

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, 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.

~

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 a bid
9 or proposal which qualifies for the preference will be deemed to be 5 percent lower
10 than the bid or proposal actually submitted. **Section 5** also prohibits granting the
11 preference for the award of any contract which uses federal money, unless such a



* A B 2 8 0 R 1 *

12 preference is authorized by federal law. **Section 6** imposes certain penalties and
13 restrictions upon a business that makes a material misrepresentation or commits a
14 fraudulent act in applying for a preference or fails to comply with the requirements
15 for a preference. **Sections 9 and 10** of this bill make conforming changes.

16 Existing law requires each proposal submitted for certain state purchasing
17 contracts to be evaluated based on certain factors to determine whether the proposal
18 is in the best interest of the State. Each factor is assigned a relative weight which
19 must not be disclosed before the proposals are submitted. (NRS 333.335) **Section**
20 **9.5** of this bill removes the requirement that the weight of each factor must not be
21 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. *For the purposes of awarding a formal contract*
16 *solicited pursuant to subsection 2 of NRS 333.300, if a business*
17 *qualifies as a Nevada-based business and submits a bid or*
18 *proposal and is a responsive and responsible bidder, the bid or*
19 *proposal shall be deemed to be 5 percent lower than the bid*
20 *or proposal actually submitted.*

- 21 2. *The preference described in subsection 1 may not be:*
22 (a) *Combined with any other preference.*
23 (b) *Granted for the award of any contract which uses federal*
24 *money unless such a preference is authorized by federal law.*

25 **Sec. 6.** 1. *In addition to any other remedy or penalty*
26 *provided by law, if the Purchasing Division determines that a*
27 *business has made a material misrepresentation or otherwise*
28 *committed a fraudulent act in applying for a preference described*
29 *in section 5 of this act or has failed to comply with the*
30 *requirements of that section, the business:*



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

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

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

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

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

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

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

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

27 3. *Such other matters as the Purchasing Division deems*
28 *relevant.*

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

30 333.310 1. An advertisement must contain a general
31 description of the classes of commodities or services for which a bid
32 or proposal is wanted and must state:

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

36 (b) Where and how specifications and quotation forms may be
37 obtained.

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

42 (1) The specifications of the alternative article meet or
43 exceed the specifications of the article listed in the original request
44 for bids;



1 (2) The purchase of the alternative article results in a lower
2 price; and

3 (3) The Administrator deems the purchase of the alternative
4 article to be in the best interests of the State of Nevada.

5 (d) Notice of the ~~preference~~ *preferences* set forth in NRS
6 333.3366 ~~H~~ *and section 5 of this act.*

7 (e) The date and time not later than which responses must be
8 received by the Purchasing Division.

9 (f) The date and time when responses will be opened.

10 ➔ The Administrator or a designated agent of the Administrator
11 shall approve the copy for the advertisement.

12 2. Each advertisement must be published:

13 (a) In at least one newspaper of general circulation in the State.
14 The selection of the newspaper to carry the advertisement must be
15 made in the manner provided by this chapter for other purchases, on
16 the basis of the lowest price to be secured in relation to the paid
17 circulation; and

18 (b) On the Internet website of the Purchasing Division.

19 **Sec. 9.5.** NRS 333.335 is hereby amended to read as follows:

20 333.335 1. Each proposal must be evaluated by:

21 (a) The chief of the using agency, or a committee appointed by
22 the chief of the using agency in accordance with the regulations
23 adopted pursuant to NRS 333.135, if the proposal is for a using
24 agency; or

25 (b) The Administrator of the Purchasing Division, or a
26 committee appointed by the Administrator in accordance with the
27 regulations adopted pursuant to NRS 333.135, if the Administrator
28 is responsible for administering the proposal.

29 2. A committee appointed pursuant to subsection 1 must
30 consist of not less than two members. A majority of the members of
31 the committee must be state officers or employees. The committee
32 may include persons who are not state officers or employees and
33 possess expert knowledge or special expertise that the chief of the
34 using agency or the Administrator of the Purchasing Division
35 determines is necessary to evaluate a proposal. The members of the
36 committee are not entitled to compensation for their service on the
37 committee, except that members of the committee who are state
38 officers or employees are entitled to receive their salaries as state
39 officers and employees. No member of the committee may have a
40 financial interest in a proposal. If the contract is being awarded for
41 the Public Employees' Benefits Program, the Executive Officer of
42 the Program may observe the activities of the committee, but may
43 not vote or otherwise participate in the evaluation.

44 3. In making an award, the chief of the using agency, the
45 Administrator of the Purchasing Division or each member of the



1 committee, if a committee is established, shall consider and assign a
2 score for each of the following factors for determining whether the
3 proposal is in the best interests of the State of Nevada:

4 (a) The experience and financial stability of the person
5 submitting the proposal;

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

8 (c) The price of the proposal; and

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

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

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

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

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

31 333.340 1. Every contract or order for goods must be
32 awarded to the lowest responsible bidder. To determine the lowest
33 responsible bidder, the Administrator:

34 (a) Shall consider, if applicable:

35 (1) The granting of the preference described in
36 NRS 333.3366.

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

39 (3) The required standards adopted pursuant to
40 NRS 333.4611.

41 (b) May consider:

42 (1) The location of the using agency to be supplied.

43 (2) The qualities of the articles to be supplied.

44 (3) The total cost of ownership of the articles to be supplied.



1 (4) Except as otherwise provided in subparagraph (5), the
2 conformity of the articles to be supplied with the specifications.

3 (5) If the articles are an alternative to the articles listed in the
4 original request for bids, whether the advertisement for bids
5 included a statement that bids for an alternative article will be
6 considered if:

7 (I) The specifications of the alternative article meet or
8 exceed the specifications of the article listed in the original request
9 for bids;

10 (II) The purchase of the alternative article results in a
11 lower price; and

12 (III) The Administrator deems the purchase of the
13 alternative article to be in the best interests of the State of Nevada.

14 (6) The purposes for which the articles to be supplied are
15 required.

16 (7) The dates of delivery of the articles to be supplied.

17 2. If a contract or an order is not awarded to the lowest bidder,
18 the Administrator shall provide the lowest bidder with a written
19 statement which sets forth the specific reasons that the contract or
20 order was not awarded to him or her.

21 3. As used in this section, "total cost of ownership" includes,
22 but is not limited to:

23 (a) The history of maintenance or repair of the articles;

24 (b) The cost of routine maintenance and repair of the articles;

25 (c) Any warranties provided in connection with the articles;

26 (d) The cost of replacement parts for the articles; and

27 (e) The value of the articles as used articles when given in trade
28 on a subsequent purchase.

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

30 338.0117 1. To qualify to receive a preference in bidding
31 pursuant to subsection 2 of NRS 338.1389, subsection 2 of NRS
32 338.147, subsection 3 of NRS 338.1693, subsection 3 of NRS
33 338.1727 or subsection 2 of NRS 408.3886, a contractor, an
34 applicant or a design-build team, respectively, must submit to the
35 public body sponsoring or financing a public work a signed affidavit
36 which certifies that, for the duration of the project, collectively, and
37 not on any specific day:

38 (a) At least 50 percent of the workers employed on the public
39 work, including, without limitation, any employees of the
40 contractor, applicant or design-build team and of any subcontractor
41 engaged on the public work, will hold a valid driver's license or
42 identification card issued by the Department of Motor Vehicles of
43 the State of Nevada;

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



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

4 (2) Registered in this State;

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

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

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

22 (a) Include a provision in the contract that substantially
23 incorporates the requirements of paragraphs (a) to (d), inclusive, of
24 subsection 1; and

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

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

40 4. If a public body receives a written objection pursuant to
41 subsection 3, the public body shall determine whether the objection
42 is accompanied by the proof or substantiating evidence required
43 pursuant to that subsection. If the public body determines that the
44 objection is not accompanied by the required proof or substantiating
45 evidence, the public body shall dismiss the objection. If the public



1 body determines that the objection is accompanied by the required
2 proof or substantiating evidence or if the public body determines on
3 its own initiative that proof or substantiating evidence of a failure to
4 comply with a requirement of paragraphs (a) to (d), inclusive, of
5 subsection 1 exists, the public body shall determine whether the
6 contractor, applicant or design-build team has failed to comply with
7 a requirement of paragraphs (a) to (d), inclusive, of subsection 1 and
8 the public body or its authorized representative may proceed to
9 award the contract accordingly or, if the contract has already been
10 awarded, seek the remedy authorized in subsection 5.

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

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

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

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

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

44 7. A public body that awards a contract for a public work to a
45 contractor, applicant or design-build team who submits the affidavit



* A B 2 8 0 R 1 *

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

15 8. As used in this section:

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

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

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

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

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

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

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

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

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

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

