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FISCAL IMPACT REPORT

ORIGINAL DATE 2-7-06
 SPONSOR Varela LAST UPDATED 2/14/06 HB 845
 SHORT TITLE Protect Certain Small Businesses SB _____
 ANALYST Dearing

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY06	FY07	FY08	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		*Indeterminate Budgetary Increases	*Indeterminate Budgetary Increases		Recurring	

(Parenthesis () Indicate Expenditure Decreases) *Please See Narrative

Duplicates SB 652

SOURCES OF INFORMATION

LFC Files

Responses Received From

General Services Department (GSD)

SUMMARY

Synopsis of Bill

House Bill 845 provides for several changes to Section 13-1-21 NMSA 1978, Public Purchases and Property.

Generally, House Bill 845 defines “bid,” “disadvantaged-small business,” and “proposal.” The bill clarifies language that is currently found within this section relating to New York state business procurement, and defines New York businesses as resident business, removing differential status for the purposes of reciprocity of procurement, necessary due to amendments within the New York statutes. Lastly, this legislation exempts construction industries and contracts, including materials from preferential bidding parameters.

Similarly, new preferential bid limits and parameters are established for disadvantaged small businesses, when these are the sole preference factor, as well as when this category is used in conjunction with other preference factors such as resident business and small business.

FISCAL IMPLICATIONS

*Indeterminate fiscal impact. The level of fiscal impact level is expected to be negative and directly correlated to the indeterminate and variable volume of preferred bids accepted, as these

bids would be tend to be slightly more expensive than the actual lowest bid.

The level of fiscal impact would vary directly on three factors:

- 1) Total dollar amount of bids received from the newly extended classes of preferentially treated businesses.

If the lowest actual bid is considered to be 100%, then;

“Resident Business” bid values, which are in excess of the lowest bid, between 0% and 5.23% higher than the lowest bid, *are now accepted as these are preferred.*

$$105.23\% \times .95 = 100\%$$

Currently, up to a 5.23% bid-cost premium over the actual lowest bid can be paid on these “Resident Business” bids.

“Small Business” bid values, which are in excess of the lowest bid, between 0% and 11.2% higher than the lowest bid, *would be accepted as these are preferred.*

$$111.20\% \times .90 = 100\%$$

If enacted, up to a 11.2% bid-cost premium over the actual lowest bid could be paid on these “Small Business” bids.

“Disadvantaged Small Business” bid values, which are in excess of the lowest bid, between 0% and 17.65% higher than the lowest bid, *would be accepted as these are preferred.*

$$117.65\% \times .85 = 100\%$$

If enacted, up to a 17.65% bid-cost premium over the actual lowest bid could be paid on these “Disadvantaged Small Business” bids.

- 2) How many of these preferred bid values fall within the “allotted” premium range. Only those bids received from preferentially treated business classes *which are also higher and fall within the ranges {0-11.2% with “Small Business” and 0-17.65% with “Disadvantaged Small Business”, and yet not higher than the upper limit(s)}* would have a negative impact on budgetary costs. Those preferential bids with values higher than the lowest bid, yet still higher than the aforementioned upper limits, would have no associated budgetary cost impact, as these bids would not be accepted.
- 3) What percentage of “Resident” businesses, currently providing bids are either “Small” or “Disadvantaged Small.” There is a potential concern that some current “Resident” businesses would re-classify themselves as one of the newly expanded preferentially treated business categories. This would increase the potential preferential bid premiums currently paid above the actual lowest bid, on preferred status bids, from up to 5.23%, to up to 11.2% or up to 17.65%, depending on the re-classification.

Currently, New Mexico resident businesses are allowed up to a 5.23% bid premium. Enactment of this legislation could increase the number of preferred bids, as well as increase the preferential business category premium on bids, up to a maximum of 17.65% in the case of “Disadvantaged Small” businesses, and subsequently increase those associated costs to procure goods and services falling under the parameters of this legislation.

SIGNIFICANT ISSUES

As currently written, Section 13-1-21 a.) NMSA 1978 defines “recycled content goods”

As enacted, the Section 13-1-21 a.) 1, 2, & 3 NMSA 1978 is expanded and clauses are inserted to define “bid” according to 13-1-102 NMSA 1978, “disadvantaged small business” as a resident business, one with 51% majority ownership by; females, honorably discharged veterans, to include those disabled, & all others defined to be minority as specified by the minority development agency of the U.S. Department of Commerce, and “proposal” according to Section 13-1-102 NMSA 1978

As currently written, Section 13-1-21 a.) 1) NMSA 1978 defines “resident business” as a New Mexico resident business, or a New York State business authorized to do business within the state, under the applicable laws.

As enacted, Section 13-1-21 a.) 5 NMSA 1978 redefines “resident business” as one which is authorized to do business in the state, and removes New York state-specific language from this subsection.

As currently written, Section 13-1-21 a.) 3) NMSA 1978 defines New York state businesses of all forms, in most industries as one having a principle office within the borders of that state.

As enacted, Section 13-1-21 a.) 3) NMSA 1978 is removed from the statutes.

As currently written, Section 13-1-21 a.) 4) NMSA 1978 defines “resident manufacturer” and includes a stipulation that a New York state business is a resident manufacturer in order to evaluate that business’s bid against the bid of a resident manufacturer, which is not a New York state business.

As enacted, Section 13-1-21 a.) 1) NMSA 1978 the clause that applies to New York state businesses is removed.

As enacted, Section 13-1-21 a.) 7) NMSA 1978 is inserted to define “small business” as a resident business as defined in Section 13-1-21 a.) 5) NMSA 1978.

As enacted, exceptions are created in Section 13-1-21 m.) 1 & 2 NMSA 1978 such that all provisions of this do not apply to construction contracts, construction service contracts, maintenance contracts, or those construction contracts based on unit pricing; as well as those materials used for in these contracts.

As enacted, Section 13-1-21 n.) NMSA 1978 is inserted such that when a bid from a small business is received, and the lowest bid is from either a non-resident or a resident business that is not defined as small, the bid is awarded to the small business closest to the low bid, as long as

the small business bid, when multiplied by .90, is lower than the others. When a bid preference is both small and resident, the preferential award may not exceed 10%.

As enacted, Section 13-1-21 o.) NMSA 1978 is inserted such that when a bid from a disadvantaged small business is received, and the lowest bid is from either a non-resident or a resident business that is not defined as small & disadvantaged, the bid is awarded to the disadvantaged small business closest to the low bid, as long as the disadvantaged small business bid, when multiplied by .85, is lower than the others. When a bid preference is both disadvantaged-small and resident, the preferential award may not exceed 15%.

As enacted, Section 13-1-21 p.) NMSA 1978 is inserted such that price-inclusive proposals from resident businesses are multiplied by .95 before evaluation points are awarded, as outlined in the RFP.

As enacted, Section 13-1-21 q.) NMSA 1978 is inserted such that price-inclusive proposals from small businesses are multiplied by .90 before evaluation points are awarded, as outlined in the RFP. When a bid preference is both small and resident, the preferential award may not exceed 10%.

As enacted, Section 13-1-21 r.) NMSA 1978 is inserted such that price-inclusive proposals from disadvantaged small businesses are multiplied by .85 before evaluation points are awarded, as outlined in the RFP. When a bid preference is both disadvantaged-small and resident, the preferential award may not exceed 15%

As enacted, Section 13-1-21.2 a.) NMSA 1978, Equal Procurement Access for New York Businesses, is amended to be more concise. This section previously referred to prior amendments to New York law that made reciprocity of procurement statutes necessary between NY & NM, however the amendment establishes the same reciprocity of procurement, albeit more concisely.

As enacted, Section 13-1-22 a.), b.), & c.) are amended to include disadvantaged-small and small business language, to the existing resident business language, for the application and submission of certificate of preferred business bids.

Some possible legal implications giving resident businesses versus non resident businesses preference based on the commerce clause of the United States Constitution.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Sections 13-1-21 & 13-1-22 NMSA 1978 will remain as written.

PD/mt:yr