



State Government Procurement Primer

for Nevada Attorneys as Prospective Contractors or Counsel to Vendors

BY HOMA SAYYAR, ESQ.

Nevada attorneys may not be aware that they are a few clicks away from knowing what government contract opportunities are available for themselves and their clients at nevadaepro.com. Offer, acceptance, and consideration are an important part of government contracting, but there are additional rules and regulations to protect trust in, and transparency of, the process. For example, the Nevada Open Records Act¹ is a floor and not a ceiling in the realm of government transparency, where state government procurement² is concerned. Requirements of government agencies for their proposed projects must be clear and available equally to all interested parties, prospective vendors must be assured of the ongoing confidentiality of their trade secrets, and appropriate disclosures related to the procurement process (such as scoring criteria) need to be readily available. A diligent Nevada attorney does not need to be familiar with these laws and regulations to get started but should read available documentation carefully.

Procurement rules for almost all state agencies, boards and commissions, and more³ are primarily found in Nevada Revised Statute (NRS) 333, NRS 334, Nevada Administrative Code (NAC) 333, the State Administrative Manual⁴, and even NRS 281A (Ethics in Government). Government agencies gather their requirements and follow rules about how formal competition must be. At lower contract value⁵ thresholds that may be as simple as calling three vendors to ask for quotes. At contract values more than \$100,000, Nevada State Purchasing of the Department of Administration facilitates formal solicitations to seek best value while offering opportunities for any qualified vendor to participate. A solicitation is a document detailing exactly what a submission (or bid) needs to include and how it will be considered (evaluated). Submitting a good-faith bid is like following a rubric for a school assignment: demonstrate responsiveness (answer what is asked) and responsibility (support claims of the ability to perform successfully with evidence).

Nevada State Purchasing uses nevadaepro.com as its primary system of record and advertisement. NRS 239.010(1) provides, “[...] all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person and may be fully copied or an abstract or memorandum may be prepared from those public books and public records.” NAC 333.185(2) indicates that the public must be able to “review a bid or proposal that is a public record pursuant to subsection 1 at the offices of the Division at no charge.”

In the digital era, the online repository and bidding platform at nevadaepro.com fulfills this obligation and

relevant public records request results are posted there as they arise. This system benefits not only the requestor of records, but the public and vendor community.⁶ Opportunities are posted on the platform, most commonly as a “Request for Proposals” (RFP), as well as a paper trail of years of projects from RFP to fully negotiated and executed contract. Not sure what opportunities may be ahead? The State Administrative Manual has a baseline recommendation of re-solicitation every four years.⁷

While transparency is key in procurement, there are guardrails for confidentiality to ensure fairness as well as to protect against even the appearance of impropriety. Be wary of the “single point of contact” rule. Attorneys supporting clients in government procurement have disqualified their clients from consideration by ignoring this rule, which is included in all written RFP postings, when they communicate with state agencies about a pending procurement instead of going through the single point of contact. NAC 333.155 provides for disqualification where a vendor or someone acting on their behalf violates the rule because of the risk of vendors seeking to obtain inside information or possibly intimidate government officials or employees as opportunities are in the solicitation process.

Other protections of note include a “quiet period” or “cone of silence” (for those who recall the TV show “Get Smart”), which starts even before a solicitation is posted because of strict rules about access to inside information.⁸ NRS 334.080(2)(b) (which applies equally to state and local governments) references that information that is not available to the general public cannot be shared by government employees with bidders. This rule also means an incumbent vendor cannot and should not even be able to know about future non-public solicitation efforts. NRS 333.180, commonly called the “design/build rule,” prohibits a vendor that is retained to help design a program or project from proposing on that project opportunity. NRS 333.800 for state procurements provides that it is a misdemeanor for a vendor to “solicit or obtain” certain information, including information about the submissions of others.

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In the formal solicitation process, the submission deadline kicks off the evaluation period. Published criteria are the rubric by which an evaluation committee⁹ scores proposals. After reviewing and scoring in accordance with the parameters set by the solicitation, the process may move to presentations among a smaller pool of vendors, a best and final offer phase, or even go directly to a Notice or Letter of Intent. Knowing that the written submission may be all evaluators see is all the more reason to carefully review requirements and respond with detail and supportive information.

The negotiation period has its own strictures. If an evaluator later serves as a negotiator, they cannot use information learned from other proposals in their new role. If a negotiator is not an evaluator, they cannot see any other proposals except the one being negotiated to contract. The single point of contact rule is also firmly still in place, which

means disqualifications of vendors not selected for negotiation at times. This happens when a proposing vendor sees that they were not selected to negotiate and contacts (or has their attorney contact) someone with the state to register their disappointment or ask questions. They are then disqualified from consideration in the event the negotiating vendor

reaches an impasse in the process and also loses the ability to protest the ultimate award.

Once negotiations have culminated in a contract document, a Notice of Award is issued pursuant to NAC 333.170 and is posted on nevadaepro.com. The contract can then be submitted to the Governor’s Finance Office for approval via the Board of Examiners or its Clerk of the Board (depending on the contract’s value). The protest period begins upon Notice of Award and runs for 11 days. Having an accessible and public repository for records helps unsuccessful bidders have access to information they’ll need during the 11-day window to determine if they have a claim for an alleged violation of NRS Chapter 333.

State employees are very aware of the importance of good procurement processes and receive training and guidance to support them. They are made aware of NRS 333.810, which provides for voiding contracts not in

Useful Bid Tabulation Information

On the public records front, in addition to the vendor proposals, the bid tabulation attachments released with a Notice of Award on nevadaepro.com include:

- **The notice of award, per NAC 333.170(5);**
- **The final, partially executed contract, per NAC 333.170(4);**
- **The evaluation scoring summary, per NRS 333.335(6); and**
- **The SAM.gov confirms the awarded vendor is not federally debarred.**

If a public records request is received related to a specific solicitation, or “records pertaining to the evaluation of a solicitation,” the following documents may be added to a bid tabulation page, either at time of award (if the single point of contact was aware of such a request pending the change of information’s status from confidential to public) or after:

- **Evaluator score sheets, per NRS 333.335(4);**
- **Evaluator comments, per NAC 333.162(4);**
- **Evaluator instructions, per NAC 333.162(1);**
- **Evaluator acknowledgements, per NAC 333.162(2);**
- **Presentation/BAFO information, per NAC 333.165; and**
- **Communications, emails, etc., if specifically requested.**

Consider how useful this information may be if you are watching for a new solicitation based on when a prior contract ends, or if you are trying to support a client in formulating their response to a pending solicitation. It is available without even logging in, and there are outreach and training staff at Nevada State Purchasing to answer questions if need be.

CONTINUED ON PAGE 19

State Government Procurement Primer

compliance with the chapter and even reflects personal liability for the signatory and the head of their agency if such contracts do exist. More broadly, they are warned of NRS 353.260, which includes possible misdemeanor penalties where there is an attempt to bind the state outside of its budget authority, which is implicated when legal processes are not followed.

Ultimately, the State of Nevada is one of the best customers to have: state agencies have a service-driven motive for the benefit of the public and their vendors get to be a part of that mission. What Nevada attorneys should know is that there are opportunities to effectively and ethically represent clients interacting with state contracting processes that not only benefit the lawyer’s practice on behalf of their client, but the lawyer’s own business opportunities. Register as a vendor today and get notice of relevant opportunities as they arise!



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ENDNOTES:

1. NRS Chapter 239.
2. NRS Chapter 333. Note that local government procurement is in alignment with NRS Chapter 332.
3. NRS 333.020(10) defines “using agencies” of the State Purchasing Division that are subject to the rules laid out in NRS Chapter 333 and includes exceptions such as the Nevada System of Higher Education. “Using agencies” are not, as one might assume, those who will use the services laid out in a given contract.
4. The State Administrative Manual is a living regulatory document for state processes – the latest version is on the Governor’s Finance Office website at budget.nv.gov - be wary of Google searches as the top result is a 2017 version of the manual.
5. Contract value is not just an amount budgeted for payment and includes the potential benefit for a vendor. See SAM 0305(b)(3) “Competition Requirements.”
6. Gone are the days of standing in a room opening sealed envelopes at an appointed time and calling out the names of the bidders. “Bid opening” is not when a project is open for submissions but is when the time for submissions has ended and the now metaphorical box of sealed bids is examined and the names of each proposing vendor posted online.
7. SAM 0305(e).
8. See NRS 333.333, 333.337.
9. The composition of which must be approved by the Purchasing Administrator subject to rules about conflicts, supervisory chains, and even open meeting law considerations. See NAC 333.162.

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