

SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PROCUREMENT; PERMITTING A STATE AGENCY OR LOCAL PUBLIC BODY TO PROCURE SERVICES FROM CERTAIN BUSINESSES OWNED BY OR OPERATED IN THE INTEREST OF PERSONS WITH DISABILITIES; CREATING A PREFERENCE FOR CERTAIN BUSINESSES OWNED BY OR OPERATED IN THE INTEREST OF PERSONS WITH DISABILITIES.

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

SECTION 1. Section 13-1C-3 NMSA 1978 (being Laws 2005, Chapter 334, Section 3) is amended to read:

"13-1C-3. DEFINITIONS.--As used in the State Use Act:

A. "central nonprofit agency" means a nonprofit agency approved pursuant to rules of the council to facilitate the equitable distribution of orders for the services of:

- (1) qualified individuals; and
- (2) community rehabilitation programs;

[bracketed-material] = delete

1 B. "community rehabilitation program" means a
2 nonprofit entity:

3 (1) that is organized under the laws of the
4 United States or this state, operated in the interest of
5 persons with disabilities and operated so that no part of the
6 income of which inures to the benefit of any shareholder or
7 other person;

8 (2) that complies with applicable occupational
9 health and safety standards as required by federal or state
10 law; and

11 (3) that, in the provision of services,
12 whether or not procured under the State Use Act, employs during
13 the state fiscal year at least seventy-five percent persons
14 with disabilities in direct labor for the provision of
15 services;

16 C. "council" means the New Mexico council for
17 purchasing from persons with disabilities;

18 D. "direct labor" means all work directly relating
19 to the provision of services, but not work required for or
20 relating to supervision, administration or inspection;

21 E. "formal bid process" means a competitive sealed
22 bid process;

23 F. "formal request-for-proposals process" means a
24 competitive sealed proposal process, including a competitive
25 sealed qualifications-based proposal process;

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1 ~~[E.]~~ G. "local public body" means a political
2 subdivision of the state and the political subdivision's
3 agencies, instrumentalities and institutions;

4 ~~[F.]~~ H. "persons with disabilities" means persons
5 who have a mental or physical impairment that constitutes or
6 results in a substantial impediment to employment as defined by
7 the federal Rehabilitation Act of 1973;

8 ~~[G.]~~ I. "qualified individual" means a person with
9 a disability who is a business owner, or a business that is
10 primarily owned and operated by persons with disabilities that
11 employs at least seventy-five percent persons with disabilities
12 in the provision of direct labor, which has been approved by
13 the council to provide services to state agencies and local
14 public bodies. A person who is receiving services pursuant to
15 an individualized plan of employment from the vocational
16 rehabilitation division of the public education department or
17 from the commission for the blind shall be presumed to be a
18 person with disability, as shall a person who is receiving
19 supplemental security income or social security benefits based
20 on disability;

21 ~~[H.]~~ J. "state agency" means a department,
22 commission, council, board, committee, institution, legislative
23 body, agency, government corporation, educational institution
24 or official of the executive, legislative or judicial branch of
25 government of this state; and

1 ~~[F.]~~ K. "state purchasing agent" means the director
2 of the purchasing division of the general services department."

3 SECTION 2. Section 13-1C-7 NMSA 1978 (being Laws 2005,
4 Chapter 334, Section 7) is amended to read:

5 "13-1C-7. PROCUREMENT BY STATE AGENCIES AND LOCAL PUBLIC
6 BODIES--COOPERATIVE AGREEMENTS.--

7 A. A state agency or local public body [~~intending~~
8 ~~to~~] may procure a service on a list published by the council.
9 A state agency or local public body that procures a service
10 from a qualified individual or community rehabilitation program
11 pursuant to the State Use Act shall [~~in accordance with rules~~
12 ~~of the council~~] procure the service at the price established by
13 the council [~~if the service is available within the period~~
14 ~~required by the state agency or local public body. Procurement~~
15 ~~pursuant to the State Use Act is exempt from the provisions of~~
16 ~~the Procurement Code~~].

17 B. The council and a state agency or local public
18 body may enter into a cooperative agreement for effective
19 coordination of the objectives of the State Use Act and any
20 other law requiring procurement of services from a state agency
21 or local public body."

22 SECTION 3. A new section of the State Use Act is enacted
23 to read:

24 "[NEW MATERIAL] APPLICATION OF PREFERENCE.--

25 A. Except as provided in Subsection B of this

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1 section, when a state agency or local public body makes a
2 purchase using a formal bid process, the state agency or local
3 public body shall deem a bid submitted by a qualified
4 individual or community rehabilitation program to be six
5 percent lower than the bid actually submitted.

6 B. When a state agency or local public body makes a
7 purchase using a formal request-for-proposals process, not
8 including contracts awarded on a point-based system, the public
9 body shall award an additional six percent of the total weight
10 of all the factors used in evaluating the proposals to a
11 qualified individual or community rehabilitation program.

12 C. 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 additional points equivalent to six percent of the total
16 possible points to a qualified individual or community
17 rehabilitation program.

18 D. When a joint bid or joint proposal is submitted
19 by a combination of businesses that receive a preference
20 pursuant to this section or pursuant to Section 13-1-21 NMSA
21 1978 or businesses that are not allowed a preference, the
22 preference provided by this section and Section 13-1-21 NMSA
23 1978 shall be calculated in proportion to the percentage of the
24 contract, based on the dollar amount of the goods or services
25 provided under the contract, that will be performed by each

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1 business as specified in the joint bid or proposal.

2 E. A public body shall not award a business both a
3 preference pursuant to this section and a preference pursuant
4 to Section 13-1-21 NMSA 1978.

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

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

11 SECTION 4. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2015.