New Mexico Resident Business Preference

The State of New Mexico Procurement Code mandates a New Mexico Resident Business Preference on all bids and request for proposals (RFP).

Qualified resident businesses will be given a 5% preference on all bids. When bids are evaluated, New Mexico Businesses registered with the Department of Taxation and Revenue, will have its bid reduced by a factor of 5%.

Qualified resident businesses will be given a 5% preference on all RFP's. When proposals are evaluated, New Mexico resident businesses that are registered with the Department of Taxation and Revenue, will receive an additional points equivalent to 5% of the total points possible for award.

As of October 5, 2011, applications for in-state preference will no longer be processed through the State Purchasing Division. All resident businesses, veterans and contractors will have to obtain a preference number with the NM Department of Taxation & Revenue.
For additional information please call 505-827-0951.

Qualifications

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

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

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

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

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

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

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

(1) the contractor has:

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

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

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

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

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

D. The taxation and revenue department shall prescribe the form and content of the application and required affidavit. The taxation and revenue department shall examine the application and affidavit and, if necessary, may seek additional information to ensure that the business or contractor is eligible to receive the certificate pursuant to the provisions of this section. If the taxation and revenue department determines that an applicant is eligible, the department shall issue a certificate pursuant to the provisions of this section. If the taxation and revenue department determines that the applicant is not eligible, the department shall issue notification within thirty days. If no notification is provided by the department, the certificate is deemed approved. A certificate is valid for three years from the date of its issuance; provided that if there is a change of ownership of more than fifty percent, a **resident** business or **resident** contractor shall reapply for a certificate.

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

F. If, following a hearing and an opportunity to be heard, the taxation and revenue department finds that a business or contractor provided false information to the taxation and revenue department in order to obtain a certificate or that a business or contractor used a certificate to obtain a **resident** business or **resident** contractor **preference** for a bid or proposal and the **resident** business or contractor did not perform the percentage of the contract specified in the bid or proposal, the business or contractor:

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

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

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

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

I. The state auditor may audit or review the issuance or validity of certificates.

J. For purposes of this section:

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

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

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

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

History: 1953 Comp., § 6-5-32.1, enacted by Laws 1969, ch. 184, § 1; 1979, ch. 72, § 2; 2011 (1st S.S.), ch. 3, § 2.

Application of Preference

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

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

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

(6) "recycled content goods" means supplies and materials composed twenty-five percent or more of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications.

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

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

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

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

D. When a joint bid or joint proposal is submitted by both **resident** and nonresident businesses, the **resident** business **preference** provided pursuant to Subsection B or C of this section shall be reduced in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by a nonresident business as specified in the joint bid or proposal.

E. When bids are received for both recycled content goods and non-recycled content goods, the public body shall deem the bids submitted for recycled content goods of equal quality to be five percent lower than the bids actually submitted. A bid calculation pursuant to this subsection for a **resident** business shall not also receive the bid calculation **preference** pursuant to Subsection B of this section.

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

G. This section shall not apply when the expenditure includes federal funds for a specific purchase.

History: 1978 Comp., § 13-1-21, enacted by Laws 1979, ch. 72, § 1; 1981, ch. 104, § 1; 1988, ch. 84, § 1; 1989, ch. 310, § 1; 1995, ch. 60, § 1; 1997, ch. 1, § 2; 1997, ch. 2, § 2; 1997, ch. 3, § 1; 2000, ch. 41, § 1; 2011 (1st S.S.), ch. 3, § 1.

Resident Veterans Preference Certification

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

Please check one box only

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than $1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than $1M but less than $5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than $5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

_____ _____

(Signature of Business Representative)* (Date)

*Must be an authorized signatory for the Business

The representations made in the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or unaward of the procurement involved if the statements are proven to be incorrect.

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