

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 1061

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Jim R. Trujillo

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; PROTECTING CERTAIN NEW MEXICO
SMALL BUSINESSES.

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) "resident business" means a New Mexico
resident business or a New York state business enterprise;

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

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

underscoring material = new
[bracketed material] = delete

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

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

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

24 (4) "resident manufacturer" means a person who
25 offers materials grown, produced, processed or manufactured

.155763.1

underscored material = new
[bracketed material] = delete

1 wholly in the state; provided, however, that a
2 New York state business enterprise shall be deemed to be a
3 resident manufacturer solely for the purpose of evaluating the
4 New York state business enterprise's bid against the bid of a
5 resident manufacturer that is not a New York state business
6 enterprise;

7 (5) "recycled content goods" means supplies
8 and materials composed in whole or in part of recycled
9 materials; provided that the recycled materials content meets
10 or exceeds the minimum content standards required by bid
11 specifications; [~~and~~]

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

16 (7) "disadvantaged small business" means a New
17 Mexico resident business that is owned by a woman, a military
18 veteran, including a disabled veteran, or other minority person
19 and that employs twenty or fewer employees.

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

.155763.1

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

1 price of the nonresident business when multiplied by a factor
2 of .95.

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

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

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

.155763.1

underscored material = new
[bracketed material] = delete

1 multiplied by a factor of .95.

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

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

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

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

.155763.1

1 content goods bid price;

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

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

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

11 (3) a nonresident business or nonresident
12 manufacturer offering recycled content goods of equal quality
13 if:

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

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

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

.155763.1

underscored material = new
[bracketed material] = delete

1 (1) a resident manufacturer offering the
2 lowest bid on recycled content goods of equal quality if the
3 bid price of the resident manufacturer when multiplied by a
4 factor of .95 is made lower than the otherwise low recycled
5 content goods bid price; or

6 (2) a resident business offering a bid on
7 recycled content goods of equal quality if:

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

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

16 J. When bids are received for both recycled content
17 goods and virgin content goods and the lowest responsible bid
18 is for recycled content goods offered by a resident business,
19 the contract shall be awarded to a resident manufacturer
20 offering the lowest bid on recycled content goods of equal
21 quality if the bid price of the resident manufacturer when
22 multiplied by a factor of .95 is made lower than the otherwise
23 low recycled content goods bid price.

24 K. This section shall not apply when the
25 expenditure of federal funds designated for a specific purchase

.155763.1

underscored material = new
[bracketed material] = delete

1 is involved or for any bid price greater than five million
2 dollars (\$5,000,000).

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

6 It is the purpose of this subsection to:

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

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

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

21 M. When bids are received from a disadvantaged
22 small business and the lowest responsible bid is from a
23 nonresident business or a resident business that is not a
24 disadvantaged small business, the contract shall be awarded to
25 the disadvantaged small business whose bid is nearest to the

.155763.1

underscored material = new
[bracketed material] = delete

1 otherwise low bidder if the bid price of the disadvantaged
2 small business is made lower than the bid price of the
3 otherwise low bidder when multiplied by a factor of .80."

4 - 9 -
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

.155763.1