

Amendment No. 229

Assembly Amendment to Assembly Bill No. 223

(BDR 27-857)

Proposed by: Assembly Committee on Government Affairs**Amends:** Summary: No 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: 4/19/2009

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 bidders' preferences for local businesses and local businesses owned by service-disabled veterans with respect to state purchasing contracts; ~~for service-disabled veterans and bona fide Nevada residents;~~ establishing bidders' preferences for local businesses owned by service-disabled veterans with respect to state public works contracts; ~~for service-disabled veterans;~~ 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 ~~18-19~~ 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 ~~19-20~~ 31** of this bill repeals that inverse preference.

In place of the former inverse preference, **sections ~~21-22~~ 5-13** of this bill establish two separate new preferences in bidding on state purchasing contracts: (1) **section ~~21~~ 10** adds ~~one~~ a 5-percent preference for ~~local~~ businesses; ~~owned by service-disabled veterans;~~ and (2) **section ~~22~~ 10** also adds ~~one~~ a 5-percent preference for local businesses owned by bona fide residents of this State; service-disabled veterans. ~~Pursuant to section 4 of this bill, the two preceding preferences in bidding on state purchasing contracts may be combined, but may not together convey a total preference exceeding 10 percent.~~

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 preferences for local businesses owned by service-disabled veterans.

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

Section 1. Chapter 333 of NRS is hereby amended by adding thereto the provisions set forth as sections ~~2, 3 and 4~~ **5 to 13, inclusive**, of this act.

Sec. 2. ~~1. For the purpose of awarding a contract pursuant to this chapter, if a small business owned by a service-disabled veteran submits a bid or proposal and, at the time the bid is submitted, has a valid certificate of eligibility to receive a preference in bidding on state purchasing contracts issued by the Commission on Economic Development pursuant to subsection 2, the bid or proposal shall be deemed to be 5 percent lower than the bid or proposal actually submitted.~~

~~2. The Commission on Economic Development shall issue a certificate of eligibility to receive a preference in bidding on state purchasing contracts to a small business owned by a service-disabled veteran if:~~

~~(a) The business submits to the Commission an application on a form prescribed by the Commission;~~

~~(b) The business satisfies the definition of a small business owned by a service-disabled veteran set forth in paragraph (c) of subsection 5; and~~

~~(c) The business satisfies any other requirements imposed by the Commission by regulation pursuant to subsection 3.~~

~~3. The Commission on Economic Development, in consultation with the Purchasing Division, shall adopt such regulations as it deems necessary to carry out the provisions of this section. The regulations adopted pursuant to this subsection must set forth, without limitation:~~

~~(a) Procedures by which the preference in bidding described in subsection 2 may be transferred to the spouse of a service-disabled veteran upon the death of that veteran;~~

~~(b) A mechanism by which a business that is determined to have made a material misrepresentation or otherwise committed a fraudulent act when applying for the preference in bidding described in subsection 2 is thereafter permanently prohibited from;~~

~~(1) Applying for or receiving the preference in bidding described in subsection 2; and~~

~~(2) Bidding on a state purchasing contract pursuant to this chapter.~~

~~(c) The specific documentation or other proof that a business must submit to the Commission to demonstrate that it satisfies the definition of a small business owned by a service-disabled veteran set forth in paragraph (c) of subsection 5.~~

~~(d) The duration of the preference in bidding described in subsection 2, which must not be less than 1 year or more than 3 years.~~

~~(e) The method by which a business may reapply for the preference in bidding described in subsection 2.~~

~~4. The Office of Veterans' Services shall report every 6 months to the Legislature, if it is in session, or to the Interim Finance Committee, if the Legislature is not in session. The report must contain, for the period since the last report:~~

~~(a) The number of small businesses owned by service-disabled veterans to which the Commission on Economic Development has issued a certificate pursuant to subsection 2;~~

~~(b) The number of small businesses owned by service-disabled veterans that have submitted a bid or proposal on a state purchasing contract;~~

~~(c) The number of state purchasing contracts that have been awarded to small businesses owned by service-disabled veterans; and~~

~~(d) The total number of dollars worth of state purchasing contracts that have been awarded to small businesses owned by service-disabled veterans.~~

~~5. As used in this section:~~

~~(a) "Bona fide resident" means a person who has:~~

~~(1) Established a residence in the State of Nevada; and~~

~~(2) Actually resided in this State for at least 6 months or has a valid driver's license or identification card issued by the Department of Motor Vehicles of this State;~~

~~(b) "Service-disabled veteran" means a veteran of the Armed Forces of the United States who:~~

~~(1) Is a bona fide resident; and~~

~~(2) Has a service-connected disability of zero percent or greater as determined by the United States Department of Veterans Affairs;~~

~~(c) "Small business owned by a service-disabled veteran" means a business:~~

~~(1) At least 51 percent of which is owned by one or more service-disabled veterans;~~

~~(2) That is managed and operated on a day-to-day basis by one or more service-disabled veterans;~~

~~(3) That employs fewer than 100 employees;~~

~~(4) That has a net worth of \$5,000,000 or less or, if a sole proprietorship, has a net worth of \$5,000,000 or less including both business and personal investments;~~

~~(5) That is organized to engage in commercial transactions; and~~

~~(6) Whose main office or principal place of business is located in this State.] (Deleted by amendment.)~~

~~Sec. 3. [1. For the purpose of awarding a contract pursuant to this chapter, if a business owned by a bona fide resident submits a bid or proposal and, at the time it submits its bid, has a valid certificate of eligibility to receive a preference in bidding on state purchasing contracts issued by the Purchasing Division pursuant to subsection 2, the bid or proposal shall be deemed to be 5 percent lower than the bid or proposal actually submitted.~~

~~2. The Purchasing Division shall issue a certificate of eligibility to receive a preference in bidding on state purchasing contracts to a business owned by a bona fide resident if:~~

~~(a) The business submits to the Purchasing Division an application on a form prescribed by the Purchasing Division;~~

~~(b) The business satisfies the definition of a business owned by a bona fide resident set forth in paragraph (b) of subsection 5; and~~

~~(c) The business satisfies any other requirements imposed by the Division by regulation pursuant to subsection 3.~~

~~3. The Purchasing Division shall adopt such regulations as it deems necessary to carry out the provisions of this section. The regulations adopted pursuant to this subsection must set forth, without limitation:~~

~~(a) Procedures by which the preference in bidding described in subsection 2, upon the death of a person who wholly or partially owns a business that holds such a preference, may be transferred to the spouse of the decedent.~~

~~(b) A mechanism by which a business that is determined to have made a material misrepresentation or otherwise committed a fraudulent act when applying for the preference in bidding described in subsection 2 is thereafter permanently prohibited from;~~

~~(1) Applying for or receiving the preference in bidding described in subsection 2; and~~

~~(2) Bidding on a state purchasing contract pursuant to this chapter.~~

~~(c) The specific documentation or other proof that a business must submit to the Purchasing Division to demonstrate that it satisfies the definition of a business owned by a bona fide resident set forth in paragraph (b) of subsection 5.~~

~~(d) The duration of the preference in bidding described in subsection 2, which must not be less than 1 year or more than 3 years.~~

~~(e) The method by which a business may reapply for the preference in bidding described in subsection 2.~~

~~4. The Chief shall report every 6 months to the Legislature, if it is in session, or to the Interim Finance Committee, if the Legislature is not in session. The report must contain, for the period since the last report:~~

~~(a) The number of businesses owned by bona fide residents to which the Purchasing Division has issued a certificate pursuant to subsection 2;~~

~~(b) The number of businesses owned by bona fide residents that have submitted a bid or proposal on a state purchasing contract;~~

~~(c) The number of state purchasing contracts that have been awarded to businesses owned by bona fide residents; and~~

~~(d) The total number of dollars worth of state purchasing contracts that have been awarded to businesses owned by bona fide residents.~~

~~5. As used in this section:~~

~~(a) "Bona fide resident" means a person who has:~~

~~(1) Established a residence in the State of Nevada; and~~

~~(2) Actually resided in this State for at least 6 months or has a valid driver's license or identification card issued by the Department of Motor Vehicles of this State.~~

~~(b) "Business owned by a bona fide resident" means a business:~~

~~(1) At least 51 percent of which is owned by one or more bona fide residents;~~

~~(2) That is managed and operated on a day-to-day basis by one or more bona fide residents;~~

~~(3) That is organized to engage in commercial transactions; and~~

~~(4) Whose main office or principal place of business is located in this State.] (Deleted by amendment.)~~

~~Sec. 4. [A person submitting a bid or proposal may qualify for both of the preferences described in sections 2 and 3 of this act. However, in no event may the bid or proposal be deemed to be more than 10 percent lower than the bid or proposal actually submitted.] (Deleted by amendment.)~~

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

~~Sec. 6. "Business owned by a service-disabled veteran" means a business:~~

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

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

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

1 ↪ The term includes a business which meets the above requirements that is
2 transferred to the spouse of a service-disabled veteran upon the death of the
3 service-disabled veteran, as determined by the United States Department of
4 Veterans Affairs.

5 Sec. 7. "Local business" means a business that:

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

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

8 Sec. 8. "Service-disabled veteran" means a veteran of the Armed Forces of
9 the United States who has a service-connected disability of at least zero percent as
10 determined by the United States Department of Veterans Affairs.

11 Sec. 9. "State purchasing contract" means a contract awarded pursuant to
12 the provisions of this chapter.

13 Sec. 10. For the purpose of awarding a formal contract solicited pursuant
14 to subsection 2 of NRS 333.300:

15 1. If a local business submits a bid or proposal and is a responsive and
16 responsible bidder, the bid or proposal shall be deemed to be 5 percent lower than
17 the bid or proposal actually submitted.

18 2. If a local business owned by a service-disabled veteran submits a bid or
19 proposal and is a responsive and responsible bidder, the bid or proposal shall be
20 deemed to be 5 percent lower than the bid or proposal actually submitted.

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

25 (a) Applying for or receiving the preference described in section 10 of this
26 act; and

27 (b) Bidding on a state purchasing contract.

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

33 Sec. 12. The Purchasing Division shall report every 6 months to the
34 Legislature, if it is in session, or to the Interim Finance Committee, if the
35 Legislature is not in session. The report must contain, for the period since the last
36 report:

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

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

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

43 4. The number of local businesses not described in subsection 3 that
44 submitted a bid or proposal on a state purchasing contract.

45 5. The number of state purchasing contracts that were awarded to local
46 businesses owned by service-disabled veterans.

47 6. The number of state purchasing contracts that were awarded to local
48 businesses not described in subsection 5.

49 7. The total number of dollars worth of state purchasing contracts that were
50 awarded to local businesses owned by service-disabled veterans.

51 8. The total number of dollars worth of state purchasing contracts that were
52 awarded to local businesses not described in subsection 7.

9. Any other information deemed relevant by the Director of the Legislative Counsel Bureau.

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

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

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

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

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

~~[Sec. 5.]~~ Sec. 14. NRS 333.310 is hereby amended to read as follows:

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

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

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

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

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

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

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

(d) A summary of the provisions of ~~[NRS 333.336.]~~ sections 2, 3 and 4 5 to 13, inclusive, of this act.

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

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

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

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

~~[Sec. 6.]~~ Sec. 15. NRS 333.335 is hereby amended to read as follows:

333.335 1. Each proposal must be evaluated by:

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

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

2. A committee appointed pursuant to subsection 1 must consist of not less than two members. A majority of the members of the committee must be state officers or employees. The committee may include persons who are not state officers or employees and possess expert knowledge or special expertise that the

chief of the using agency or the Chief of the Purchasing Division determines is necessary to evaluate a proposal. The members of the committee are not entitled to compensation for their service on the committee, except that members of the committee who are state officers or employees are entitled to receive their salaries as state officers and employees. No member of the committee may have a financial interest in a proposal.

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

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

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

(c) The price of the proposal, including the ~~imposition~~ granting of an inverse preference any of the preferences described in ~~NRS 333.336, sections 2 and 3~~ section 10 of this act, if applicable; and

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

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

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

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

~~Sec. 7.~~ **Sec. 16.** NRS 333.340 is hereby amended to read as follows:

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

(a) Shall consider, if applicable, the ~~imposition~~ granting of any of the inverse preference preferences described in ~~NRS 333.336, sections 2 and 3~~ section 10 of this act.

(b) May consider:

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The history of maintenance or repair of the articles;
- (b) The cost of routine maintenance and repair of the articles;
- (c) Any warranties provided in connection with the articles;
- (d) The cost of replacement parts for the articles; and
- (e) The value of the articles as used articles when given in trade on a subsequent purchase.

~~[Sec. 8.]~~ Sec. 17. Chapter 338 of NRS is hereby amended by adding thereto ~~[a new section to read as follows:]~~ the provisions set forth as sections 18 to 25, inclusive, of this act.

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

Sec. 19. "Business owned by a service-disabled veteran" has the meaning ascribed to it in section 6 of this act.

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

Sec. 21. "Service-disabled veteran" has the meaning ascribed to it in section 8 of this act.

Sec. 22. 1. For the purpose of awarding a contract for a public work of this State for which the estimated cost is \$100,000 or less, as governed by NRS 338.13862, if a ~~(small)~~ local business owned by a service-disabled veteran submits a bid, ~~[and, at the time it submits its bid, has a valid certificate of eligibility to receive a preference in bidding on public works issued by the Commission on Economic Development pursuant to subsection 2,] the bid shall be deemed to be 5 percent lower than the bid actually submitted.~~

2. The ~~[Commission on Economic Development shall issue a certificate of eligibility to receive a preference in bidding on public works to a small business owned by a service-disabled veteran if:~~

~~— (a) The business submits to the Commission an application on a form prescribed by the Commission;~~

~~— (b) The business satisfies the definition of a small business owned by a service-disabled veteran set forth in paragraph (c) of subsection 5; and~~

~~— (c) The business satisfies any other requirements imposed by the Commission by regulation pursuant to subsection 3.~~

3. The Commission on Economic Development, in consultation with the State Public Works Board, shall adopt such regulations as it deems necessary to carry out the provisions of this section. The regulations adopted pursuant to this subsection must set forth, without limitation:

~~— (a) Procedures by which the preference in bidding described in subsection 2 may be transferred to the spouse of a service-disabled veteran upon the death of that veteran.~~

~~— (b) A mechanism by which a business that is determined to have made a material misrepresentation or otherwise committed a fraudulent act when applying for the preference in bidding described in subsection 2 is thereafter permanently prohibited from:~~

~~— (1) Applying for or receiving the preference in bidding described in subsection 2; and~~

~~— (2) Bidding on a contract for a public work pursuant to this chapter.~~

~~(c) The specific documentation or other proof that a business must submit to the Commission to demonstrate that it satisfies the definition of a small business owned by a service-disabled veteran set forth in paragraph (c) of subsection 5.~~

~~(d) The duration of the preference in bidding described in subsection 2, which must not be less than 1 year or more than 3 years.~~

~~(e) The method by which a business may reapply for the preference in bidding described in subsection 2.~~

~~4. The Office of Veterans' Services shall report every 6 months to the Legislature, if it is in session, or to the Interim Finance Committee, if the Legislature is not in session. The report must contain, for the period since the last report:~~

~~(a) The number of small businesses owned by service-disabled veterans to which the Commission on Economic Development has issued a certificate pursuant to subsection 2;~~

~~(b) The number of small businesses owned by service-disabled veterans that have submitted a bid on a contract for a public work;~~

~~(c) The number of contracts for public works that have been awarded to small businesses owned by service-disabled veterans; and~~

~~(d) The total number of dollars worth of contracts for public works that have been awarded to small businesses owned by service-disabled veterans.~~

~~5. As used in this section:~~

~~(a) "Bona fide resident" means a person who has:~~

~~(1) Established a residence in the State of Nevada; and~~

~~(2) Actually resided in this State for at least 6 months or has a valid driver's license or identification card issued by the Department of Motor Vehicles of this State.~~

~~(b) "Service-disabled veteran" means a veteran of the Armed Forces of the United States who:~~

~~(1) Is a bona fide resident; and~~

~~(2) Has a service-connected disability of zero percent or greater as determined by the United States Department of Veterans Affairs.~~

~~(c) "Small business owned by a service-disabled veteran" means a business:~~

~~(1) At least 51 percent of which is owned by one or more service-disabled veterans;~~

~~(2) That is managed and operated on a day-to-day basis by one or more service-disabled veterans;~~

~~(3) That employs fewer than 100 employees;~~

~~(4) That has a net worth of \$5,000,000 or less or, if a sole proprietorship, has a net worth of \$5,000,000 or less including both business and personal investments;~~

~~(5) That is organized to engage in commercial transactions; and~~

~~(6) Whose main office or principal place of business is located in this State.} preference described in subsection 1 may not be combined with any other preference.~~

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

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

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

2. If the State Public Works Board determines, as described in subsection 1, that a business has made a material misrepresentation or otherwise committed a

fraudulent act in applying for the preference described in section 22 of this act, the business may apply to the Manager to review the decision pursuant to chapter 233B of NRS.

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

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

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

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

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

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

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

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

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

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

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

3. Such other matters as the State Public Works Board deems relevant.
↪ In carrying out the provisions of this section, the State Public Works Board shall, to the extent practicable, cooperate and coordinate with the Purchasing Division of the Department of Administration so that any regulations adopted pursuant to this section and section 13 of this act are reasonably consistent.

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

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

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

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

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

(b) May include only:

- (1) The financial ability of the applicant to perform a contract;
- (2) The principal personnel of the applicant;

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

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

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

(6) The truthfulness and completeness of the application.

~~++~~ Sec. 9. **Sec. 27.** NRS 338.1385 is hereby amended to read as follows:

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

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

(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1386, 338.13862 and 338.13864 ~~++~~ and section 8 sections 18 to 25, inclusive, of this act.

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

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

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

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

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

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

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

(b) The bidder is not responsive or responsible;

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

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

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

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

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

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

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

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

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

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

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

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

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

9. This section does not apply to:

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

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

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

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

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

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

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

~~Sec. 10.~~ **Sec. 28.** NRS 338.1385 is hereby amended to read as follows:

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

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

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

~~and section 9~~ sections 18 to 25, inclusive, of this act.

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

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

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

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

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

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

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

(b) The bidder is not responsive or responsible;

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

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

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

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

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

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

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

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

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

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

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

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

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

9. This section does not apply to:

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

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

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

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

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

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

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

~~Sec. 11.~~ **Sec. 29.** NRS 338.13862 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

(b) The amount of the contract awarded;

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

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

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

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

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

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

For the purposes of this paragraph, the lowest responsive and responsible bidder must be determined in consideration of any applicable bidder's preference granted pursuant to section ~~19~~ 22 of this act.

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

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

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

- (a) The Purchasing Division of the Department of Administration.
- (b) The State Public Works Board.
- (c) The Commission on Economic Development.
- (d) Groups representing the interests of veterans of the Armed Forces of the United States.
- (e) The business community.
- (f) Local businesses owned by service-disabled veterans.

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

4. As used in this section:

- (a) "Business owned by a service-disabled veteran" has the meaning ascribed to it in section 6 of this act.
- (b) "Local business" has the meaning ascribed to it in section 7 of this act.
- (c) "Service-disabled veteran" has the meaning ascribed to it in section 8 of this act.

~~[Sec. 12.]~~ **Sec. 31.** NRS 333.336 is hereby repealed.

~~[Sec. 13.]~~ **Sec. 32.** 1. This section, ~~and~~ sections 1 to ~~[9.]~~ 26, inclusive, ~~[11 and 12]~~ and 29, 30 and 31 of this act become effective on ~~July~~ October 1, 2009.

2. Section ~~[9.]~~ 27 of this act expires by limitation on April 30, 2013.

3. Section ~~[10.]~~ 28 of this act becomes effective on May 1, 2013.

TEXT OF REPEALED SECTION

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.