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HOUSE BILL 97

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO PROCUREMENT; ESTABLISHING A 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

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1 sealed bid process;

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

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

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

19 [~~5~~] (6) "resident business" means a business
20 that has a valid resident business certificate issued by the
21 taxation and revenue department pursuant to Section
22 13-1-22 NMSA 1978 but does not include a resident veteran
23 business; [and

24 ~~(6) "recycled content goods" means supplies~~
25 ~~and materials composed twenty-five percent or more of recycled~~

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1 ~~materials; provided that the recycled materials content meets~~
2 ~~or exceeds the minimum content standards required by bid~~
3 ~~specifications] and~~

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

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

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

13 (2) resident veteran business to be ten
14 percent lower than the bid actually submitted.

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

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

22 (2) bids submitted for recycled content goods
23 from a resident veteran business to be ten percent lower than
24 the bids actually submitted.

25 [~~G-~~] D. When a public body makes a purchase using a

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1 formal request for proposals process, not including contracts
2 awarded on a point-based system, the public body shall award an
3 additional:

4 (1) five percent of the total weight of all
5 the factors used in evaluating the proposals [~~shall be awarded~~]
6 to a resident business; [~~based on the resident business~~
7 ~~possessing a valid resident business certificate; or~~] and

8 (2) [~~if~~] ten percent of the total weight of
9 all the factors used in evaluating the proposals shall be
10 awarded to a resident veteran business.

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

15 (1) [~~a resident business shall be awarded the~~
16 ~~equivalent of~~] five percent of the total possible points to [~~be~~
17 ~~awarded based on the~~] a resident business [~~possessing a valid~~
18 ~~resident business certificate~~]; and

19 (2) ten percent of the total possible points
20 to a resident veteran business.

21 [~~D-~~] F. When a joint bid or joint proposal is
22 submitted by [~~both resident and~~] a combination of resident
23 veteran, resident or nonresident businesses, the [~~resident~~
24 business] preference provided pursuant to Subsection B, [~~or~~] C,
25 D or E of this section shall be [~~reduced~~] calculated in

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1 proportion to the percentage of the contract, based on the
2 dollar amount of the goods or services provided under the
3 contract, that will be performed by ~~[a nonresident]~~ each
4 business as specified in the joint bid or proposal.

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

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

16 ~~[G.]~~ H. This section shall not apply when the
17 expenditure includes federal funds for a specific purchase."

18 **SECTION 2.** Section 13-1-22 NMSA 1978 (being Laws 1969,
19 Chapter 184, Section 1, as amended) is amended to read:

20 "13-1-22. RESIDENT BUSINESS ~~[AND]~~, RESIDENT VETERAN
21 BUSINESS, RESIDENT CONTRACTOR AND RESIDENT VETERAN CONTRACTOR
22 CERTIFICATION.--

23 A. To receive a resident business or resident
24 veteran business preference pursuant to Section 13-1-21 NMSA
25 1978 or a resident contractor or resident veteran contractor

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

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

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

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

22 (3) if the business is a relocated business,
23 at least eighty percent of the total personnel of the business
24 in the year immediately preceding the submission of the
25 affidavit were residents of the state and that, prior to the

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1 submission of the affidavit, the business either leased real
2 property for ten years or purchased real property greater than
3 one hundred thousand dollars (\$100,000) in value in the state;
4 or

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

13 C. An application for a resident veteran business
14 certificate shall include the affidavit required by Subsection
15 B of this section and:

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

19 (2) verification of veteran status as
20 indicated by the United States department of defense DD form
21 214 of release or discharge from active duty with greater than
22 dishonorable discharge or of service-disabled veteran status by
23 the department of veterans affairs and proof that veterans own
24 a majority of the business.

25 [~~G.~~] D. An application for a resident contractor

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

4 (1) the contractor has:

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

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

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

22 (3) if the contractor is a relocated business,
23 at least eighty percent of the total personnel of the business
24 in the year immediately preceding the submission of the
25 affidavit were residents of the state and that, prior to the

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1 submission of the affidavit, the contractor either leased real
2 property for ten years or purchased real property greater than
3 one hundred thousand dollars (\$100,000) in value in the state;
4 or

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

13 E. An application for a resident veteran contractor
14 shall include the affidavit required by Subsection D of this
15 section and:

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

19 (2) verification of veteran status as
20 indicated by the United States department of defense DD form
21 214 of release or discharge from active duty with greater than
22 dishonorable discharge or of service-disabled veteran status by
23 the department of veterans affairs and proof that veterans own
24 a majority of the business.

25 [~~D-~~] F. The taxation and revenue department shall

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1 prescribe the form and content of [~~the~~] an application for
2 certification and required affidavit. The taxation and revenue
3 department shall examine the application and affidavit and, if
4 necessary, may seek additional information to ensure that the
5 business or contractor is eligible to receive the certificate
6 pursuant to the provisions of this section. If the taxation
7 and revenue department determines that an applicant is
8 eligible, the department shall issue a certificate pursuant to
9 the provisions of this section. If the taxation and revenue
10 department determines that the applicant is not eligible, the
11 department shall issue notification within thirty days. If no
12 notification is provided by the department, the certificate is
13 deemed approved. A certificate is valid for three years from
14 the date of its issuance; provided that if there is a change of
15 ownership of more than fifty percent, a resident business,
16 resident veteran business, [~~or~~] resident contractor or resident
17 veteran contractor shall reapply for a certificate.

18 [~~E.~~] G. A business or contractor whose application
19 for a certificate is denied has fifteen days from the date of
20 the taxation and revenue department's decision to file an
21 objection with the taxation and revenue department. The person
22 filing the objection shall submit evidence to support the
23 objection. The taxation and revenue department shall review
24 the evidence and issue a decision within fifteen days of the
25 filing of the objection.

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1 ~~[F-]~~ H. If, following a hearing and an opportunity
2 to be heard, the taxation and revenue department finds that a
3 business or contractor provided false information to the
4 taxation and revenue department in order to obtain a
5 certificate or that a business or contractor used a certificate
6 to obtain a resident business, ~~[or]~~ resident veteran business,
7 resident contractor or resident veteran contractor preference
8 for a bid or proposal and the resident business, ~~[or]~~ resident
9 veteran business, resident contractor or resident veteran
10 contractor did not perform the percentage of the contract
11 specified in the bid or proposal, the business or contractor:

12 (1) is not eligible to receive a certificate
13 or a preference pursuant to Section 13-1-21 or 13-4-2 NMSA 1978
14 for a period of five years from the date on which the taxation
15 and revenue department became aware of the submission of the
16 false information or the failure to perform the contract as
17 specified in the bid or proposal; and

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

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

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1 ~~[H.]~~ J. The taxation and revenue department may
2 assess a reasonable fee for the issuance of a certificate not
3 to exceed the actual cost of administering the taxation and
4 revenue department's duties pursuant to this section.

5 ~~[I.]~~ K. The state auditor may audit or review the
6 issuance or validity of certificates.

7 ~~[J.]~~ L. For purposes of this section:

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

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

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

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

20 **SECTION 3.** Section 13-4-2 NMSA 1978 (being Laws 1984,
21 Chapter 66, Section 2, as amended) is amended to read:

22 "13-4-2. ~~[RESIDENT CONTRACTOR DEFINED]~~ APPLICATION OF
23 PREFERENCE.--

24 A. For the purposes of this section:

25 (1) "formal bid process" means a competitive

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1 sealed bid process;

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

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

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

18 (5) "resident contractor" means a person that
19 has a valid resident contractor certificate issued by the
20 taxation and revenue department pursuant to Section
21 13-1-22 NMSA 1978 but does not include a resident veteran
22 contractor; and

23 (6) "resident veteran contractor" means a
24 person that has a valid resident veteran contractor certificate
25 issued by the taxation and revenue department pursuant to

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1 Section 13-1-22 NMSA 1978.

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

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

7 (2) resident veteran contractor to be ten
8 percent lower than the bid actually submitted.

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

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

17 ~~(2) if]; and~~

18 (2) ten percent of the total weight of all the
19 factors used in evaluating the proposals to a resident veteran
20 contractor.

21 D. When a public body makes a purchase using a
22 formal bid process, and the contract is awarded based on a
23 point-based system, [~~a~~] the public body shall award an
24 additional of the equivalent of:

25 (1) [~~resident contractor shall be awarded the~~

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1 ~~equivalent of~~] five percent of the total possible points to [be
2 ~~awarded based on the~~] a resident contractor [~~possessing a valid~~
3 ~~resident contractor certificate~~]; and

4 (2) ten percent of the total possible points
5 to a resident veteran contractor.

6 [~~D.~~] E. When a joint bid or joint proposal is
7 submitted by [~~both resident and~~] a combination of resident
8 veteran, resident or nonresident contractors, the [~~resident~~
9 ~~contractor~~] preference provided pursuant to Subsection B, [~~or~~]
10 C or D of this section shall be [~~reduced~~] calculated in
11 proportion to the percentage of the contract, based on the
12 dollar amount of the goods or services provided under the
13 contract, that will be performed by [~~a nonresident~~] each
14 contractor as specified in the joint bid or joint proposal.

15 [~~E.~~] F. The procedures provided in Sections
16 13-1-172 through 13-1-183 NMSA 1978 or in an applicable
17 purchasing ordinance apply to a protest to a public body
18 concerning the awarding of a contract in violation of this
19 section."

20 **SECTION 4. EFFECTIVE DATE.**--The effective date of the
21 provisions of this act is July 1, 2012.