

AN ACT

RELATING TO PROCUREMENT; ESTABLISHING A TEMPORARY PREFERENCE FOR RESIDENT VETERAN BUSINESSES AND FOR RESIDENT VETERAN CONTRACTORS; PROVIDING FOR CERTIFICATION AS A RESIDENT VETERAN BUSINESS AND A RESIDENT VETERAN CONTRACTOR.

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;

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

(4) "public body" means a department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of the state or a political

subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts, local school boards and all municipalities, including home-rule municipalities;

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

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

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

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

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

(2) resident veteran business with annual

revenues of one million dollars (\$1,000,000) or less to be ten percent lower than the bid actually submitted;

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

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

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

(1) bids submitted for recycled content goods from any business, except a resident veteran business, to be five percent lower than the bids actually submitted;

(2) bids submitted for recycled content goods from a resident veteran business with annual revenues of one million dollars (\$1,000,000) or less to be ten percent lower than the bids actually submitted;

(3) bids submitted for recycled content goods from a resident veteran business with annual revenues of more than one million dollars (\$1,000,000) but less than five

million dollars (\$5,000,000) to be eight percent lower than the bids actually submitted subject to the limitation provided in Subsection G of this section; and

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

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

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

(2) ten percent of the total weight of all the factors used in evaluating the proposals to a resident veteran business that has annual revenues of one million dollars (\$1,000,000) or less;

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

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

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

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

(2) ten percent of the total possible points to a resident veteran business that has annual revenues of one million dollars (\$1,000,000) or less;

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

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

F. When a joint bid or joint proposal is submitted by a combination of resident veteran, resident or nonresident

businesses, the preference provided pursuant to Subsection B, C, D or E of this section shall be calculated in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by each business as specified in the joint bid or proposal.

G. The preference pursuant to Paragraphs (3) and (4) of Subsection B of this section, Paragraphs (3) and (4) of Subsection C of this section, Paragraphs (3) and (4) of Subsection D of this section and Paragraphs (3) and (4) of Subsection E of this section shall be limited, in any calendar year, to an aggregate of ten million dollars (\$10,000,000) in purchases by public bodies from all resident veteran businesses receiving preferences pursuant to the provisions of those paragraphs.

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

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

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

SECTION 2. Section 13-1-21 NMSA 1978 (being Laws 1979,

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Chapter 72, Section 1, as amended by Section 1 of this act) is repealed and a new Section 13-1-21 NMSA 1978 is enacted 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;

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

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

(5) "resident business" means a business

that has a valid resident business certificate issued by the taxation and revenue department pursuant to Section 13-1-22 NMSA 1978; and

(6) "recycled content goods" means supplies and materials composed twenty-five percent or more of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications.

B. When a public body makes a purchase using a formal bid process, the public body shall deem a bid submitted by a resident business to be five percent lower than the bid actually submitted.

C. When a public body makes a purchase using a formal request for proposals process:

(1) five percent of the total weight of all the factors used in evaluating the proposals shall be awarded to a resident business based on the resident business possessing a valid resident business certificate; or

(2) if the contract is awarded based on a point-based system, a resident business shall be awarded the equivalent of five percent of the total possible points to be awarded based on the resident business possessing a valid resident business certificate.

D. When a joint bid or joint proposal is submitted by both resident and nonresident businesses, the resident

business preference provided pursuant to Subsection B or C of this section shall be reduced in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by a nonresident business as specified in the joint bid or proposal.

E. When bids are received for both recycled content goods and nonrecycled content goods, the public body shall deem the bids submitted for recycled content goods of equal quality to be five percent lower than the bids actually submitted. A bid calculation pursuant to this subsection for a resident business shall not also receive the bid calculation preference pursuant to Subsection B of this section.

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

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

SECTION 3. Section 13-1-22 NMSA 1978 (being Laws 1969, Chapter 184, Section 1, as amended) is amended to read:

"13-1-22. RESIDENT BUSINESS, RESIDENT VETERAN BUSINESS, RESIDENT CONTRACTOR AND RESIDENT VETERAN CONTRACTOR CERTIFICATION.--

A. To receive a resident business or resident

veteran business preference pursuant to Section 13-1-21 NMSA 1978 or a resident contractor or resident veteran contractor preference pursuant to Section 13-4-2 NMSA 1978, a business or contractor shall submit with its bid or proposal a copy of a valid resident business certificate, valid resident veteran business certificate, valid resident contractor certificate or valid resident veteran contractor certificate issued by the taxation and revenue department.

B. An application for a resident business certificate shall include an affidavit from a certified public accountant setting forth that the business is licensed to do business in this state and that:

(1) the business has paid property taxes or rent on real property in the state and paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit;

(2) if the business is a new business, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit and has not applied for a resident business or resident contractor certificate pursuant to this section during that time period;

(3) if the business is a relocated business, at least eighty percent of the total personnel of the business

in the year immediately preceding the submission of the affidavit were residents of the state and that, prior to the submission of the affidavit, the business either leased real property for ten years or purchased real property greater than one hundred thousand dollars (\$100,000) in value in the state; or

(4) if the business is a previously certified business or was eligible for certification, the business has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same commercial enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

C. An application for a resident veteran business certificate shall include the affidavit required by Subsection B of this section, an affidavit from a certified public accountant providing the previous year's annual revenues of the resident veteran business and:

(1) verification by the federal department of veterans affairs as being either a veteran-owned small business or a service-disabled veteran-owned small business; or

(2) verification of veteran status as indicated by the United States department of defense DD form

214 of release or discharge from active duty with an honorable discharge or of service-disabled veteran status by the department of veterans affairs and proof that a veteran or veterans own a majority of the business.

D. An application for a resident contractor certificate shall include an affidavit from a certified public accountant setting forth that the contractor is currently licensed as a contractor in this state and that:

(1) the contractor has:

(a) registered with the state at least one vehicle; and

(b) in each of the five years immediately preceding the submission of the affidavit: 1) paid property taxes or rent on real property in the state and paid at least one other tax administered by the state; and 2) paid unemployment insurance on at least three full-time employees who are residents of the state; provided that if a contractor is a legacy contractor, the requirement of at least three full-time employees who are residents of the state is waived;

(2) if the contractor is a new contractor, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the five years immediately preceding the submission of the affidavit and has

not applied for a resident business or resident contractor certificate pursuant to this section during that time period;

(3) if the contractor is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were residents of the state and that, prior to the submission of the affidavit, the contractor either leased real property for ten years or purchased real property greater than one hundred thousand dollars (\$100,000) in value in the state; or

(4) if the contractor is a previously certified contractor or was eligible for certification, the contractor has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

E. An application for a resident veteran contractor certificate shall include the affidavit required by Subsection D of this section, an affidavit from a certified public accountant providing the previous year's annual revenues for the resident veteran contractor and:

(1) verification by the federal department of veterans affairs as being either a veteran-owned small

business or a service-disabled veteran-owned small business;
or

(2) verification of veteran status as indicated by the United States department of defense DD form 214 of release or discharge from active duty with an honorable discharge or of service-disabled veteran status by the department of veterans affairs and proof that a veteran or veterans own a majority of the business.

F. The taxation and revenue department shall prescribe the form and content of an application for certification and required affidavit. The taxation and revenue department shall examine the application and affidavit and, if necessary, may seek additional information to ensure that the business or contractor is eligible to receive the certificate pursuant to the provisions of this section. If the taxation and revenue department determines that an applicant is eligible, the department shall issue a certificate pursuant to the provisions of this section. If the taxation and revenue department determines that the applicant is not eligible, the department shall issue notification within thirty days. If no notification is provided by the department, the certificate is deemed approved. A certificate is valid for three years from the date of its issuance; provided that if there is a change of ownership of more than fifty percent, a resident business,

resident veteran business, resident contractor or resident veteran contractor shall reapply for a certificate.

G. A business or contractor whose application for a certificate is denied has fifteen days from the date of the taxation and revenue department's decision to file an objection with the taxation and revenue department. The person filing the objection shall submit evidence to support the objection. The taxation and revenue department shall review the evidence and issue a decision within fifteen days of the filing of the objection.

H. If, following a hearing and an opportunity to be heard, the taxation and revenue department finds that a business or contractor provided false information to the taxation and revenue department in order to obtain a certificate or that a business or contractor used a certificate to obtain a resident business, resident veteran business, resident contractor or resident veteran contractor preference for a bid or proposal and the resident business, resident veteran business, resident contractor or resident veteran contractor did not perform the percentage of the contract specified in the bid or proposal, the business or contractor:

(1) is not eligible to receive a certificate or a preference pursuant to Section 13-1-21 or 13-4-2 NMSA 1978 for a period of five years from the date on which the

taxation and revenue department became aware of the submission of the false information or the failure to perform the contract as specified in the bid or proposal; and

(2) is subject to an administrative penalty of up to fifty thousand dollars (\$50,000) for each violation.

I. In a decision issued pursuant to Subsection G or H of this section, the taxation and revenue department shall state the reasons for the action taken and inform an aggrieved business or contractor of the right to judicial review of the determination pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

J. The taxation and revenue department may assess a reasonable fee for the issuance of a certificate not to exceed the actual cost of administering the taxation and revenue department's duties pursuant to this section.

K. The state auditor may audit or review the issuance or validity of certificates.

L. For purposes of this section:

(1) "new business" means a person that did not exist as a business in any form and that has been in existence for less than three years;

(2) "new contractor" means a person that did not exist as a business in any form and that has been in existence for less than five years;

(3) "legacy contractor" means a construction

business that has been licensed in this state for ten consecutive years; and

(4) "relocated business" means a business that moved eighty percent of its total domestic personnel from another state to New Mexico in the past five years."

SECTION 4. Section 13-1-22 NMSA 1978 (being Laws 1969, Chapter 184, Section 1, as amended by Section 3 of this act) is repealed and a new Section 13-1-22 NMSA 1978 is enacted to read:

"13-1-22. RESIDENT BUSINESS AND RESIDENT CONTRACTOR CERTIFICATION.--

A. To receive a resident business preference pursuant to Section 13-1-21 NMSA 1978 or a resident contractor preference pursuant to Section 13-4-2 NMSA 1978, a business or contractor shall submit with its bid or proposal a copy of a valid resident business certificate or valid resident contractor certificate issued by the taxation and revenue department.

B. An application for a resident business certificate shall include an affidavit from a certified public accountant setting forth that the business is licensed to do business in this state and that:

(1) the business has paid property taxes or rent on real property in the state and paid at least one other tax administered by the state in each of the three years

immediately preceding the submission of the affidavit;

(2) if the business is a new business, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit and has not applied for a resident business or resident contractor certificate pursuant to this section during that time period;

(3) if the business is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were residents of the state and that, prior to the submission of the affidavit, the business either leased real property for ten years or purchased real property greater than one hundred thousand dollars (\$100,000) in value in the state; or

(4) if the business is a previously certified business or was eligible for certification, the business has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same commercial enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

C. An application for a resident contractor

certificate shall include an affidavit from a certified public accountant setting forth that the contractor is currently licensed as a contractor in this state and that:

(1) the contractor has:

(a) registered with the state at least one vehicle; and

(b) in each of the five years immediately preceding the submission of the affidavit: 1) paid property taxes or rent on real property in the state and paid at least one other tax administered by the state; and 2) paid unemployment insurance on at least three full-time employees who are residents of the state; provided that if a contractor is a legacy contractor, the requirement of at least three full-time employees who are residents of the state is waived;

(2) if the contractor is a new contractor, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the five years immediately preceding the submission of the affidavit and has not applied for a resident business or resident contractor certificate pursuant to this section during that time period;

(3) if the contractor is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission

of the affidavit were residents of the state and that, prior to the submission of the affidavit, the contractor either leased real property for ten years or purchased real property greater than one hundred thousand dollars (\$100,000) in value in the state; or

(4) if the contractor is a previously certified contractor or was eligible for certification, the contractor has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

D. The taxation and revenue department shall prescribe the form and content of the application and required affidavit. The taxation and revenue department shall examine the application and affidavit and, if necessary, may seek additional information to ensure that the business or contractor is eligible to receive the certificate pursuant to the provisions of this section. If the taxation and revenue department determines that an applicant is eligible, the department shall issue a certificate pursuant to the provisions of this section. If the taxation and revenue department determines that the applicant is not eligible, the department shall issue notification within thirty days. If no

notification is provided by the department, the certificate is deemed approved. A certificate is valid for three years from the date of its issuance; provided that if there is a change of ownership of more than fifty percent, a resident business or resident contractor shall reapply for a certificate.

E. A business or contractor whose application for a certificate is denied has fifteen days from the date of the taxation and revenue department's decision to file an objection with the taxation and revenue department. The person filing the objection shall submit evidence to support the objection. The taxation and revenue department shall review the evidence and issue a decision within fifteen days of the filing of the objection.

F. If, following a hearing and an opportunity to be heard, the taxation and revenue department finds that a business or contractor provided false information to the taxation and revenue department in order to obtain a certificate or that a business or contractor used a certificate to obtain a resident business or resident contractor preference for a bid or proposal and the resident business or contractor did not perform the percentage of the contract specified in the bid or proposal, the business or contractor:

(1) is not eligible to receive a certificate or a preference pursuant to Section 13-1-21 or 13-4-2 NMSA

1978 for a period of five years from the date on which the taxation and revenue department became aware of the submission of the false information or the failure to perform the contract as specified in the bid or proposal; and

(2) is subject to an administrative penalty of up to fifty thousand dollars (\$50,000) for each violation.

G. In a decision issued pursuant to Subsection E or F of this section, the taxation and revenue department shall state the reasons for the action taken and inform an aggrieved business or contractor of the right to judicial review of the determination pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

H. The taxation and revenue department may assess a reasonable fee for the issuance of a certificate not to exceed the actual cost of administering the taxation and revenue department's duties pursuant to this section.

I. The state auditor may audit or review the issuance or validity of certificates.

J. For purposes of this section:

(1) "new business" means a person that did not exist as a business in any form and that has been in existence for less than three years;

(2) "new contractor" means a person that did not exist as a business in any form and that has been in existence for less than five years;

(3) "legacy contractor" means a construction business that has been licensed in this state for ten consecutive years; and

(4) "relocated business" means a business that moved eighty percent of its total domestic personnel from another state to New Mexico in the past five years."

SECTION 5. Section 13-4-2 NMSA 1978 (being Laws 1984, Chapter 66, Section 2, as amended) is amended to read:

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

A. For the purposes of this section:

(1) "formal bid process" means a competitive sealed bid process;

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

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

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

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

(6) "resident veteran contractor" means a person that has a valid resident veteran contractor certificate issued by the taxation and revenue department pursuant to Section 13-1-22 NMSA 1978.

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

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

(2) resident veteran contractor with annual revenues of one million dollars (\$1,000,000) or less to be ten percent lower than the bid actually submitted;

(3) resident veteran contractor with annual revenues of more than one million dollars (\$1,000,000) but less than five million dollars (\$5,000,000) to be eight percent less than the bid actually submitted subject to the

limitation provided in Subsection F of this section; and

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

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

(1) five percent of the total weight of all the factors used in evaluating the proposals to a resident contractor;

(2) ten percent of the total weight of all the factors used in evaluating the proposals to a resident veteran contractor that has annual revenues of one million dollars (\$1,000,000) or less;

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

(4) seven percent of the total weight of all the factors used in evaluating the proposals to a resident veteran contractor that has annual revenues of five million

dollars (\$5,000,000) or more subject to the limitation provided in Subsection F of this section.

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

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

(2) ten percent of the total possible points to a resident veteran contractor that has annual revenues of one million dollars (\$1,000,000) or less;

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

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

E. When a joint bid or joint proposal is submitted by a combination of resident veteran, resident or nonresident contractors, the preference provided pursuant to Subsection B,

C or D of this section shall be calculated in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by each contractor as specified in the joint bid or joint proposal.

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

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

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

SECTION 6. Section 13-4-2 NMSA 1978 (being Laws 1984, Chapter 66, Section 2, as amended by Section 5 of this act) is repealed and a new Section 13-4-2 NMSA 1978 is enacted to read:

"13-4-2. RESIDENT CONTRACTOR DEFINED--APPLICATION OF PREFERENCE.--

A. For the purposes of this section:

(1) "formal bid process" means a competitive sealed bid process;

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

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

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

(5) "resident contractor" means a person that has a valid resident contractor certificate issued by the taxation and revenue department pursuant to Section 13-1-22

NMSA 1978.

B. For the purpose of awarding a public works contract using a formal bid process, a public body shall deem a bid submitted by a resident contractor to be five percent lower than the bid actually submitted.

C. When a public body awards a contract using a formal request for proposals process:

(1) five percent of the total weight of all the factors used in evaluating the proposals shall be awarded to a resident contractor based on the resident contractor possessing a valid resident contractor certificate; or

(2) if the contract is awarded based on a point-based system, a resident contractor shall be awarded the equivalent of five percent of the total possible points to be awarded based on the resident contractor possessing a valid resident contractor certificate.

D. When a joint bid or joint proposal is submitted by both resident and nonresident contractors, the resident contractor preference provided pursuant to Subsection B or C of this section shall be reduced in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by a nonresident contractor as specified in the joint bid or joint proposal.

E. The procedures provided in Sections 13-1-172

through 13-1-183 NMSA 1978 or in an applicable purchasing ordinance apply to a protest to a public body concerning the awarding of a contract in violation of this section."

SECTION 7. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1, 3 and 5 of this act is July 1, 2012.

B. The effective date of the provisions of Sections 2, 4 and 6 of this act is July 1, 2022._____