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FISCAL IMPACT REPORT

ORIGINAL DATE 03/04/21

SPONSOR STBTC LAST UPDATED _____ HB _____

SHORT TITLE Procurement Changes SB 53/STBTCS

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	Indeterminate	Indeterminate	Indeterminate	Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

General Services Department (GSD)

State Ethics Commission (SEC)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

The Senate Tax, Business and Transportation Committee substitute for Senate Bill 53 (SB53) adds procurement preferences for resident tribal and resident minority businesses, requires additional reporting on contracts entered into by state agencies and local public bodies, and makes other technical changes. Specifically:

Section 1 defines “resident minority” and “resident tribal” businesses and provides a 10 percent price advantage for resident, resident minority, resident tribal, and resident veteran-owned businesses. The section also amends the definition of recycled goods to include “sustainable materials” and provides a 10 percent price advantage for recycled materials goods. The section also provides a definition for “bid”.

Section 2 stipulates that, in order to qualify as a resident, resident minority, resident tribal, or resident veteran business, a business may not have annual revenue exceeding \$3.5 million. The \$3.5 million cap is adjusted to keep pace with inflation. This section removes the requirement that the business’s annual revenue be attested to by a certified public accountant.

Other provisions include: authorizing central purchasing offices to design procurements exclusively for New Mexico businesses in Section 3; adding definitions for “advertising”, “evaluation factors”, and “marketing” and amending the definition of small business to increase the annual revenue cap from \$1.5 million to \$3.5 million in Sections 4-8; allowing for virtual openings of bids and proposals in Section 9; requiring state agencies and local public bodies to register chief procurement officers on the purchasing division website in Section 10; requiring GSD to report annually on the number and dollar amount of contracts awarded to in-state and out-of-state contractors in Section 11; applying the procurement code to marketing in Section 12; prohibiting the opening of competitive sealed bids prior to stated date of opening in Section 13; authorizing chief procurement officers to reject identical low bids if the bids are submitted separately by registered bidders that have the same physical address, shared operations, or shared ownership in Section 14; clarifying that the contents of any proposal shall not be disclosed after the submission of the proposal and before the final execution of all awarded contracts in Section 15; requires emergency procurements to be posted on the sunshine portal in Section 16; provides a 10 percent price advantage for recycled and sustainable goods and allows a chief procurement officer to design purchases exclusively for recycled and sustainable goods in Section 17; allows state agencies and local public bodies to audit books and records of contractors related to sales to public entities in Section 18; states that an entity unsuccessful in submitting a bid or offer is deemed not a bidder nor offeror and has no right to protest in Section 19; authorizes exclusive procurements for small businesses in Section 20; requires GSD to submit an annual report on contracts awarded to New Mexico businesses in Section 21; exempts electric and plug-in hybrid vehicles from a requirement they be assembled in North America in Section 22; includes definitions for resident minority contractor and resident tribal contractor in Section 23; provides a 10 percent price advantage to resident, resident minority, resident tribal, and resident veteran business and stipulates no more than one preference may be used in Section 24.

FISCAL IMPLICATIONS

SB53 increases the preference for resident businesses (including minority- and tribal-owned businesses) from 5 percent to 10 percent. This increase may increase contracting costs to the state, but the amount of the increase is unknown. GSD does not currently track the number or dollar amount for contracts awarded to resident business making it impossible to determine what proportion of contract spending is directed to resident business. Additionally, many New Mexico businesses are not certified as resident businesses and it is not clear that increasing the preference amount will induce these businesses to certify as resident businesses.

TRD notes that creating the new certifications for resident minority and resident tribal businesses and updating the preference amounts will require additional programming of IT systems, but expects to be able to absorb these costs in the existing operating budget.

SIGNIFICANT ISSUES

SEC notes:

Two of the proposed amendments are based on or respond to formal advisory opinions issued by the State Ethics Commission:

- In [Advisory Opinion No. 2020-04 \(June 5, 2020\)](#), the commission opined that the Procurement Code prohibits a person involved in a procurement from discussing the

details of proposals during the negotiation process, i.e., the period of time between submission of proposals and award. Senate Bill 53 (comm. sub.) clarifies that prohibition in the statute, amending Section 13-1-116 of the Procurement Code to provide, “The contents of any proposal shall not be disclosed after the submission of the proposal and before the final execution of all awarded contracts.”

- In [Advisory Opinion No. 2020-05 \(July 14, 2020\)](#), the commission opined that the Procurement Code prohibits two companies from submitting identical bids in response to an invitation for bids. Senate Bill 53 codifies the commission’s analysis with an amendment permitting the state purchasing agent or a central purchasing office to “reject . . . identical low bids if the bids are submitted by separately registered bidders that have the same physical address, shared operations or shared ownership[.]” *See* Senate Bill 53 (comm. sub.), § 14(E).

TECHNICAL ISSUES

SEC reports “The Procurement Code does not define “New Mexico businesses,” and so it is unclear if Senate Bill 53’s use of the term “New Mexico business” refers to a certified resident business, *see* NMSA 1978, Section 13-1-22, or a business incorporated in New Mexico.”

CJ/sb