

1 SENATE BILL 212

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Jacob R. Candelaria

5
6
7
8
9
10 AN ACT

11 RELATING TO PROCUREMENT; EXTENDING THE RESIDENT VETERAN
12 BUSINESS AND RESIDENT VETERAN CONTRACTOR PROCUREMENT PREFERENCE
13 TO PARENTS AND SURVIVING SPOUSES OF VETERANS.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "13-1-22. RESIDENT BUSINESS, RESIDENT VETERAN BUSINESS,
19 RESIDENT CONTRACTOR AND RESIDENT VETERAN CONTRACTOR
20 CERTIFICATION.--

21 A. To receive a resident business or resident
22 veteran business preference pursuant to Section 13-1-21 NMSA
23 1978 or a resident contractor or resident veteran contractor
24 preference pursuant to Section 13-4-2 NMSA 1978, a business or
25 contractor shall submit with its bid or proposal a copy of a

.197411.1

underscored material = new
[bracketed material] = delete

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

1 valid resident business certificate, valid resident veteran
2 business certificate, valid resident contractor certificate or
3 valid resident veteran contractor certificate issued by the
4 taxation and revenue department.

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

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

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

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

.197411.1

underscored material = new
[bracketed material] = delete

1 one hundred thousand dollars (\$100,000) in value in the state;
2 or

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

11 C. An application for a resident veteran business
12 certificate shall include the affidavit required by Subsection
13 B of this section, an affidavit from a certified public
14 accountant providing the previous year's annual revenues of the
15 resident veteran business 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 or that the veteran died while
24 in the service of the armed forces of the United States and
25 proof that a [~~veteran or veterans own a~~] majority of the

.197411.1

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

1 business is owned by:

2 (a) a veteran or veterans;

3 (b) a parent or surviving spouse of a
4 veteran; or

5 (c) parents or surviving spouses of
6 veterans.

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

11 (1) the contractor has:

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

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

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

.197411.1

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

1 preceding the submission of the affidavit and has not applied
2 for a resident business or resident contractor certificate
3 pursuant to this section during that time period;

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

12 (4) if the contractor is a previously
13 certified contractor or was eligible for certification, the
14 contractor has changed its name, 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.

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

25 (1) verification by the federal department of

.197411.1

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

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 or that the veteran died while
8 in the service of the armed forces of the United States and
9 proof that a ~~[veteran or veterans own a]~~ majority of the
10 business is owned by:

11 (a) a veteran or veterans;

12 (b) a parent or surviving spouse of a
13 veteran; or

14 (c) parents or surviving spouses of
15 veterans.

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

.197411.1

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

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 has fifteen days from the date of the
11 taxation and revenue department's decision to file an objection
12 with the taxation and revenue department. The person filing
13 the objection shall submit evidence to support the objection.
14 The taxation and revenue department shall review the evidence
15 and issue a decision within fifteen days of the filing of the
16 objection.

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

.197411.1

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

1 contractor did not perform the percentage of the contract
2 specified in the bid or proposal, the business or contractor:

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

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

11 I. In a decision issued pursuant to Subsection G or
12 H 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 J. 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 K. The state auditor may audit or review the
22 issuance or validity of certificates.

23 L. For purposes of this section:

24 (1) "new business" means a person that did not
25 exist as a business in any form and that has been in existence

.197411.1

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

1 for less than three years;

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

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

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

11 SECTION 2. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2015.

13 - 9 -

14
15
16
17
18
19
20
21
22
23
24
25