

HOUSE BILL 557

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

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; and

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

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

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

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

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

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

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

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

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

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

24                   (2) ten percent of the total weight of all the  
25 factors used in evaluating the proposals to a resident veteran

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1 business that has annual revenues of [~~one million dollars~~  
2 ~~(\$1,000,000) or less~~] up to three million dollars (\$3,000,000).

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

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

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

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

20 (2) ten percent of the total possible points  
21 to a resident veteran business that has annual revenues of [~~one~~  
22 ~~million dollars (\$1,000,000) or less~~] up to three million  
23 dollars (\$3,000,000).

24 [~~(3) eight percent of the total possible~~  
25 ~~points to a resident veteran business that has annual revenues~~

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1 ~~of more than one million dollars (\$1,000,000) but less than~~  
2 ~~five million dollars (\$5,000,000) subject to the limitation~~  
3 ~~provided in Subsection G of this section; and~~

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

8 F. When a joint bid or joint proposal is submitted  
9 by a combination of resident veteran, resident or nonresident  
10 businesses, the preference provided pursuant to Subsection B,  
11 C, D or E of this section shall be calculated in proportion to  
12 the percentage of the contract, based on the dollar amount of  
13 the goods or services provided under the contract, that will be  
14 performed by each business as specified in the joint bid or  
15 proposal. The calculation of a bid by a resident veteran  
16 business shall include all sub-bids, including those for goods,  
17 services and construction.

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

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1 ~~paragraphs.]~~

2           G. A resident veteran business shall not benefit  
3 from the preference pursuant to this section for more than ten  
4 years. A person that is an owner of a business that is a  
5 resident veteran business shall not benefit from the preference  
6 pursuant to this section for more than ten years.

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

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

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

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

18           "13-4-2. APPLICATION OF PREFERENCE.--

19           A. For the purposes of this section:

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

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

25                   (3) "public body" means a department,

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1 commission, council, board, committee, institution, legislative  
2 body, agency, government corporation, educational institution  
3 or official of the executive, legislative or judicial branch of  
4 the government of the state or a political subdivision of the  
5 state and the agencies, instrumentalities and institutions  
6 thereof, including two-year post-secondary educational  
7 institutions, school districts, local school boards and all  
8 municipalities, including home-rule municipalities;

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

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

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

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

25 (1) resident contractor to be five percent

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1 lower than the bid actually submitted; and

2 (2) resident veteran contractor with annual  
3 revenues of [~~one million dollars (\$1,000,000) or less~~] up to  
4 three million dollars (\$3,000,000) to be ten percent lower than  
5 the bid actually submitted.

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

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

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

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

22 (2) ten percent of the total weight of all the  
23 factors used in evaluating the proposals to a resident veteran  
24 contractor that has annual revenues of [~~one million dollars~~  
25 ~~(\$1,000,000) or less~~] up to three million dollars (\$3,000,000).

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

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

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

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

18                   (2) ten percent of the total possible points  
19 to a resident veteran contractor that has annual revenues of  
20 ~~[one million dollars (\$1,000,000) or less]~~ up to three million  
21 dollars (\$3,000,000).

22                   ~~[(3) eight percent of the total weight of all~~  
23 ~~the factors used in evaluating the proposals to a resident~~  
24 ~~veteran contractor that has annual revenues of more than one~~  
25 ~~million dollars (\$1,000,000) but less than five million dollars~~

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1 ~~(\$5,000,000) subject to the limitation provided in Subsection F~~  
2 ~~of this section; and~~

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

8 E. When a joint bid or joint proposal is submitted  
9 by a combination of resident veteran, resident or nonresident  
10 contractors, the preference provided pursuant to Subsection B,  
11 C or D of this section shall be calculated in proportion to the  
12 percentage of the contract, based on the dollar amount of the  
13 goods or services provided under the contract, that will be  
14 performed by each contractor as specified in the joint bid or  
15 joint proposal. The calculation of a bid by a resident veteran  
16 business shall include all sub-bids, including those for goods,  
17 services and construction.

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

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1                   F. A resident veteran business shall not benefit  
2 from the preference pursuant to this section for more than ten  
3 years. A person that is an owner of a business that is a  
4 resident veteran business shall not benefit from the preference  
5 pursuant to this section for more than ten years.

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

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

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

15                   **SECTION 4. EFFECTIVE DATE.**--The effective date of the  
16 provisions of this act is July 1, 2015.