

HOUSE BILL 93

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

INTRODUCED BY

Bob Wooley

This document incorporates amendments made by the House and further amendments made by the Senate. It was returned to the House with a request that the House concur with the Senate amendments. It is a tool to show the amendments in context

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;

(3) "formal request for proposals process"

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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

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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; or

(2) resident veteran business, ~~including all of its subsidiaries,~~ with annual gross revenues of [~~one million dollars (\$1,000,000) or less~~] up to three million dollars (\$3,000,000) in the preceding tax year 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; or

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(2) bids submitted for recycled content goods from a resident veteran business, ~~including all of its subsidiaries,~~ with annual gross revenues of ~~[one million dollars (\$1,000,000) or less]~~ up to three million dollars (\$3,000,000) in the preceding tax year 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; and

(2) ten percent of the total weight of all the

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

~~[(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] points equivalent [of] to:

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

(2) ten percent of the total possible points to a resident veteran business, ~~including all of its subsidiaries,~~ that has annual gross revenues of [~~one million~~

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dollars ~~(\$1,000,000) or less~~ up to three million dollars  
(\$3,000,000) in the preceding tax year.

~~[(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~~

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~~purchases by public bodies from all resident veteran businesses receiving preferences pursuant to the provisions of those paragraphs.]~~

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

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 13-4-2 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

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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

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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; or

(2) resident veteran contractor, including all of its subsidiaries, with annual gross revenues of [one million dollars (\$1,000,000) or less] up to three million dollars (\$3,000,000) in the preceding tax year 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

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

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

~~[(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; or

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

~~[(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~~

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~~(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.]~~

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

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 3.** A new section of the Procurement Code is enacted to read:

"[NEW MATERIAL] DUTY TO PROMULGATE RULES.--The secretary

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of general services shall promulgate rules necessary to implement the provisions of this 2016 act."

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

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

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