

STATE CONTRACTING POLICIES AND PROCEDURES

Boards and Commissions Training

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Senior Deputy Attorney General

Kevin D. Doty

Sources of Nevada Procurement Law

- NRS Chapter 333 (State Purchasing)
 - 332 (local governments)
 - 338 (Public Works)
 - 408 (NDOT)
 - 277 (interlocal agreements)
- NAC (Nevada Administrative Code)
- SAM (State Administrative Manual)

Applicability of NRS 333.700

- Grants authority to contract with Independent Contractors
- 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
 - 2 CFR 200.317
- Exceptions – e.g., NSHE, Housing Div, Local Gov’ts

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.)

“Government Corruption Exposed”

- Don't become a headline
- It can be dangerous to go into a procurement with the idea that you already know which vendor you want
- Remember what Ross said this morning?

Time & Talk

- The easiest way to avoid procurement problems is to give yourself time for the process and reach out to Purchasing early in the process.

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

SERVICES

- Request for Proposals
- Contract for Services of Independent Contractor
- REQUIRES DAG REVIEW AS TO FORM NRS 333.700(6)
- BOE approval

GOODS

- Invitation to Bid
- Bid
- No BOE approval

Purchasing's role – SAM 305

Contracts for Services

- Purchasing Contracts for Services \geq \$100,000; may authorize Agency \geq \$100K
- Services $> 25k < 100k$ agency does formal RFP
- Services $< 25K$ agency does informal
- SAM 313

Purchase of Goods

- $> \$50,000$: Purchasing Division to receive sealed bids on an ITB. NRS 333.300
- Goods $> 5k$ but less than \$50k agency does informal but Purchasing reviews
- Goods $< 5k$ agency informal

Special approvals

- IT components and phone systems
- New and used vehicle purchases must be approved by BOE - 1933

Shortcut I

- Purchasing Division has Statewide 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/service agreement

Shortcut II

- Preferred Purchase Program
- <http://preferred/purchase.nv.gov/>

Shortcut III

- Surplus property program
- Federal surplus property program

Shortcut IV

- Does Vendor have a contract with GSA for these same supplies, materials or equipment, and is willing to offer substantially similar prices? NRS 333.480

Shortcut V

- Can you create a contract on another jurisdiction's solicitation? NRS 333.475
- Shameless copying is okay too

EXCEPTIONS FROM COMPETITIVE SOLICITATION

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

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 of Purchasing

Competitive Solicitation Criteria for Award

SERVICES

- **Best interest of the state** – as determined by the scores assigned to the proposals; NRS 333.335(5)
- Criteria are disclosed in the RFP
- Criteria can be almost anything you want

GOODS

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

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- Do you have the money in your budget to pay for these services?

Do you need a TIE?

- Technology Investment Evaluation
- Are you spending \$50k or more on technology?
- Replaces TINs and CINs
- Can take up to six weeks to get a TIE Completion Memo from GTO

RFPs

- Requests for Proposals
- What services do you need?
- Get insurance requirements from Risk
- A good RFP can form the basis for a good contract
- Deliverables preferable to liquidated damages
- Post on NEVADAePro and newspaper advertising

Evaluation and Award Process

- Evaluators score the proposals based on criteria set forth in the RFP
- Notice of Intent to Award
- Negotiate contract
- Notice of Award
- Losing vendors have 11 days to appeal

Contract for Services of Independent Contractor

- NRS 333.337 – Contracts must be in writing, signed, have insurance determined by Risk Management, and be approved by your DAG
- State contract forms can be found at <http://purchasing.nv.gov/Contracts/ToolBox/#Forms/Templates>

Importance of Standard Contracts

- 10A - Termination Without Cause
- 10B- Nonappropriation Clause
- 12- Limits on State's Liability (NRS Ch 41)
- 12- LOL
- 14 - Indemnification from Contractor
- 16- Insurance
- 20 – Assignment - SAM 121
- 26 - Warranties
- 30 - Choice of Nevada Law and Jurisdiction

NRS 333.339 (2021)

A contract entered into or renewed under NRS Chapter 333

- (1) May not require litigation or arbitration in another state or nation;
- (2) May not require the State to indemnify another party against liability for damages.



Beware of Contractor Forms

- Contractor May Submit Its Own Form
- Will Contain Provisions Detrimental to State and May Violate Nevada Law
 - Auto renewal
 - Confidentiality/Public Records
 - Hyperlink terms
 - State indemnification of vendor
 - Foreign jurisdiction, venue and governing law

Contract Negotiation

- Vendor should have agreed to our standard terms as part of the RFP process
- Attachment AA – Negotiated Items
- Don't negotiate against yourself
- Leverage
- Put it in writing! Parol evidence

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

- Standard Form Contract Requires a separate Insurance Schedule
- 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

Why Insurance?

- We have some protection under NRS 41
- And the vendor indemnifies us
- Let's maim a Californian

Board of Examiners Approval

CONTRACTS FOR SERVICES (not goods)

- <\$2,000 (Agency approval)
- 2,000 – <100,000 (Clerk of BOE)
- 100k or greater it goes to BOE for approval at monthly meeting
- SAM 107

SPECIAL CASES

- LEASES of equipment – by the Administrator of Purchasing NRS 333.150
- Interlocal Cooperation Agreements NRS 277.080 -.170 (Requires BOE approval)
- Interlocal Contracts between public agencies NRS 277.180 (Requires BOE approval)

Lease of Office Space

- 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)

Potential problems

- Grants
- MOUs

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 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
- Can you amend a contract that has expired?
- Increasing NTE Amount
- Assignment/Change of Contractor's Form of Organization (There is a special amendment and assignment form)
- New or different service? (probably not allowed)

Certified Contract Managers

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

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

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

Contract Management

- “I now pronounce you...”
- The real work begins
- The State’s weak link
- Friendly, but not friends
- Documentation
- Disputes – get your lawyer involved early
- Breach letter – Section 4 - Notice
- Section 10A - **Termination Without Cause**

QR Code
for CLE

CLE Certifying Attendance for
Credit Form - State Contracting
Policies and Procedures

