
 - Unconditional Obligations, Acceleration of Payments, Penalties, Etc.
 - Foreign jurisdiction, venue and governing law

Procurement of Goods or Services (What is the Contract?)

SERVICES

- Contract for Services of Independent Contractor
 - Short Form <\$50,000
 - Standard Form
- GENERALLY REQUIRES AG REVIEW AS TO FORM NRS 333.700(6), SAM 0342

GOODS

- Invitation to Bid
- Bid
- Notice of Award

Role of Purchasing Division

Contracts for Services

- Purchasing Contracts for Services \geq \$100,000; may authorize Agency \geq \$100K
- Purchasing may (1) contract for Agency if best interest of State; or (2) assist Agency in contracting if requested.
- NRS 333.165

Purchase of Goods

- $>$ \$50,000: Purchasing Division to receive sealed bids on an ITB. NRS 333.300
- $<$ \$50,000 Purchasing Division may do informal solicitation
- Purchasing may authorize using agency to purchase directly. NRS 333.390

Criteria for Award

SERVICES

- **Best interest of the state** – as determined by the scores assigned to the proposals; NRS 333.335(5)
- Criteria are stated in NRS 333.335(3)
 - Includes any other factor disclosed in the RFP

GOODS

- **Lowest responsible bidder**
NRS 333.340, 333.300

Applicability of NRS 333.700

- Grants authority to contract with Independent Contractors (Does your agency have independent authority to contract? E.g., NDOT)
- Applies to “**using agencies**”
- “Using Agency” defined in 333.020(10)
- Officers, departments, institutions, boards, commissions, other agencies in the **Executive Department**
- ANY support from “**public money**”
 - From State, Federal or private or other sources
- Exceptions – e.g., NSHE, Housing Div, Local Gov’ts

Board of Examiners Approval

CONTRACTS FOR SERVICES (not goods)

- <\$2,000 (Agency approval)
- 2,000 – 49,999 (Clerk of BOE)

Changed by AB41 (2013) NRS 333.700; and action of the BOE August 2013; Was 2,000-9,999

- ≥50,000 (BOE)

EXCEPTIONS FROM BOE REVIEW

- NRS 333.700(8) full list
- Examples
 - Office equipment maintenance and repair NRS 333.700(8)(d), SAM 0326
 - Computer software maintenance consisting of license agreements, remote download of updates, off-site tech support. SAM 0326

Competitive Solicitation Is Generally Required

SERVICES

- >\$25,000/fiscal yr – by RFP (NAC 333.150)
- By Purchasing if >\$100,000 (or agency direct w/ authorization) NRS 333.165
- \$2,000 – 25,000 – informal solicitation (SAM0338) with at least 3 proposals if feasible
- Solicit every 4 years as a general rule (SAM 0338)

GOODS

- >\$50,000 by formal ITB (NRS 333.300)
- By Purchasing Division
- Local purchase by using agency can be authorized for up to \$5,000 per order

EXCEPTIONS FROM COMPETITIVE SOLICITATION

- Not suitable for competitive solicitation NAC 333.150(2)
- Sole Source NAC 333.150(2)(a) (as determined by the Chief of Purchasing)
- **Professional Services** NAC 333.150(2)(b)
- Emergency NAC 150(2)(c) (as determined by the Chief of Purchasing)

Professional Services Exception

NAC 333.150(2)(b):

- (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 Administrator/Chief of Purchasing**

SPECIAL CASES

- Installment-Purchase or Lease-Purchase under NRS 353.500 -.630 (Does not apply to some boards)
- Applies to State of Nevada or State Agency
 - Applies to both real property and personal property NRS 353.510
 - Agreements involving real property have special requirements. See NRS 353.550
 - Not subject to competitive bidding or other procedures for award of contracts 353.580

MORE SPECIAL CASES

- LEASES of equipment – by the Administrator of Purchasing NRS 333.150; SAM 1534 (except short-term rentals \leq \$5,000)
- Interlocal Cooperation Agreements NRS 277.080 -.170 (Requires BOE approval: SAM 0310)
- Interlocal Contracts between public agencies NRS 277.180 (Requires BOE approval: SAM 0316) (form at <http://purchasing.nv.gov/Contracts/ToolBox/#Forms/Templates>)

Lease of Office Space (A Digression)

- The Administrator of Public Works ***shall*** lease office space for State agencies and boards in private buildings. NRS 331.110(1)(a)
- Exception: Boards that are exempt under NRS 353.005. For these boards, Public Works ***may*** lease outside office space at the request of the Board. NRS 331.110(1)(b)

INSURANCE

- The State Risk Manager has responsibility for procuring insurance and using means to reduce risks to the State NRS 331.182, 331.184, 331.186, SAM 0516
- Risk Management Division publishes an insurance manual for contracts, that contains suggested types and limits of insurance policies according to the type of contract and risk involved. <http://risk.nv.gov/Contracts/CR/>

Common Types of Required Insurance

Based on Nature of Risk, not Amount of Contract

- Comprehensive General Liability
- Automobile Liability
- Worker's Compensation (Sole proprietors may execute an affidavit of rejection of WC coverage. NRS 616B.627, 617.210)
- Professional Liability
- Commercial Crime or Fidelity Bond
- Network Security (Cyber) and Privacy Liability

Contract Amendments

- There is a Form. See <http://purchasing.nv.gov/Contracts/ToolBox/#Forms/Templates>
- The Amendment Form is a hybrid
 - Reason for Amendment (Description)
 - Substitution (Cut-and-Paste)
- If you both describe the amendment and substitute a new section, make sure they match

Amendment By Description

- Description (1. A.): [Give a brief explanation of reason for contract amendment.]
 - Example: “Due to unexpected delays, the term of the contract is extended six months, to December 31, 2019”
 - Example: “The term of the contract is extended to December 31, 2019”

Amendment by Substitution

Current Contract Language:

3. CONTRACT TERM. This Contract shall be effective as noted below, unless sooner terminated by either party as specified in Section 10, Contract Termination. Contract is subject to Board of Examiners' approval (anticipated to be December 10, 2017).

Effective from: January 1, 2018 To: June 30, 2020

Amended Contract Language:

3. CONTRACT TERM. This Contract shall be effective as noted below, unless sooner terminated by either party as specified in Section 10, Contract Termination. Contract is subject to Board of Examiners' approval (anticipated to be December 10, 2017).

Effective from: January 1, 2018 To: **December 31, 2020**

Some Reasons for Amendment

CAUTION!

- Extending Term
- Increasing NTE Amount
- New or different service (careful not to make a material change in the solicitation or allow material changes to original proposals)
- Assignment/Change of Contractor's Form of Organization (There is a special amendment and assignment form)

Do you need a new contract? **Shortcut I**

- Purchasing Division Has a number of “Good of the State” or Master Agreements
- These can be used by multiple state agencies and sometimes local governments
- Go to Purchasing site and click “State Contracts” for the list
<http://purchasing.nv.gov/contracts/>
- Can be utilized by a purchase order

Shortcut II

- Does Vendor have a contract with GSA or another government agency for these same supplies, materials or equipment, and is willing to offer substantially similar prices?
NRS 333.480
- Can You join or use contracts solicited by local governments located in or outside Nevada?
NRS 332.195 (local governments); New Section in Ch 333 (AB 86, Sec. 25) (State Purchasing Division)

Certified Contract Managers

Each agency must have a contract manager, who must take the Certified Contract Manager course offered by the Division of Purchasing. SAM 0322.

<http://purchasing.nv.gov/SA/TrainingOpps/>

The course covers procurement, contract management and use of the State's Contract Entry Tracking System (CETS)