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SECOND REPRINT

A.B. 280

ASSEMBLY BILL NO. 280—ASSEMBLYMEN FRIERSON, CARRILLO, MONROE-MORENO, SPRINKLE, NEAL; ARAUJO, BENITEZ-THOMPSON, BILBRAY-AXELROD, CARLTON, COHEN, DALY, FUMO, JAUREGUI, JOINER, MCCURDY II, MILLER, OHRENSCHALL, SPIEGEL, THOMPSON, TOLLES, WATKINS AND YEAGER

MARCH 13, 2017

JOINT SPONSORS: SENATORS FORD AND CANNIZZARO

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to preferences in bidding for certain contracts for businesses based in this State. (BDR 27-1060)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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

AN ACT relating to procurement; establishing provisions relating to preferences in bidding for certain contracts with Nevada-based businesses for state purchasing; revising provisions relating to the disclosure of the weight assigned to certain factors used to evaluate proposals for certain state purchasing contracts; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law grants a preference of 5 percent for a bid or proposal for a state
2 purchasing contract which is submitted by a local business owned and operated by
3 a veteran with a service-connected disability. (NRS 333.3361-333.3369) **Sections**
4 **2-8** of this bill create a preference of 5 percent for a bid or proposal for a state
5 purchasing contract which is submitted by a Nevada-based business. To qualify for
6 this preference, **section 3** requires such a business to certify that: (1) its principal
7 place of business is in this State; or (2) a majority of the goods provided for in a
8 state purchasing contract are produced in this State. **Section 5** establishes that: (1) a
9 bid which qualifies for the preference will be deemed to be 5 percent lower than the
10 bid actually submitted; and (2) a proposal which qualifies for the preference will be
11 deemed to have a score which is 5 percent higher than the score actually awarded.



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12 **Section 5** also prohibits granting the preference for the award of any contract which
13 uses federal money, unless such a preference is authorized by federal law or any
14 contract which has been procured on a multistate basis. **Section 6** imposes certain
15 penalties and restrictions upon a business that makes a material misrepresentation
16 or commits a fraudulent act in applying for a preference or fails to comply with the
17 requirements for a preference. **Sections 9 and 10** of this bill make conforming
18 changes.

19 Existing law requires each proposal submitted for certain state purchasing
20 contracts to be evaluated based on certain factors to determine whether the proposal
21 is in the best interest of the State. Each factor is assigned a relative weight which
22 must not be disclosed before the proposals are submitted. (NRS 333.335) **Section**
23 **9.5** of this bill removes the requirement that the weight of each factor must not be
24 disclosed before the proposals are submitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 333 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 8, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 8, inclusive, of this act, unless*
5 *the context otherwise requires, the words and terms defined in*
6 *sections 3 and 4 of this act have the meanings ascribed to them in*
7 *those sections.*

8 **Sec. 3.** *“Nevada-based business” means a business which*
9 *certifies that:*

- 10 1. *Its principal place of business is in this State; or*
11 2. *The majority of goods provided for in a state purchasing*
12 *contract are produced in this State.*

13 **Sec. 4.** *“State purchasing contract” means a contract*
14 *awarded pursuant to the provisions of this chapter.*

15 **Sec. 5.** 1. *If a business that qualifies as a Nevada-based*
16 *business submits a:*

17 (a) *Bid to furnish commodities that was solicited pursuant to*
18 *NRS 333.300, the bid shall be deemed to be 5 percent lower than*
19 *the bid actually submitted; or*

20 (b) *Proposal to contract for services, the score assigned to the*
21 *proposal pursuant to NRS 333.335 shall be deemed to be 5 percent*
22 *higher than the score actually awarded.*

23 2. *The preference described in subsection 1 may not be:*

- 24 (a) *Combined with any other preference.*
25 (b) *Granted for the award of any contract which uses federal*
26 *money unless such a preference is authorized by federal law.*

27 (c) *Granted for the award of any contract procured on a*
28 *multistate basis.*

29 **Sec. 6.** 1. *In addition to any other remedy or penalty*
30 *provided by law, if the Purchasing Division determines that a*



1 *business has made a material misrepresentation or otherwise*
2 *committed a fraudulent act in applying for a preference described*
3 *in section 5 of this act or has failed to comply with the*
4 *requirements of that section, the business:*

5 *(a) Shall pay to the Purchasing Division, if awarded a state*
6 *purchasing contract, a penalty in the amount of 1 percent of the*
7 *cost of the state purchasing contract;*

8 *(b) Shall not bid on a state purchasing contract or a contract*
9 *awarded by any local government for 1 year after the date upon*
10 *which the Purchasing Division makes such a determination; and*

11 *(c) Shall not apply for or receive a preference described in*
12 *section 5 of this act for 5 years after the date upon which the*
13 *Purchasing Division makes such a determination.*

14 *2. If the Purchasing Division determines, as described in*
15 *subsection 1, that a business has made a material*
16 *misrepresentation or otherwise committed a fraudulent act in*
17 *applying for a preference described in section 5 of this act or has*
18 *failed to comply with the requirements of that section, the business*
19 *may apply to the Administrator to review the decision pursuant to*
20 *chapter 233B of NRS.*

21 **Sec. 7.** (Deleted by amendment.)

22 **Sec. 8.** *The Purchasing Division may adopt such regulations*
23 *as it determines to be necessary or advisable to carry out the*
24 *provisions of sections 2 to 8, inclusive, of this act. The regulations*
25 *may include, without limitation, provisions setting forth:*

26 *1. The method by which a business may apply to receive a*
27 *preference described in section 5 of this act;*

28 *2. The documentation or other proof that a business must*
29 *submit to demonstrate that it qualifies for a preference described*
30 *in section 5 of this act; and*

31 *3. Such other matters as the Purchasing Division deems*
32 *relevant.*

33 **Sec. 9.** NRS 333.310 is hereby amended to read as follows:

34 333.310 1. An advertisement must contain a general
35 description of the classes of commodities or services for which a bid
36 or proposal is wanted and must state:

37 (a) The name and location of the department, agency, local
38 government, district or institution for which the purchase is to be
39 made.

40 (b) Where and how specifications and quotation forms may be
41 obtained.

42 (c) If the advertisement is for bids, whether the Administrator is
43 authorized by the using agency to be supplied to consider a bid for
44 an article that is an alternative to the article listed in the original
45 request for bids if:



- 1 (1) The specifications of the alternative article meet or
2 exceed the specifications of the article listed in the original request
3 for bids;
- 4 (2) The purchase of the alternative article results in a lower
5 price; and
- 6 (3) The Administrator deems the purchase of the alternative
7 article to be in the best interests of the State of Nevada.
- 8 (d) Notice of the ~~preference~~ *preferences* set forth in NRS
9 333.3366 ~~H~~ *and section 5 of this act.*
- 10 (e) The date and time not later than which responses must be
11 received by the Purchasing Division.
- 12 (f) The date and time when responses will be opened.
- 13 ↪ The Administrator or a designated agent of the Administrator
14 shall approve the copy for the advertisement.
- 15 2. Each advertisement must be published:
- 16 (a) In at least one newspaper of general circulation in the State.
17 The selection of the newspaper to carry the advertisement must be
18 made in the manner provided by this chapter for other purchases, on
19 the basis of the lowest price to be secured in relation to the paid
20 circulation; and
- 21 (b) On the Internet website of the Purchasing Division.
- 22 **Sec. 9.5.** NRS 333.335 is hereby amended to read as follows:
23 333.335 1. Each proposal must be evaluated by:
- 24 (a) The chief of the using agency, or a committee appointed by
25 the chief of the using agency in accordance with the regulations
26 adopted pursuant to NRS 333.135, if the proposal is for a using
27 agency; or
- 28 (b) The Administrator of the Purchasing Division, or a
29 committee appointed by the Administrator in accordance with the
30 regulations adopted pursuant to NRS 333.135, if the Administrator
31 is responsible for administering the proposal.
- 32 2. A committee appointed pursuant to subsection 1 must
33 consist of not less than two members. A majority of the members of
34 the committee must be state officers or employees. The committee
35 may include persons who are not state officers or employees and
36 possess expert knowledge or special expertise that the chief of the
37 using agency or the Administrator of the Purchasing Division
38 determines is necessary to evaluate a proposal. The members of the
39 committee are not entitled to compensation for their service on the
40 committee, except that members of the committee who are state
41 officers or employees are entitled to receive their salaries as state
42 officers and employees. No member of the committee may have a
43 financial interest in a proposal. If the contract is being awarded for
44 the Public Employees' Benefits Program, the Executive Officer of



1 the Program may observe the activities of the committee, but may
2 not vote or otherwise participate in the evaluation.

3 3. In making an award, the chief of the using agency, the
4 Administrator of the Purchasing Division or each member of the
5 committee, if a committee is established, shall consider and assign a
6 score for each of the following factors for determining whether the
7 proposal is in the best interests of the State of Nevada:

8 (a) The experience and financial stability of the person
9 submitting the proposal;

10 (b) Whether the proposal complies with the requirements of the
11 request for proposals as prescribed in NRS 333.311;

12 (c) The price of the proposal; and

13 (d) Any other factor disclosed in the request for proposals.

14 4. The chief of the using agency, the Administrator of the
15 Purchasing Division or the committee, if a committee is established,
16 shall determine the relative weight of each factor set forth in
17 subsection 3 before a request for proposals is advertised. ~~¶The
18 weight of each factor must not be disclosed before the date
19 proposals are required to be submitted.¶~~

20 5. Except as otherwise provided in this subsection, the chief of
21 the using agency, the Administrator of the Purchasing Division or
22 the committee, if a committee is established, shall award the
23 contract based on the best interests of the State, as determined by the
24 total scores assigned pursuant to subsection 3, and is not required to
25 accept the lowest-priced proposal. If the contract is being awarded
26 for the Public Employees' Benefits Program, the Administrator of
27 the Purchasing Division or the committee, if a committee is
28 established, shall submit recommendations for awarding the contract
29 to the Board for the Public Employees' Benefits Program, which
30 shall award the contract in accordance with NRS 287.04345.

31 6. Except as otherwise provided in NRS 239.0115, each
32 proposal evaluated pursuant to the provisions of this section is
33 confidential and may not be disclosed until the contract is awarded.

34 **Sec. 10.** NRS 333.340 is hereby amended to read as follows:

35 333.340 1. Every contract or order for goods must be
36 awarded to the lowest responsible bidder. To determine the lowest
37 responsible bidder, the Administrator:

38 (a) Shall consider, if applicable:

39 (1) The granting of the preference described in
40 NRS 333.3366.

41 (2) *The granting of the preference described in section 5 of*
42 *this act.*

43 (3) The required standards adopted pursuant to
44 NRS 333.4611.

45 (b) May consider:



- 1 (1) The location of the using agency to be supplied.
- 2 (2) The qualities of the articles to be supplied.
- 3 (3) The total cost of ownership of the articles to be supplied.
- 4 (4) Except as otherwise provided in subparagraph (5), the
- 5 conformity of the articles to be supplied with the specifications.
- 6 (5) If the articles are an alternative to the articles listed in the
- 7 original request for bids, whether the advertisement for bids
- 8 included a statement that bids for an alternative article will be
- 9 considered if:
 - 10 (I) The specifications of the alternative article meet or
 - 11 exceed the specifications of the article listed in the original request
 - 12 for bids;
 - 13 (II) The purchase of the alternative article results in a
 - 14 lower price; and
 - 15 (III) The Administrator deems the purchase of the
 - 16 alternative article to be in the best interests of the State of Nevada.
- 17 (6) The purposes for which the articles to be supplied are
- 18 required.
- 19 (7) The dates of delivery of the articles to be supplied.
- 20 2. If a contract or an order is not awarded to the lowest bidder,
- 21 the Administrator shall provide the lowest bidder with a written
- 22 statement which sets forth the specific reasons that the contract or
- 23 order was not awarded to him or her.
- 24 3. As used in this section, "total cost of ownership" includes,
- 25 but is not limited to:
 - 26 (a) The history of maintenance or repair of the articles;
 - 27 (b) The cost of routine maintenance and repair of the articles;
 - 28 (c) Any warranties provided in connection with the articles;
 - 29 (d) The cost of replacement parts for the articles; and
 - 30 (e) The value of the articles as used articles when given in trade
 - 31 on a subsequent purchase.

32 **Sec. 11.** NRS 338.0117 is hereby amended to read as follows:

33 338.0117 1. To qualify to receive a preference in bidding
34 pursuant to subsection 2 of NRS 338.1389, subsection 2 of NRS
35 338.147, subsection 3 of NRS 338.1693, subsection 3 of NRS
36 338.1727 or subsection 2 of NRS 408.3886, a contractor, an
37 applicant or a design-build team, respectively, must submit to the
38 public body sponsoring or financing a public work a signed affidavit
39 which certifies that, for the duration of the project, collectively, and
40 not on any specific day:

- 41 (a) At least 50 percent of the workers employed on the public
- 42 work, including, without limitation, any employees of the
- 43 contractor, applicant or design-build team and of any subcontractor
- 44 engaged on the public work, will hold a valid driver's license or



1 identification card issued by the Department of Motor Vehicles of
2 the State of Nevada;

3 (b) All vehicles used primarily for the public work will be:

4 (1) Registered and partially apportioned to Nevada pursuant
5 to the International Registration Plan, as adopted by the Department
6 of Motor Vehicles pursuant to NRS 706.826; or

7 (2) Registered in this State;

8 (c) If applying to receive a preference in bidding pursuant to
9 subsection 3 of NRS 338.1727 or subsection 2 of NRS 408.3886, at
10 least 50 percent of the design professionals working on the public
11 work, including, without limitation, employees of the design-build
12 team and of any subcontractor or consultant engaged in the design
13 of the public work, will have a valid driver's license or
14 identification card issued by the Department of Motor Vehicles of
15 the State of Nevada; and

16 (d) The contractor, applicant or design-build team and any
17 subcontractor engaged on the public work will maintain and make
18 available for inspection within this State his or her records
19 concerning payroll relating to the public work.

20 2. Any contract for a public work that is awarded to a
21 contractor, applicant or design-build team who submits the affidavit
22 described in subsection 1 as a result of the contractor, applicant or
23 design-build team receiving a preference in bidding described in
24 subsection 1 must:

25 (a) Include a provision in the contract that substantially
26 incorporates the requirements of paragraphs (a) to (d), inclusive, of
27 subsection 1; and

28 (b) Provide that a failure to comply with any requirement of
29 paragraphs (a) to (d), inclusive, of subsection 1 entitles the public
30 body to a penalty only as provided in subsections 5 and 6.

31 3. A person who submitted a bid on the public work or an
32 entity who believes that a contractor, applicant or design-build team
33 has obtained a preference in bidding as described in subsection 1 but
34 has failed to comply with a requirement of paragraphs (a) to (d),
35 inclusive, of subsection 1 may file, before the substantial completion
36 of the public work, a written objection with the public body for
37 which the contractor, applicant or design-build team is performing
38 the public work. A written objection authorized pursuant to this
39 subsection must set forth proof or substantiating evidence to support
40 the belief of the person or entity that the contractor, applicant or
41 design-build team has failed to comply with a requirement of
42 paragraphs (a) to (d), inclusive, of subsection 1.

43 4. If a public body receives a written objection pursuant to
44 subsection 3, the public body shall determine whether the objection
45 is accompanied by the proof or substantiating evidence required



1 pursuant to that subsection. If the public body determines that the
2 objection is not accompanied by the required proof or substantiating
3 evidence, the public body shall dismiss the objection. If the public
4 body determines that the objection is accompanied by the required
5 proof or substantiating evidence or if the public body determines on
6 its own initiative that proof or substantiating evidence of a failure to
7 comply with a requirement of paragraphs (a) to (d), inclusive, of
8 subsection 1 exists, the public body shall determine whether the
9 contractor, applicant or design-build team has failed to comply with
10 a requirement of paragraphs (a) to (d), inclusive, of subsection 1 and
11 the public body or its authorized representative may proceed to
12 award the contract accordingly or, if the contract has already been
13 awarded, seek the remedy authorized in subsection 5.

14 5. ~~1A~~ *In addition to any other remedy or penalty provided by*
15 *law, a* public body may recover, by civil action against the party
16 responsible for a failure to comply with a requirement of paragraphs
17 (a) to (d), inclusive, of subsection 1, a penalty as described in
18 subsection 6 for a failure to comply with a requirement of
19 paragraphs (a) to (d), inclusive, of subsection 1. If a public body
20 recovers a penalty pursuant to this subsection, the public body shall
21 report to the State Contractors' Board the date of the failure to
22 comply, the name of each entity which failed to comply and the cost
23 of the contract to which the entity that failed to comply was a party.
24 The Board shall maintain this information for not less than 6 years.
25 Upon request, the Board shall provide this information to any public
26 body or its authorized representative.

27 6. If a contractor, applicant or design-build team submits the
28 affidavit described in subsection 1, receives a preference in bidding
29 described in subsection 1 and is awarded the contract as a result of
30 that preference, the contract between the contractor, applicant or
31 design-build team and the public body, each contract between the
32 contractor, applicant or design-build team and a subcontractor and
33 each contract between a subcontractor and a lower tier subcontractor
34 must provide that:

35 (a) If a party to the contract causes the contractor, applicant or
36 design-build team to fail to comply with a requirement of
37 paragraphs (a) to (d), inclusive, of subsection 1, the party is liable to
38 the public body for a penalty in the amount of 1 percent of the cost
39 of the largest contract to which he or she is a party;

40 (b) The right to recover the amount determined pursuant to
41 paragraph (a) by the public body pursuant to subsection 5 may be
42 enforced by the public body directly against the party that caused
43 the failure to comply with a requirement of paragraphs (a) to (d),
44 inclusive, of subsection 1; and



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1 (c) No other party to the contract is liable to the public body for
2 a penalty.

3 7. A public body that awards a contract for a public work to a
4 contractor, applicant or design-build team who submits the affidavit
5 described in subsection 1 and who receives a preference in bidding
6 described in subsection 1 shall, on or before July 31 of each year,
7 submit a written report to the Director of the Legislative Counsel
8 Bureau for transmittal to the Legislative Commission. The report
9 must include information on each contract for a public work
10 awarded to a contractor, applicant or design-build team who submits
11 the affidavit described in subsection 1 and who receives a
12 preference in bidding described in subsection 1, including, without
13 limitation, the name of the contractor, applicant or design-build
14 team who was awarded the contract, the cost of the contract, a brief
15 description of the public work and a description of the degree to
16 which the contractor, applicant or design-build team and each
17 subcontractor complied with the requirements of paragraphs (a) to
18 (d), inclusive, of subsection 1.

19 8. As used in this section:

20 (a) "Lower tier subcontractor" means a subcontractor who
21 contracts with another subcontractor to provide labor, materials or
22 services to the other subcontractor for a construction project.

23 (b) "Vehicle used primarily for the public work" does not
24 include any vehicle that is present at the site of the public work only
25 occasionally and for a purpose incidental to the public work
26 including, without limitation, the delivery of materials.
27 Notwithstanding the provisions of this paragraph, the term includes
28 any vehicle which is:

29 (1) Owned or operated by the contractor or any subcontractor
30 who is engaged on the public work; and

31 (2) Present at the site of the public work.

32 **Sec. 12.** (Deleted by amendment.)

33 **Sec. 13.** (Deleted by amendment.)

34 **Sec. 14.** (Deleted by amendment.)

35 **Sec. 15.** (Deleted by amendment.)

36 **Sec. 16.** (Deleted by amendment.)

37 **Sec. 17.** This act becomes effective on July 1, 2017.

