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To: Kristopher Sanchez; Sharath Chandra
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Subject: Request for comment
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Attachments: Competitive Bidding An Undefined Standard NRED and the Commission Ignore 8.20.26.pdf

Director Sanchez, Administrator Chandra, CIC Commission Chairperson Heydarian

NVHOAReform intends to publish the post attached using Nevada's HOA competitive-bidding rules as an example of a broader problem in the State's HOA regulatory system: **what happens when an important regulatory standard remains undefined, is applied largely through confidential investigations, and a formal rulemaking petition seeking clarification does not result in a clear public Commission decision.**

Competitive bidding provides a particularly useful example.

NRS 116.31086 contains the familiar "if" language that NRED has relied upon in stating that if an association solicits no bids, the Division cannot say that statute itself was violated. But NAC 116.405(8)(d) separately asks whether a board caused the association to obtain, **"when practicable, at least three bids."** NRED's own Advisory Opinion 11-02 recognizes that inquiry, and NRED has publicly stated that it expects three bids unless doing so is not reasonably possible.

Yet the central standard—**when bidding is "practicable"**—remains largely undefined in any meaningful public way.

That creates a substantive bidding problem, but it also illustrates two larger institutional concerns.

First, **rulemaking process compliance**. I formally petitioned for clarification of this and related regulatory ambiguities. NRED did not reject the petitions, and they were provided to Commissioners in supporting materials. However, I have been unable to identify a distinct agenda item, public Commission consideration, vote, or other disposition resolving the requested clarification. I later challenged NRED's handling of those petitions under NRS 233B.100. NRED denied that it violated the statute.

Second, **regulatory transparency**. If NRED determines during confidential investigations whether bidding was or was not "practicable," but does not publish the criteria or reasoning used in those decisions, homeowners, boards, and managers have no meaningful body of guidance showing how the rule is actually applied.

The post therefore uses competitive bidding as a case study in a larger question:

How can Nevada expect consistent compliance when important regulatory standards remain undefined, enforcement reasoning is largely hidden, and formal petitions seeking clarification do not result in a clear public Commission decision?

Before publication, I would welcome your response to these concerns.,

I am also asking Director Sanchez to place these broader institutional issues before the CIC Task Force. Competitive bidding is only one example. The larger concern is whether Nevada's HOA regulatory system provides a reliable mechanism for identifying ambiguous regulations, obtaining public Commission consideration of requested rulemaking, and making the standards developed through enforcement sufficiently transparent for homeowners and the regulated community to understand.

I ask Shareece to forward copies of this note to Chair Heydarian, given the public has no method to communicate directly with her or the Commission.

Thank you in advance for your assistance and response.

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Competitive Bidding: An Undefined Standard NRED and the Commission Ignore

Competitive bidding should be one of the simplest protections in HOA governance. Boards spend money that belongs to homeowners. Competitive bids help test price, compare services, expose alternatives, and reduce the risk of favoritism or self-dealing.

Nevada recognizes that principle. But Nevada still has not clearly told homeowners, boards—or apparently even investigators—when competitive bidding is actually required. The problem comes down to two words in a Commission regulation: *"When practicable."*

NAC 116.405(8)(d) says the Commission may consider whether board members caused an association to obtain, *"when practicable, at least three bids"* before purchasing services. NRED has also said publicly that it expects associations to obtain three bids unless doing so is not reasonably possible. That sounds straightforward.

But what makes bidding "practicable"? What facts make it impracticable? What evidence does NRED require? What reasons for avoiding competition are acceptable? Despite years of administering this requirement, neither NRED nor the Commission has provided homeowners and boards with a meaningful public standard answering those questions.

And both have been repeatedly asked to do so.

The Problem Is Bigger Than the Word "If"

Much of the debate over Nevada's competitive-bidding law has focused on one word in NRS 116.31086: "if." The statute provides that **if** an association solicits bids for certain contracts above specified financial thresholds, it must, whenever reasonably possible, solicit at least three.

NRED has relied heavily on that language. In its Winter 2022 *Community Insights*, the Division stated: *"The word 'if' cannot be ignored, therefore if no bids are solicited, the Division cannot state that a violation of law took place."* But that is only part of what NRED said.

The Division immediately acknowledged that soliciting bids is a best practice, cited NAC 116.405(8)(d), recognized the potential fiduciary-duty implications of failing to bid, and said a board deciding that bids were unnecessary should thoroughly discuss its reasoning at a public board meeting.

That distinction matters. NRS 116.31086 may answer one question: If bids are solicited, how many must be sought? But NAC 116.405 raises a different and potentially more important question: Should bids have been solicited in the first place because doing so was practicable?

A board cannot logically make that second inquiry disappear merely by deciding to solicit zero bids.

NRED Has Already Recognized the Real Question

This is not a new interpretation. NRED issued Advisory Opinion 11-02 in 2011 under the title: **“Determining Whether Executive Board has Performed their Duty for Bids for Services ‘When Practicable.’”** The opinion explains “practicable” generally as something performable, feasible, or possible and recognizes that the determination depends upon the particular circumstances. More importantly, the advisory opinion describes an enforcement process in which, when a failure to obtain bids is alleged, NRED examines the particular facts and determines whether there is sufficient evidence to allege a violation.

The Commission ultimately determines whether a violation occurred. That means NRED's own framework points to the question that should be central whenever an HOA awards a substantial contract without competition:

Was obtaining competitive bids practicable under the circumstances?

The word **“if”** in NRS 116.31086 does not answer that question. But What Does “Practicable” Actually Mean? Here is where the regulatory system breaks down.

Saying that practicable means *performable, feasible, or possible* provides little meaningful guidance for deciding real HOA cases. Consider a management contract coming up for renewal.

Is competitive bidding ordinarily practicable? Can the board say it likes the current manager and therefore see no reason to seek alternatives? Does continuity of service make bidding impracticable? How much inconvenience or additional work is enough? Must there be an emergency? Does bidding become more important when the contractor is affiliated with the declarant, manager, or another person controlling the association? Must the board determine and document that bidding is impracticable **before** awarding the contract?

Should an evergreen or automatic-renewal provision be allowed to avoid competitive bidding when bidding would otherwise be practicable?

Who bears the burden when practicability is disputed? And what evidence does a NRED investigator actually require before concluding that a no-bid contract complied with the directors' duties?

Nevada provides no meaningful public criteria answering those questions. That is not merely an academic problem. It determines how millions of dollars of homeowner money can be spent.

An Undefined Standard Creates an Enforcement Problem

An imprecise standard might be workable if homeowners and boards could see how it was being applied. They largely cannot. NRED investigations and closure reasoning are generally unavailable in a form that allows the public to understand how investigators apply the phrase “when practicable.”

There is no meaningful published body of decisions showing:

- when NRED concluded bidding was practicable;
- when NRED concluded it was not;
- what reasons boards gave for avoiding competition;
- which reasons NRED accepted;
- which reasons NRED rejected; or
- what evidence investigators considered important.

The ambiguity also creates room for deliberate workarounds. Boards may accept—or even encourage—evergreen and automatic-renewal provisions for preferred management companies, landscapers, or other vendors, while those vendors have an obvious incentive to preserve them. The result can be a longstanding contract that never returns to the market. If competitive bidding would otherwise be practicable, should an evergreen provision be allowed to defeat that requirement simply by eliminating a formal renewal event?

That leaves an important regulatory requirement largely dependent upon decisions made inside confidential investigations. One board can award a substantial contract without competition and face a violation allegation. Another can do essentially the same thing and have the complaint closed. Without published criteria or meaningful closure reasoning, homeowners cannot know why. Neither can responsible boards trying to comply with the law.

That is what happens when an undefined standard is combined with a largely confidential enforcement system.

I Formally Asked NRED and the Commission to Address It

This issue has not escaped regulatory attention because nobody raised it. In 2025, I submitted formal rulemaking petitions asking NRED and the Commission to address competitive bidding and ambiguities in NAC 116.405. One of those petitions specifically identified the phrase *"when practicable"* and asked for clearer standards so the regulation could be interpreted and enforced consistently.

The issue was therefore broader than whether NRS 116.31086 should require bids. It was:

What does Nevada's existing "when practicable" standard mean, and how is it supposed to be applied?

The petitions ultimately appeared in supporting materials provided to Commissioners. But placing a petition somewhere in a large packet of supporting material is not the same as placing the requested rulemaking issue on an agenda for Commission consideration and action. I have found no agenda item in which the Commission was asked to decide what "when practicable" means.

I have found no public Commission discussion resolving the ambiguity. I have found no Commission vote rejecting the requested clarification. And I have found no resulting regulation defining the standard.

NRED and the Commission Have Both Been Asked to Address It

NRED cannot reasonably say the issue is unknown. Neither can the Commission. NAC 116.405 is a Commission regulation. The Commission is ultimately responsible for applying the standard contained in it.

NRED investigates alleged violations under that regulatory framework. Both therefore have institutional responsibilities here. And both have been put on notice.

I have repeatedly asked that the ambiguity—and my related rulemaking petitions—be placed before the Commission for consideration. Commissioners received the petitions in their supporting materials. They are aware that the regulatory language has been challenged as undefined. Yet there has been no public Commission proceeding defining what "practicable" means, no vote declining to clarify it, and no meaningful published criteria telling boards or owners how the standard is supposed to work.

NRED cannot answer that problem merely by saying materials were transmitted to the Commission. And the Commission cannot indefinitely remain passive about ambiguity in its own regulation after that ambiguity has repeatedly been brought to its attention.

At some point, failure to address a known regulatory ambiguity becomes a regulatory choice of its own.

Then the Rulemaking Process Became Part of the Problem

Nevada law provides a mechanism for citizens to ask an agency to adopt, amend, or repeal a regulation. NRS 233B.100 is not an incidental administrative procedure. It gives any interested person the ability to ask an agency to adopt, amend, or repeal a regulation. Nevada's own rulemaking guidance describes public participation as a central feature of the Administrative Procedure Act and explains that rulemaking can be used to remove uncertainty or ambiguity in the law. That is exactly what these petitions sought to do: identify ambiguous regulatory standards and ask the responsible agency and Commission to clarify them.

I used it. When my petitions still did not receive a clear disposition, I wrote to NRED alleging that its handling of them appears to violate NRS 233B.100. NRED denied that it had violated the statute.

The problem is not that the public lacks a statutory mechanism for raising these issues. Nevada created one. The question is what that mechanism means if a properly submitted petition can be placed into supporting materials and effectively be disposed of without producing either the written denial or rulemaking consideration the statute was designed to require.

That legal disagreement is important, but readers do not have to resolve it to recognize the underlying problem. Look at the result. A formal rulemaking petition identified an ambiguity in an important Commission regulation. The petition asked for clarification. The issue was known to NRED. The materials reached Commissioners. I subsequently challenged NRED's failure to obtain action on the petitions. NRED denied any statutory violation.

Yet the original regulatory question remains unanswered. **What does “when practicable” mean?**

Whatever one's view of the NRS 233B.100 dispute, the rulemaking process has produced neither a meaningful standard nor a public Commission decision declining to create one. That should concern anyone who believes administrative rules should mean something more than whatever an investigator decides they mean in an individual case.

This Is Also a Transparency Problem

There is an important connection between competitive bidding and the broader transparency problems within Nevada's HOA regulatory system. A vague standard becomes less dangerous when administrative decisions interpreting it are public. Published decisions create precedent. They tell regulated parties what conduct is acceptable. They allow owners to compare similar cases. They expose inconsistent enforcement. And they allow the Commission itself to see how a regulation is functioning in practice.

Nevada's current system provides very little of that.

NRED may decide during a confidential investigation that bidding was not practicable. The complaint may close. The homeowner may receive little meaningful explanation. Other homeowners never see the reasoning. Other boards cannot learn from it. And the Commission may never be asked to determine whether NRED applied its own regulation correctly.

The result is not merely lack of transparency. It allows NRED, through individual enforcement decisions, to effectively develop the meaning of an undefined Commission regulation without creating a public body of law explaining that meaning.

The Commission Has a Role NRED Cannot Replace

This distinction matters. NRED investigates. The Commission determines violations when matters are actually brought before it. Yet an undefined regulation administered primarily through confidential investigations shifts enormous interpretive power toward the Division.

If NRED closes a bidding complaint because an investigator concludes bidding was not practicable, that conclusion can effectively decide the matter without the Commission ever determining what “practicable” means.

If another investigator reaches a different conclusion in another case, the public may never know. That is precisely why the Commission needs to establish the standard publicly rather than allowing its meaning to emerge invisibly, case by case, inside NRED. The Commission wrote the regulation. It should explain what its regulation means.

This Matters Most When Relationships Already Exist

Competitive bidding becomes especially important when an association is considering a contract with an incumbent provider, declarant affiliate, management affiliate, or another party with an established relationship to the people controlling the association.

Competitive bidding does not mean the lowest bidder must win. It does not mean a board cannot retain a trusted incumbent. It means the board obtains information before deciding how to spend somebody else's money. What alternatives are available? What does the market charge? Are better terms available? Is the incumbent still competitive? Those are basic questions of informed governance.

A board may have a perfectly legitimate reason for retaining an incumbent contractor. But if competitive bidding was feasible, homeowners should be entitled to know why the board chose not to test the market. And where the selected contractor is affiliated with the declarant or another person controlling the association, the need for an objective and transparent standard becomes even greater.

Nevada Does Not Need Another Vague Principle

Nevada already has one: **"When practicable."**

What Nevada needs is a usable standard. The Commission should define the factors that determine whether competitive bidding is practicable. Those factors might include:

- availability of qualified vendors;
- urgency;
- specialized or proprietary services;
- legitimate continuity concerns;
- size and duration of the contract;
- sufficient time to conduct a competitive process;
- relationships between the vendor and persons controlling the association; and
- other circumstances genuinely making competition unreasonable.

The Commission should also require a board approving a substantial no-bid contract to document, before approval, why competitive bidding was not practicable. That does not dictate which contractor a board must select. It simply requires the board to explain why it did not test the market.

The precise standard should be developed publicly. That is what rulemaking is supposed to accomplish.

NRED and the Commission Should Answer

After years of guidance, investigations, an advisory opinion, formal petitions, correspondence, and repeated requests for Commission consideration, the issue can be reduced to one straightforward question:

When an HOA awards or renews a substantial contract without seeking competitive bids, what facts determine whether competitive bidding was “practicable”?

If NRED already applies an established standard, publish it. If no adequate standard exists, the Commission should develop one. If the Commission believes its existing regulation is sufficiently clear, it should explain publicly why. And if it disagrees with a formal rulemaking petition asking for clarification, it should consider the petition and say so.

What should not continue is the status quo:

an undefined standard, applied largely through confidential investigations, while both NRED and the Commission know the ambiguity exists and leave it unresolved.

Homeowners should not have to guess how the rules governing the expenditure of their money are being interpreted. Neither should the boards expected to follow them.

NVHOAReform asked NRED, the Department of Business and Industry, and the Commission for comment on these issues before publication.