

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 1061

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

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 and Section
13-1-22 NMSA 1978:

(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

1 of business in the state;

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

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

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

25 ~~(4)]~~ (2) "resident manufacturer" means a

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

8 ~~(5)]~~ (3) "recycled content goods" means
 9 supplies and materials composed in whole or in part of recycled
 10 materials; provided that the recycled materials content meets
 11 or exceeds the minimum content standards required by bid
 12 specifications; [~~and~~

13 ~~(6)]~~ (4) "virgin content goods" means supplies
 14 and materials that are wholly composed of nonrecycled materials
 15 or do not meet minimum recycled content standards required by
 16 bid specification;

17 (5) "disadvantaged small business" means a
 18 resident business, at least fifty-one percent of which is owned
 19 by a woman, a United States military veteran who was not
 20 dishonorably discharged, including a disabled veteran, or any
 21 other minority person as defined by the minority business
 22 development agency of the United States department of commerce;
 23 and

24 (6) "small business" means a resident business
 25 as defined in Paragraph (1) of this subsection that employs

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1 twenty or fewer employees.

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

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

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

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

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

23 G. When bids are received for virgin content goods
24 only or for recycled content goods only, Subsections B through
25 F of this section shall apply.

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

4 (1) a resident manufacturer offering the
5 lowest bid on recycled content goods of equal quality if the
6 bid price of the resident manufacturer when multiplied by a
7 factor of .90 is made lower than the otherwise low virgin
8 content goods bid price;

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

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

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

18 (3) a nonresident business or nonresident
19 manufacturer offering recycled content goods of equal quality
20 if:

21 (a) the bid price of no resident
22 business or resident manufacturer following application of the
23 preference allowed in Paragraph (1) or (2) of this subsection
24 can be made sufficiently low; and

25 (b) the lowest bid price of a

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1 nonresident offering recycled content goods when multiplied by
2 a factor of .95 is made lower than the otherwise low virgin
3 content bid price.

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

8 (1) a resident manufacturer offering the
9 lowest bid on recycled content goods of equal quality if the
10 bid price of the resident manufacturer when multiplied by a
11 factor of .95 is made lower than the otherwise low recycled
12 content goods bid price; or

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

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

19 (b) the lowest bid price of the resident
20 business when multiplied by a factor of .95 is made lower than
21 the otherwise low recycled content goods bid price offered by a
22 nonresident business or manufacturer.

23 J. When bids are received for both recycled content
24 goods and virgin content goods and the lowest responsible bid
25 is for recycled content goods offered by a resident business,

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1 the contract shall be awarded to a resident manufacturer
2 offering the lowest bid on recycled content goods of equal
3 quality if the bid price of the resident manufacturer when
4 multiplied by a factor of .95 is made lower than the otherwise
5 low recycled content goods bid price.

6 K. This section shall not apply when the
7 expenditure of federal funds designated for a specific purchase
8 is involved or for any bid price greater than five million
9 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

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

3 M. The provisions of this section shall not apply
4 to:

5 (1) construction contracts, construction
6 services, construction maintenance contracts or construction
7 contracts based on unit pricing; or

8 (2) construction materials to be used in any
9 contract or service specified in Paragraph (1) of this
10 subsection.

11 N. When bids are received from a small business and
12 the lowest responsible bid is from a nonresident business or a
13 resident business that is not a small business, the contract
14 shall be awarded to the small business whose bid is nearest to
15 the otherwise low bidder if the bid price of the small business
16 is made lower than the bid price of the otherwise low bidder
17 when multiplied by a factor of .90. When a resident bid
18 preference is combined with a small business bid preference,
19 the total maximum preference awarded may not exceed ten
20 percent.

21 O. 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

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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 .85. When
4 a resident bid preference is combined with a disadvantaged
5 small business bid preference, the total maximum preference
6 awarded may not exceed fifteen percent.

7 P. When proposals that include prices are received
8 from a resident business, those prices shall be multiplied by
9 .95 prior to awarding evaluation points as outlined in the
10 request for proposals.

11 Q. When proposals that include prices are received
12 from a small business, those prices shall be multiplied by .90
13 prior to awarding evaluation points as outlined in the request
14 for proposals. When a resident bid preference is combined with
15 a small business bid preference, the total maximum preference
16 awarded may not exceed ten percent.

17 R. When proposals that include prices are received
18 from a disadvantaged small business, those prices shall be
19 multiplied by .85 prior to awarding evaluation points as
20 outlined in the request for proposals. When a resident bid
21 preference is combined with a disadvantaged small business bid
22 preference, the total maximum preference awarded may not exceed
23 fifteen percent."

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

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

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

21 B. the resident business, [~~or~~] resident
 22 manufacturer, small business or disadvantaged small business
 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~~] resident manufacturer, small

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1 business or disadvantaged small business desires to be given a
2 preference; and

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

underscored material = new
[bracketed material] = delete