

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 19

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11 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

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AN ACT

RELATING TO PROCUREMENT; MODIFYING THE PREFERENCE ADVANTAGE FOR
IN-STATE BUSINESS; CHANGING THE DEFINITIONS OF "RESIDENT
BUSINESS" AND "RESIDENT CONTRACTOR"; CHANGING THE PROCESS FOR
OBTAINING CERTIFICATION AS A RESIDENT BUSINESS OR RESIDENT
CONTRACTOR; ELIMINATING PREFERENCES FOR RESIDENT MANUFACTURERS
AND NEW YORK STATE BUSINESSES; PROVIDING PENALTIES; REPEALING
SECTION 13-1-21.2 NMSA 1978 (BEING LAWS 1997, CHAPTER 1,
SECTION 1 AND LAWS 1997, CHAPTER 2, SECTION 1).

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

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underscored material = new
[bracketed material] = delete

1 carried on for the purpose of selling goods or services,
2 including growing, producing, processing or distributing
3 agricultural products for profit;

4 (2) "public body" means the executive,
5 legislative and judicial branches of state and local
6 governments, the New Mexico hospital equipment loan council,
7 entities on state-owned land and all agencies or entities
8 created by the constitution of New Mexico or any branch of
9 government that receives public funding, including political
10 subdivisions, home rule municipalities, special taxing
11 districts, school districts and institutions of higher
12 education;

13 (3) "resident business" means a [New Mexico
14 resident business or a New York state business enterprise]
15 business that has a valid resident business certificate issued
16 by the taxation and revenue department pursuant to Section
17 13-1-22 NMSA 1978; and

18 ~~[(2) "New Mexico resident business" means a~~
19 ~~business that is authorized to do and is doing business under~~
20 ~~the laws of this state and:~~

21 ~~(a) that maintains its principal place~~
22 ~~of business in the state;~~

23 ~~(b) has staffed an office and has paid~~
24 ~~applicable state taxes for two years prior to the awarding of~~
25 ~~the bid and has five or more employees who are residents of the~~

1 ~~state; or~~

2 ~~(c) is an affiliate of a business that~~
3 ~~meets the requirements of Subparagraph (a) or (b) of this~~
4 ~~paragraph. As used in this section, "affiliate" means an~~
5 ~~entity that directly or indirectly through one or more~~
6 ~~intermediaries controls, is controlled by or is under common~~
7 ~~control with the qualifying business through ownership of~~
8 ~~voting securities representing a majority of the total voting~~
9 ~~power of the entity;~~

10 ~~(3) "New York state business enterprise" means~~
11 ~~a business enterprise, including a sole proprietorship,~~
12 ~~partnership or corporation, that offers for sale or lease or~~
13 ~~other form of exchange, goods or commodities that are~~
14 ~~substantially manufactured, produced or assembled in New York~~
15 ~~state, or services, other than construction services, that are~~
16 ~~substantially performed within New York state. For purposes of~~
17 ~~construction services, a "New York state business enterprise"~~
18 ~~means a business enterprise, including a sole proprietorship,~~
19 ~~partnership or corporation, that has its principal place of~~
20 ~~business in New York state;~~

21 ~~(4) "resident manufacturer" means a person who~~
22 ~~offers materials grown, produced, processed or manufactured~~
23 ~~wholly in the state; provided, however, that a New York state~~
24 ~~business enterprise shall be deemed to be a resident~~
25 ~~manufacturer solely for the purpose of evaluating the New York~~

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1 ~~state business enterprise's bid against the bid of a resident~~
2 ~~manufacturer that is not a New York state business enterprise;~~

3 ~~(5)]~~ (4) "recycled content goods" means
4 supplies and materials composed [~~in whole or in part~~] twenty-
5 five percent or more of recycled materials; provided that the
6 recycled materials content meets or exceeds the minimum content
7 standards required by bid specifications. [~~and~~

8 ~~(6) "virgin content goods" means supplies and~~
9 ~~materials that are wholly composed of nonrecycled materials or~~
10 ~~do not meet minimum recycled content standards required by bid~~
11 ~~specification.~~

12 B. ~~When bids are received only from nonresident~~
13 ~~businesses and resident businesses and the lowest responsible~~
14 ~~bid is from a nonresident business, the contract shall be~~
15 ~~awarded to the resident business whose bid is nearest to the~~
16 ~~bid price of the otherwise low nonresident business bidder if~~
17 ~~the bid price of the resident bidder is made lower than the bid~~
18 ~~price of the nonresident business when multiplied by a factor~~
19 ~~of .95.~~

20 C. ~~When bids are received only from nonresident~~
21 ~~businesses and resident manufacturers and the lowest~~
22 ~~responsible bid is from a nonresident business, the contract~~
23 ~~shall be awarded to the resident manufacturer whose bid is~~
24 ~~nearest to the bid price of the otherwise low nonresident~~
25 ~~business bidder if the bid price of the resident manufacturer~~

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1 ~~is made lower than the bid price of the nonresident business~~
2 ~~when multiplied by a factor of .95.~~

3 ~~D. When bids are received only from resident~~
4 ~~businesses and resident manufacturers and the lowest~~
5 ~~responsible bid is from a resident business, the contract shall~~
6 ~~be awarded to the resident manufacturer whose bid is nearest to~~
7 ~~the bid price of the otherwise low resident business bidder if~~
8 ~~the bid price of the resident manufacturer is made lower than~~
9 ~~the bid price of the resident business when multiplied by a~~
10 ~~factor of .95.~~

11 ~~E. When bids are received from resident~~
12 ~~manufacturers, resident businesses and nonresident businesses~~
13 ~~and the lowest responsible bid is from a resident business, the~~
14 ~~contract shall be awarded to the resident manufacturer whose~~
15 ~~bid is nearest to the bid price of the otherwise low resident~~
16 ~~business bidder if the bid price of the resident manufacturer~~
17 ~~is made lower than the bid price of the resident business when~~
18 ~~multiplied by a factor of .95.~~

19 ~~F. When bids are received from resident~~
20 ~~manufacturers, resident businesses and nonresident businesses~~
21 ~~and the lowest responsible bid is from a nonresident business,~~
22 ~~the contract shall be awarded to the resident manufacturer~~
23 ~~whose bid is nearest to the bid price of the otherwise low~~
24 ~~nonresident business bidder if the bid price of the resident~~
25 ~~manufacturer is evaluated as lower than the bid price of the~~

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1 ~~nonresident business when multiplied by a factor of .95. If~~
2 ~~there is no resident manufacturer eligible for award under this~~
3 ~~provision, then the contract shall be awarded to the resident~~
4 ~~business whose bid is nearest to the bid price of the otherwise~~
5 ~~low nonresident business bidder if the bid price of the~~
6 ~~resident business is made lower than the bid price of the~~
7 ~~nonresident business when multiplied by a factor of .95.~~

8 ~~G. When bids are received for virgin content goods~~
9 ~~only or for recycled content goods only, Subsections B through~~
10 ~~F of this section shall apply.~~

11 ~~H. When bids are received for both recycled content~~
12 ~~goods and virgin content goods and the lowest responsible bid~~
13 ~~is for virgin content goods, the contract shall be awarded to:~~

14 ~~(1) a resident manufacturer offering the~~
15 ~~lowest bid on recycled content goods of equal quality if the~~
16 ~~bid price of the resident manufacturer when multiplied by a~~
17 ~~factor of .90 is made lower than the otherwise low virgin~~
18 ~~content goods bid price;~~

19 ~~(2) a resident business offering a bid on~~
20 ~~recycled content goods of equal quality if:~~

21 ~~(a) the bid price of no resident~~
22 ~~manufacturer following application of the preference allowed in~~
23 ~~Paragraph (1) of this subsection can be made sufficiently low;~~
24 ~~and~~

25 ~~(b) the lowest bid price of the resident~~

1 ~~business when multiplied by a factor of .90 is made lower than~~
 2 ~~the otherwise low virgin content goods bid price; or~~

3 ~~(3) a nonresident business or nonresident~~
 4 ~~manufacturer offering recycled content goods of equal quality~~
 5 ~~if:~~

6 ~~(a) the bid price of no resident~~
 7 ~~business or resident manufacturer following application of the~~
 8 ~~preference allowed in Paragraph (1) or (2) of this subsection~~
 9 ~~can be made sufficiently low; and~~

10 ~~(b) the lowest bid price of a~~
 11 ~~nonresident offering recycled content goods when multiplied by~~
 12 ~~a factor of .95 is made lower than the otherwise low virgin~~
 13 ~~content bid price.~~

14 ~~I. When bids are received for both recycled content~~
 15 ~~goods and virgin content goods and the lowest responsible bid~~
 16 ~~is for recycled content goods offered by a nonresident business~~
 17 ~~or nonresident manufacturer, the contract shall be awarded to:~~

18 ~~(1) a resident manufacturer offering the~~
 19 ~~lowest bid on recycled content goods of equal quality if the~~
 20 ~~bid price of the resident manufacturer when multiplied by a~~
 21 ~~factor of .95 is made lower than the otherwise low recycled~~
 22 ~~content goods bid price; or~~

23 ~~(2) a resident business offering a bid on~~
 24 ~~recycled content goods of equal quality if:~~

25 ~~(a) the bid price of no resident~~

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1 ~~manufacturer following application of the preference allowed in~~
2 ~~Paragraph (1) of this subsection can be made sufficiently low;~~
3 ~~and~~

4 ~~(b) the lowest bid price of the resident~~
5 ~~business when multiplied by a factor of .95 is made lower than~~
6 ~~the otherwise low recycled content goods bid price offered by a~~
7 ~~nonresident business or manufacturer.~~

8 ~~J. When bids are received for both recycled content~~
9 ~~goods and virgin content goods and the lowest responsible bid~~
10 ~~is for recycled content goods offered by a resident business,~~
11 ~~the contract shall be awarded to a resident manufacturer~~
12 ~~offering the lowest bid on recycled content goods of equal~~
13 ~~quality if the bid price of the resident manufacturer when~~
14 ~~multiplied by a factor of .95 is made lower than the otherwise~~
15 ~~low recycled content goods bid price.]~~

16 B. When a public body makes a purchase using a
17 formal bid process, the public body shall deem the bids
18 submitted by resident businesses to be five percent lower than
19 the bids actually submitted.

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

22 (1) five percent of the relative weight of all
23 the factors used in evaluating the proposals shall be based on
24 whether the proposal was submitted by a resident business; or

25 (2) if the contract is awarded based on a

1 point-based system, resident businesses shall be awarded the
2 equivalent of five percent of the total possible points to be
3 awarded.

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

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

19 F. The procedures provided in Sections 13-1-172
20 through 13-1-183 NMSA 1978 apply to a protest to a public body
21 concerning the awarding of a contract in violation of this
22 section.

23 ~~[K-]~~ G. This section shall not apply when the
24 expenditure ~~[of]~~ includes federal funds ~~[designated]~~ for a
25 specific purchase. ~~[is involved or for any bid price greater~~

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1 ~~than five million dollars (\$5,000,000).~~

2 ~~L. The provisions of this section shall not apply~~
3 ~~to the purchase of buses from a resident manufacturer or a New~~
4 ~~Mexico resident business that manufactures buses in New Mexico.~~
5 ~~It is the purpose of this subsection to:~~

6 ~~(1) allow any bus manufacturer or business~~
7 ~~that manufactures buses to compete openly for public~~
8 ~~procurement contracts in New Mexico without giving preference~~
9 ~~to a business based on the location of the place of manufacture~~
10 ~~of the buses;~~

11 ~~(2) give resident manufacturers and New Mexico~~
12 ~~resident businesses that manufacture buses an equal opportunity~~
13 ~~to sell their buses in states that have reciprocal preference~~
14 ~~laws; and~~

15 ~~(3) eliminate all different treatment of any~~
16 ~~kind under New Mexico law and by all political jurisdictions in~~
17 ~~the state between New Mexico resident businesses and~~
18 ~~manufacturers that manufacture buses and businesses in other~~
19 ~~states that manufacture and sell buses.]"~~

20 SECTION 2. Section 13-1-22 NMSA 1978 (being Laws 1969,
21 Chapter 184, Section 1, as amended) is amended to read:

22 "13-1-22. RESIDENT BUSINESS AND [MANUFACTURER] RESIDENT
23 CONTRACTOR CERTIFICATION [APPLICATION--INFORMATION].--[No
24 ~~resident business or resident manufacturer, as those terms are~~
25 ~~defined in Subsection A of Section 13-1-21 NMSA 1978, shall be~~

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1 ~~given any preference in the awarding of contracts for~~
2 ~~furnishing materials or services to a state agency unless the~~
3 ~~resident business or resident manufacturer shall have qualified~~
4 ~~with the state purchasing agent as a resident business or~~
5 ~~resident manufacturer or both by making application to the~~
6 ~~state purchasing agent and receiving from him a certification~~
7 ~~number. The procedure for application and certification shall~~
8 ~~be as follows:~~

9 ~~A. the state purchasing agent shall prepare an~~
10 ~~application form for certification as a resident business or~~
11 ~~manufacturer, requesting such information and proof as he deems~~
12 ~~necessary to qualify the applicant under the terms of Section~~
13 ~~13-1-21 NMSA 1978;~~

14 ~~B. the resident business or resident manufacturer~~
15 ~~shall complete the application form and submit it to the state~~
16 ~~purchasing agent prior to the awarding of any contract in which~~
17 ~~the resident business or manufacturer desires to be given a~~
18 ~~preference; and~~

19 ~~C. the state purchasing agent shall examine the~~
20 ~~application and if necessary may seek additional information or~~
21 ~~proof to assure himself that the prospective business or~~
22 ~~manufacturer is indeed entitled to the statutory preference.~~
23 ~~If all is in order, he shall issue the supplier a distinctive~~
24 ~~certification number, which shall be valid until revoked, and~~
25 ~~which, when used on bids and other purchasing documents, shall~~

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1 ~~entitle the business or manufacturer to the statutory~~
2 ~~preference.]~~

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

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 authorized to do
13 and is doing business under the laws of this state and that:

14 (1) the business has paid property taxes or
15 rent on real property in New Mexico and paid at least one other
16 tax administered by the taxation and revenue department in each
17 of the five years immediately preceding the submission of the
18 affidavit;

19 (2) if the business is an entrepreneur's
20 business, the entrepreneur owns a majority of the business and
21 has resided in New Mexico during the five-year period
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,

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

7 (4) if the business has changed its name from
8 that of a previously certified business, the business is
9 identical in every way to the previously certified business
10 that meets all criteria.

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

15 (1) 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 New Mexico and paid
21 at least one other tax administered by the taxation and revenue
22 department; and 2) unless the contractor is a legacy
23 contractor, paid unemployment compensation on at least three
24 full-time employees who are residents of the state;

25 (2) if the contractor is an entrepreneur, the

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1 entrepreneur owns a majority of the business and has resided in
2 New Mexico during the five-year period immediately preceding
3 the submission of the affidavit and has not applied for a
4 resident business or resident contractor certificate pursuant
5 to this section during that time period;

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

13 (4) if the contractor has changed its name
14 from that of a previously certified contractor, the contractor
15 is identical in every way to the previously certified
16 contractor that meets all criteria; or

17 (5) if the contractor is a legacy contractor,
18 the requirement of at least three full-time employees who are
19 residents of the state is waived.

20 D. The taxation and revenue department shall
21 prescribe the form and content of the application and required
22 affidavit. The taxation and revenue department shall examine
23 the application and affidavit and, if necessary, may seek
24 additional information to ensure that the business or
25 contractor is eligible to receive the certificate pursuant to

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1 the provisions of this section. If all is in order, the
2 taxation and revenue department shall issue a certificate
3 within thirty days of the submission of an application. A
4 certificate is valid for three years from the date of its
5 issuance; provided that if there is a change of ownership of
6 more than fifty percent, a resident business or resident
7 contractor shall reapply for a certificate.

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

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

25 (1) is not eligible to receive a certificate

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1 or a preference pursuant to Section 13-1-21 or 13-4-2 NMSA 1978
2 for a period of five years from the date on which the taxation
3 and revenue department became aware of the submission of the
4 false information or the failure to perform the contract as
5 specified in the bid or proposal; and

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

8 G. The taxation and revenue department may assess a
9 reasonable fee for the issuance of a certificate to cover the
10 costs of administering the taxation and revenue department's
11 duties pursuant to this section.

12 H. The state auditor may audit or review the
13 issuance or validity of certificates.

14 I. For purposes of this section:

15 (1) "entrepreneur" means a person who is an
16 owner and operator of an entirely new business that did not
17 exist in any form and that has been in existence for less than
18 five years;

19 (2) "legacy contractor" means a business that
20 has been licensed in this state and owned by a resident for ten
21 consecutive years; and

22 (3) "relocated business" means a business that
23 moved its principal place of business from another state to New
24 Mexico in the past five years."

25 **SECTION 3.** Section 13-1-103 NMSA 1978 (being Laws 1984,

1 Chapter 65, Section 76, as amended) is amended to read:

2 "13-1-103. INVITATION FOR BIDS.--

3 A. An invitation for bids shall be issued and shall
4 include the specifications for the services, construction or
5 items of tangible personal property to be procured, all
6 contractual terms and conditions applicable to the procurement,
7 the location where bids are to be received, ~~and~~ the date,
8 time and place of the bid opening and the requirements for
9 complying with any applicable in-state preference provisions as
10 provided by law.

11 B. If the procurement is to be by sealed bid
12 without electronic submission, the invitation for bids shall
13 include the location where bids are to be received and the
14 date, time and place of the bid opening.

15 C. If the procurement is to be by sealed bid with
16 part or all of the bid to be submitted electronically, the
17 invitation for bids shall comply with the requirements of
18 Section 13-1-95.1 NMSA 1978."

19 SECTION 4. Section 13-1-112 NMSA 1978 (being Laws 1984,
20 Chapter 65, Section 85, as amended) is amended to read:

21 "13-1-112. COMPETITIVE SEALED PROPOSALS--REQUEST FOR
22 PROPOSALS.--

23 A. Competitive sealed proposals, including
24 competitive qualifications-based proposals, shall be solicited
25 through a request for proposals that shall be issued and shall

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1 include:

2 (1) the specifications for the services or
3 items of tangible personal property to be procured;

4 (2) all contractual terms and conditions
5 applicable to the procurement;

6 (3) the form for disclosure of campaign
7 contributions given by prospective contractors to applicable
8 public officials pursuant to Section 13-1-191.1 NMSA 1978;

9 [~~and~~]

10 (4) the location where proposals are to be
11 received and the date, time and place where proposals are to be
12 received and reviewed; and

13 (5) the requirements for complying with any
14 applicable in-state preference provisions as provided by law.

15 B. A request for proposals may, pursuant to Section
16 13-1-95.1 NMSA 1978, require that all or a portion of a
17 responsive proposal be submitted electronically.

18 C. In the case of requests for competitive
19 qualifications-based proposals, price shall be determined by
20 formal negotiations related to scope of work."

21 SECTION 5. Section 13-4-2 NMSA 1978 (being Laws 1984,
22 Chapter 66, Section 2, as amended) is amended to read:

23 "13-4-2. RESIDENT CONTRACTOR DEFINED--APPLICATION OF
24 PREFERENCE.--

25 [~~A. "Resident contractor" means a New Mexico~~

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1 ~~resident contractor or a New York state business enterprise.~~

2 B. ~~"New Mexico resident contractor" means any~~
3 ~~person, firm, corporation or other legal entity if, at the time~~
4 ~~the contract is advertised for bids and at the time bids are~~
5 ~~opened, it has all required licenses and meets the following~~
6 ~~requirements:~~

7 (1) ~~if the bidder is a corporation, it shall~~
8 ~~be incorporated in New Mexico and maintain its principal office~~
9 ~~and place of business in New Mexico;~~

10 (2) ~~if the bidder is a partnership, general or~~
11 ~~limited, or other legal entity, it shall maintain its principal~~
12 ~~office and place of business in New Mexico;~~

13 (3) ~~if the bidder is an individual, he shall~~
14 ~~maintain his principal office and place of business in New~~
15 ~~Mexico; or~~

16 (4) ~~if a bidder who is a telecommunications~~
17 ~~company as defined by Subsection M of Section 63-9A-3 NMSA 1978~~
18 ~~or an affiliate of a telecommunications company has paid~~
19 ~~unemployment compensation to the employment security division~~
20 ~~of the labor department at the applicable experience rate for~~
21 ~~that employer pursuant to the Unemployment Compensation Law on~~
22 ~~no fewer than ten employees who have performed services subject~~
23 ~~to contributions for the two-year period prior to issuance of~~
24 ~~notice to bid, the bidder will be considered to have fulfilled~~
25 ~~the requirements of Paragraph (1), (2) or (3) of this~~

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1 ~~subsection. A successor to a previously qualified New Mexico~~
2 ~~contractor or resident contractor, where the creation of the~~
3 ~~bidder resulted from a court order, is entitled to credit for~~
4 ~~qualifying contributions paid by the previously qualified New~~
5 ~~Mexico contractor or resident contractor.~~

6 C. ~~"New York state business enterprise" means a~~
7 ~~business enterprise, including a sole proprietorship,~~
8 ~~partnership or corporation, that offers for sale or lease or~~
9 ~~other form of exchange, goods or commodities that are~~
10 ~~substantially manufactured, produced or assembled in New York~~
11 ~~state, or services, other than construction services, that are~~
12 ~~substantially performed within New York state. For purposes of~~
13 ~~construction services, a New York state business enterprise~~
14 ~~means a business enterprise, including a sole proprietorship,~~
15 ~~partnership or corporation, that has its principal place of~~
16 ~~business in New York state.~~

17 D. ~~For purposes of this section, "affiliate" means~~
18 ~~an entity that directly or indirectly through one or more~~
19 ~~intermediaries controls, is controlled by or is under common~~
20 ~~control with a telecommunications company through ownership of~~
21 ~~voting securities representing a majority of the total voting~~
22 ~~power of that entity.~~

23 E. ~~When bids are received only from nonresident~~
24 ~~contractors and resident contractors and the lowest responsible~~
25 ~~bid is from a nonresident contractor, the contract shall be~~

1 ~~awarded to the resident contractor whose bid is nearest to the~~
2 ~~bid price of the otherwise low nonresident contractor if the~~
3 ~~bid price of the resident contractor is made lower than the bid~~
4 ~~price of the nonresident contractor when multiplied by a factor~~
5 ~~of .95.~~

6 ~~F. No contractor shall be treated as a resident~~
7 ~~contractor in the awarding of public works contracts by a state~~
8 ~~agency or a local public body unless the contractor has~~
9 ~~qualified with the state purchasing agent as a resident~~
10 ~~contractor pursuant to this section by making application to~~
11 ~~the state purchasing agent and receiving from him a~~
12 ~~certification number. The procedure for application and~~
13 ~~certification is as follows:~~

14 ~~(1) the state purchasing agent shall prepare~~
15 ~~an application form for certification as a resident contractor,~~
16 ~~requiring such information and proof as he deems necessary to~~
17 ~~qualify the applicant under the terms of this section;~~

18 ~~(2) the contractor seeking to qualify as a~~
19 ~~resident contractor shall complete the application form and~~
20 ~~submit it to the state purchasing agent prior to the submission~~
21 ~~of a bid on which the contractor desires to be given a~~
22 ~~preference;~~

23 ~~(3) the state purchasing agent shall examine~~
24 ~~the application and if necessary may seek additional~~
25 ~~information or proof so as to be assured that the prospective~~

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1 ~~contractor is indeed entitled to certification as a resident~~
2 ~~contractor. If the application is in proper form, the state~~
3 ~~purchasing agent shall issue the contractor a distinctive~~
4 ~~certification number which is valid until revoked and which~~
5 ~~when used on bids and other purchasing documents for state~~
6 ~~agencies or local public bodies, entitles the contractor to~~
7 ~~treatment as a resident contractor under Subsection E of this~~
8 ~~section; and~~

9 ~~(4) the certification number issued pursuant~~
10 ~~to Paragraph (3) of this subsection shall be revoked by the~~
11 ~~state purchasing agent upon making a determination that the~~
12 ~~contractor no longer meets the requirements of a resident~~
13 ~~contractor as defined in this section.]~~

14 A. For the purposes of this section:

15 (1) "public body" means the executive,
16 legislative and judicial branches of state and local
17 governments, the New Mexico hospital equipment loan council,
18 entities on state-owned land and all agencies or entities
19 created by the constitution of New Mexico or any branch of
20 government that receives public funding, including political
21 subdivisions, home rule municipalities, special taxing
22 districts, school districts and institutions of higher
23 education;

24 (2) "public works contract" means a contract
25 for construction, construction management, architectural,

1 landscape architectural, engineering, surveying or interior
2 design services; and

3 (3) "resident contractor" means any person,
4 firm, corporation or other legal entity that has a valid
5 resident contractor certificate issued by the taxation and
6 revenue department pursuant to Section 13-1-22 NMSA 1978.

7 B. For the purpose of awarding a public works
8 contract, a public body shall deem the bids submitted by
9 resident contractors to be five percent lower than the bids
10 actually submitted.

11 C. When a public body awards a contract using a
12 formal request for proposals process:

13 (1) five percent of the relative weight of all
14 the factors used in evaluating the proposals shall be based on
15 whether the proposal was submitted by a resident contractor; or

16 (2) if the contract is awarded based on a
17 point-based system, resident contractors shall be awarded the
18 equivalent of five percent of the total possible points to be
19 awarded.

20 D. When a joint bid or joint proposal is submitted
21 by both resident and nonresident contractors, the resident
22 contractor preference provided pursuant to Subsection B or C of
23 this section shall be reduced in proportion to the percentage
24 of the contract, based on the dollar amount of the goods or
25 services provided under the contract, that will be performed by

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1 a nonresident contractor as specified in the joint bid or joint
2 proposal.

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

7 SECTION 6. Section 13-4-5 NMSA 1978 (being Laws 1933,
8 Chapter 19, Section 1, as amended by Laws 1997, Chapter 1,
9 Section 4 and also by Laws 1997, Chapter 2, Section 4) is
10 amended to read:

11 "13-4-5. USE OF NEW MEXICO MATERIALS.--[A.] In all public
12 works within New Mexico, whether constructed or maintained by
13 the state or by a department, [a] board [a] or commission of
14 the state or by any political subdivision [~~thereof~~] of the
15 state, or in any construction or maintenance to which the state
16 or any political subdivision [~~thereof~~] of the state has granted
17 aid, preference shall be given to materials produced, grown,
18 processed or manufactured in New Mexico by citizens or
19 residents of New Mexico [~~or provided or offered by a New York~~
20 ~~state business enterprise, and such materials shall be used~~
21 ~~where they are deemed satisfactory for the intended use~~]. In
22 any case where, in the judgment of the different officers,
23 boards, commissions or other [authority] authorities in this
24 state [~~now or hereafter~~] vested with the power of contracting
25 for material used in the construction or maintenance of public

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1 works referred to in this section, it appears that an attempt
2 is being made by producers, growers, processors or
3 manufacturers in the state to form a trust or combination of
4 any kind for the purpose of fixing or regulating the price of
5 materials to be used in any public works to the detriment of or
6 loss to the state, [then] the provisions of this section shall
7 not apply.

8 ~~[B. As used in this section, "New York state~~
9 ~~business enterprise" means a business enterprise, including a~~
10 ~~sole proprietorship, partnership or corporation, that offers~~
11 ~~for sale or lease or other form of exchange, goods or~~
12 ~~commodities that are substantially manufactured, produced or~~
13 ~~assembled in New York state, or services, other than~~
14 ~~construction services, that are substantially performed within~~
15 ~~New York state. For purposes of construction services, a New~~
16 ~~York state business enterprise means a business enterprise,~~
17 ~~including a sole proprietorship, partnership or corporation,~~
18 ~~that has its principal place of business in New York state.]"~~

19 SECTION 7. TEMPORARY PROVISION.--A certification as a
20 resident business or resident manufacturer by the general
21 services department that is in effect on June 30, 2011 is valid
22 until January 1, 2012 for the purpose of obtaining a resident
23 business preference pursuant to Section 13-1-21 NMSA 1978. A
24 certification as a resident contractor by the general services
25 department that is in effect on June 30, 2011 is valid until

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1 January 1, 2012 for the purpose of obtaining a resident
2 contractor preference pursuant to Section 13-4-2 NMSA 1978.
3 After January 1, 2012, a certification as a resident business
4 or resident contractor by the taxation and revenue department
5 for the purpose of obtaining a resident business preference or
6 a resident contractor preference is required for all new bids
7 and proposals.

8 SECTION 8. REPEAL.--Section 13-1-21.2 NMSA 1978 (being
9 Laws 1997, Chapter 1, Section 1 and Laws 1997, Chapter 2,
10 Section 1) is repealed.

11 SECTION 9. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2011.