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SENATE BILL 1

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

INTRODUCED BY

Timothy M. Keller

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); DECLARING AN
EMERGENCY.

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:

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

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

7 (3) "formal request for proposals process"
8 means a competitive sealed proposal process, including a
9 competitive sealed qualifications-based proposal process;

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

19 (5) "resident business" means a [New Mexico
20 resident business or a New York state business enterprise]
21 business that has a valid resident business certificate issued
22 by the taxation and revenue department pursuant to Section
23 13-1-22 NMSA 1978; and

24 ~~[(2) "New Mexico resident business" means a~~
25 ~~business that is authorized to do and is doing business under~~

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1 ~~the laws of this state and:~~

2 ~~(a) that maintains its principal place~~
3 ~~of business in the state;~~

4 ~~(b) has staffed an office and has paid~~
5 ~~applicable state taxes for two years prior to the awarding of~~
6 ~~the bid and has five or more employees who are residents of the~~
7 ~~state; or~~

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

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

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1 ~~business in New York state;~~

2 ~~(4) "resident manufacturer" means a person who~~
3 ~~offers materials grown, produced, processed or manufactured~~
4 ~~wholly in the state; provided, however, that a New York state~~
5 ~~business enterprise shall be deemed to be a resident~~
6 ~~manufacturer solely for the purpose of evaluating the New York~~
7 ~~state business enterprise's bid against the bid of a resident~~
8 ~~manufacturer that is not a New York state business enterprise;~~

9 ~~(5)]~~ (6) "recycled content goods" means
10 supplies and materials composed [~~in whole or in part~~] twenty-
11 five percent or more of recycled materials; provided that the
12 recycled materials content meets or exceeds the minimum content
13 standards required by bid specifications. [~~and~~

14 ~~(6) "virgin content goods" means supplies and~~
15 ~~materials that are wholly composed of nonrecycled materials or~~
16 ~~do not meet minimum recycled content standards required by bid~~
17 ~~specification.~~

18 ~~B. When bids are received only from nonresident~~
19 ~~businesses and resident businesses and the lowest responsible~~
20 ~~bid is from a nonresident business, the contract shall be~~
21 ~~awarded to the resident business whose bid is nearest to the~~
22 ~~bid price of the otherwise low nonresident business bidder if~~
23 ~~the bid price of the resident bidder is made lower than the bid~~
24 ~~price of the nonresident business when multiplied by a factor~~
25 ~~of .95.~~

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

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

17 ~~E. When bids are received from resident~~
18 ~~manufacturers, resident businesses and nonresident businesses~~
19 ~~and the lowest responsible bid is from a resident business, the~~
20 ~~contract shall be awarded to the resident manufacturer whose~~
21 ~~bid is nearest to the bid price of the otherwise low resident~~
22 ~~business bidder if the bid price of the resident manufacturer~~
23 ~~is made lower than the bid price of the resident business when~~
24 ~~multiplied by a factor of .95.~~

25 ~~F. When bids are received from resident~~

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1 ~~manufacturers, resident businesses and nonresident businesses~~
2 ~~and the lowest responsible bid is from a nonresident business,~~
3 ~~the contract shall be awarded to the resident manufacturer~~
4 ~~whose bid is nearest to the bid price of the otherwise low~~
5 ~~nonresident business bidder if the bid price of the resident~~
6 ~~manufacturer is evaluated as lower than the bid price of the~~
7 ~~nonresident business when multiplied by a factor of .95. If~~
8 ~~there is no resident manufacturer eligible for award under this~~
9 ~~provision, then the contract shall be awarded to the resident~~
10 ~~business whose bid is nearest to the bid price of the otherwise~~
11 ~~low nonresident business bidder if the bid price of the~~
12 ~~resident business is made lower than the bid price of the~~
13 ~~nonresident business when multiplied by a factor of .95.~~

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

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

20 ~~(1) a resident manufacturer offering the~~
21 ~~lowest bid on recycled content goods of equal quality if the~~
22 ~~bid price of the resident manufacturer when multiplied by a~~
23 ~~factor of .90 is made lower than the otherwise low virgin~~
24 ~~content goods bid price;~~

25 ~~(2) a resident business offering a bid on~~

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1 ~~recycled content goods of equal quality if:~~

2 ~~(a) the bid price of no resident~~
3 ~~manufacturer following application of the preference allowed in~~
4 ~~Paragraph (1) of this subsection can be made sufficiently low;~~
5 ~~and~~

6 ~~(b) the lowest bid price of the resident~~
7 ~~business when multiplied by a factor of .90 is made lower than~~
8 ~~the otherwise low virgin content goods bid price; or~~

9 ~~(3) a nonresident business or nonresident~~
10 ~~manufacturer offering recycled content goods of equal quality~~
11 ~~if:~~

12 ~~(a) the bid price of no resident~~
13 ~~business or resident manufacturer following application of the~~
14 ~~preference allowed in Paragraph (1) or (2) of this subsection~~
15 ~~can be made sufficiently low; and~~

16 ~~(b) the lowest bid price of a~~
17 ~~nonresident offering recycled content goods when multiplied by~~
18 ~~a factor of .95 is made lower than the otherwise low virgin~~
19 ~~content bid price.~~

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

24 ~~(1) a resident manufacturer offering the~~
25 ~~lowest bid on recycled content goods of equal quality if the~~

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1 ~~bid price of the resident manufacturer when multiplied by a~~
2 ~~factor of .95 is made lower than the otherwise low recycled~~
3 ~~content goods bid price; or~~

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

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

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

14 ~~J. 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 resident business,~~
17 ~~the contract shall be awarded to a resident manufacturer~~
18 ~~offering the lowest bid on recycled content goods of equal~~
19 ~~quality if the bid price of the resident manufacturer when~~
20 ~~multiplied by a factor of .95 is made lower than the otherwise~~
21 ~~low recycled content goods bid price.]~~

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

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

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

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

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

20 E. When bids are received for both recycled content
21 goods and nonrecycled content goods, the public body shall deem
22 the bids submitted for recycled content goods of equal quality
23 to be five percent lower than the bids actually submitted. A
24 bid calculation pursuant to this subsection for a resident
25 business shall not also receive the bid calculation preference

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1 pursuant to Subsection B of this section.

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

6 ~~[K.] G. This section shall not apply when the~~
7 ~~expenditure [of] includes federal funds [designated] for a~~
8 ~~specific purchase. [is involved or for any bid price greater~~
9 ~~than five million dollars (\$5,000,000).]~~

10 ~~L. The provisions of this section shall not apply~~
11 ~~to the purchase of buses from a resident manufacturer or a New~~
12 ~~Mexico resident business that manufactures buses in New Mexico.~~
13 ~~It is the purpose of this subsection to:~~

14 ~~(1) allow any bus manufacturer or business~~
15 ~~that manufactures buses to compete openly for public~~
16 ~~procurement contracts in New Mexico without giving preference~~
17 ~~to a business based on the location of the place of manufacture~~
18 ~~of the buses;~~

19 ~~(2) give resident manufacturers and New Mexico~~
20 ~~resident businesses that manufacture buses an equal opportunity~~
21 ~~to sell their buses in states that have reciprocal preference~~
22 ~~laws; and~~

23 ~~(3) eliminate all different treatment of any~~
24 ~~kind under New Mexico law and by all political jurisdictions in~~
25 ~~the state between New Mexico resident businesses and~~

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1 ~~manufacturers that manufacture buses and businesses in other~~
2 ~~states that manufacture and sell buses.]"~~

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

5 "13-1-22. RESIDENT BUSINESS AND [MANUFACTURER] RESIDENT
6 CONTRACTOR CERTIFICATION [APPLICATION--INFORMATION].-- [No
7 ~~resident business or resident manufacturer, as those terms are~~
8 ~~defined in Subsection A of Section 13-1-21 NMSA 1978, shall be~~
9 ~~given any preference in the awarding of contracts for~~
10 ~~furnishing materials or services to a state agency unless the~~
11 ~~resident business or resident manufacturer shall have qualified~~
12 ~~with the state purchasing agent as a resident business or~~
13 ~~resident manufacturer or both by making application to the~~
14 ~~state purchasing agent and receiving from him a certification~~
15 ~~number. The procedure for application and certification shall~~
16 ~~be as follows:~~

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

22 B. ~~the resident business or resident manufacturer~~
23 ~~shall complete the application form and submit it to the state~~
24 ~~purchasing agent prior to the awarding of any contract in which~~
25 ~~the resident business or manufacturer desires to be given a~~

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1 preference; and

2 ~~G. the state purchasing agent shall examine the~~
3 ~~application and if necessary may seek additional information or~~
4 ~~proof to assure himself that the prospective business or~~
5 ~~manufacturer is indeed entitled to the statutory preference.~~
6 ~~If all is in order, he shall issue the supplier a distinctive~~
7 ~~certification number, which shall be valid until revoked, and~~
8 ~~which, when used on bids and other purchasing documents, shall~~
9 ~~entitle the business or manufacturer to the statutory~~
10 ~~preference.]~~

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

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

22 (1) the business has paid property taxes or
23 rent on real property in the state and paid at least one other
24 tax administered by the taxation and revenue department in each
25 of the three years immediately preceding the submission of the

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1 affidavit;

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

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

17 (4) if the business is a previously certified
18 business that has changed its name, has reorganized into one or
19 more different legal entities, was purchased by another legal
20 entity but operates in the state as substantially the same
21 commercial enterprise or has merged with a different legal
22 entity but operates in the state as substantially the same
23 commercial enterprise, the business continues to meet all
24 criteria for a resident business certificate.

25 C. An application for a resident contractor

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1 certificate shall include an affidavit from a certified public
2 accountant setting forth that the contractor is currently
3 licensed as a contractor in this state and that:

4 (1) the contractor has:

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

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

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

24 (3) if the contractor is a relocated business,
25 at least eighty percent of the total personnel of the business

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1 in the year immediately preceding the submission of the
2 affidavit were residents of the state and that, prior to the
3 submission of the affidavit, the contractor either leased
4 property for ten years or purchased property greater than one
5 hundred thousand dollars (\$100,000) in value in the state; or
6 (4) if the contractor is a previously
7 certified contractor that has changed its name, has reorganized
8 into one or more different legal entities, was purchased by
9 another legal entity but operates in the state as substantially
10 the same enterprise or has merged with a different legal entity
11 but operates in the state as substantially the same commercial
12 enterprise, the contractor continues to meet all criteria for a
13 resident contractor certificate.

14 D. The taxation and revenue department shall
15 prescribe the form and content of the application and required
16 affidavit. The taxation and revenue department shall examine
17 the application and affidavit and, if necessary, may seek
18 additional information to ensure that the business or
19 contractor is eligible to receive the certificate pursuant to
20 the provisions of this section. If the taxation and revenue
21 department determines that an applicant is eligible, the
22 department shall issue a certificate pursuant to the provisions
23 of this section. If the taxation and revenue department
24 determines that the applicant is not eligible, the department
25 shall issue notification within thirty days. If no

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1 notification is provided by the department, the certificate is
2 deemed approved. A certificate is valid for three years from
3 the date of its issuance; provided that if there is a change of
4 ownership of more than fifty percent, a resident business or
5 resident contractor shall reapply for a certificate.

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

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

23 (1) is not eligible to receive a certificate
24 or a preference pursuant to Section 13-1-21 or 13-4-2 NMSA 1978
25 for a period of five years from the date on which the taxation

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1 and revenue department became aware of the submission of the
2 false information or the failure to perform the contract as
3 specified in the bid or proposal; and

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

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

10 H. The state auditor may audit or review the
11 issuance or validity of certificates.

12 I. For purposes of this section:

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

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

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

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

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

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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 sealed qualifications-based proposals, shall be
25 solicited through a request for proposals that shall be issued

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1 and shall 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~~

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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) "formal bid process" means a competitive
16 sealed bid process;

17 (2) "formal request for proposals process"
18 means a competitive sealed proposal process, including a
19 competitive sealed qualifications-based proposal process;

20 (3) "public body" means a department,
21 commission, council, board, committee, institution, legislative
22 body, agency, government corporation, educational institution
23 or official of the executive, legislative or judicial branch of
24 the government of the state or a political subdivision of the
25 state and the agencies, instrumentalities and institutions

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1 thereof, including two-year post-secondary educational
2 institutions, school districts, local school boards and all
3 municipalities, including home-rule municipalities;

4 (4) "public works contract" means a contract
5 for construction, construction management, architectural,
6 landscape architectural, engineering, surveying or interior
7 design services; and

8 (5) "resident contractor" means a person that
9 has a valid resident contractor certificate issued by the
10 taxation and revenue department pursuant to Section 13-1-22
11 NMSA 1978.

12 B. For the purpose of awarding a public works
13 contract using a formal bid process, a public body shall deem a
14 bid submitted by a resident contractor to be five percent lower
15 than the bid actually submitted.

16 C. When a public body awards a contract using a
17 formal request for proposals process:

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

22 (2) if the contract is awarded based on a
23 point-based system, a resident contractor shall be awarded the
24 equivalent of five percent of the total possible points to be
25 awarded based on the resident contractor possessing a valid

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1 resident contractor certificate.

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

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

14 SECTION 6. Section 13-4-5 NMSA 1978 (being Laws 1933,
15 Chapter 19, Section 1, as amended by Laws 1997, Chapter 1,
16 Section 4 and also by Laws 1997, Chapter 2, Section 4) is
17 amended to read:

18 "13-4-5. USE OF NEW MEXICO MATERIALS.--~~[A.]~~ In all public
19 works within New Mexico, whether constructed or maintained by
20 the state or by a department, ~~[a]~~ board ~~[a]~~ or commission of
21 the state or by any political subdivision ~~[thereof]~~ of the
22 state, or in any construction or maintenance to which the state
23 or any political subdivision ~~[thereof]~~ of the state has granted
24 aid, preference shall be given to materials produced, grown,
25 processed or manufactured in New Mexico by citizens or

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1 residents of New Mexico [~~or provided or offered by a New York~~
2 ~~state business enterprise, and such materials shall be used~~
3 ~~where they are deemed satisfactory for the intended use~~]. In
4 any case where, in the judgment of the different officers,
5 boards, commissions or other [~~authority~~] authorities in this
6 state [~~now or hereafter~~] vested with the power of contracting
7 for material used in the construction or maintenance of public
8 works referred to in this section, it appears that an attempt
9 is being made by producers, growers, processors or
10 manufacturers in the state to form a trust or combination of
11 any kind for the purpose of fixing or regulating the price of
12 materials to be used in any public works to the detriment of or
13 loss to the state, [~~then~~] the provisions of this section shall
14 not apply.

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

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1 **SECTION 7. TEMPORARY PROVISION.**--A certification as a
2 resident business or resident manufacturer by the general
3 services department that is in effect prior to passage of this
4 2011 act is valid until January 1, 2012 for the purpose of
5 obtaining a resident business preference pursuant to Section
6 13-1-21 NMSA 1978. A certification as a resident contractor by
7 the general services department that is in effect prior to
8 passage of this 2011 act is valid until January 1, 2012 for the
9 purpose of obtaining a resident contractor preference pursuant
10 to Section 13-4-2 NMSA 1978. After January 1, 2012, a
11 certification as a resident business or resident contractor by
12 the taxation and revenue department for the purpose of
13 obtaining a resident business preference or a resident
14 contractor preference is required for all new bids and
15 proposals.

16 **SECTION 8. REPEAL.**--Section 13-1-21.2 NMSA 1978 (being
17 Laws 1997, Chapter 1, Section 1 and Laws 1997, Chapter 2,
18 Section 1) is repealed.

19 **SECTION 9. EMERGENCY.**--It is necessary for the public
20 peace, health and safety that this act take effect immediately.