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HOUSE BILL 492

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Larry A. Larrañaga and Timothy M. Keller

AN ACT

RELATING TO PROCUREMENT; CLARIFYING REQUIREMENTS FOR
CERTIFICATION TO RECEIVE A RESIDENT PREFERENCE FOR A BUSINESS
OR CONTRACTOR PREVIOUSLY CERTIFIED AS A RESIDENT BUSINESS OR
CONTRACTOR; ALLOWING THE TAXATION AND REVENUE DEPARTMENT TO
SUSPEND OR REVOKE THE CERTIFICATION OF A BUSINESS OR CONTRACTOR
PREFERENCE IN CERTAIN CIRCUMSTANCES.

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

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

"13-1-22. [~~RESIDENT BUSINESS, RESIDENT VETERAN BUSINESS,
RESIDENT CONTRACTOR AND RESIDENT VETERAN CONTRACTOR~~]
CERTIFICATION FOR RESIDENT PREFERENCE--PROCEDURES--REVOICATION
AND SUSPENSION--RIGHT TO JUDICIAL REVIEW.--

A. To receive a [~~resident business or resident~~

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1 ~~veteran business~~] preference pursuant to Section 13-1-21 [~~NMSA~~
2 ~~1978 or a resident contractor or resident veteran contractor~~
3 ~~preference pursuant to Section~~] or 13-4-2 NMSA 1978, a business
4 or contractor shall submit with its bid or proposal a copy of a
5 valid [~~resident business certificate, valid resident veteran~~
6 ~~business certificate, valid resident contractor certificate or~~
7 ~~valid resident veteran contractor~~] certificate issued by the
8 taxation and revenue department pursuant to this section.

9 B. An application for a resident business
10 certificate shall include an affidavit from a certified public
11 accountant, licensed attorney or enrolled agent authorized to
12 practice before the internal revenue service setting forth that
13 the business is licensed to do business in this state and
14 [~~that~~]:

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

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

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

9 (4) if the business [~~is a~~] was previously
10 certified [~~business or was eligible for certification~~] pursuant
11 to this subsection and the business [~~has changed its name~~] has
12 reorganized into one or more different legal entities, was
13 purchased by another legal entity but operates in the state as
14 substantially the same commercial enterprise or has merged with
15 a different legal entity but operates in the state as
16 substantially the same commercial enterprise and the business
17 has obtained a new tax identification number, that the business
18 meets the requirements pursuant to Paragraph (1) of this
19 subsection.

20 C. An application for a resident veteran business
21 certificate shall include the affidavit required by Subsection
22 B of this section, an affidavit from a certified public
23 accountant providing the previous year's annual revenues of the
24 resident veteran business and:

25 (1) verification by the federal department of

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underscored material = new
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1 veterans affairs as being either a veteran-owned small business
2 or a service-disabled veteran-owned small business; or

3 (2) verification of veteran status as
4 indicated by the United States department of defense DD form
5 214 of release or discharge from active duty with an honorable
6 discharge or of service-disabled veteran status by the
7 department of veterans affairs and proof that a veteran or
8 veterans own a majority of the business.

9 D. An application for a resident contractor
10 certificate shall include an affidavit from a certified public
11 accountant, licensed attorney or enrolled agent authorized to
12 practice before the internal revenue service setting forth that
13 the contractor is currently licensed as a contractor in this
14 state and [~~that~~]:

15 (1) that the contractor has:

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

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

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

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

16 (4) if the contractor [~~is a~~] was previously
17 certified [~~contractor or was eligible for certification~~]
18 pursuant to this subsection and the contractor [~~has changed its~~
19 ~~name~~] has reorganized into one or more different legal
20 entities, was purchased by another legal entity but operates in
21 the state as substantially the same enterprise or has merged
22 with a different legal entity but operates in the state as
23 substantially the same commercial enterprise and the contractor
24 has obtained a new tax identification number, that the
25 contractor meets the requirements pursuant to Paragraph (1) of

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[bracketed material] = delete

1 this subsection.

2 E. An application for a resident veteran contractor
3 certificate shall include the affidavit required by Subsection
4 D of this section, an affidavit from a certified public
5 accountant providing the previous year's annual revenues for
6 the resident veteran contractor and:

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

10 (2) verification of veteran status as
11 indicated by the United States department of defense DD form
12 214 of release or discharge from active duty with an honorable
13 discharge or of service-disabled veteran status by the
14 department of veterans affairs and proof that a veteran or
15 veterans own a majority of the business.

16 F. The taxation and revenue department shall
17 prescribe the form and content of an application for
18 certification and required affidavit. The taxation and revenue
19 department shall examine the application and affidavit and, if
20 necessary, may seek additional information to ensure that the
21 business or contractor is eligible to receive the certificate
22 pursuant to the provisions of this section. If the taxation
23 and revenue department determines that an applicant is
24 eligible, the department shall issue a certificate pursuant to
25 the provisions of this section. If the taxation and revenue

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1 department determines that the applicant is not eligible, the
2 department shall issue notification within thirty days. If no
3 notification is provided by the department, the certificate is
4 deemed approved. A certificate is valid for three years from
5 the date of its issuance; provided that if there is a change of
6 ownership of more than fifty percent, a resident business,
7 resident veteran business, resident contractor or resident
8 veteran contractor shall reapply for a certificate.

9 G. A business or contractor whose application for a
10 certificate is denied, or is suspended or revoked pursuant to
11 Subsection I of this section, has fifteen days from the date of
12 the taxation and revenue department's decision to file an
13 objection with the taxation and revenue department. The person
14 filing the objection shall submit evidence to support the
15 objection. The taxation and revenue department shall review
16 the evidence and issue a decision within fifteen days of the
17 filing of the objection. If the department denies, suspends or
18 revokes a certificate, the business or contractor may request a
19 hearing.

20 H. If, following a hearing and an opportunity to be
21 heard, the taxation and revenue department finds that a
22 business or contractor provided false information to the
23 taxation and revenue department in order to obtain a
24 certificate or that a business or contractor used a certificate
25 to obtain a [~~resident business, resident veteran business,~~

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1 ~~resident contractor or resident veteran contractor~~] preference
2 for a bid or proposal and the [~~resident business, resident~~
3 ~~veteran business, resident contractor or resident veteran~~]
4 business or contractor did not perform the percentage of the
5 contract specified in the bid or proposal, the business or
6 contractor:

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

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

15 I. In the administration of the provisions of this
16 section, the taxation and revenue department may:

17 (1) deny or suspend a business' or
18 contractor's certification if the department's records show the
19 business or contractor to be a delinquent taxpayer or to have a
20 period of non-filing until the delinquency or non-filing is
21 cured;

22 (2) revoke a business' or contractor's
23 certificate if:

24 (a) the information on the application
25 for certification is determined to be incorrect or misleading;

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[bracketed material] = delete

1 or

2 (b) the department determines the
3 business or contractor no longer meets the requirements for
4 certification pursuant to Subsection B or D of this section, as
5 applicable; and

6 (3) notwithstanding the restrictions to reveal
7 taxpayer return information pursuant to Section 7-1-8 NMSA
8 1978, notify the public or provide for notice to the public of
9 the suspension or revocation of a business' or contractor's
10 certification.

11 [~~F.~~] J. In a decision issued pursuant to Subsection
12 F, G or H of this section, the taxation and revenue department
13 shall state the reasons for the action taken and inform an
14 aggrieved business or contractor of the right to judicial
15 review of the determination pursuant to the provisions of
16 Section 39-3-1.1 NMSA 1978.

17 [~~J.~~] K. The taxation and revenue department may
18 assess a reasonable fee for the issuance of a certificate not
19 to exceed the actual cost of administering the taxation and
20 revenue department's duties pursuant to this section.

21 [~~K.~~] L. The secretary of taxation and revenue or
22 the state auditor may audit or review the issuance or validity
23 of certificates.

24 [~~L.~~] M. For purposes of this section:

25 (1) "new business" means a person that did not

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underscored material = new
[bracketed material] = delete

1 exist as a business in any form and that has been in existence
2 for less than three years;

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

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

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

12 SECTION 2. Section 13-1-22 NMSA 1978 (being Laws 2012,
13 Chapter 56, Section 4) is repealed and a new Section 13-1-22
14 NMSA 1978 is enacted to read:

15 "13-1-22. [NEW MATERIAL] CERTIFICATION FOR RESIDENT
16 PREFERENCE--PROCEDURES--REVOCATION AND SUSPENSION--RIGHT TO
17 JUDICIAL REVIEW.--

18 A. To receive a preference pursuant to Section
19 13-1-21 or 13-4-2 NMSA 1978, a business or contractor shall
20 submit with its bid or proposal a copy of a valid certificate
21 issued by the taxation and revenue department pursuant to this
22 section.

23 B. An application for a resident business
24 certificate shall include an affidavit from a certified public
25 accountant, licensed attorney or enrolled agent authorized to

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underscoring material = new
~~[bracketed material] = delete~~

1 practice before the internal revenue service setting forth that
2 the business is licensed to do business in this state and:

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

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

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

22 (4) if the business was previously certified
23 pursuant to this subsection and the business has reorganized
24 into one or more different legal entities, was purchased by
25 another legal entity but operates in the state as substantially

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1 the same commercial enterprise or has merged with a different
2 legal entity but operates in the state as substantially the
3 same commercial enterprise and the business has obtained a new
4 tax identification number, that the business meets the
5 requirements pursuant to Paragraph (1) of this subsection.

6 C. An application for a resident contractor
7 certificate shall include an affidavit from a certified public
8 accountant, licensed attorney or enrolled agent authorized to
9 practice before the internal revenue service setting forth that
10 the contractor is currently licensed as a contractor in this
11 state and:

12 (1) that the contractor has:

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

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

23 (2) if the contractor is a new contractor,
24 that the owner or majority of owners has paid property taxes or
25 rent on real property in the state and has paid at least one

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1 other tax administered by the state in each of the five years
2 immediately preceding the submission of the affidavit and has
3 not applied for a resident business or resident contractor
4 certificate pursuant to this section during that time period;

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

13 (4) if the contractor was previously certified
14 pursuant to this subsection and has reorganized into one or
15 more different legal entities, was purchased by another legal
16 entity but operates in the state as substantially the same
17 enterprise or has merged with a different legal entity but
18 operates in the state as substantially the same commercial
19 enterprise and the contractor has obtained a new tax
20 identification number, that the contractor meets the
21 requirements pursuant to Paragraph (1) of this subsection.

22 D. The taxation and revenue department shall
23 prescribe the form and content of the application and required
24 affidavit. The taxation and revenue department shall examine
25 the application and affidavit and, if necessary, may seek

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underscoring material = new
~~[bracketed material] = delete~~

1 additional information to ensure that the business or
2 contractor is eligible to receive the certificate pursuant to
3 the provisions of this section. If the taxation and revenue
4 department determines that an applicant is eligible, the
5 department shall issue a certificate pursuant to the provisions
6 of this section. If the taxation and revenue department
7 determines that the applicant is not eligible, the department
8 shall issue notification within thirty days. If no
9 notification is provided by the department, the certificate is
10 deemed approved. A certificate is valid for three years from
11 the date of its issuance; provided that if there is a change of
12 ownership of more than fifty percent, a resident business or
13 resident contractor shall reapply for a certificate.

14 E. A business or contractor whose application for a
15 certificate is denied, or is suspended or revoked pursuant to
16 Subsection G of this section, has fifteen days from the date of
17 the taxation and revenue department's decision to file an
18 objection with the taxation and revenue department. The person
19 filing the objection shall submit evidence to support the
20 objection. The taxation and revenue department shall review
21 the evidence and issue a decision within fifteen days of the
22 filing of the objection. If the department denies, suspends or
23 revokes a certificate, the business or contractor may request a
24 hearing.

25 F. If, following a hearing and an opportunity to be

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1 heard, the taxation and revenue department finds that a
2 business or contractor provided false information to the
3 taxation and revenue department in order to obtain a
4 certificate or that a business or contractor used a certificate
5 to obtain a preference for a bid or proposal and the business
6 or contractor did not perform the percentage of the contract
7 specified in the bid or proposal, the business or contractor:

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

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

16 G. In the administration of the provisions of this
17 section, the taxation and revenue department may:

18 (1) suspend a business' or contractor's
19 certification if the department's records show the business or
20 contractor to be a delinquent taxpayer or to have a period of
21 non-filing until the delinquency or non-filing is cured;

22 (2) revoke a business' or contractor's
23 certificate if:

24 (a) the information on the application
25 for certification is determined to be incorrect or misleading;

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[bracketed material] = delete

1 or

2 (b) the department determines the
3 business or contractor no longer meets the requirements for
4 certification pursuant to Subsection B or D of this section, as
5 applicable; and

6 (3) notwithstanding the restrictions to reveal
7 taxpayer return information pursuant to Section 7-1-8 NMSA
8 1978, may notify the public or provide for notice to the public
9 of the suspension or revocation of a business' or contractor's
10 certification.

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

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

21 J. The secretary of taxation and revenue or the
22 state auditor may audit or review the issuance or validity of
23 certificates.

24 K. For purposes of this section:

25 (1) "new business" means a person that did not

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1 exist as a business in any form and that has been in existence
2 for less than three years;

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

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

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

12 SECTION 3. EFFECTIVE DATE.--

13 A. The effective date of the provisions of Section
14 1 of this act is July 1, 2013.

15 B. The effective date of the provisions of Section
16 2 of this act is July 1, 2022.