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HOUSE BILL 389

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Deborah A. Armstrong

AN ACT

RELATING TO PUBLIC PURCHASES; AMENDING THE PROCUREMENT CODE TO
PROVIDE FOR GENDER EQUITY.

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

SECTION 1. Section 13-1-21 NMSA 1978 (being Laws 1979,
Chapter 72, Section 1, as amended) is amended to read:

"13-1-21. APPLICATION OF PREFERENCES.--

A. For the purposes of this section:

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

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

(3) "formal request for proposals process"

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1 means a competitive sealed proposal process, including a
2 competitive sealed qualifications-based proposal process;

3 (4) "gender equity of wages and salaries"
4 means a compilation of data from a business seeking to provide
5 goods or services to a public body that includes information
6 sufficient to determine if the business's wages and salaries
7 paid to its employees are equitable in terms of gender;

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

17 [~~(5)~~] (6) "recycled content goods" means
18 supplies and materials composed twenty-five percent or more of
19 recycled materials; provided that the recycled materials
20 content meets or exceeds the minimum content standards required
21 by bid specifications;

22 [~~(6)~~] (7) "resident business" means a business
23 that has a valid resident business certificate issued by the
24 taxation and revenue department pursuant to Section 13-1-22
25 NMSA 1978 but does not include a resident veteran business; and

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1 [~~7~~] (8) "resident veteran business" means a
2 business that has a valid resident veteran business certificate
3 issued by the taxation and revenue department pursuant to
4 Section 13-1-22 NMSA 1978.

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

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

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

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

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

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

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

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

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

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

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

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

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1 (2) ten percent of the total weight of all the
2 factors used in evaluating the proposals to a resident veteran
3 business that has annual revenues of one million dollars
4 (\$1,000,000) or less;

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

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

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

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

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

25 (3) eight percent of the total possible points

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1 to a resident veteran business that has annual revenues of more
2 than one million dollars (\$1,000,000) but less than five
3 million dollars (\$5,000,000) subject to the limitation provided
4 in Subsection [G] H of this section; and

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

9 F. When a public body makes a purchase using a
10 formal request for proposals process, the public body shall
11 award an additional equivalent of five percent of the total
12 possible points to a business that demonstrates gender equity
13 in its payment of wages and salaries to its employees.

14 [~~F-~~] G. When a joint bid or joint proposal is
15 submitted by a combination of resident veteran, resident or
16 nonresident businesses, the preference provided pursuant to
17 Subsection B, C, D or E of this section shall be calculated in
18 proportion to the percentage of the contract, based on the
19 dollar amount of the goods or services provided under the
20 contract, that will be performed by each business as specified
21 in the joint bid or proposal.

22 [~~G-~~] H. The preference pursuant to Paragraphs (3)
23 and (4) of Subsection B of this section, Paragraphs (3) and (4)
24 of Subsection C of this section, Paragraphs (3) and (4) of
25 Subsection D of this section and Paragraphs (3) and (4) of

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1 Subsection E of this section shall be limited, in any calendar
2 year, to an aggregate of ten million dollars (\$10,000,000) in
3 purchases by public bodies from all resident veteran businesses
4 receiving preferences pursuant to the provisions of those
5 paragraphs.

6 ~~[H.]~~ I. A public body shall not award a business
7 both a resident business preference and a resident veteran
8 business preference.

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

14 ~~[J.]~~ K. This section shall not apply when the
15 expenditure includes federal funds for a specific purchase."

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