

Amendment No. 123

Assembly Amendment to Assembly Bill No. 147

(BDR 27-753)

Proposed by: Assembly Committee on Government Affairs**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

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.

MSM/BJE



Date: 4/13/2009

A.B. No. 147—Requires local governments to grant preference to local bidders bidding on certain contracts for goods or services. (BDR 27-753)



ASSEMBLY BILL NO. 147—~~[ASSEMBLYWOMEN]~~ ASSEMBLYMEN SPIEGEL,
KIRKPATRICK, ~~[AND]~~ SMITH; AND HAMBRICK

FEBRUARY 9, 2009

Referred to Committee on Government Affairs

SUMMARY—Requires local governments , under certain circumstances, to grant preference to local bidders bidding on certain contracts for goods or services. (BDR 27-753)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: No.

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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 purchasing by local governments; requiring local governments , under certain circumstances, to grant a preference to local bidders bidding on certain contracts for goods or services; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for a 5-percent preference in bidding on public works and certain highway construction projects for contractors who provide evidence of the payment of certain taxes. (NRS 338.1389, 338.147, 338.1693, 338.1727, 408.3883, 408.3886) **Sections 1 and 2** of this bill provide for a 5-percent preference in bidding on local governmental purchasing contracts for contractors who qualify as a "local bidder," and set forth the ~~[parameters within which the governing body of a local government is required to define that term.]~~ criteria by which a bidder may qualify as a local bidder.

Under existing law, certain local governmental contracts for certain goods and services are stated to be, by their nature, not adapted to award by competitive bidding. (NRS 332.115) **Sections 1 and 3** of this bill provide that, irrespective of this exclusion from competitive bidding, local governmental contracts for the following types of goods and services must reflect ~~[a 5-percent preference]~~ consideration for local contractors if the governing body of the local government or its authorized representative has a choice of more than one person or vendor to fulfill the contract: (1) professional services; (2) perishable goods; (3) insurance; (4) hardware and associated peripheral equipment and devices for computers; (5) software for computers; (6) books, library materials and subscriptions; (7) items for resale through a retail outlet operated in this State by a local government or the State of Nevada; and (8) the design of, and equipment and services associated with, systems of communication.

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

Section 1. Chapter 332 of NRS is hereby amended by adding thereto a new section to read as follows:

1. ~~[With]~~ Except as otherwise provided in subsections 5 and 6, with respect to the awarding of a contract pursuant to NRS 332.065 ~~for which the estimated annual amount to perform the contract is more than \$25,000,~~ a responsive and responsible bidder who is a local bidder shall be deemed to have submitted a lower bid than a competing bidder who is not a local bidder if the amount of the bid of the local bidder is not more than 5 percent higher than the amount bid by the competing bidder.

2. With respect to the awarding of a contract of the type described in paragraph (b), (e), (f), (g), (h), (i), (n) or (q) of subsection 1 of NRS 332.115, if a governing body or its authorized representative has a choice of more than one person or vendor to fulfill the contract, at least one of whom is a local bidder, the contract must be awarded in such a manner as to reflect the preference described in subsection ~~1.~~

~~3. The governing body of each local government that awards contracts as described in subsection 1 shall, by ordinance or regulation, define the term "local bidder" for the purposes of that subsection.~~

~~4. In carrying out the duty set forth in subsection 3, the governing body shall define the term "local bidder" so that:~~

~~(a) A bidder is not deemed to be a local bidder unless the bidder produces evidence that the bidder has contributed financially to one or more local governments in this State;~~

~~(b) The financial contribution necessary for a bidder to be deemed a local bidder is evaluated solely on the basis of taxes or fees paid;~~

~~(c) A bidder desiring to be deemed a local bidder has the burden of proving the quantity of taxes and fees paid by providing to the governing body cancelled checks, credit card or debit card receipts, bank statements or other indicia of payment satisfactory to the governing body;~~

~~(d) The governing body retains discretion to determine the geographic area within which the payment of taxes or fees applies toward a bidder qualifying as a local bidder.~~

~~5. 6 of that section.~~

3. To qualify as a local bidder for the purposes of this section:

(a) If the bidder is a business of which at least 51 percent of the ownership interest is held by a member of a minority group, a woman or a service-disabled veteran, the business must have continuously employed at least one full-time employee in this State during the immediately preceding 1-year period;

(b) If the bidder is a business that does not meet the requirements of paragraph (a), the business must have:

(1) Continuously conducted business operations in this State during the immediately preceding 2-year period; and

(2) Continuously employed at least one full-time employee in this State during the immediately preceding 2-year period.

4. Governing bodies and their authorized representatives shall consult with the Purchasing Division of the Department of Administration to develop uniform standards for businesses to submit proof of their status for the purposes of subsection 3. Such uniform standards may include, without limitation, certification by reputable and reliable public or private entities to determine

whether at least 51 percent of the ownership interest of a business is or is not held by a member of a minority group, a woman or a service-disabled veteran.

5. The provisions of this section do not require a local government or its authorized representative to award a contract to a bidder whose quality of services, supplies, materials, equipment or labor does not conform to the requirements of the local government or if the public interest would be served by rejection of the bid.

6. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular contract because of the provisions of this section, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that contract.

7. As used in this section:

(a) "Minority group" has the meaning ascribed to it in NRS 232.472.

(b) "Service-disabled veteran" means a veteran of the Armed Forces of the United States who has a service-connected disability of 0 percent or greater as determined by the United States Department of Veterans Affairs.

Sec. 2. NRS 332.065 is hereby amended to read as follows:

332.065 1. If a governing body or its authorized representative has advertised for or requested bids in letting a contract, the governing body or its authorized representative must, except as otherwise provided in subsection 2, award the contract to the lowest responsive and responsible bidder. The lowest responsive and responsible bidder ~~may~~ **must** be judged on the basis of:

(a) Price;

(b) Conformance to specifications;

(c) Qualifications;

(d) Past performance;

(e) Performance or delivery date;

(f) Quality and utility of services, supplies, materials or equipment offered and the adaptability of those services, supplies, materials or equipment to the required purpose of the contract;

(g) *The status of the bidder as a local bidder, as determined pursuant to section 1 of this act;*

(h) The best interests of the public; and

~~(h)~~ (i) Such other criteria as may be set forth by the governing body or its authorized representative in the advertisement or request for bids, as applicable, that pertains to the contract.

2. The governing body or its authorized representative:

(a) Shall give preference to recycled products if:

(1) The product meets the applicable standards;

(2) The product can be substituted for a comparable nonrecycled product; and

(3) The product costs no more than a comparable nonrecycled product.

(b) May give preference to recycled products if:

(1) The product meets the applicable standards;

(2) The product can be substituted for a comparable nonrecycled product; and

(3) The product costs no more than 5 percent more than a comparable nonrecycled product.

(c) May purchase recycled paper products if the specific recycled paper product is:

(1) Available at a price which is not more than 10 percent higher than that of paper products made from virgin material;

(2) Of adequate quality; and

1 (3) Available to the purchaser within a reasonable period.

2 3. If, after the lowest responsive and responsible bidder has been awarded the
3 contract, during the term of the contract he does not supply goods or services in
4 accordance with the bid specifications, or if he repudiates the contract, the
5 governing body or its authorized representative may reaward the contract to the
6 next lowest responsive and responsible bidder without requiring that new bids be
7 submitted. Reawarding the contract to the next lowest responsive and responsible
8 bidder is not a waiver of any liability of the initial bidder awarded the contract.

9 4. As used in this section:

10 (a) "Postconsumer waste" means a finished material which would normally be
11 disposed of as a solid waste having completed its life cycle as a consumer item.

12 (b) "Recycled paper product" means all paper and wood-pulp products
13 containing in some combination at least 50 percent of its total weight:

14 (1) Postconsumer waste; and

15 (2) Secondary waste,

16 ➤ but does not include fibrous waste generated during the manufacturing process
17 such as fibers recovered from wastewater or trimmings of paper machine rolls,
18 wood slabs, chips, sawdust or other wood residue from a manufacturing process.

19 (c) "Secondary waste" means fragments of products or finished products of a
20 manufacturing process which has converted a virgin resource into a commodity of
21 real economic value.

22 **Sec. 3.** NRS 332.115 is hereby amended to read as follows:

23 332.115 1. Contracts which by their nature are not adapted to award by
24 competitive bidding, including contracts for:

25 (a) Items which may only be contracted from a sole source;

26 (b) Professional services;

27 (c) Additions to and repairs and maintenance of equipment which may be more
28 efficiently added to, repaired or maintained by a certain person;

29 (d) Equipment which, by reason of the training of the personnel or of an
30 inventory of replacement parts maintained by the local government is compatible
31 with existing equipment;

32 (e) Perishable goods;

33 (f) Insurance;

34 (g) Hardware and associated peripheral equipment and devices for computers;

35 (h) Software for computers;

36 (i) Books, library materials and subscriptions;

37 (j) Motor vehicle fuel purchased by a local law enforcement agency for use in
38 an undercover investigation;

39 (k) Motor vehicle fuel for use in a vehicle operated by a local law enforcement
40 agency or local fire department if such fuel is not available within the vehicle's
41 assigned service area from a fueling station owned by the State of Nevada or a local
42 government;

43 (l) Purchases made with money in a store fund for prisoners in a jail or local
44 detention facility for the provision and maintenance of a canteen for the prisoners;

45 (m) Supplies, materials or equipment that are available pursuant to an
46 agreement with a vendor that has entered into an agreement with the General
47 Services Administration or another governmental agency located within or outside
48 this State;

49 (n) Items for resale through a retail outlet operated in this State by a local
50 government or the State of Nevada;

51 (o) Commercial advertising within a recreational facility operated by a county
52 fair and recreation board;

(p) Goods or services purchased from organizations or agencies whose primary purpose is the training and employment of persons with disabilities; and

(q) The design of, and equipment and services associated with, systems of communication,

are not ~~except as otherwise provided in subsection 2 of section 1 of this act,~~ subject to the requirements of this chapter for competitive bidding, as determined by the governing body or its authorized representative.

2. The purchase of equipment for use by a local law enforcement agency in the course of an undercover investigation is not subject to the requirements of this chapter for competitive bidding, as determined by the governing body or its authorized representative, if:

(a) The equipment is an electronic or mechanical device which by design is intended to monitor and document in a clandestine manner suspected criminal activity; or

(b) Purchasing the equipment pursuant to such requirements would limit or compromise the use of such equipment by an agency authorized to conduct such investigations.

3. The purchase of personal safety equipment for use by a response agency or any other local governmental agency is not subject to the requirements of this chapter for competitive bidding, as determined by the governing body or its authorized representative, if:

(a) The personal safety equipment will be used by personnel of the response agency or other local governmental agency in preventing, responding to or providing services of recovery or relief in connection with emergencies, acts of terrorism or other natural or man-made disasters in which the health, safety or welfare of those personnel may be compromised, impaired or otherwise threatened; and

(b) The cost of the personal safety equipment is comparable to the cost of similar personal safety equipment that is available for purchase by the public.

4. The governing body of a hospital required to comply with the provisions of this chapter, or its authorized representative, may purchase goods commonly used by the hospital, under a contract awarded pursuant to NRS 332.065, without additional competitive bidding even if at the time the contract was awarded:

(a) The vendor supplying such goods to the person awarded the contract was not identified as a supplier to be used by the person awarded the contract; or

(b) The vendor was identified as a supplier but was not identified as the supplier of such goods.

The governing body of the hospital shall make available for public inspection each such contract and records related to those purchases.

5. This section does not prohibit a governing body or its authorized representative from advertising for or requesting bids.

6. Notwithstanding the provisions of subsections 1 to 5, inclusive, and except as otherwise provided in subsections 7 and 8, if a governing body or its authorized representative is choosing between two or more businesses, contractors or vendors to fulfill a contract described in paragraph (b), (e), (f), (g), (h), (i), (n) or (q) of subsection 1, the governing body or authorized representative, as applicable, shall:

(a) Include within its selection criteria consideration of the following factors:
(1) The number of residents of this State that the business, contractor or vendor employs;

(2) The amount of taxes and fees paid by the business, contractor or vendor to state and local governmental entities in Nevada;

(3) The length of time in which the business, contractor or vendor has maintained business operations in this State or the applicable local jurisdiction; and

(4) If the contract to be fulfilled is a contract described in paragraph (b) of subsection 1, the number of owners and principals of the business, contractor or vendor who are residents of this State.

(b) If the governing body or authorized representative uses a point system or similar scoring rubric, and if one or more of the businesses, contractors or vendors being considered qualifies as a local bidder pursuant to section 1 of this act, the status of being a local bidder must account for not less than 5 percent of the points or score awarded.

7. The provisions of subsection 6 do not require a local government or its authorized representative to award a contract to a business, contractor or vendor whose quality of services, supplies, materials, equipment or labor does not conform to the requirements of the local government or if the public interest would be served by rejection of the offer to fulfill the contract.

8. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular contract because of the provisions of subsection 6, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that contract.

9. As used in this section:

(a) "Act of terrorism" has the meaning ascribed to it in NRS 239C.030.

(b) "Personal safety equipment" means safety equipment that personnel of a response agency or other local governmental agency:

(1) Use in the course of preventing, responding to or providing services of recovery or relief in connection with emergencies, acts of terrorism or other natural or man-made disasters; or

(2) Wear or otherwise carry on a regular basis.

➤ The term includes, without limitation, firearms, boots, bulletproof vests or other types of body armor, protective garments, protective eyewear, gloves, helmets, and any specialized apparatus, equipment or materials approved or recommended by the United States Department of Homeland Security.

(c) "Response agency" means an agency of a local government that provides services related to law enforcement, firefighting, emergency medical care or public safety.

Sec. 4. NRS 625.530 is hereby amended to read as follows:

625.530 Except as otherwise provided in NRS 338.1711 to 338.1727, inclusive, and 408.3875 to 408.3887, inclusive:

1. The State of Nevada or any of its political subdivisions, including a county, city or town, shall not engage in any public work requiring the practice of professional engineering or land surveying, unless the maps, plans, specifications, reports and estimates have been prepared by, and the work executed under the supervision of, a professional engineer, professional land surveyor or registered architect.

2. The provisions of this section do not:

(a) Apply to any public work wherein the expenditure for the complete project of which the work is a part does not exceed \$35,000.

(b) Include any maintenance work undertaken by the State of Nevada or its political subdivisions.

(c) Authorize a professional engineer, registered architect or professional land surveyor to practice in violation of any of the provisions of chapter 623 of NRS or this chapter.

(d) Require the services of an architect registered pursuant to the provisions of chapter 623 of NRS for the erection of buildings or structures manufactured in an industrial plant, if those buildings or structures meet the requirements of local building codes of the jurisdiction in which they are being erected.

3. The selection of a professional engineer, professional land surveyor or registered architect to perform services pursuant to subsection 1 must be made on the basis of the competence and qualifications of the engineer, land surveyor or architect for the type of services to be performed and not on the basis of competitive fees. ~~It~~ but this sentence does not prohibit consideration of the factors set forth in subsection 6 of NRS 332.115. If, after selection of the engineer, land surveyor or architect, an agreement upon a fair and reasonable fee cannot be reached with him, the public agency may terminate negotiations and select another engineer, land surveyor or architect.

Sec. 5. Each local government that awards a contract in accordance with the provisions of section 1 of this act or NRS 332.115, as amended by section 3 of this act, or both, shall, on or before October 1 of each year in which it awards such a contract, submit to the Director of the Legislative Counsel Bureau a report setting forth:

1. The number of transactions conducted by the local government that are subject to the provisions of this act.

2. The number of businesses, contractors and vendors that qualified as local bidders pursuant to section 1 of this act.

3. A description of each type of transaction conducted by the local government which was subject to the provisions of this act, including, without limitation:

(a) Whether the transaction was for goods or services.

(b) The particular type of goods or services involved in the transaction.

(c) The total dollar amount of the transaction.

4. The number of businesses, contractors and vendors that:

(a) Were awarded a contract without being qualified as a local bidder or without receiving any consideration as a local bidder.

(b) Were awarded a contract, in whole or in part, because they were qualified as a local bidder or received consideration as a local bidder. The information required pursuant to this paragraph must include, for each such contract, the dollar amount of the contract.

5. Any other information determined to be relevant by the Director of the Legislative Counsel Bureau.

~~Sec. 4.~~ Sec. 6. This act becomes effective ~~upon passage and approval,~~ on July 1, 2009.