

Amendment No. CA34

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| Conference Committee Amendment to<br>Assembly Bill No. 223 Third Reprint             | (BDR 27-857) |
| <b>Proposed by:</b> Conference Committee   |              |
| <b>Amends:</b> Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes |              |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) green bold italic underlining is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold dashed underlining is newly added transitory language.

EGO



Date: 6/1/2009

A.B. No. 223—Revises provisions concerning preferences for bidders on certain state purchasing and public works contracts. (BDR 27-857)



ASSEMBLY BILL NO. 223—ASSEMBLYMEN SMITH, MCCLAIN, CONKLIN, BUCKLEY, OCEGUERA; ANDERSON, BOBZIEN, CLABORN, DONDERO LOOP, GOICOECHEA, HAMBRICK, HARDY, HORNE, KIRKPATRICK, MANENDO AND PARNELL

MARCH 2, 2009

Referred to Committee on Government Affairs

SUMMARY—Revises provisions concerning preferences for bidders on certain state purchasing and public works contracts. (BDR 27-857)

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 state governmental procurement; establishing a bidder's preference for local businesses owned by service-disabled veterans with respect to state purchasing contracts ~~for establishing a bidder's preference for local businesses owned by service-disabled veterans with respect to~~ and state public works contracts; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law, with respect only to contracts for public works for which the estimated cost exceeds \$250,000, provides a mechanism by which a contractor who has paid certain taxes may earn a 5-percent preference in bidding on public works. (NRS 338.1389, 338.147, 338.1693, 338.1727) **Sections 18-25** of this bill establish a limited preference in bidding on public works for local businesses owned by service-disabled veterans. This new preference in bidding on public works does not overlap with the existing preference in bidding on public works because the new preference is limited to public works for which the estimated cost is \$100,000 or less.

Under existing law, the State of Nevada imposes an inverse preference against a person who submits a bid or proposal on a state purchasing contract if that person is a resident of a state that denies a preference to bidders or contractors who are residents of this State. (NRS 333.336) **Section 31** of this bill repeals that inverse preference.

In place of the former inverse preference, **sections 5-13** of this bill establish a 5-percent preference in bidding on state purchasing contracts for local businesses ~~for~~ owned by service-disabled veterans. **Section 14** of this bill requires advertisements for bids or proposals to include notices of this new preference.

**Section 30** of this bill directs the Office of Veterans' Services to perform certain duties with respect to gathering information and making recommendations to the Legislative Commission concerning the ~~preference~~ preferences in bidding on state purchasing contracts and public works for local businesses owned by service-disabled veterans.

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 thereto the  
2 provisions set forth as sections 5 to 13, inclusive, of this act.

3 **Sec. 2.** (Deleted by amendment.)

4 **Sec. 3.** (Deleted by amendment.)

5 **Sec. 4.** (Deleted by amendment.)

6 **Sec. 5.** *As used in sections 5 to 13, inclusive, of this act, unless the context  
7 otherwise requires, the words and terms defined in sections ~~4.6~~ 5.5 to 9, inclusive,  
8 of this act have the meanings ascribed to them in those sections.*

9 **Sec. 5.5.** *“Business owned by a service-disabled veteran” has the meaning  
10 ascribed to it in section 19 of this act.*

11 **Sec. 6.** (Deleted by amendment.)

12 **Sec. 7.** *“Local business” means a business that:*

13 1. *Employs at least one person in this State; and*

14 2. *Has employed at least one person in this State for not fewer than 2 years.*

15 **Sec. 7.5.** *“Service-disabled veteran” has the meaning ascribed to it in  
16 section 21 of this act.*

17 **Sec. 8.** (Deleted by amendment.)

18 **Sec. 9.** *“State purchasing contract” means a contract awarded pursuant to  
19 the provisions of this chapter.*

20 **Sec. 10.** *For the purpose of awarding a formal contract solicited pursuant  
21 to subsection 2 of NRS 333.300, if a local business owned by a service-disabled  
22 veteran submits a bid or proposal and is a responsive and responsible bidder, the  
23 bid or proposal shall be deemed to be 5 percent lower than the bid or proposal  
24 actually submitted.*

25 **Sec. 11.** 1. *If the Purchasing Division determines that a business has  
26 made a material misrepresentation or otherwise committed a fraudulent act in  
27 applying for a preference described in section 10 of this act, the business is  
28 thereafter permanently prohibited from:*

29 (a) *Applying for or receiving the preference described in section 10 of this  
30 act; and*

31 (b) *Bidding on a state purchasing contract.*

32 2. *If the Purchasing Division determines, as described in subsection 1, that  
33 a business has made a material misrepresentation or otherwise committed a  
34 fraudulent act in applying for a preference described in section 10 of this act, the  
35 business may apply to the Chief to review the decision pursuant to chapter 233B  
36 of NRS.*

37 **Sec. 12.** *The Purchasing Division shall report every 6 months to the  
38 Legislature, if it is in session, or to the Interim Finance Committee, if the  
39 Legislature is not in session. The report must contain, for the period since the last  
40 report:*

41 1. *The number of state purchasing contracts that were subject to the  
42 provisions of sections 5 to 13, inclusive, of this act.*

43 2. *The total dollar amount of state purchasing contracts that were subject to  
44 the provisions of sections 5 to 13, inclusive, of this act.*

45 3. *The number of local businesses owned by service-disabled veterans that  
46 submitted a bid or proposal on a state purchasing contract.*

47 4. *The number of state purchasing contracts that were awarded to local  
48 businesses ~~not~~ owned by service-disabled veterans.*

1           5. *The total number of dollars worth of state purchasing contracts that were*  
2 *awarded to local businesses ~~that~~ owned by service-disabled veterans.*

3           6. *Any other information deemed relevant by the Director of the Legislative*  
4 *Counsel Bureau.*

5           **Sec. 13.** *The Purchasing Division may adopt such regulations as it*  
6 *determines to be necessary or advisable to carry out the provisions of sections 5 to*  
7 *13, inclusive, of this act. The regulations may include, without limitation,*  
8 *provisions setting forth:*

9           1. *The method by which a business may apply to receive a preference*  
10 *described in section 10 of this act;*

11           2. *The documentation or other proof that a business must submit to*  
12 *demonstrate that it qualifies for a preference described in section 10 of this act;*  
13 *and*

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

15           ↪ *In carrying out the provisions of this section, the Purchasing Division shall, to*  
16 *the extent practicable, cooperate and coordinate with the State Public Works*  
17 *Board so that any regulations adopted pursuant to this section and section 25 of*  
18 *this act are reasonably consistent.*

19           **Sec. 14.** NRS 333.310 is hereby amended to read as follows:

20           333.310 1. An advertisement must contain a general description of the  
21 classes of commodities or services for which a bid or proposal is wanted and must  
22 state:

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

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

26           (c) If the advertisement is for bids, whether the Chief is authorized by the using  
27 agency to be supplied to consider a bid for an article that is an alternative to the  
28 article listed in the original request for bids if:

29           (1) The specifications of the alternative article meet or exceed the  
30 specifications of the article listed in the original request for bids;

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

32           (3) The Chief deems the purchase of the alternative article to be in the best  
33 interests of the State of Nevada.

34           (d) ~~{A summary}~~ *Notice of the ~~{provisions of NRS 333.336.}~~ preference set*  
35 *forth in section 10 of this act.*

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

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

39           ↪ The Chief or his designated agent shall approve the copy for the advertisement.

40           2. Each advertisement must be published in at least one newspaper of general  
41 circulation in the State. The selection of the newspaper to carry the advertisement  
42 must be made in the manner provided by this chapter for other purchases, on the  
43 basis of the lowest price to be secured in relation to the paid circulation.

44           **Sec. 15.** NRS 333.335 is hereby amended to read as follows:

45           333.335 1. Each proposal must be evaluated by:

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

49           (b) The Chief of the Purchasing Division, or a committee appointed by the  
50 Chief in accordance with the regulations adopted pursuant to NRS 333.135, if he is  
51 responsible for administering the proposal.

1 2. A committee appointed pursuant to subsection 1 must consist of not less  
2 than two members. A majority of the members of the committee must be state  
3 officers or employees. The committee may include persons who are not state  
4 officers or employees and possess expert knowledge or special expertise that the  
5 chief of the using agency or the Chief of the Purchasing Division determines is  
6 necessary to evaluate a proposal. The members of the committee are not entitled to  
7 compensation for their service on the committee, except that members of the  
8 committee who are state officers or employees are entitled to receive their salaries  
9 as state officers and employees. No member of the committee may have a financial  
10 interest in a proposal.

11 3. In making an award, the chief of the using agency, the Chief of the  
12 Purchasing Division or each member of the committee, if a committee is  
13 established, shall consider and assign a score for each of the following factors for  
14 determining whether the proposal is in the best interests of the State of Nevada:

15 (a) The experience and financial stability of the person submitting the  
16 proposal;

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

19 (c) The price of the proposal ; ~~[-, including the imposition of an inverse~~  
20 ~~preference described in NRS 333.336, if applicable;]~~ and

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

22 4. The chief of the using agency, the Chief of the Purchasing Division or the  
23 committee, if a committee is established, shall determine the relative weight of each  
24 factor set forth in subsection 3 before a request for proposals is advertised. The  
25 weight of each factor must not be disclosed before the date proposals are required  
26 to be submitted.

27 5. The chief of the using agency, the Chief of the Purchasing Division or the  
28 committee, if a committee is established, shall award the contract based on the best  
29 interests of the State, as determined by the total scores assigned pursuant to  
30 subsection 3, and is not required to accept the lowest-priced proposal.

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

34 **Sec. 16.** NRS 333.340 is hereby amended to read as follows:

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

37 (a) Shall consider, if applicable, the ~~[imposition]~~ **granting** of the ~~[inverse~~  
38 ~~preference]~~ **preference** described in ~~[NRS 333.336,]~~ **section 10 of this act.**

39 (b) May consider:

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

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

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

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

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

48 (I) The specifications of the alternative article meet or exceed the  
49 specifications of the article listed in the original request for bids;

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

51 (III) The Chief deems the purchase of the alternative article to be in the  
52 best interests of the State of Nevada.

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

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

3 2. If a contract or an order is not awarded to the lowest bidder, the Chief shall  
4 provide the lowest bidder with a written statement which sets forth the specific  
5 reasons that the contract or order was not awarded to him.

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

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

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

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

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

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

14 **Sec. 17.** Chapter 338 of NRS is hereby amended by adding thereto the  
15 provisions set forth as sections 18 to 25, inclusive, of this act.

16 **Sec. 18.** *As used in sections 18 to 25, inclusive, of this act, unless the*  
17 *context otherwise requires, the words and terms defined in sections 19, 20 and 21*  
18 *of this act have the meanings ascribed to them in those sections.*

19 **Sec. 19.** *"Business owned by a service-disabled veteran" means a business:*

20 1. *Of which at least 51 percent of the ownership interest is held by one or*  
21 *more service-disabled veterans;*

22 2. *That is organized to engage in commercial transactions; and*

23 3. *That is managed and operated on a day-to-day basis by one or more*  
24 *service-disabled veterans.*

25 *↳ The term includes a business which meets the above requirements that is*  
26 *transferred to the spouse of a service-disabled veteran upon the death of the*  
27 *service-disabled veteran, as determined by the United States Department of*  
28 *Veterans Affairs.*

29 **Sec. 20.** *"Local business" has the meaning ascribed to it in section 7 of this*  
30 *act.*

31 **Sec. 21.** *"Service-disabled veteran" means a veteran of the Armed Forces*  
32 *of the United States who has a service-connected disability of at least zero percent*  
33 *as determined by the United States Department of Veterans Affairs.*

34 **Sec. 22.** 1. *For the purpose of awarding a contract for a public work of*  
35 *this State for which the estimated cost is \$100,000 or less, as governed by NRS*  
36 *338.13862, if a local business owned by a service-disabled veteran submits a bid,*  
37 *the bid shall be deemed to be 5 percent lower than the bid actually submitted.*

38 2. *The preference described in subsection 1 may not be combined with any*  
39 *other preference.*

40 **Sec. 23.** 1. *If the State Public Works Board determines that a business*  
41 *has made a material misrepresentation or otherwise committed a fraudulent act*  
42 *in applying for the preference described in section 22 of this act, the business is*  
43 *thereafter permanently prohibited from:*

44 (a) *Applying for or receiving the preference described in section 22 of this*  
45 *act; and*

46 (b) *Bidding on a contract for a public work of this State.*

47 2. *If the State Public Works Board determines, as described in subsection 1,*  
48 *that a business has made a material misrepresentation or otherwise committed a*  
49 *fraudulent act in applying for the preference described in section 22 of this act,*  
50 *the business may apply to the Manager to review the decision pursuant to chapter*  
51 *233B of NRS.*

1           3. *As used in this section, "Manager" has the meaning ascribed to it in*  
2 *NRS 341.015.*

3           **Sec. 24.** *The State Public Works Board shall report every 6 months to the*  
4 *Legislature, if it is in session, or to the Interim Finance Committee, if the*  
5 *Legislature is not in session. The report must contain, for the period since the last*  
6 *report:*

7           1. *The number of contracts for public works of this State that were subject*  
8 *to the provisions of sections 18 to 25, inclusive, of this act.*

9           2. *The total dollar amount of contracts for public works of this State that*  
10 *were subject to the provisions of sections 18 to 25, inclusive, of this act.*

11           3. *The number of local businesses owned by service-disabled veterans that*  
12 *submitted a bid or proposal on a contract for a public work of this State.*

13           4. *The number of contracts for public works of this State that were awarded*  
14 *to local businesses owned by service-disabled veterans.*

15           5. *The total number of dollars worth of contracts for public works of this*  
16 *State that were awarded to local businesses owned by service-disabled veterans.*

17           6. *Any other information deemed relevant by the Director of the Legislative*  
18 *Counsel Bureau.*

19           **Sec. 25.** *The State Public Works Board may adopt such regulations as it*  
20 *determines to be necessary or advisable to carry out the provisions of sections 18*  
21 *to 25, inclusive, of this act. The regulations may include, without limitation,*  
22 *provisions setting forth:*

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

25           2. *The documentation or other proof that a business must submit to*  
26 *demonstrate that it qualifies for the preference described in section 22 of this act;*  
27 *and*

28           3. *Such other matters as the State Public Works Board deems relevant.*

29           ↪ *In carrying out the provisions of this section, the State Public Works Board*  
30 *shall, to the extent practicable, cooperate and coordinate with the Purchasing*  
31 *Division of the Department of Administration so that any regulations adopted*  
32 *pursuant to this section and section 13 of this act are reasonably consistent.*

33           **Sec. 26.** NRS 338.1375 is hereby amended to read as follows:

34           338.1375 1. The State Public Works Board shall not accept a bid on a  
35 contract for a public work unless the contractor who submits the bid has qualified  
36 pursuant to NRS 338.1379 to bid on that contract.

37           2. The State Public Works Board shall by regulation adopt criteria for the  
38 qualification of bidders on contracts for public works of this State. The criteria  
39 adopted by the State Public Works Board pursuant to this section must be used by  
40 the State Public Works Board to determine the qualification of bidders on contracts  
41 for public works of this State.

42           3. The criteria adopted by the State Public Works Board pursuant to this  
43 section:

44           (a) Must be adopted in such a form that the determination of whether an  
45 applicant is qualified to bid on a contract for a public work does not require or  
46 allow the exercise of discretion by any one person.

47           (b) May include only:

48           (1) The financial ability of the applicant to perform a contract;

49           (2) The principal personnel of the applicant;

50           (3) Whether the applicant has breached any contracts with a public body or  
51 person in this State or any other state;

1 (4) Whether the applicant has been disqualified from being awarded a  
2 contract pursuant to NRS 338.017 or 338.13895 ~~or~~ *or section 23 of this act;*

3 (5) The performance history of the applicant concerning other recent,  
4 similar contracts, if any, completed by the applicant; and

5 (6) The truthfulness and completeness of the application.

6 **Sec. 27.** NRS 338.1385 is hereby amended to read as follows:

7 338.1385 1. Except as otherwise provided in subsection 9 and NRS  
8 338.1906 and 338.1907, this State, or a governing body or its authorized  
9 representative that awards a contract for a public work in accordance with  
10 paragraph (a) of subsection 1 of NRS 338.1373 shall not:

11 (a) Commence a public work for which the estimated cost exceeds \$100,000  
12 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is  
13 published in the county where the public work will be performed for bids for the  
14 public work. If no qualified newspaper is published in the county where the public  
15 work will be performed, the required advertisement must be published in some  
16 qualified newspaper that is printed in the State of Nevada and has a general  
17 circulation in the county.

18 (b) Commence a public work for which the estimated cost is \$100,000 or less  
19 unless it complies with the provisions of NRS 338.1386, 338.13862 and 338.13864  
20 ~~and~~ *and, with respect to the State, sections 18 to 25, inclusive, of this act.*

21 (c) Divide a public work into separate portions to avoid the requirements of  
22 paragraph (a) or (b).

23 2. At least once each quarter, the authorized representative of a public body  
24 shall report to the public body any contract that the authorized representative  
25 awarded pursuant to subsection 1 in the immediately preceding quarter.

26 3. Each advertisement for bids must include a provision that sets forth the  
27 requirement that a contractor must be qualified pursuant to NRS 338.1379 or  
28 338.1382 to bid on the contract.

29 4. Approved plans and specifications for the bids must be on file at a place  
30 and time stated in the advertisement for the inspection of all persons desiring to bid  
31 thereon and for other interested persons. Contracts for the public work must be  
32 awarded on the basis of bids received.

33 5. Except as otherwise provided in subsection 6 and NRS 338.1389, a public  
34 body or its authorized representative shall award a contract to the lowest responsive  
35 and responsible bidder.

36 6. Any bids received in response to an advertisement for bids may be rejected  
37 if the public body or its authorized representative responsible for awarding the  
38 contract determines that:

39 (a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;

40 (b) The bidder is not responsive or responsible;

41 (c) The quality of the services, materials, equipment or labor offered does not  
42 conform to the approved plans or specifications; or

43 (d) The public interest would be served by such a rejection.

44 7. A public body may let a contract without competitive bidding if no bids  
45 were received in response to an advertisement for bids and:

46 (a) The public body publishes a notice stating that no bids were received and  
47 that the contract may be let without further bidding;

48 (b) The public body considers any bid submitted in response to the notice  
49 published pursuant to paragraph (a);

50 (c) The public body lets the contract not less than 7 days after publishing a  
51 notice pursuant to paragraph (a); and



1 (d) The contract is awarded to the bidder who has submitted the lowest  
2 responsive and responsible bid.

3 8. Before a public body may commence the performance of a public work  
4 itself pursuant to the provisions of this section, based upon a determination that the  
5 public interest would be served by rejecting any bids received in response to an  
6 advertisement for bids, the public body shall prepare and make available for public  
7 inspection a written statement containing:

8 (a) A list of all persons, including supervisors, whom the public body intends  
9 to assign to the public work, together with their classifications and an estimate of  
10 the direct and indirect costs of their labor;

11 (b) A list of all equipment that the public body intends to use on the public  
12 work, together with an estimate of the number of hours each item of equipment will  
13 be used and the hourly cost to use each item of equipment;

14 (c) An estimate of the cost of administrative support for the persons assigned to  
15 the public work;

16 (d) An estimate of the total cost of the public work, including the fair market  
17 value of or, if known, the actual cost of all materials, supplies, labor and equipment  
18 to be used for the public work; and

19 (e) An estimate of the amount of money the public body expects to save by  
20 rejecting the bids and performing the public work itself.

21 9. This section does not apply to:

22 (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

23 (b) Any work of construction, reconstruction, improvement and maintenance  
24 of highways subject to NRS 408.323 or 408.327;

25 (c) Normal maintenance of the property of a school district;

26 (d) The Las Vegas Valley Water District created pursuant to chapter 167,  
27 Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to  
28 chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created  
29 pursuant to chapter 100, Statutes of Nevada 1993;

30 (e) The design and construction of a public work for which a public body  
31 contracts with a design-build team pursuant to NRS 338.1711 to 338.1727,  
32 inclusive;

33 (f) A constructability review of a public work, which review a local  
34 government or its authorized representative is required to perform pursuant to NRS  
35 338.1435; or

36 (g) The preconstruction or construction of a public work for which a public  
37 body enters into a contract with a construction manager at risk pursuant to NRS  
38 338.169 to 338.1699, inclusive.

39 **Sec. 28.** NRS 338.1385 is hereby amended to read as follows:

40 338.1385 1. Except as otherwise provided in subsection 9, this State, or a  
41 governing body or its authorized representative that awards a contract for a public  
42 work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:

43 (a) Commence a public work for which the estimated cost exceeds \$100,000  
44 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is  
45 published in the county where the public work will be performed for bids for the  
46 public work. If no qualified newspaper is published in the county where the public  
47 work will be performed, the required advertisement must be published in some  
48 qualified newspaper that is printed in the State of Nevada and having a general  
49 circulation within the county.

50 (b) Commence a public work for which the estimated cost is \$100,000 or less  
51 unless it complies with the provisions of NRS 338.1386, 338.13862 and 338.13864

52 ***and, with respect to the State, sections 18 to 25, inclusive, of this act.***

1 (c) Divide a public work into separate portions to avoid the requirements of  
2 paragraph (a) or (b).

3 2. At least once each quarter, the authorized representative of a public body  
4 shall report to the public body any contract that the authorized representative  
5 awarded pursuant to subsection 1 in the immediately preceding quarter.

6 3. Each advertisement for bids must include a provision that sets forth the  
7 requirement that a contractor must be qualified pursuant to NRS 338.1379 or  
8 338.1382 to bid on the contract.

9 4. Approved plans and specifications for the bids must be on file at a place  
10 and time stated in the advertisement for the inspection of all persons desiring to bid  
11 thereon and for other interested persons. Contracts for the public work must be  
12 awarded on the basis of bids received.

13 5. Except as otherwise provided in subsection 6 and NRS 338.1389, a public  
14 body or its authorized representative shall award a contract to the lowest responsive  
15 and responsible bidder.

16 6. Any bids received in response to an advertisement for bids may be rejected  
17 if the public body or its authorized representative responsible for awarding the  
18 contract determines that:

19 (a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;

20 (b) The bidder is not responsive or responsible;

21 (c) The quality of the services, materials, equipment or labor offered does not  
22 conform to the approved plans or specifications; or

23 (d) The public interest would be served by such a rejection.

24 7. A public body may let a contract without competitive bidding if no bids  
25 were received in response to an advertisement for bids and:

26 (a) The public body publishes a notice stating that no bids were received and  
27 that the contract may be let without further bidding;

28 (b) The public body considers any bid submitted in response to the notice  
29 published pursuant to paragraph (a);

30 (c) The public body lets the contract not less than 7 days after publishing a  
31 notice pursuant to paragraph (a); and

32 (d) The contract is awarded to the lowest responsive and responsible bidder.

33 8. Before a public body may commence the performance of a public work  
34 itself pursuant to the provisions of this section, based upon a determination that the  
35 public interest would be served by rejecting any bids received in response to an  
36 advertisement for bids, the public body shall prepare and make available for public  
37 inspection a written statement containing:

38 (a) A list of all persons, including supervisors, whom the public body intends  
39 to assign to the public work, together with their classifications and an estimate of  
40 the direct and indirect costs of their labor;

41 (b) A list of all equipment that the public body intends to use on the public  
42 work, together with an estimate of the number of hours each item of equipment will  
43 be used and the hourly cost to use each item of equipment;

44 (c) An estimate of the cost of administrative support for the persons assigned to  
45 the public work;

46 (d) An estimate of the total cost of the public work, including, the fair market  
47 value of or, if known, the actual cost of all materials, supplies, labor and equipment  
48 to be used for the public work; and

49 (e) An estimate of the amount of money the public body expects to save by  
50 rejecting the bids and performing the public work itself.

51 9. This section does not apply to:

52 (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

1 (b) Any work of construction, reconstruction, improvement and maintenance  
2 of highways subject to NRS 408.323 or 408.327;

3 (c) Normal maintenance of the property of a school district;

4 (d) The Las Vegas Valley Water District created pursuant to chapter 167,  
5 Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to  
6 chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created  
7 pursuant to chapter 100, Statutes of Nevada 1993;

8 (e) The design and construction of a public work for which a public body  
9 contracts with a design-build team pursuant to NRS 338.1711 to 338.1727,  
10 inclusive;

11 (f) A constructability review of a public work, which review a local  
12 government or its authorized representative is required to perform pursuant to NRS  
13 338.1435; or

14 (g) The preconstruction or construction of a public work for which a public  
15 body enters into a contract with a construction manager at risk pursuant to NRS  
16 338.169 to 338.1699, inclusive.

17 **Sec. 29.** NRS 338.13862 is hereby amended to read as follows:

18 338.13862 1. Before this State or a local government awards a contract for  
19 the completion of a public work in accordance with subsection 1 of NRS 338.1386,  
20 the State or the local government must:

21 (a) If the estimated cost of the public work is more than \$25,000 but not more  
22 than \$100,000, solicit bids from at least three properly licensed contractors; and

23 (b) If the estimated cost of the public work is \$25,000 or less, solicit a bid from  
24 at least one properly licensed contractor.

25 2. Any bids received in response to a solicitation for bids made pursuant to  
26 this section may be rejected if the State or the local government determines that:

27 (a) The quality of the services, materials, equipment or labor offered does not  
28 conform to the approved plan or specifications;

29 (b) The bidder is not responsive or responsible; or

30 (c) The public interest would be served by such a rejection.

31 3. At least once each quarter, the State and each local government shall  
32 prepare a report detailing, for each public work over \$25,000 for which a contract  
33 for its completion is awarded pursuant to paragraph (a) of subsection 1, if any:

34 (a) The name of the contractor to whom the contract was awarded;

35 (b) The amount of the contract awarded;

36 (c) A brief description of the public work; and

37 (d) The names of all contractors from whom bids were solicited.

38 4. A report prepared pursuant to subsection 3 is a public record and must be  
39 maintained on file at the administrative offices of the applicable public body.

40 5. The provisions of this section do not relieve this State from the duty to  
41 award the contract for the public work to a bidder who is:

42 (a) Qualified pursuant to the applicable provisions of NRS 338.1375 to  
43 338.1382, inclusive; and

44 (b) The lowest responsive and responsible bidder, if bids are required to be  
45 solicited from more than one properly licensed contractor pursuant to subsection 1.

46 *For the purposes of this paragraph, the lowest responsive and responsible bidder*  
47 *must be determined in consideration of any applicable bidder's preference*  
48 *granted pursuant to section 22 of this act.*

49 **Sec. 30.** Chapter 417 of NRS is hereby amended by adding thereto a new  
50 section to read as follows:

51 *1. Each year on or before October 1, the Office of Veterans' Services shall*  
52 *review the reports submitted pursuant to ~~section~~ sections 12 and 24 of this act.*

1       2. *In carrying out the provisions of subsection 1, the Office of Veterans'*  
2 *Services shall seek input from:*

3       (a) *The Purchasing Division of the Department of Administration.*

4       **(b) *The State Public Works Board.***

5       ~~(b)~~ (c) *The Commission on Economic Development.*

6       ~~(c)~~ (d) *Groups representing the interests of veterans of the Armed Forces*  
7 *of the United States.*

8       ~~(d)~~ (e) *The business community.*

9       ~~(e)~~ (f) *Local businesses owned by service-disabled veterans.*

10       3. *After performing the duties described in subsections 1 and 2, the Office*  
11 *of Veterans' Services shall make recommendations to the Legislative Commission*  
12 *regarding the continuation, modification, promotion or expansion of the*  
13 ~~*preference*~~ *preferences for local businesses owned by service-disabled veterans*  
14 *which ~~is~~ are described in ~~section~~ sections 10 and 22 of this act.*

15       4. *As used in this section:*

16       (a) *"Business owned by a service-disabled veteran" has the meaning*  
17 *ascribed to it in section 19 of this act.*

18       (b) *"Local business" has the meaning ascribed to it in section 7 of this act.*

19       (c) *"Service-disabled veteran" has the meaning ascribed to it in section 21 of*  
20 *this act.*

21       **Sec. 31.** NRS 333.336 is hereby repealed.

22       **Sec. 32.** 1. This section and sections 1 to ~~26~~ 27, inclusive, 29, 30 and 31  
23 of this act become effective on October 1, 2009.

24       2. Section 27 of this act expires by limitation on April 30, 2013.

25       3. Section 28 of this act becomes effective on May 1, 2013.

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### TEXT OF REPEALED SECTION

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#### **333.336 Inverse preference imposed on certain bidders resident outside State of Nevada.**

For the purpose of awarding a contract pursuant to this chapter, if a person who submits a bid or proposal:

1. Is a resident of a state other than the State of Nevada; and

2. That other state, with respect to contracts awarded by that other state or agencies of that other state, applies to bidders or contractors who are residents of that state a preference which is not afforded to bidders or contractors who are residents of the State of Nevada,

➤ the person or entity responsible for awarding the contract pursuant to this chapter shall, insofar as is practicable, increase the person's bid or proposal by an amount that is substantially equivalent to the preference that the other state of which the person is a resident denies to bidders or contractors who are residents of the State of Nevada.