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STATE OF NEVADA  
**PUBLIC EMPLOYEES' BENEFITS PROGRAM**

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Board Chairman

**Board Supplemental Materials**  
**January 26, 2016**  
**PEBP Board Meeting**

**NAC 333.170 Procedures for award or withdrawal of contract. ([NRS 333.130](#), [333.135](#))**

1. If the chief of the using agency, the Administrator, or the committee to evaluate proposals selects a proposal for the award of the contract, the person designated by the Administrator or the using agency as the contact person pursuant to [NAC 333.155](#) shall provide to each person who submitted a proposal a written notice of intent to award the contract. The notice of intent to award the contract must:
  - (a) Identify the proposal selected for the award of the contract; and
  - (b) State that the award of the contract is contingent upon the successful negotiation of the final terms of the contract with the person selected for the award of the contract.
2. After the contract has been awarded on a contingency basis, the negotiations of the final terms of the contract are confidential and must not be disclosed to any other person who has submitted a proposal until a final contract is agreed upon.
3. If a final contract is not agreed upon:
  - (a) The person designated by the Administrator or the using agency as the contact person pursuant to [NAC 333.155](#) shall:
    - (1) Provide written notice to each person who submitted a proposal; and
    - (2) Issue a written withdrawal of the award to the person whose proposal was selected for the award of the contract and with whom the chief of the using agency, the Administrator, or the committee to evaluate proposals was unable to agree upon a final contract.
  - (b) The Administrator will, and the chief of the using agency and the committee to evaluate proposals shall:
    - (1) Negotiate, in a manner consistent with the provisions of subsection 2, the final terms of the contract with the person who submitted the proposal that received the next highest score; or
    - (2) Withdraw the request for proposals.
4. The Administrator will, and the chief of the using agency and the committee to evaluate proposals shall, repeat the procedure set forth in this section until a final contract is agreed upon or the request for proposals is withdrawn.
5. After the contract has been executed by all the appropriate parties, the person designated by the Administrator or the using agency as the contact person pursuant to [NAC 333.155](#) shall provide to each person who submitted a proposal a written notice of the award of the contract. The notice of the award of the contract must:
  - (a) Identify the proposal pursuant to which the contract will be awarded provided that, if applicable, the contract is approved by the State Board of Examiners;
  - (b) State that the 10-day period after which a person who makes an unsuccessful proposal may file a notice of appeal as set forth in subsection 1 of [NRS 333.370](#) has commenced; and
  - (c) State that a person who made an unsuccessful proposal may file a notice of appeal pursuant to [NRS 333.370](#).

(Added to NAC by Chief of Purchasing Div. by R099-99, eff. 12-13-99; A by R078-01, 12-17-2001)

**NRS 333.370 Appeal by person making unsuccessful bid or proposal.**

1. A person who makes an unsuccessful bid or proposal may file a notice of appeal with the Purchasing Division and with the Hearings Division of the Department of Administration within 10 days after:

- (a) The date of award as entered on the bid record; and
- (b) The notice of award has been posted in at least three public buildings, including the location of the using agency.

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

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

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

- (a) The estimated total value of the contract; or
- (b) The method for determining the estimated total value of the contract,

↪ based on records of past experience and estimates of anticipated requirements furnished by the using agency.

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

5. The hearing officer may cancel the award for lack of compliance with the provisions of this chapter. A cancellation of the award requires readvertising for bids and a new award in accordance with the provisions of this chapter.

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

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

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

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

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

[26:333:1951]—(NRS A 1963, 1058; 1971, 14; [1985, 45](#); [1991, 623](#); [1995, 378](#); [1997, 487](#))