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SENATE BILL 399

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

INTRODUCED BY

Nancy Rodriguez

AN ACT

RELATING TO PROCUREMENT; ESTABLISHING A PREFERENCE FOR A LOCAL
RESIDENT BUSINESS AND A LOCAL RESIDENT CONTRACTOR; PROVIDING
FOR CERTIFICATION AS A LOCAL RESIDENT BUSINESS AND A LOCAL
RESIDENT CONTRACTOR; AMENDING, REPEALING AND ENACTING SECTIONS
OF THE NMSA 1978.

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--RESIDENT
BUSINESSES--RESIDENT VETERAN BUSINESSES.--

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

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1 agricultural products;

2 (2) "formal bid process" means a competitive
3 sealed bid process;

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

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

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

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

25 (7) "resident veteran business" means a

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1 business that has a valid resident veteran business certificate
2 issued by the taxation and revenue department pursuant to
3 Section 13-1-22 NMSA 1978.

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

7 (1) resident business to be five percent lower
8 than the bid actually submitted;

9 (2) resident veteran business with annual
10 revenues of one million dollars (\$1,000,000) or less to be ten
11 percent lower than the bid actually submitted;

12 (3) resident veteran business with annual
13 revenues of more than one million dollars (\$1,000,000) but less
14 than five million dollars (\$5,000,000) to be eight percent
15 lower than the bid actually submitted subject to the limitation
16 provided in Subsection G of this section; and

17 (4) resident veteran business with annual
18 revenues of five million dollars (\$5,000,000) or more to be
19 seven percent lower than the bid actually submitted subject to
20 the limitation provided in Subsection G of this section.

21 C. When a public body makes a purchase using a
22 formal bid process and the bids are received for both recycled
23 content goods and nonrecycled content goods, the public body
24 shall deem:

25 (1) bids submitted for recycled content goods

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1 from any business, except a resident veteran business, to be
2 five percent lower than the bids actually submitted;

3 (2) bids submitted for recycled content goods
4 from a resident veteran business with annual revenues of one
5 million dollars (\$1,000,000) or less to be ten percent lower
6 than the bids actually submitted;

7 (3) bids submitted for recycled content goods
8 from a resident veteran business with annual revenues of more
9 than one million dollars (\$1,000,000) but less than five
10 million dollars (\$5,000,000) to be eight percent lower than the
11 bids actually submitted subject to the limitation provided in
12 Subsection G of this section; and

13 (4) bids submitted for recycled content goods
14 from a resident veteran business with annual revenues of five
15 million dollars (\$5,000,000) or more to be seven percent lower
16 than the bids actually submitted subject to the limitation
17 provided in Subsection G of this section.

18 D. When a public body makes a purchase using a
19 formal request for proposals process, not including contracts
20 awarded on a point-based system, the public body shall award an
21 additional:

22 (1) five percent of the total weight of all
23 the factors used in evaluating the proposals to a resident
24 business;

25 (2) ten percent of the total weight of all the

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1 factors used in evaluating the proposals to a resident veteran
2 business that has annual revenues of one million dollars
3 (\$1,000,000) or less;

4 (3) eight percent of the total weight of all
5 the factors used in evaluating the proposals to a resident
6 veteran business that has annual revenues of more than one
7 million dollars (\$1,000,000) but less than five million dollars
8 (\$5,000,000) subject to the limitation provided in Subsection G
9 of this section; and

10 (4) seven percent of the total weight of all
11 the factors used in evaluating the proposals to a resident
12 veteran business that has annual revenues of five million
13 dollars (\$5,000,000) or more subject to the limitation provided
14 in Subsection G of this section.

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

19 (1) five percent of the total possible points
20 to a resident business;

21 (2) ten percent of the total possible points
22 to a resident veteran business that has annual revenues of one
23 million dollars (\$1,000,000) or less;

24 (3) eight percent of the total possible points
25 to a resident veteran business that has annual revenues of more

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1 than one million dollars (\$1,000,000) but less than five
2 million dollars (\$5,000,000) subject to the limitation provided
3 in Subsection G of this section; and

4 (4) seven percent of the total possible points
5 to a resident veteran business that has annual revenues of five
6 million dollars (\$5,000,000) or more subject to the limitation
7 provided in Subsection G of this section.

8 F. When a joint bid or joint proposal is submitted
9 by [a] any combination of resident veteran businesses, resident
10 businesses, businesses receiving a preference pursuant to
11 Section 13-1-21.3 NMSA 1978 or nonresident businesses, the
12 preference [~~provided pursuant to Subsection B, C, D or E of~~
13 ~~this section~~] shall be calculated in proportion to the
14 percentage of the contract, based on the dollar amount of the
15 goods or services provided under the contract, that will be
16 performed by each business as specified in the joint bid or
17 proposal.

18 G. The preference pursuant to Paragraphs (3) and
19 (4) of Subsection B of this section, Paragraphs (3) and (4) of
20 Subsection C of this section, Paragraphs (3) and (4) of
21 Subsection D of this section and Paragraphs (3) and (4) of
22 Subsection E of this section shall be limited, in any calendar
23 year, to an aggregate of ten million dollars (\$10,000,000) in
24 purchases by public bodies from all resident veteran businesses
25 receiving preferences pursuant to the provisions of those

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1 paragraphs.

2 H. A public body shall not award a business [~~both a~~
3 ~~resident business preference and a resident veteran business~~]
4 more than one preference pursuant to this section and Section
5 13-1-21.3 NMSA 1978.

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

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

12 SECTION 2. Section 13-1-21 NMSA 1978 (being Laws 2012,
13 Chapter 56, Section 2) is repealed and a new Section 13-1-21
14 NMSA 1978 is enacted to read:

15 "13-1-21. [NEW MATERIAL] APPLICATION OF PREFERENCES--
16 RESIDENT BUSINESSES.--

17 A. For the purposes of this section:

18 (1) "business" means a commercial enterprise
19 carried on for the purpose of selling goods or services,
20 including growing, producing, processing or distributing
21 agricultural products;

22 (2) "formal bid process" means a competitive
23 sealed bid process;

24 (3) "formal request for proposals process"
25 means a competitive sealed proposal process, including a

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1 competitive sealed qualifications-based proposal process;

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

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

16 (6) "resident business" means a business that
17 has a valid resident business certificate issued by the
18 taxation and revenue department pursuant to Section 13-1-22
19 NMSA 1978.

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

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

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

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

10 D. When a joint bid or joint proposal is submitted
11 by any combination of resident businesses, businesses receiving
12 a preference pursuant to Section 13-1-21.3 NMSA 1978 and
13 nonresident businesses, the preference shall be calculated in
14 proportion to the percentage of the contract, based on the
15 dollar amount of the goods or services provided under the
16 contract, that will be performed by each business as specified
17 in the joint bid or proposal.

18 E. A public body shall not award a business more
19 than one preference pursuant to this section and Section
20 13-1-21.3 NMSA 1978.

21 F. When bids are received for both recycled content
22 goods and nonrecycled content goods, the public body shall deem
23 the bids submitted for recycled content goods of equal quality
24 to be five percent lower than the bids actually submitted. A
25 bid calculation pursuant to this subsection for a resident

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1 business shall not also receive the bid calculation preference
2 pursuant to Subsection B of this section.

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

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

9 SECTION 3. A new Section 13-1-21.3 NMSA 1978 is enacted
10 to read:

11 "13-1-21.3. [NEW MATERIAL] APPLICATION OF PREFERENCE--
12 LOCAL RESIDENT BUSINESS.--

13 A. For the purposes of this section:

14 (1) "business" means a commercial enterprise
15 carried on for the purpose of selling goods or services,
16 including growing, producing, processing or distributing
17 agricultural products;

18 (2) "formal bid process" means a competitive
19 sealed bid process;

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

23 (4) "local public body" means every political
24 subdivision of the state and the agencies, instrumentalities
25 and institutions thereof, including two-year post-secondary

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1 educational institutions, school districts and local school
2 boards and municipalities; and

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

7 B. When a local public body makes a purchase, the
8 local public body shall deem a bid or proposal, as appropriate,
9 submitted by a local resident business as follows; provided
10 that the local public body is located in the same county in
11 which the local resident contractor is certified:

12 (1) using a formal bid process, eight percent
13 lower than the bid actually submitted;

14 (2) using a formal request for proposals
15 process, not including contracts awarded on a point-based
16 system, an additional eight percent of the total weight of all
17 the factors used in evaluating the proposals to a local
18 resident business; and

19 (3) using a formal request for proposals
20 process, and the contract is awarded based on a point-based
21 system, an additional of the equivalent of eight percent of the
22 total possible points to a local resident business.

23 C. When a joint bid or joint proposal is submitted
24 by any combination of local resident businesses, businesses
25 receiving a preference pursuant to Section 13-1-21 NMSA 1978 or
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1 nonresident businesses, the preference shall be calculated in
2 proportion to the percentage of the contract, based on the
3 dollar amount of the goods or services provided under the
4 contract, that will be performed by each business as specified
5 in the joint bid or proposal.

6 D. A public body shall not award a business more
7 than one preference pursuant to this section and Section
8 13-1-21 NMSA 1978.

9 E. The procedures provided in Sections 13-1-172
10 through 13-1-183 NMSA 1978 or in an applicable purchasing
11 ordinance apply to a protest to a local public body concerning
12 the awarding of a contract in violation of this section.

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

15 SECTION 4. Section 13-1-22 NMSA 1978 (being Laws 1969,
16 Chapter 184, Section 1, as amended) is amended to read:

17 "13-1-22. [~~RESIDENT BUSINESS, RESIDENT VETERAN BUSINESS,~~
18 ~~RESIDENT CONTRACTOR AND RESIDENT VETERAN CONTRACTOR~~]
19 CERTIFICATION FOR RESIDENT PREFERENCE--PROCEDURES.--

20 A. To receive a [~~resident business or resident~~
21 ~~veteran business~~] preference pursuant to Section 13-1-21, [~~NMSA~~
22 ~~1978 or a resident contractor or resident veteran contractor~~
23 ~~preference pursuant to Section~~] 13-1-21.3, 13-4-2 or 13-4-2.1
24 NMSA 1978, a business or contractor shall submit with its bid
25 or proposal a copy of a valid [~~resident business certificate,~~
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1 ~~valid resident veteran business certificate, valid resident~~
2 ~~contractor certificate or valid resident veteran contractor]~~
3 certificate issued by the taxation and revenue department
4 pursuant to this section; provided that the taxation and
5 revenue department shall not, within the same three-year period
6 that a certificate is valid pursuant to Subsection H of this
7 section, issue more than one local resident business
8 certificate to any business or more than one local resident
9 contractor certificate to any contractor.

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

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

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

25 (3) if the business is a relocated business,

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

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

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

23 (1) that the business has paid property taxes
24 or rent on real property in the county in which the business is
25 applying for a local resident business certificate and that the

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1 business has paid at least one other tax administered by the
2 state in each of the three years immediately preceding the
3 submission of the affidavit;

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

12 (3) if the business is a relocated business,
13 that at least eighty percent of the total personnel of the
14 business in the year immediately preceding the submission of
15 the affidavit were residents of the county in which the
16 business is applying for a local resident business certificate
17 and that, prior to the submission of the affidavit, the
18 business either leased real property for ten years or purchased
19 real property greater than one hundred thousand dollars
20 (\$100,000) in value in the county in which the business is
21 applying for a local business certificate; 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 ~~[G-]~~ D. An application for a resident veteran
7 business certificate shall include the affidavit required by
8 Subsection B of this section, an affidavit from a certified
9 public accountant providing the previous year's annual revenues
10 of the resident veteran business and:

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

14 (2) verification of veteran status as
15 indicated by the United States department of defense DD form
16 214 of release or discharge from active duty with an honorable
17 discharge or of service-disabled veteran status by the
18 department of veterans affairs and proof that a veteran or
19 veterans own a majority of the business.

20 ~~[D-]~~ E. An application for a resident contractor
21 certificate shall include an affidavit from a certified public
22 accountant setting forth that the contractor is currently
23 licensed as a contractor in this state and ~~[that]~~:

24 (1) that the contractor has:

25 (a) registered with the state at least

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1 one vehicle; and

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

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

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

25 (4) if the contractor [~~is a~~] was previously

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1 certified [~~contractor or was eligible for certification~~]
2 pursuant to this subsection and the contractor [~~has changed its~~
3 ~~name~~] has reorganized into one or more different legal
4 entities, was purchased by another legal entity but operates in
5 the state as substantially the same enterprise or has merged
6 with a different legal entity but operates in the state as
7 substantially the same commercial enterprise and the contractor
8 has obtained a new tax identification number, that the
9 contractor meets the requirements pursuant to Paragraph (1) of
10 this subsection.

11 F. An application for a local resident contractor
12 certificate shall include an affidavit from a certified public
13 accountant setting forth that the contractor is licensed as a
14 contractor in this state and:

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 county in which
21 the contractor is applying for a local resident contractor
22 certificate and paid at least one other tax administered by the
23 state; and 2) paid unemployment insurance on at least three
24 full-time employees who are residents of the county in which
25 the contractor is applying for a local resident contractor

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1 certificate; provided that if a contractor is a legacy
2 contractor and has, for ten consecutive years, been engaged in
3 business as a contractor in the county in which the contractor
4 is applying for a local resident contractor certificate, the
5 requirement of at least three full-time employees who are
6 residents of the county in which the contractor is applying for
7 a local resident contractor certificate is waived;

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

16 (3) if the contractor is a relocated business,
17 that at least eighty percent of the total personnel of the
18 business in the year immediately preceding the submission of
19 the affidavit were residents of the county in which the
20 contractor is applying for a local resident contractor
21 certificate and that, prior to the submission of the affidavit,
22 the contractor either leased real property for ten years or
23 purchased real property greater than one hundred thousand
24 dollars (\$100,000) in value in the county in which the
25 contractor is applying for a local resident contractor

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1 certificate; or

2 (4) if the contractor was previously certified
3 pursuant to this subsection and the contractor has reorganized
4 into one or more different legal entities, was purchased by
5 another legal entity but operates in the state as substantially
6 the same enterprise or has merged with a different legal entity
7 but operates in the state as substantially the same commercial
8 enterprise and the contractor has obtained a new tax
9 identification number, that the contractor meets the
10 requirements pursuant to Paragraph (1) of this subsection.

11 [~~E-~~] G. An application for a resident veteran
12 contractor certificate shall include the affidavit required by
13 Subsection [~~D~~] E of this section, an affidavit from a certified
14 public accountant providing the previous year's annual revenues
15 for the resident veteran contractor 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 an honorable
22 discharge or of service-disabled veteran status by the
23 department of veterans affairs and proof that a veteran or
24 veterans own a majority of the business.

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

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1 prescribe the form and content of 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, resident contractor or resident~~
17 ~~veteran]~~ business or contractor shall reapply for a
18 certificate.

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

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1 filing of the objection.

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

14 (1) is not eligible to receive a certificate
15 or a preference pursuant to Section 13-1-21, [~~or~~] 13-1-21.3,
16 13-4-2 or 13-4-2.1 NMSA 1978 for a period of five years from
17 the date on which the taxation and revenue department became
18 aware of the submission of the false information or the failure
19 to perform the contract as specified in the bid or proposal;
20 and

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

23 [F.] K. In a decision issued pursuant to Subsection
24 [~~G or H~~] I or J of this section, the taxation and revenue
25 department shall state the reasons for the action taken and

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1 inform an aggrieved business or contractor of the right to
2 judicial review of the determination pursuant to the provisions
3 of Section 39-3-1.1 NMSA 1978.

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

8 ~~[K.]~~ M. The state auditor may audit or review the
9 issuance or validity of certificates.

10 ~~[L.]~~ N. For purposes of this section:

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

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

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

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

23 **SECTION 5.** Section 13-1-22 NMSA 1978 (being Laws 2012,
24 Chapter 56, Section 4) is repealed and a new Section 13-1-22
25 NMSA 1978 is enacted to read:

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1 "13-1-22. [NEW MATERIAL] CERTIFICATION FOR RESIDENT
2 PREFERENCE--PROCEDURES.--

3 A. To receive a preference pursuant to Section
4 13-1-21, 13-1-21.3, 13-4-2 or 13-4-2.1 NMSA 1978, a business or
5 contractor shall submit with its bid or proposal a copy of a
6 valid certificate issued by the taxation and revenue department
7 pursuant to this section; provided that the taxation and
8 revenue department shall not, within the same three-year period
9 that a certificate is valid pursuant to Subsection F of this
10 section, issue more than one local resident business
11 certificate to any business or more than one local resident
12 contractor certificate to any contractor.

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

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

21 (2) if the business is a new business, that
22 the owner or majority of owners has paid property taxes or rent
23 on real property in the state and has paid at least one other
24 tax administered by the state in each of the three years
25 immediately preceding the submission of the affidavit and has

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1 not applied for a resident business or resident contractor
2 certificate pursuant to this section during that time period;

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

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

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

24 (1) that the business has paid property taxes
25 or rent on real property in the county in which the business is

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1 applying for a local resident business certificate and that the
2 business has paid at least one other tax administered by the
3 state in each of the three years immediately preceding the
4 submission of the affidavit;

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

13 (3) if the business is a relocated business,
14 that at least eighty percent of the total personnel of the
15 business in the year immediately preceding the submission of
16 the affidavit were residents of the county in which the
17 business is applying for a local resident business certificate
18 and that, prior to the submission of the affidavit, the
19 business either leased real property for ten years or purchased
20 real property greater than one hundred thousand dollars
21 (\$100,000) in value in the county in which the business is
22 applying for a local business certificate and the business has
23 obtained a new tax identification number, that the business
24 meets the requirements pursuant to Paragraph (1) of this
25 subsection; or

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1 (4) if the business was previously certified
2 pursuant to this subsection and the business has reorganized
3 into one or more different legal entities, was purchased by
4 another legal entity but operates in the state as substantially
5 the same enterprise or has merged with a different legal entity
6 but operates in the state as substantially the same commercial
7 enterprise and the business has obtained a new tax
8 identification number, that the business meets the requirements
9 pursuant to Paragraph (1) of this subsection.

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

14 (1) that the contractor has:

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

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

25 (2) if the contractor is a new contractor,

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

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

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

24 E. An application for a local resident contractor
25 certificate shall include an affidavit from a certified public

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1 accountant setting forth that the contractor is licensed as a
2 contractor in this state and:

3 (1) that the contractor has:

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

6 (b) in each of the five years
7 immediately preceding the submission of the affidavit: 1) paid
8 property taxes or rent on real property in the county in which
9 the contractor is applying for a local resident contractor
10 certificate and paid at least one other tax administered by the
11 state; and 2) paid unemployment insurance on at least three
12 full-time employees who are residents of the county in which
13 the contractor is applying for a local resident contractor
14 certificate; provided that if a contractor is a legacy
15 contractor and has, for ten consecutive years, been engaged in
16 business as a contractor in the county in which the contractor
17 is applying for a local resident contractor certificate, the
18 requirement of at least three full-time employees who are
19 residents of the county in which the contractor is applying for
20 a local resident contractor certificate is waived;

21 (2) if the contractor is a new contractor,
22 that the owner or majority of owners has paid property taxes or
23 rent on real property in the county in which the contractor is
24 applying for a local resident contractor certificate and has
25 paid at least one other tax administered by the state in each

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1 of the five years immediately preceding the submission of the
2 affidavit and has not applied for a certificate pursuant to
3 this section during that time period;

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

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

24 F. The taxation and revenue department shall
25 prescribe the form and content of the application and required

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

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

24 H. If, following a hearing and an opportunity to be
25 heard, the taxation and revenue department finds that a

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

7 (1) is not eligible to receive a certificate
8 or a preference pursuant to Section 13-1-21, 13-1-21.3, 13-4-2
9 or 13-4-2.1 NMSA 1978 for a period of five years from the date
10 on which the taxation and revenue department became aware of
11 the submission of the false information or the failure to
12 perform the contract as 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 a decision issued pursuant to Subsection G or
16 H of this section, the taxation and revenue department shall
17 state the reasons for the action taken and inform an aggrieved
18 business or contractor of the right to judicial review of the
19 determination pursuant to the provisions of Section 39-3-1.1
20 NMSA 1978.

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

25 K. The state auditor may audit or review the

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1 issuance or validity of certificates.

2 L. For purposes of this section:

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

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

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

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

15 SECTION 6. Section 13-4-2 NMSA 1978 (being Laws 1984,
16 Chapter 66, Section 2, as amended) is amended to read:

17 "13-4-2. APPLICATION OF PREFERENCE--RESIDENT CONTRACTOR--
18 RESIDENT VETERAN CONTRACTOR.--

19 A. For the purposes of this section:

20 (1) "formal bid process" means a competitive
21 sealed bid process;

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

25 (3) "public body" means a department,

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1 commission, council, board, committee, institution, legislative
2 body, agency, government corporation, educational institution
3 or official of the executive, legislative or judicial branch of
4 the government of the state or a political subdivision of the
5 state and the agencies, instrumentalities and institutions
6 thereof, including two-year post-secondary educational
7 institutions, school districts, local school boards and all
8 municipalities, including home-rule municipalities;

9 (4) "public works contract" means a contract
10 for construction, construction management, architectural,
11 landscape architectural, engineering, surveying or interior
12 design services;

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

18 (6) "resident veteran contractor" means a
19 person that has a valid resident veteran contractor certificate
20 issued by the taxation and revenue department pursuant to
21 Section 13-1-22 NMSA 1978.

22 B. For the purpose of awarding a public works
23 contract using a formal bid process, a public body shall deem a
24 bid submitted by a:

25 (1) resident contractor to be five percent

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1 lower than the bid actually submitted;

2 (2) resident veteran contractor with annual
3 revenues of one million dollars (\$1,000,000) or less to be ten
4 percent lower than the bid actually submitted;

5 (3) resident veteran contractor with annual
6 revenues of more than one million dollars (\$1,000,000) but less
7 than five million dollars (\$5,000,000) to be eight percent less
8 than the bid actually submitted subject to the limitation
9 provided in Subsection F of this section; and

10 (4) resident veteran contractor with annual
11 revenues of five million dollars (\$5,000,000) or more to be
12 seven percent less than the bid actually submitted subject to
13 the limitation provided in Subsection F of this section.

14 C. When a public body awards a contract using a
15 formal request for proposals process, not including contracts
16 awarded on a point-based system, the public body shall award an
17 additional:

18 (1) five percent of the total weight of all
19 the factors used in evaluating the proposals to a resident
20 contractor;

21 (2) ten percent of the total weight of all the
22 factors used in evaluating the proposals to a resident veteran
23 contractor that has annual revenues of one million dollars
24 (\$1,000,000) or less;

25 (3) eight percent of the total weight of all

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1 the factors used in evaluating the proposals to a resident
2 veteran contractor that has annual revenues of more than one
3 million dollars (\$1,000,000) but less than five million dollars
4 (\$5,000,000) subject to the limitation provided in Subsection F
5 of this section; and

6 (4) seven percent of the total weight of all
7 the factors used in evaluating the proposals to a resident
8 veteran contractor that has annual revenues of five million
9 dollars (\$5,000,000) or more subject to the limitation provided
10 in Subsection F of this section.

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

15 (1) five percent of the total possible points
16 to a resident contractor;

17 (2) ten percent of the total possible points
18 to a resident veteran contractor that has annual revenues of
19 one million dollars (\$1,000,000) or less;

20 (3) eight percent of the total weight of all
21 the factors used in evaluating the proposals to a resident
22 veteran contractor that has annual revenues of more than one
23 million dollars (\$1,000,000) but less than five million dollars
24 (\$5,000,000) subject to the limitation provided in Subsection F
25 of this section; and

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1 (4) seven percent of the total weight of all
2 the factors used in evaluating the proposals to a resident
3 veteran contractor that has annual revenues of five million
4 dollars (\$5,000,000) or more subject to the limitation provided
5 in Subsection F of this section.

6 E. When a joint bid or joint proposal is submitted
7 by [~~any~~] any combination of resident veteran contractors,
8 resident contractors, contractors receiving a preference
9 pursuant to Section 13-4-2.1 NMSA 1978 or nonresident
10 contractors, the preference [~~provided pursuant to Subsection B,~~
11 ~~C or D of this section~~] shall be calculated in proportion to
12 the percentage of the contract, based on the dollar amount of
13 the goods or services provided under the contract, that will be
14 performed by each contractor as specified in the joint bid or
15 joint proposal.

16 F. The preference pursuant to Paragraphs (3) and
17 (4) of Subsection B of this section, Paragraphs (3) and (4) of
18 Subsection C of this section and Paragraphs (3) and (4) of
19 Subsection D of this section shall be limited, in any calendar
20 year, to an aggregate of ten million dollars (\$10,000,000) in
21 public works contracts by public bodies from all resident
22 veteran contractors receiving preferences pursuant to the
23 provisions of those paragraphs.

24 G. A public body shall not award a contractor [~~both~~
25 ~~a resident contractor preference and a resident veteran~~

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1 ~~contractor]~~ more than one preference pursuant to this section
2 and Section 13-4-2.1 NMSA 1978.

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

7 SECTION 7. Section 13-4-2 NMSA 1978 (being Laws 2012,
8 Chapter 56, Section 6) is repealed and a new Section 13-4-2
9 NMSA 1978 is enacted to read:

10 "13-4-2. [NEW MATERIAL] APPLICATION OF PREFERENCE--
11 RESIDENT CONTRACTOR.--

12 A. For the purposes of this section:

13 (1) "formal bid process" means a competitive
14 sealed bid process;

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

18 (3) "public body" means a department,
19 commission, council, board, committee, institution, legislative
20 body, agency, government corporation, educational institution
21 or official of the executive, legislative or judicial branch of
22 the government of the state or a political subdivision of the
23 state and the agencies, instrumentalities and institutions
24 thereof, including two-year post-secondary educational
25 institutions, school districts, local school boards and all

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1 municipalities, including home-rule municipalities;

2 (4) "public works contract" means a contract
3 for construction, construction management, architectural,
4 landscape architectural, engineering, surveying or interior
5 design services; and

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

10 B. For the purpose of awarding a public works
11 contract using a formal bid process, a public body shall deem a
12 bid submitted by a resident contractor to be five percent lower
13 than the bid actually submitted.

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

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

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

25 D. When a joint bid or joint proposal is submitted

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1 by any combination of resident contractors, contractors
2 receiving a preference pursuant to Section 13-4-2.1 NMSA 1978
3 and nonresident contractors, the preference provided pursuant
4 to this section shall be calculated in proportion to the
5 percentage of the contract, based on the dollar amount of the
6 goods or services provided under the contract, that will be
7 performed by each contractor as specified in the joint bid or
8 joint proposal.

9 E. A public body shall not award a contractor more
10 than one preference pursuant to this section and Section
11 13-4-2.1 NMSA 1978.

12 F. 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 SECTION 8. A new Section 13-4-2.1 NMSA 1978 is enacted to
17 read:

18 "13-4-2.1. [NEW MATERIAL] APPLICATION OF PREFERENCE--
19 LOCAL RESIDENT CONTRACTOR.--

20 A. For the purposes of this section:

21 (1) "formal bid process" means a competitive
22 sealed bid process;

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

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1 (3) "local public body" means every political
2 subdivision of the state and the agencies, instrumentalities
3 and institutions thereof, including two-year post-secondary
4 educational institutions, school districts and local school
5 boards and municipalities;

6 (4) "local resident contractor" means a
7 contractor that has a valid local resident contractor
8 certificate issued by the taxation and revenue department
9 pursuant to Section 13-1-22 NMSA 1978; and

10 (5) "public works contract" means a contract
11 for construction, construction management, architectural,
12 landscape architectural, engineering, surveying or interior
13 design services.

14 B. For the purpose of awarding a public works
15 contract, a local public body shall deem a bid or proposal, as
16 appropriate, submitted by a local resident contractor as
17 follows; provided that the local public body is located in the
18 same county in which the local resident contractor is
19 certified:

20 (1) using a formal bid process, eight percent
21 lower than the bid actually submitted;

22 (2) using a formal request for proposals
23 process, not including contracts awarded on a point-based
24 system, an additional eight percent of the total weight of all
25 the factors used in evaluating the proposals; and

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1 (3) using a formal request for proposals
2 process and the contract is awarded based on a point-based
3 system, an additional of the equivalent of eight percent of the
4 total possible points.

5 C. When a joint bid or joint proposal is submitted
6 by any combination of local resident contractors, contractors
7 receiving a preference pursuant to Section 13-4-2 NMSA 1978 or
8 nonresident contractors, the preference shall be calculated in
9 proportion to the percentage of the contract, based on the
10 dollar amount of the goods or services provided under the
11 contract, that will be performed by each contractor as
12 specified in the joint bid or proposal.

13 D. A public body shall not award a contractor more
14 than one preference pursuant to this section and Section 13-4-2
15 NMSA 1978.

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

20 SECTION 9. EFFECTIVE DATE.--

21 A. The effective date of the provisions of Sections
22 1, 3, 4, 6 and 8 of this act is July 1, 2013.

23 B. The effective date of the provisions of Sections
24 2, 5 and 7 of this act is July 1, 2022.