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FISCAL IMPACT REPORT

SPONSOR	<u>SCORC</u>	ORIGINAL DATE	<u>02/08/10</u>	HB	
		LAST UPDATED	<u>02/09/10</u>		
SHORT TITLE	<u>In-State Business Procurement Preference</u>	SB			<u>14/CS/CS/SCORCS/ aSFL#1/aSFL#2</u>
				ANALYST	<u>Archuleta</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate*	Indeterminate*	Indeterminate*	Recurring	All Funds

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Impact

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AG)
 General Services Department (GSD)
 Department of Information Technology (DoIT)
 Economic Development Department (EDD)
 Department of Workforce Solutions (DWS)
 Human Services Department (HSD)
 Corrections Department (CD)

SUMMARY

Synopsis of Senate Floor#2 Amendment to Senate Corporations and Transportation Committee Substitute for Senate Public Affairs Committee Substitute for Senate Bill 14

The amendment removes the language referring to the requirement of having staffed and maintained an office that has paid the applicable state taxes for two years prior to the awarding of the proposal.

Synopsis of Senate Floor Amendment#1 to Senate Corporations and Transportation Committee Substitute for Senate Public Affairs Committee Substitute for Senate Bill 14

The amendment inserts language requiring the resident contractor or previously qualified New Mexico contractor bidding on a project to have paid applicable state taxes for two years prior to the awarding of the bid.

Synopsis of the Senate Corporations and Transportation Committee Substitute for Senate Public Affairs Committee Substitute for Senate Bill 14

Senate Corporations and Transportation Committee Substitute for Senate Public Affairs Committee Substitute for Senate Bill 14 amends Section 13-1-21 NMSA 1978 relating to the application of New Mexico resident preferences during general governmental contracting through the use of bids to remove New York state business enterprises from the definitions of “resident business” and “resident manufacturer”. Key elements of CS/14/SCORC are as follows:

- Adds a new section to the Procurement Code requiring the state purchasing agent to annually prepare and distribute to central purchasing offices a schedule providing which states give bidders in their states a preference and the extent of the preference. The schedule will be used by state agencies and local public bodies in evaluating bids.
- The bill removes “affiliates” of New Mexico resident businesses (those entities, controlling, controlled by, or under the common control of a resident business) from the definition of “resident business”.
- The bill modifies the definition of “New Mexico Resident Business” in that section to remove the current requirement that the business have five or more employees who are residents of the state in order to be considered a “New Mexico Resident Business.
- Gives preference to a New Mexico resident manufacturer over a New Mexico resident business.
- The bill also makes that section inapplicable to bid prices greater than ten million dollars (\$10,000,000), as opposed to those greater than five million dollars (\$5,000,000) in current law.
- The bill also eliminates provisions in that section which exempt either New Mexico or New York bus manufacturers or businesses, or other bus manufacturers regardless of their location, depending on its interpretation, from that section.
- The bill provides for contracts to be awarded to a bidder, a resident business or a resident manufacturer to be given preference over a nonresident business equal to the preference given or required by the state in which the nonresident business is a resident.
- The bill amends NMSA Section 13-4-2 relating to New Mexico resident preferences for government public works projects to remove New York state business enterprises from the definition of “resident contractor”.
- The bill amends that section to remove an exemption applicable only to telecommunications companies from the requirements that a bidder maintain its principal office and place of business in New Mexico, in order to be considered a “New Mexico Resident Contractor”, so long as the telecommunications company has paid unemployment compensation to the Workforce Transition Services Division of the Workforce Solutions Department at the applicable experience rate for that employer pursuant to the Unemployment Compensation Law on no fewer than ten employees who

have performed services subject to contributions for the two-year period prior to issuance of notice to bid.

- The amendments to that section would also make such payment of unemployment compensation for at least ten employees for the two year period prior to issuance of the notice to bid an additional requirement, applicable to all bidders, and not only to telecommunications companies, in order for a bidder to be deemed to be a “resident contractor”.
- The bill amends NMSA Section 13-4-5 to remove the preference granted to materials provided or offered by a New York state business enterprise in New Mexico public works projects.
- The bill provides that for purposes of that section, "resident business" means a business that is authorized to do and is doing business under the laws of this state and that maintains its principal place of business in the state and has staffed an office and has paid applicable state taxes for two years prior to the awarding of the proposal.
- The bill also repeals NMSA Section 13-1-21.2 generally providing that “New York state business enterprises shall be treated as New Mexico resident businesses or resident manufacturers for all procurement purposes”.

FISCAL IMPLICATIONS

Indeterminate fiscal impact. NMDOT does not foresee any major fiscal impact. NMDOT is not typically required to apply the rule of in-state preference when soliciting for its projects. It is rare for a non-resident business to be the low bidder in a NMDOT Invitation to Bid. The majority, if not all, contracts awarded by NMDOT are to resident businesses. Since the rule of in-state preference does not apply to projects specifically designated for federal expenditures, this further justifies a no fiscal impact for NMDOT. Most projects solicitations by NMDOT are supported by federal funds and earmarked for specific projects.

SIGNIFICANT ISSUES

The Senate Corporations and Transportation Committee Substitute for Senate Public Affairs Committee Substitute for Senate Bill 14 requires the state purchasing agent to develop a schedule that will be used by state agencies and local public bodies of states that provide a preference to in-state bidders and the extent of that preference.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Sections 13-1-21 and 13-4-2 NMSA 1978 will remain as written.

POSSIBLE QUESTIONS

DA/mew