

FIFTIETH LEGISLATURE  
SECOND SESSION

February 15, 2012

SENATE FLOOR AMENDMENT number \_\_\_1\_\_\_ to HOUSE BILL 97, as amended  
Amendment sponsored by Senator David Ulibarri

1. Strike House Business and Industry Committee Amendments 1 and 3.

2. On page 1, line 11, before "PREFERENCE", insert "TEMPORARY".

3. On page 3, line 12, strike "and".

4. On page 3, line 13, after "business", insert "with annual revenues of one million dollars (\$1,000,000) or less".

5. On page 3, line 14, strike the period and insert in lieu thereof a semicolon.

6. On page 3, between lines 14 and 15, insert the following new paragraphs:

"(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."

7. On page 3, line 21, strike "and".

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8. On page 3, line 23, after "business", insert "with annual revenues of one million dollars (\$1,000,000) or less".

9. On page 3, line 24, strike the period and insert in lieu thereof a semicolon.

10. On page 3, between lines 24 and 25, insert the following new paragraphs:

"(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."

11. On page 4, line 7, strike "and".

12. On page 4, lines 9 and 10, strike "shall be awarded".

13. On page 4, line 10, strike the period and insert in lieu thereof "that has annual revenues of one million dollars (\$1,000,000) or less;".

14. On page 4, between lines 10 and 11, insert the following new paragraphs:

"(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

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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."

15. On page 4, line 18, strike "and".

16. On page 4, line 20, strike the period and insert in lieu thereof "that has annual revenues of one million dollars (\$1,000,000) or less;".

17. On page 4, between lines 20 and 21, insert the following new paragraphs:

"(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."

18. On page 5, between lines 11 and 12, insert the following new subsections:

"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 purchases by public bodies from all

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resident veteran businesses receiving preferences pursuant to the provisions of those paragraphs.

H. A public body shall not award a business both a resident business preference and a resident veteran business preference."

19. Reletter the succeeding subsections accordingly.

20. On page 5, between lines 17 and 18, insert the following new section:

"SECTION 2. Section 13-1-21 NMSA 1978 (being Laws 1979, Chapter 72, Section 1, as amended by Section 1 of this act) is repealed and a new Section 13-1-21 NMSA 1978 is enacted to read:

"13-1-21. [NEW MATERIAL] 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" 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-

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secondary educational institutions, school districts, local school boards and all municipalities, including home-rule municipalities;

(5) "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; and

(6) "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.

B. When a public body makes a purchase using a formal bid process, the public body shall deem a bid submitted by a resident business to be five percent lower than the bid actually submitted.

C. When a public body makes a purchase using a formal request for proposals process:

(1) five percent of the total weight of all the factors used in evaluating the proposals shall be awarded to a resident business based on the resident business possessing a valid resident business certificate; or

(2) if the contract is awarded based on a point-based system, a resident business shall be awarded the equivalent of five percent of the total possible points to be awarded based on the resident business possessing a valid resident business certificate.

D. When a joint bid or joint proposal is submitted by both resident and nonresident businesses, the resident business preference provided pursuant to Subsection B or C of this section shall be reduced 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 a nonresident business as specified in the joint bid or proposal.

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

F. 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.

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

21. Renumber the succeeding sections accordingly.

22. On page 7, line 15, before "and", insert ", an affidavit from a certified public accountant providing the previous year's annual revenues of the resident veteran business".

23. On page 7, lines 21 and 22, strike "greater than dishonorable" and insert in lieu thereof "an honorable".

24. On page 9, line 13, after "contractor", insert "certificate".

25. On page 9, line 15, before "and", insert ", an affidavit from a certified public accountant providing the previous year's annual revenues for the resident veteran contractor".

26. On page 9, lines 21 and 22, strike "greater than dishonorable" and insert in lieu thereof "an honorable".

27. On page 12, between lines 19 and 20, insert the following new section:

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"SECTION 4. Section 13-1-22 NMSA 1978 (being Laws 1969, Chapter 184, Section 1, as amended by Section 3 of this act) is repealed and a new Section 13-1-22 NMSA 1978 is enacted to read:

"13-1-22. [NEW MATERIAL] RESIDENT BUSINESS AND RESIDENT CONTRACTOR CERTIFICATION.--

A. To receive a resident business preference pursuant to Section 13-1-21 NMSA 1978 or a resident contractor preference pursuant to Section 13-4-2 NMSA 1978, a business or contractor shall submit with its bid or proposal a copy of a valid resident business certificate or valid resident contractor certificate issued by the taxation and revenue department.

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

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

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

(3) if the business is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were residents of the state and that, prior to the submission of the affidavit, the business either leased real property for ten years or purchased real

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property greater than one hundred thousand dollars (\$100,000) in value in the state; or

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

C. An application for a resident contractor certificate shall include an affidavit from a certified public accountant setting forth that the contractor is currently licensed as a contractor in this state and that:

(1) the contractor has:

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

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

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

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(3) if the contractor is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were residents of the state and that, prior to the submission of the affidavit, the contractor either leased real property for ten years or purchased real property greater than one hundred thousand dollars (\$100,000) in value in the state; or

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

D. The taxation and revenue department shall prescribe the form and content of the application and required affidavit. The taxation and revenue department shall examine the application and affidavit and, if necessary, may seek additional information to ensure that the business or contractor is eligible to receive the certificate pursuant to the provisions of this section. If the taxation and revenue department determines that an applicant is eligible, the department shall issue a certificate pursuant to the provisions of this section. If the taxation and revenue department determines that the applicant is not eligible, the department shall issue notification within thirty days. If no notification is provided by the department, the certificate is deemed approved. A certificate is valid for three years from the date of its issuance; provided that if there is a change of ownership of more than fifty percent, a resident business or resident contractor shall reapply for a certificate.

E. A business or contractor whose application for a certificate is denied has fifteen days from the date of the taxation and revenue department's decision to file an objection with the taxation and revenue department. The person filing the objection

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shall submit evidence to support the objection. The taxation and revenue department shall review the evidence and issue a decision within fifteen days of the filing of the objection.

F. If, following a hearing and an opportunity to be heard, the taxation and revenue department finds that a business or contractor provided false information to the taxation and revenue department in order to obtain a certificate or that a business or contractor used a certificate to obtain a resident business or resident contractor preference for a bid or proposal and the resident business or contractor did not perform the percentage of the contract specified in the bid or proposal, the business or contractor:

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

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

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

H. The taxation and revenue department may assess a reasonable fee for the issuance of a certificate not to exceed the actual cost of administering the taxation and revenue department's duties pursuant to this section.

I. The state auditor may audit or review the issuance or validity of certificates.

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J. For purposes of this section:

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

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

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

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

28. Renumber the succeeding sections accordingly.

29. On page 14, line 6, strike "and".

30. On page 14, line 7, after "contractor", insert "with annual revenues of one million dollars (\$1,000,000) or less".

31. On page 14, line 8, strike the period and insert in lieu thereof a semicolon.

32. On page 14, between lines 8 and 9, insert the following new paragraphs:

"(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

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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."

33. On page 14, line 17, strike "and".

34. On page 14, line 20, strike the period and insert in lieu thereof "that has annual revenues of one million dollars (\$1,000,000) or less;".

35. On page 14, between lines 20 and 21, insert the following new paragraphs:

"(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."

36. On page 14, line 22, strike "bid" and insert in lieu thereof "request for proposals".

37. On page 15, line 3, strike "and".

38. On page 15, line 5, strike the period and insert in lieu thereof "that has annual revenues of one million dollars (\$1,000,000) or less;".

39. On page 15, between lines 5 and 6, insert the following new paragraphs:

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"(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."

40. On page 15, between lines 14 and 15, insert the following new subsections:

"F. The preference pursuant to Paragraphs (3) and (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.

G. A public body shall not award a contractor both a resident contractor preference and a resident veteran contractor preference."

41. Reletter the succeeding subsection accordingly.

42. On page 15, between lines 19 and 20, insert the following new section:

"SECTION 6. Section 13-4-2 NMSA 1978 (being Laws 1984, Chapter 66, Section 2, as amended by Section 5 of this act) is repealed and a new Section 13-4-2 NMSA 1978 is enacted read:

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"13-4-2. [NEW MATERIAL] RESIDENT CONTRACTOR DEFINED--  
APPLICATION OF PREFERENCE.--

A. For the purposes of this section:

(1) "formal bid process" means a competitive 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; and

(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.

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 resident contractor to be five percent lower than the bid actually submitted.

C. When a public body awards a contract using a formal request for proposals process:

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

(2) if the contract is awarded based on a point-based system, a resident contractor shall be awarded the equivalent of five percent of the total possible points to be awarded based on the resident contractor possessing a valid resident contractor certificate.

D. When a joint bid or joint proposal is submitted by both resident and nonresident contractors, the resident contractor preference provided pursuant to Subsection B or C of this section shall be reduced 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 a nonresident contractor as specified in the joint bid or joint proposal.

E. 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."".

43. Renumber the succeeding section accordingly.

44. On page 15, line 20, before "The", insert the subsection designation "A.".

45. On page 15, line 21, after "provisions", insert "of Sections 1, 3 and 5".

46. On page 15, between lines 21 and 22, insert the following new subsection:

"B. The effective date of the provisions of Sections 2, 4 and 6 of this act is July 1, 2022.".

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\_\_\_\_\_  
David Ulibarri

Adopted \_\_\_\_\_  
(Chief Clerk)

Not Adopted \_\_\_\_\_  
(Chief Clerk)

Date \_\_\_\_\_