



STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Purchasing Division

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OFFICE OF THE ATTORNEY GENERAL
CARSON CITY, NEVADA

MAY 01 2019

May 1, 2019

Attorney General Aaron Ford
Chair, Governor's Task Force on Sexual Harassment and Discrimination Law and Policy
Office of the Attorney General
101 North Carson Street
Carson City, NV 89701

Re: Governor's Task Force on Sexual Harassment and Discrimination Law and Policy

Dear Attorney General Ford,

On behalf of the Purchasing Division of the Department of Administration, I am submitting this report, as required by Executive Order 2019-2, on the sexual harassment and discrimination policies of Purchasing's vendors. This report contains information from vendors with contracts or interested in contracting with the State to supply goods or services pursuant to Chapter 333 of Nevada Revised Statutes. This report does not contain information from vendors for construction projects awarded pursuant to Chapter 338 of Nevada Revised Statutes or highway projects awarded pursuant to Chapter 408 of Nevada Revised Statutes.

The Numbers

After the issuance of Executive Order 2019-2, Purchasing contacted all registered vendors, numbering more than 4,800 at that time, through the NevadaEPro online procurement system to request copies of the vendors' sexual harassment and discrimination policies. On February 22, 2019, an all-agency memorandum was sent requesting agencies to encourage vendors with contracts approved before the recent implementation of NevadaEPro to register in the system. Numerous follow-up messages were sent via email to the vendors. As of today, more than 5,800 vendors are registered in NevadaEPro and 1,532 policies have been submitted.

This response rate is surprisingly high considering most vendors registered in NevadaEPro are not currently under contract with the State. These businesses registered merely to be eligible to win contracts with the State in the future. Even though the filing of a policy is not required to register in the system or to do business with the State, many businesses responded by providing copies of sexual harassment and discrimination policies.

Some businesses may have decided not to expose their policies to public view when there is nothing to gain. Others may have chosen not to invest the time required to upload documents. Still other businesses may simply not have such policies. For example, Purchasing buys hay from farmers to supply to the ranch operated by Silver State Industries. Small businesses like family farms are unlikely to have written sexual harassment and discrimination policies.

The Policies

Purchasing reviewed more than 400 of the policies submitted by the State's vendors. As expected, many use the definition of "sexual harassment" adopted by the federal government and set forth at 29 CFR §1604.11. This definition is also incorporated into the sexual harassment and discrimination policy of Nevada's executive branch. NAC 284.0995.

While the policies varied greatly in length, many well-organized policies required only a few pages. Several policies usefully included specific examples of the types of physical conduct, verbal conduct, and non-verbal conduct that can constitute sexual harassment. Upon request, Purchasing will provide copies of the collected policies in a suitable electronic format.

The Future

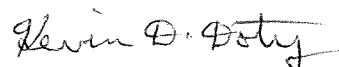
If the Governor's Task Force on Sexual Harassment and Discrimination Law and Policy considers proposing legislation to prohibit the State from doing business with vendors that do not have written sexual harassment and discrimination policies here are a few points to consider. First, the existence of a written policy does not guarantee that a vendor is adhering to that policy. Second, many small businesses, like family hay farms, will probably never draft such policies. Finally, there will be situations where the State could not practically afford to be legally prohibited from entering into a contract with a vendor that does not have such a policy. Potential solutions to these problems are set forth in a statutory scheme enacted by the State of Oregon.

Oregon law, specifically ORS 279A.112, requires each of the state's vendors to certify that it has "a policy and practice" of prohibiting sexual harassment and discrimination. That law sets a minimum contract amount of \$150,000 for the restriction to apply and creates an exemption for when only one vendor submits a proposal in response to a solicitation. Other Oregon laws contain additional exemptions including sole source contracts (ORS 279B.075), emergency contracts (ORS 279B.080), and other special circumstances (ORS 279B.085).

All of these concepts could be enacted into Nevada law by adding the following single section to Chapter 333 of Nevada Revised Statutes: "The Administrator may not award a contract following a competitive request for proposals issued pursuant to NRS 333.165(1) to a vendor that has failed to certify it has a policy and practice of prohibiting sexual harassment and discrimination unless that vendor submitted the only response." This language would create the same important exemptions found in Oregon's laws with the only significant difference being a lower threshold for when the restriction applies. Nevada's prohibition would apply to contracts for \$100,000 or more.

If you have any questions about this report, please do not hesitate to contact me.

Respectfully submitted,



Kevin D. Doty