

**From:** Michael Schulman \_\_\_\_\_  
**Sent:** Monday, December 21, 2020 1:42 PM

**Subject:** RE: Sealed Bid Question

The short answer to your question is that no one, including Seth, Ryan or another association representative, may open or see bids that have been solicited in accordance with NRS 116.31086, of which I will send you a copy separately. If the association solicits bids, the bids must be sealed and they must be opened at an open board meeting. No one can "pre-open" them. I know this may prolong the process of choosing a contractor, but there are four ways to handle this and they are the following:

1. The association can ask each vendor to provide a copy of their bid without the amounts completed, to an association representative before the meeting to open sealed bids. The association representative can make sure all vendors are bidding on all the items (apples to apples). The sealed bids would have to be sent in sealed, with the amounts completed, and opened at the board meeting.
2. The association can put out an RFP which requires the vendors to bid on a form to cover all things to be in the contract. (This is harder to do because the bidders do not always bid on the form or cover all items.)
3. Some of my clients have a second board meeting every month, i. e. two weeks before the other scheduled board meeting, for the sole purpose of opening and announcing bids so the bids go on the record and then a representative of the association can compare them prior to the next board meeting. If there are no bids in a certain month, the bid opening meeting may be canceled. One of my clients has a "coffee with the president" the first Tuesday of every month. It is scheduled as a board meeting and a quorum of the board attends if there are bids to open. If there are no bids, the president or other officer attends to share coffee and answer questions. This is something to be considered once the pandemic is resolved.
4. In the worst case scenario, where bids are opened and reviewed for the first time at a scheduled board meeting, the board can do all its other business and then adjourn or recess the meeting to another time and place (or the same place) within 30 days as long as the board announces the time and the place where the recessed meeting will reconvene before the initial phase of the meeting adjourns. That gives staff or the board time to review the bids for a few days and then vote on what bid to choose. The only business that can be done at the reconvened meeting is business that was on the original agenda and not completed at the initial portion of the meeting. No additional mailing or notice has to go to the owners if the board announces the time and the place of the reconvened meeting at the initial portion of the meeting before it adjourns.

By separate email I am going to send you a copy of NRS 116.31086 regarding solicitation of bids. There are two things you should know about the statute:

1. It was written in response to a construction defect attorney, a management company and a construction company (in Vegas, about 10 years ago) trying to rig bids. The legislature did not want an association representative knowing the amount of one bid before all bids were opened simultaneously. This was to prevent anyone from disclosing the amount of the first bid to the other bidders.
2. The law begins with the phrase, "If an association solicits bids..." Please remember an association does not have to solicit bids in every case (even if the amount of the contract is over

1% in SOA). I suggest the association consider soliciting bids where it has a type of job which the association has not had before and or the amount of the job is large. Many associations have an amount set and if a job is below that they will not go out for bids. Some associations set the amount at \$1,000 others at \$25,000 (depends on the budget and the authority of the management company) and it still can be subject to the board electing not to go out to bid in certain situations.

You still might not want to solicit bids in some of situations such as the following: you have a landscaping maintenance contract, but a tree needs to be replaced and it is expensive. You might want to bid out the tree replacement. However, if you do choose a second contractor to replace the tree and the tree dies, then the regular landscaper and the landscaper that replaced the tree are going to point the finger at each other. It may be best to just use the same contractor in that situation. Also if the association has a contractor it likes and it does not want to seek bids every year, it does not have to do so. However, in every situation it is important to put in the minutes why the association may have not chosen to go out for bid (like we like the contractor and we checked pricing or only two companies are qualified to bid the job and have time to do it now). All I want is a basis to defend the board's decision put in the minutes as the reason for the action or inaction.

Sorry for the long answer, but it is best you know the reasoning for the law and the requirements if you do go out to bid.

Let me know if you have questions.

Michael Schulman, Esq.

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