

**PROPOSED REGULATION OF THE ADMINISTRATOR OF THE
REHABILITATION DIVISION OF THE DEPARTMENT OF
EMPLOYMENT, TRAINING AND REHABILITATION**

LCB File No. R105-08

September 25, 2008

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-12, NRS 334.025.

A REGULATION relating to the Program to Encourage and Facilitate Purchases by Agencies of Commodities and Services From Organizations for the training and employment of persons with mental or physical disabilities; providing certain requirements for contracts relating to the Program; requiring that such contracts be approved by the Rehabilitation Division of the Department of Employment, Training and Rehabilitation; authorizing the Division to withdraw its approval of such contracts in certain circumstances; providing for the appeal of decisions by the Division to deny or withdraw its approval of such contracts; revising provisions governing registration of organizations that enter into contracts pursuant to the Program; and providing other matters properly relating thereto.

Section 1. Chapter 334 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. *As used in NAC 232.280 and 232.290 and sections 2 to 10, inclusive of this regulation, the words and terms defined in NAC 232.220 to 232.270, inclusive, and sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Program” means the Program to Encourage and Facilitate Purchases by Agencies of Commodities and Services From Organizations established pursuant to NRS 334.025.*

Sec. 4. *“Registered organization” means an organization that has registered with the Division pursuant to subsection 3 of NRS 334.025.*

Sec. 5. 1. *A registered organization may not enter into a contract pursuant to the Program, or any amendment thereto, unless the proposed contract or amendment has been submitted to the Division for its approval. The Division will approve such a contract or amendment if the Division determines that:*

(a) The registered organization has sufficient capacity, capital, training and experience to successfully perform the terms of the contract or amendment.

(b) Except during the 60 days commencing on the date of execution of the contract or amendment, at least 75 percent of the hours of direct labor required for the production or provision of commodities or services pursuant to that contract or amendment will be performed by persons with disabilities.

2. Except as otherwise provided in this subsection, within 15 days after receipt of a proposed contract or amendment from a registered organization pursuant to subsection 1, the Division will notify the registered organization in writing regarding whether the Division has approved or disapproved the contract or amendment. If the Division does not provide such notification within the 15-day period, the proposed contract or amendment is deemed approved by the Division.

3. If the Division denies approval of a proposed contract or amendment, the Division will provide to the registered organization, with the written notification of the denial, a written statement explaining the reasons for the denial. Within 15 days after receiving notification of the denial, the registered organization may submit a written request to the Administrator for a hearing to appeal the denial.

4. Not later than 5 business days after entering into a contract or amendment approved by the Division pursuant to this section, a registered organization shall submit to the Division a copy of the final, executed contract or amendment, including, without limitation, any attachments and exhibits.

Sec. 6. 1. *The Division may at any time withdraw its approval of a contract or amendment that was approved pursuant to section 5 of this regulation if the Division finds that:*

(a) The training and employment of persons with disabilities is not the primary purpose of the registered organization;

(b) The performance of the contract does not primarily benefit, through training or employment, persons with disabilities;

(c) The registered organization has failed to comply with the provisions of NRS 334.025, NAC 232.280 or 232.290 or sections 2 to 10, inclusive, of this regulation; or

(d) The registered organization has failed to adequately perform its obligations under the contract or amendment.

2. If the Division withdraws approval of a contract or amendment pursuant to subsection 1, the Division will provide to the registered organization written notification of the

withdrawal and a written statement explaining the reasons for the withdrawal. Within 15 days after receiving such notification, the registered organization may submit to the Administrator a written request for a hearing to appeal the withdrawal.

Sec. 7. 1. *Upon receipt of a request for a hearing pursuant to subsection 3 of section 5 of this regulation or subsection 2 of section 6 of this regulation, the Administrator or his designee will submit the request to the Hearings Division of the Department of Administration for assignment to a hearing officer.*

2. A hearing requested pursuant to subsection 2 of section 6 of this regulation operates as a stay of action with respect to the withdrawal of approval of the contract or amendment until a determination on the appeal is made by the hearing officer assigned to hear the appeal.

Sec. 8. 1. *A registered organization that requests a hearing pursuant to subsection 3 of section 5 of this regulation or subsection 2 of section 6 of this regulation must:*

- (a) Post a bond with a solvent surety authorized to do business in this State; or*
- (b) Submit to the Administrator other security that is approved by the Administrator.*

2. A bond posted or other security submitted pursuant to subsection 1 must be in an amount equal to 25 percent of the estimated total value of the contract or amendment for which the denial or withdrawal of approval is being appealed. At the request of a registered organization posting or submitting a bond or security, the Administrator shall provide to the registered organization:

- (a) The estimated total value of the contract or amendment for which the denial or withdrawal of approval is being appealed; and*
- (b) The method for determining the estimated total value of the contract or amendment.*

3. The Administrator shall hold a bond or other security posted or submitted pursuant to subsection 1 until a determination on the appeal has been made by the hearing officer assigned to hear the appeal.

4. If the hearing officer finds in favor of the registered organization, the bond or other security will be returned to the registered organization within 30 days after the finding.

5. If the hearing officer does not find in favor of the registered organization, the Division will make a claim against the bond or other security for an amount equal to the expenses incurred by the Division in defending the appeal. Such a claim must be heard by the hearing officer that was assigned to hear the appeal or another hearing officer of the Hearings Division of the Department of Administration. Any amount of the bond or other security not awarded to the Division as part of the claim will be returned to the registered organization within 30 days after the hearing on the claim.

Sec. 9. *A person may file a complaint with the Division alleging the noncompliance of a registered organization with the provisions of NRS 334.025, NAC 232.280 or 232.290 or sections 2 to 10, inclusive, of this regulation. Such a complaint must:*

- 1. Be in writing;*
- 2. Contain the contact information of the person who filed the complaint; and*
- 3. Be signed by the person who filed the complaint.*

Sec. 10. *The Division may audit the books and records of a registered organization:*

- 1. To ensure that the carrying out of a contract or amendment entered into by the registered organization pursuant to the Program effectuates the purposes of the Program.*

2. *In the course of conducting an investigation of a complaint filed pursuant to section 9 of this regulation.*

3. *In response to any legal action alleging noncompliance with the provisions of NRS 334.025, NAC 232.280 or 232.290 or sections 2 to 10, inclusive, of this regulation.*

Sec. 11. NAC 232.280 is hereby amended to read as follows:

232.280 *1.* An organization must that wishes to register with the Division ~~[, on a]~~ *pursuant to subsection 3 of NRS 334.025 must submit with the registration* form prescribed by the Division ~~[, before contacting:~~

~~—1.— Any agency concerning entering into a contract pursuant to the Program to Encourage and Facilitate Purchases by Agencies of Commodities and Services from Organizations established pursuant to NRS 334.025;~~

~~—2.— The Nevada System of Higher Education concerning entering into a contract pursuant to the Program to Encourage and Facilitate Purchases by Agencies of Commodities and Services from Organizations established pursuant to NRS 334.025 if the Nevada System of Higher Education participates in the Program on a voluntary basis as described in NRS 333.470;~~

~~—3.— Any governing body of a local government or its authorized representative concerning the award of a contract by the governing body of the local government or its authorized representative pursuant to NRS 332.117; or~~

~~—4.— The Purchasing Division of the Department of Administration concerning the award of a contract by the Purchasing Division pursuant to NRS 333.375.] :~~

- (a) If the organization is a nonprofit organization, a copy of a ruling or determination letter from the Internal Revenue Service indicating that the organization is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code;*
- (b) A copy of the articles of incorporation of the organization;*
- (c) A list containing the names, addresses and telephone numbers of the members of the board of directors of the organization;*
- (d) A copy of the organizational chart of the organization, including, without limitation, job titles and names;*
- (e) A copy of the liability insurance policy of the organization applicable to the training and employment of persons with disabilities;*
- (f) If the organization is authorized to pay subminimum wages to persons with disabilities, a copy of the subminimum wage certificate issued to the organization by the United States Department of Labor authorizing the payment of subminimum wages, accompanied by a letter of explanation concerning the exemption; and*
- (g) A signed and notarized affirmation from an officer or authorized agent of the organization that the organization possesses documentation that persons with disabilities will perform at least 75 percent of the hours of direct labor required for the production or provision of commodities or services under a contract entered into by the organization pursuant to the Program.*

2. A registered organization shall maintain the documentation required pursuant to paragraph (g) of subsection 1 in a confidential manner except that a registered organization

shall make that documentation available upon request to the Division or to the agency with which the registered organization has entered into a contract pursuant to the Program.

3. A certificate of registration issued by the Division pursuant to this section is valid for 4 years after the date of its issuance and may be renewed. A registered organization may request renewal of its registration for an additional 4 years by submitting the form prescribed by the Division and the affirmation described in subsection 1.

Sec. 12. NAC 232.290 is hereby amended to read as follows:

232.290 1. Not later than 20 days after the end of each quarter of a fiscal year, ~~an~~ *a registered* organization that has entered into a contract with an agency pursuant to the Program, ~~[to Encourage and Facilitate Purchases by Agencies of Commodities and Services from Organizations established pursuant to NRS 334.025,]~~ with a governing body of a local government or its authorized representative pursuant to NRS 332.117 or with the Purchasing Division of the Department of Administration pursuant to NRS 333.375, shall provide a written report to the Administrator. Each quarterly report must include, without limitation:

(a) The number of contracts the *registered* organization has entered into during the preceding quarter pursuant to NRS 332.117, 333.375 or 334.025 which are in effect and a list of the agencies with which the *registered* organization has entered into those contracts; and

(b) The following information relating to each such contract:

(1) The type and scope of the services or commodities to be provided pursuant to the contract;

(2) The total number of persons with disabilities employed by the *registered* organization to provide services or commodities to an agency pursuant to the contract;

(3) The number of persons with disabilities ~~[, other than those persons who are described in subparagraph (4),]~~ who are employed by the *registered* organization to provide services or commodities to an agency pursuant to the contract who have at least 90 days of competitive employment without a break in service;

~~(4) [The number of persons who are receiving vocational rehabilitation services who are employed by the organization to provide services or commodities to an agency pursuant to the contract who have at least 90 days of competitive employment without a break in service;~~

~~—(5)]~~ The annual value of the contract;

~~[(6)]~~ (5) The ratio of the number of persons with disabilities who are employed by the *registered* organization to provide services or commodities to an agency pursuant to the contract to the number of persons without disabilities who are employed by the *registered* organization to provide services or commodities to an agency pursuant to the contract;

~~[(7)]~~ (6) The hourly wage which is paid to each person with a disability who is employed by the *registered* organization to provide services or commodities pursuant to the contract; and

~~[(8)]~~ (7) The number of days each person with a disability was employed by the *registered* organization to provide services or commodities pursuant to the contract.

2. As used in this section:

(a) “Competitive employment” means work:

(1) In the competitive labor market that is performed by a person with a disability on a full-time or part-time basis in an integrated setting; and

(2) For which the person with a disability is compensated at or above the federal minimum wage or the state minimum wage, other than the special minimum wage as that term is defined in

NAC 608.250, but not less than the customary wage and the level of benefits paid by the employer of the person with a disability for the same or similar work performed by persons without disabilities.

(b) “Fiscal year” means a period beginning on July 1 and ending on June 30 of the following year.

(c) “Integrated setting” has the meaning ascribed to it in 34 C.F.R. § 361.5(b)(33).

~~[(d) “Vocational rehabilitation services” has the meaning ascribed to it in NRS 615.140.]~~