

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

AN ACT
RELATING TO ECONOMIC DEVELOPMENT; PROTECTING CERTAIN NEW
MEXICO SMALL BUSINESSES; ENACTING A NEW SECTION OF THE
PROCUREMENT CODE TO PROVIDE FOR SEPARATE PRICING OF CERTAIN
COMPONENTS IN CERTAIN CIRCUMSTANCES.

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) "bid" means an offer made by a
competitive sealed bid pursuant to Section 13-1-102 NMSA
1978;

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

(3) "proposal" means an offer made by a
competitive sealed proposal pursuant to Section 13-1-102 NMSA
1978;

1 (4) "recycled content goods" means supplies
2 and materials composed in whole or in part of recycled
3 materials; provided that the recycled materials content meets
4 or exceeds the minimum content standards required by bid
5 specifications;

6 (5) "resident business" means a New Mexico
7 resident business or a New York state business enterprise;

8 (6) "New Mexico resident business" means a
9 business that is authorized to and is doing business under
10 the laws of this state and:

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

13 (b) has staffed an office and has paid
14 applicable state taxes for two years prior to the awarding of
15 the bid and has five or more employees who are residents of
16 the state; or

17 (c) is an affiliate of a business that
18 meets the requirements of Subparagraph (a) or (b) of this
19 paragraph. As used in this section, "affiliate" means an
20 entity that directly or indirectly through one or more
21 intermediaries controls, is controlled by or is under common
22 control with the qualifying business through ownership of
23 voting securities representing a majority of the total voting
24 power of the entity;

25 (7) "New York state business enterprise"

1 means a business enterprise, including a sole proprietorship,
2 partnership or corporation, that offers for sale or lease or
3 other form of exchange, goods or commodities that are
4 substantially manufactured, produced or assembled in New York
5 state, or services, other than construction services, that
6 are substantially performed within New York state. For
7 purposes of construction services, a New York state business
8 enterprise means a business enterprise, including a sole
9 proprietorship, partnership or corporation, that has its
10 principal place of business in New York state;

11 (8) "resident manufacturer" means a person
12 who offers materials grown, produced, processed or
13 manufactured wholly in the state; provided, however, that a
14 New York state business enterprise shall be deemed to be a
15 resident manufacturer solely for the purpose of evaluating
16 the New York state business enterprise's bid against the bid
17 of a resident manufacturer that is not a New York state
18 business enterprise;

19 (9) "small business" means a resident
20 business as defined in Paragraph (5) of this subsection that
21 employs twenty or fewer employees; and

22 (10) "virgin content goods" means supplies
23 and materials that are wholly composed of nonrecycled
24 materials or do not meet minimum recycled content standards
25 required by bid specification.

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

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

17 D. When bids are received only from resident
18 businesses and resident manufacturers and the lowest
19 responsible bid is from a resident business, the contract
20 shall be awarded to the resident manufacturer whose bid is
21 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
24 when multiplied by a factor of .95.

25 E. When bids are received from resident

1 manufacturers, resident businesses and nonresident businesses
2 and the lowest responsible bid is from a resident 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 resident business bidder if the bid price of the resident
6 manufacturer is made lower than the bid price of the resident
7 business when multiplied by a factor of .95.

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

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

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

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

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

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

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

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

23 (a) the bid price of no resident
24 business or resident manufacturer following application of
25 the preference allowed in Paragraph (1) or (2) of this

1 subsection can be made sufficiently low; and

2 (b) the lowest bid price of a
3 nonresident offering recycled content goods when multiplied
4 by a factor of .95 is made lower than the otherwise low
5 virgin content bid price.

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

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

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

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

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

1 J. When bids are received for both recycled
2 content goods and virgin content goods and the lowest
3 responsible bid is for recycled content goods offered by a
4 resident business, the contract shall be awarded to a
5 resident manufacturer offering the lowest bid on recycled
6 content goods of equal quality if the bid price of the
7 resident manufacturer when multiplied by a factor of .95 is
8 made lower than the otherwise low recycled content goods bid
9 price.

10 K. This section shall not apply when the
11 expenditure of federal funds designated for a specific
12 purchase is involved or for any bid price greater than five
13 million dollars (\$5,000,000).

14 L. The provisions of this section shall not apply
15 to the purchase of buses from a resident manufacturer or a
16 New Mexico resident business that manufactures buses in New
17 Mexico. It is the purpose of this subsection to:

18 (1) allow any bus manufacturer or business
19 that manufactures buses to compete openly for public
20 procurement contracts in New Mexico without giving preference
21 to a business based on the location of the place of
22 manufacture of the buses;

23 (2) give resident manufacturers and New
24 Mexico resident businesses that manufacture buses an equal
25 opportunity to sell their buses in states that have

1 reciprocal preference laws; and

2 (3) eliminate all different treatment of any
3 kind under New Mexico law and by all political jurisdictions
4 in the state between New Mexico resident businesses and
5 manufacturers that manufacture buses and businesses in other
6 states that manufacture and sell buses.

7 M. The provisions of this section shall not apply
8 to:

9 (1) construction contracts, construction
10 services, construction maintenance contracts or construction
11 contracts based on unit pricing; or

12 (2) construction materials to be used in any
13 contract or service specified in Paragraph (1) of this
14 subsection.

15 N. When bids are received from a small business
16 and the lowest responsible bid is from a nonresident business
17 or a resident business that is not a small business, the
18 contract shall be awarded to the small business whose bid is
19 nearest to the otherwise low bidder if the bid price of the
20 small business is made lower than the bid price of the
21 otherwise low bidder when multiplied by a factor of .90.

22 When a resident bid preference is combined with a small
23 business bid preference, the total maximum preference awarded
24 may not exceed ten percent.

25 O. When bids are received from a disadvantaged

1 small business and the lowest responsible bid is from a
2 nonresident business or a resident business that is not a
3 disadvantaged small business, the contract shall be awarded
4 to the disadvantaged small business whose bid is nearest to
5 the otherwise low bidder if the bid price of the
6 disadvantaged small business is made lower than the bid price
7 of the otherwise low bidder when multiplied by a factor of
8 .85. When a resident bid preference is combined with a
9 disadvantaged small business bid preference, the total
10 maximum preference awarded may not exceed fifteen percent.

11 P. When proposals that include prices are received
12 from a resident business, those prices shall be multiplied by
13 .95 prior to awarding evaluation points as outlined in the
14 request for proposals.

15 Q. When proposals that include prices are received
16 from a small business, those prices shall be multiplied by
17 .90 prior to awarding evaluation points as outlined in the
18 request for proposals. When a resident bid preference is
19 combined with a small business bid preference, the total
20 maximum preference awarded may not exceed ten percent.

21 R. When proposals that include prices are received
22 from a disadvantaged small business, those prices shall be
23 multiplied by .85 prior to awarding evaluation points as
24 outlined in the request for proposals. When a resident bid
25 preference is combined with a disadvantaged small business

1 bid preference, the total maximum preference awarded may not
2 exceed fifteen percent."

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
6 CERTIFICATION--APPLICATION--INFORMATION.--No resident
7 business, resident manufacturer, small business or
8 disadvantaged small business, as those terms are defined in
9 Subsection A of Section 13-1-21 NMSA 1978, shall be given any
10 preference in the awarding of contracts for furnishing
11 materials or services to a state agency unless the resident
12 business, resident manufacturer, small business or
13 disadvantaged small business has qualified with the state
14 purchasing agent as a resident business, resident
15 manufacturer, small business or disadvantaged small business
16 by making application to the state purchasing agent and
17 receiving from the state purchasing agent a certification
18 number. The procedure for application and certification
19 shall be as follows:

20 A. the state purchasing agent shall prepare an
21 application form for certification as a resident business,
22 small business, resident manufacturer or disadvantaged small
23 business, requesting such information and proof as deemed
24 necessary to qualify the applicant under the terms of Section
25 13-1-21 NMSA 1978;

1 B. the resident business, resident manufacturer,
2 small business or disadvantaged small business shall complete
3 the application form and submit it to the state purchasing
4 agent prior to the awarding of any contract in which the
5 resident business, resident manufacturer, small business or
6 disadvantaged small business desires to be given a
7 preference; and

8 C. the state purchasing agent shall examine the
9 application and if necessary may seek additional information
10 or necessary proof that the prospective resident business,
11 small business, resident manufacturer or disadvantaged small
12 business is entitled to the statutory preference. If all is
13 in order, the resident business, resident manufacturer, small
14 business or disadvantaged small business shall be issued a
15 distinctive certification number that shall be valid until
16 revoked and that when used on bids and other purchasing
17 documents shall entitle the resident business, resident
18 manufacturer, small business or disadvantaged small business
19 to the statutory preference."

20 Section 3. A new section of the Procurement Code is
21 enacted to read:

22 "SPECIFICATION OF CERTAIN COMPONENTS--SEPARATE PRICING
23 REQUIRED.--Prior to submitting a bid or proposal for a state
24 public works project or a local public works project, if the
25 state purchasing agent, the central purchasing office or a

1 responsible bidder or responsible offeror determines that
2 there is only one source for a specific service, construction
3 or item of tangible personal property that is required in the
4 specifications, the state purchasing agent, central purchasing
5 office, responsible bidder or responsible offeror may require
6 any bid or offer submitted by a subcontractor or supplier to
7 separately price the specific service, construction or item of
8 tangible personal property." _____

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25