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## FISCAL IMPACT REPORT

SPONSOR Armstrong ORIGINAL DATE 02/24/15  
LAST UPDATED 02/27/15 HB 389  
SHORT TITLE Procurement Code Gender Equity SB \_\_\_\_\_  
ANALYST Hanika-Ortiz

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			Minimal			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
Department of Finance and Administration (DFA)  
Administrative Office of the Courts (AOC)  
Department of Finance and Administration (DFA)

#### Responses Not Received From

General Services Department A/O 2/24/15

### SUMMARY

#### Synopsis of Bill

House Bill 389 amends the application of preferences section of the Procurement Code to include a five percent increase in an offeror's total points in a request-for-proposals process if that offeror can demonstrate gender equity in its payment of wages and salaries to its employees.

### FISCAL IMPLICATIONS

Preference programs have been known to inadvertently incur higher costs for governments.

### SIGNIFICANT ISSUE

The bill would help remedy the wage discrimination that puts working women at a disadvantage, by encouraging salary transparency by state contractors and making sure violations are revealed.

The bill allows a five percent preference for gender pay equity to be applied, in addition to other

preferences for New Mexico residents and veterans.

Unlike other preferences, the bill does not include this preference for invitations-to-bid.

### **PERFORMANCE IMPLICATIONS**

In 2013, Governor Susana Martinez signed into law the Fair Pay for Women Act (FPWA), prohibiting employers from engaging in gender-based wage discrimination. The FPWA provides it is discriminatory for employers with four or more employees to pay different wages to men and women who work in the same establishment, under similar working conditions, and who are performing work requiring equal skill, effort, and responsibility (it is not discriminatory for an employer to pay men and women different wages so long as the wage differential is based on a seniority or merit system.) An employee who successfully brings a claim under the FPWA is entitled to unpaid wages up to 6 years, damages from retaliation, and employment reinstatement.

The federal Equal Pay Act (EPA) also prohibits sex-based wage discrimination between men and women in the same establishment performing work under similar conditions. Unlike the FPWA, which only applies to employers with four or more employees, the EPA applies to all employers.

### **ADMINISTRATIVE IMPLICATIONS**

Most likely, GSD will be required to determine how to apply the new gender equity preference.

GSD would also be left to determine whether or not to report the data obtained from businesses, which could be organized by race in addition to sex.

### **DUPLICATION**

Duplicates Senate Bill 490

### **OTHER SUBSTANTIVE ISSUES**

DFA noted the bill adds a third preference in scoring requests for proposals. The two others are "resident business" and "resident veteran business." Resident business preference is a flat five percent obtained from the Taxation and Revenue Department (TRD). Veteran business preferences are awarded at seven, eight or ten percent depending on revenues, also from TRD.

DFA also noted that entities submitting proposals may choose not to pursue the preference if doing so results in producing salary information that is subject to public inspection. In addition, the definition warrants more specificity as there is much room for interpretation. Finally, there may be an increase in protests due to the application of preference points if the definition does not provide for uniform criteria in evaluating the salary compilation provided in a proposal.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Bidders compliant with gender pay equity will not get additional points in scoring of their RFPs.

AHO/aml/bb