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HOUSE BILL 93

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Bob Wooley

AN ACT

RELATING TO PROCUREMENT; AMENDING THE RESIDENT VETERAN BUSINESS PREFERENCE; REPEALING LAWS 2012, CHAPTER 56, SECTION 2 AND LAWS 2012, CHAPTER 56, SECTION 6.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 13-1-21 NMSA 1978 (being Laws 1979, Chapter 72, Section 1, as amended) is amended to read:

"13-1-21. APPLICATION OF PREFERENCES.--

A. For the purposes of this section:

(1) "business" means a commercial enterprise carried on for the purpose of selling goods or services, including growing, producing, processing or distributing agricultural products;

(2) "formal bid process" means a competitive ~~sealed~~ bid process;

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1 (3) "formal request for proposals process"
2 means a competitive [~~sealed~~] proposal process, including a
3 competitive [~~sealed~~] qualifications-based proposal process;

4 (4) "public body" means a department,
5 commission, council, board, committee, institution, legislative
6 body, agency, government corporation, educational institution
7 or official of the executive, legislative or judicial branch of
8 the government of the state or a political subdivision of the
9 state and the agencies, instrumentalities and institutions
10 thereof, including two-year post-secondary educational
11 institutions, school districts, local school boards and all
12 municipalities, including home-rule municipalities;

13 (5) "recycled content goods" means supplies
14 and materials composed twenty-five percent or more of recycled
15 materials; provided that the recycled materials content meets
16 or exceeds the minimum content standards required by bid
17 specifications;

18 (6) "resident business" means a business that
19 has a valid resident business certificate issued by the
20 taxation and revenue department pursuant to Section 13-1-22
21 NMSA 1978 but does not include a resident veteran business; and

22 (7) "resident veteran business" means a
23 business that has a valid resident veteran business certificate
24 issued by the taxation and revenue department pursuant to
25 Section 13-1-22 NMSA 1978.

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1 B. Except as provided in Subsection C of this
2 section, when a public body makes a purchase using a formal bid
3 process, the public body shall deem a bid submitted by a:

4 (1) resident business to be five percent lower
5 than the bid actually submitted; or

6 (2) resident veteran business, including all
7 of its subsidiaries, with annual gross revenues of [~~one million~~
8 ~~dollars (\$1,000,000) or less~~] up to three million dollars
9 (\$3,000,000) in the preceding tax year to be ten percent lower
10 than the bid actually submitted.

11 ~~[(3) resident veteran business with annual~~
12 ~~revenues of more than one million dollars (\$1,000,000) but less~~
13 ~~than five million dollars (\$5,000,000) to be eight percent~~
14 ~~lower than the bid actually submitted subject to the limitation~~
15 ~~provided in Subsection G of this section; and~~

16 ~~(4) resident veteran business with annual~~
17 ~~revenues of five million dollars (\$5,000,000) or more to be~~
18 ~~seven percent lower than the bid actually submitted subject to~~
19 ~~the limitation provided in Subsection G of this section.]~~

20 C. When a public body makes a purchase using a
21 formal bid process and the bids are received for both recycled
22 content goods and nonrecycled content goods, the public body
23 shall deem:

24 (1) bids submitted for recycled content goods
25 from any business, except a resident veteran business, to be

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1 five percent lower than the bids actually submitted; or

2 (2) bids submitted for recycled content goods
3 from a resident veteran business, including all of its
4 subsidiaries, with annual gross revenues of [~~one million~~
5 ~~dollars (\$1,000,000) or less~~] up to three million dollars
6 (\$3,000,000) in the preceding tax year to be ten percent lower
7 than the bids actually submitted.

8 [~~(3) bids submitted for recycled content goods~~
9 ~~from a resident veteran business with annual revenues of more~~
10 ~~than one million dollars (\$1,000,000) but less than five~~
11 ~~million dollars (\$5,000,000) to be eight percent lower than the~~
12 ~~bids actually submitted subject to the limitation provided in~~
13 ~~Subsection G of this section; and~~

14 [~~(4) bids submitted for recycled content goods~~
15 ~~from a resident veteran business with annual revenues of five~~
16 ~~million dollars (\$5,000,000) or more to be seven percent lower~~
17 ~~than the bids actually submitted subject to the limitation~~
18 ~~provided in Subsection G of this section.]~~

19 D. When a public body makes a purchase using a
20 formal request for proposals process, not including contracts
21 awarded on a point-based system, the public body shall award an
22 additional:

23 (1) five percent of the total weight of all
24 the factors used in evaluating the proposals to a resident
25 business; and

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1 (2) ten percent of the total weight of all the
2 factors used in evaluating the proposals to a resident veteran
3 business, including all of its subsidiaries, that has annual
4 gross revenues of [~~one million dollars (\$1,000,000) or less~~] up
5 to three million dollars (\$3,000,000) in the preceding tax
6 year.

7 ~~[(3) eight percent of the total weight of all~~
8 ~~the factors used in evaluating the proposals to a resident~~
9 ~~veteran business that has annual revenues of more than one~~
10 ~~million dollars (\$1,000,000) but less than five million dollars~~
11 ~~(\$5,000,000) subject to the limitation provided in Subsection G~~
12 ~~of this section; and~~

13 ~~(4) seven percent of the total weight of all~~
14 ~~the factors used in evaluating the proposals to a resident~~
15 ~~veteran business that has annual revenues of five million~~
16 ~~dollars (\$5,000,000) or more subject to the limitation provided~~
17 ~~in Subsection G of this section.]~~

18 E. When a public body makes a purchase using a
19 formal request for proposals process, and the contract is
20 awarded based on a point-based system, the public body shall
21 award [an] additional [~~of the~~] points equivalent [~~of~~] to:

22 (1) five percent of the total possible points
23 to a resident business; or

24 (2) ten percent of the total possible points
25 to a resident veteran business, including all of its

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1 subsidiaries, that has annual gross revenues of [~~one million~~
2 ~~dollars (\$1,000,000) or less~~] up to three million dollars
3 (\$3,000,000) in the preceding tax year.

4 [~~(3) eight percent of the total possible~~
5 ~~points to a resident veteran business that has annual revenues~~
6 ~~of more than one million dollars (\$1,000,000) but less than~~
7 ~~five million dollars (\$5,000,000) subject to the limitation~~
8 ~~provided in Subsection G of this section; and~~

9 ~~(4) seven percent of the total possible points~~
10 ~~to a resident veteran business that has annual revenues of five~~
11 ~~million dollars (\$5,000,000) or more subject to the limitation~~
12 ~~provided in Subsection G of this section.]~~

13 F. When a joint bid or joint proposal is submitted
14 by a combination of resident veteran, resident or nonresident
15 businesses, the preference provided pursuant to Subsection B,
16 C, D or E of this section shall be calculated in proportion to
17 the percentage of the contract, based on the dollar amount of
18 the goods or services provided under the contract, that will be
19 performed by each business as specified in the joint bid or
20 proposal.

21 [~~G. The preference pursuant to Paragraphs (3) and~~
22 ~~(4) of Subsection B of this section, Paragraphs (3) and (4) of~~
23 ~~Subsection C of this section, Paragraphs (3) and (4) of~~
24 ~~Subsection D of this section and Paragraphs (3) and (4) of~~
25 ~~Subsection E of this section shall be limited, in any calendar~~

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1 ~~year, to an aggregate of ten million dollars (\$10,000,000) in~~
2 ~~purchases by public bodies from all resident veteran businesses~~
3 ~~receiving preferences pursuant to the provisions of those~~
4 ~~paragraphs.]~~

5 G. A resident veteran business shall not benefit
6 from the preference pursuant to this section for more than ten
7 years. A person that is an owner of a business that is a
8 resident veteran business shall not benefit from the preference
9 pursuant to this section for more than ten years. A person
10 shall not benefit from the provisions of this section based on
11 more than one business concurrently.

12 H. A public body shall not award a business both a
13 resident business preference and a resident veteran business
14 preference.

15 I. The procedures provided in Sections 13-1-172
16 through 13-1-183 NMSA 1978 or in an applicable purchasing
17 ordinance apply to a protest to a public body concerning the
18 awarding of a contract in violation of this section.

19 J. This section shall not apply when the
20 expenditure includes federal funds for a specific purchase."

21 SECTION 2. Section 13-4-2 NMSA 1978 (being Laws 1984,
22 Chapter 66, Section 2, as amended) is amended to read:

23 "13-4-2. APPLICATION OF PREFERENCE.--

24 A. For the purposes of this section:

25 (1) "formal bid process" means a competitive

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~~[bracketed material] = delete~~

1 sealed bid process;

2 (2) "formal request for proposals process"
3 means a competitive sealed proposal process, including a
4 competitive sealed qualifications-based proposal process;

5 (3) "public body" means a department,
6 commission, council, board, committee, institution, legislative
7 body, agency, government corporation, educational institution
8 or official of the executive, legislative or judicial branch of
9 the government of the state or a political subdivision of the
10 state and the agencies, instrumentalities and institutions
11 thereof, including two-year post-secondary educational
12 institutions, school districts, local school boards and all
13 municipalities, including home-rule municipalities;

14 (4) "public works contract" means a contract
15 for construction, construction management, architectural,
16 landscape architectural, engineering, surveying or interior
17 design services;

18 (5) "resident contractor" means a person that
19 has a valid resident contractor certificate issued by the
20 taxation and revenue department pursuant to Section 13-1-22
21 NMSA 1978 but does not include a resident veteran contractor;
22 and

23 (6) "resident veteran contractor" means a
24 person that has a valid resident veteran contractor certificate
25 issued by the taxation and revenue department pursuant to

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1 Section 13-1-22 NMSA 1978.

2 B. For the purpose of awarding a public works
3 contract using a formal bid process, a public body shall deem a
4 bid submitted by a:

5 (1) resident contractor to be five percent
6 lower than the bid actually submitted; or

7 (2) resident veteran contractor, including all
8 of its subsidiaries, with annual gross revenues of [~~one million~~
9 ~~dollars (\$1,000,000) or less~~] up to three million dollars
10 (\$3,000,000) in the preceding tax year to be ten percent lower
11 than the bid actually submitted.

12 [~~(3) resident veteran contractor with annual~~
13 ~~revenues of more than one million dollars (\$1,000,000) but less~~
14 ~~than five million dollars (\$5,000,000) to be eight percent less~~
15 ~~than the bid actually submitted subject to the limitation~~
16 ~~provided in Subsection F of this section; and~~

17 [~~(4) resident veteran contractor with annual~~
18 ~~revenues of five million dollars (\$5,000,000) or more to be~~
19 ~~seven percent less than the bid actually submitted subject to~~
20 ~~the limitation provided in Subsection F of this section.]~~

21 C. When a public body awards a contract using a
22 formal request for proposals process, not including contracts
23 awarded on a point-based system, the public body shall award an
24 additional:

25 (1) five percent of the total weight of all

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1 the factors used in evaluating the proposals to a resident
2 contractor; or

3 (2) ten percent of the total weight of all the
4 factors used in evaluating the proposals to a resident veteran
5 contractor, including all of its subsidiaries, that has annual
6 gross revenues of [~~one million dollars (\$1,000,000) or less~~] up
7 to three million dollars (\$3,000,000) in the preceding tax
8 year.

9 [~~(3) eight percent of the total weight of all~~
10 ~~the factors used in evaluating the proposals to a resident~~
11 ~~veteran contractor that has annual revenues of more than one~~
12 ~~million dollars (\$1,000,000) but less than five million dollars~~
13 ~~(\$5,000,000) subject to the limitation provided in Subsection F~~
14 ~~of this section; and~~

15 [~~(4) seven percent of the total weight of all~~
16 ~~the factors used in evaluating the proposals to a resident~~
17 ~~veteran contractor that has annual revenues of five million~~
18 ~~dollars (\$5,000,000) or more subject to the limitation provided~~
19 ~~in Subsection F of this section.~~]

20 D. When a public body makes a purchase using a
21 formal request for proposals process, and the contract is
22 awarded based on a point-based system, the public body shall
23 award an additional of the equivalent of:

24 (1) five percent of the total possible points
25 to a resident contractor; or

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1 (2) ten percent of the total possible points
2 to a resident veteran contractor, including all of its
3 subsidiaries, that has annual gross revenues of [~~one million~~
4 ~~dollars (\$1,000,000) or less~~] up to three million dollars
5 (\$3,000,000) in the preceding tax year.

6 ~~[(3) eight percent of the total weight of all~~
7 ~~the factors used in evaluating the proposals to a resident~~
8 ~~veteran contractor that has annual revenues of more than one~~
9 ~~million dollars (\$1,000,000) but less than five million dollars~~
10 ~~(\$5,000,000) subject to the limitation provided in Subsection F~~
11 ~~of this section; and~~

12 ~~(4) seven percent of the total weight of all~~
13 ~~the factors used in evaluating the proposals to a resident~~
14 ~~veteran contractor that has annual revenues of five million~~
15 ~~dollars (\$5,000,000) or more subject to the limitation provided~~
16 ~~in Subsection F of this section.]~~

17 E. When a joint bid or joint proposal is submitted
18 by a combination of resident veteran, resident or nonresident
19 contractors, the preference provided pursuant to Subsection B,
20 C or D of this section shall be calculated in proportion to the
21 percentage of the contract, based on the dollar amount of the
22 goods or services provided under the contract, that will be
23 performed by each contractor as specified in the joint bid or
24 joint proposal.

25 ~~[F. The preference pursuant to Paragraphs (3) and~~

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1 ~~(4) of Subsection B of this section, Paragraphs (3) and (4) of~~
2 ~~Subsection C of this section and Paragraphs (3) and (4) of~~
3 ~~Subsection D of this section shall be limited, in any calendar~~
4 ~~year, to an aggregate of ten million dollars (\$10,000,000) in~~
5 ~~public works contracts by public bodies from all resident~~
6 ~~veteran contractors receiving preferences pursuant to the~~
7 ~~provisions of those paragraphs.]~~

8 F. A resident veteran contractor shall not benefit
9 from the preference pursuant to this section for more than ten
10 years. A person that is an owner of a business that is a
11 resident veteran contractor shall not benefit from the
12 preference pursuant to this section for more than ten years. A
13 person shall not benefit from the provisions of this section
14 based on more than one business concurrently.

15 G. A public body shall not award a contractor both
16 a resident contractor preference and a resident veteran
17 contractor preference.

18 H. The procedures provided in Sections 13-1-172
19 through 13-1-183 NMSA 1978 or in an applicable purchasing
20 ordinance apply to a protest to a public body concerning the
21 awarding of a contract in violation of this section."

22 SECTION 3. A new section of the Procurement Code is
23 enacted to read:

24 "[NEW MATERIAL] DUTY TO PROMULGATE RULES.--The secretary
25 of general services shall promulgate rules necessary to

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1 implement the provisions of this 2016 act."

2 SECTION 4. REPEAL.--Laws 2012, Chapter 56, Section 2 and
3 Laws 2012, Chapter 56, Section 6 are repealed.

4 SECTION 5. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2016.

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