

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 14

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

AN ACT

RELATING TO PROCUREMENT; INCREASING THE PREFERENCE ADVANTAGE FOR IN-STATE BUSINESS; PROVIDING A PREFERENCE FOR RESIDENT BUSINESSES IN THE EVALUATION OF COMPETITIVE SEALED PROPOSALS; CHANGING THE DEFINITIONS OF "RESIDENT BUSINESS" AND "RESIDENT CONTRACTOR"; ELIMINATING PREFERENCES FOR NEW YORK STATE BUSINESSES; 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) "resident business" means a New Mexico~~

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1 ~~resident business or a New York state business enterprise;~~

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

5 ~~(a) maintains its principal place of~~
6 ~~business in the state;~~

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

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

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

1 ~~construction services, a "New York state business enterprise"~~
 2 ~~means a business enterprise, including a sole proprietorship,~~
 3 ~~partnership or corporation, that has its principal place of~~
 4 ~~business in New York state;]~~

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

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

13 (a) maintains its principal place of
 14 business in the state; and

15 (b) has staffed an office and has paid
 16 applicable state taxes for two years prior to the awarding of
 17 the bid;

18 ~~[4)] (3) "resident manufacturer" means a~~
 19 ~~person who offers materials grown, produced, processed or~~
 20 ~~manufactured wholly in the state; [provided, however, that a~~
 21 ~~New York state business enterprise shall be deemed to be a~~
 22 ~~resident manufacturer solely for the purpose of evaluating the~~
 23 ~~New York state business enterprise's bid against the bid of a~~
 24 ~~resident manufacturer that is not a New York state business~~
 25 ~~enterprise;~~

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1 ~~(5) "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;]~~ and

6 ~~[(6)]~~ (4) "virgin content goods" means
7 supplies and materials that are wholly composed of nonrecycled
8 materials or do not meet minimum recycled content standards
9 required by bid specification.

10 B. When bids are received only from nonresident
11 businesses and resident businesses and the lowest responsible
12 bid is from a nonresident business, the contract shall be
13 awarded to the resident business whose bid is nearest to the
14 bid price of the otherwise low nonresident business bidder if
15 the bid price of the resident bidder is made lower than the bid
16 price of the nonresident business when multiplied by a factor
17 of ~~[-95]~~ .90.

18 C. When bids are received only from nonresident
19 businesses and resident manufacturers and the lowest
20 responsible bid is from a nonresident business, the contract
21 shall be awarded to the resident manufacturer whose bid is
22 nearest to the bid price of the otherwise low nonresident
23 business bidder if the bid price of the resident manufacturer
24 is made lower than the bid price of the nonresident business
25 when multiplied by a factor of ~~[-95]~~ .90.

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

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

17 F. When bids are received from resident
18 manufacturers, resident businesses and nonresident businesses
19 and the lowest responsible bid is from a nonresident business,
20 the contract shall be awarded to the resident manufacturer
21 whose bid is nearest to the bid price of the otherwise low
22 nonresident business bidder if the bid price of the resident
23 manufacturer is evaluated as lower than the bid price of the
24 nonresident business when multiplied by a factor of [~~.95~~] .90.
25 If there is no resident manufacturer eligible for award under

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1 this provision, then the contract shall be awarded to the
2 resident business whose bid is nearest to the bid price of the
3 otherwise low nonresident business bidder if the bid price of
4 the resident business is made lower than the bid price of the
5 nonresident business when multiplied by a factor of ~~[-95]~~ .90.

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

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

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

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

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

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

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1 (3) a nonresident business or nonresident
2 manufacturer offering recycled content goods of equal quality
3 if:

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

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

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

16 (1) a resident manufacturer offering the
17 lowest bid on recycled content goods of equal quality if the
18 bid price of the resident manufacturer when multiplied by a
19 factor of [~~.95~~] .90 is made lower than the otherwise low
20 recycled content goods bid price; or

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

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

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1 and

2 (b) the lowest bid price of the resident
3 business when multiplied by a factor of [~~.95~~] .90 is made lower
4 than the otherwise low recycled content goods bid price offered
5 by a nonresident business or manufacturer.

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

14 K. This section shall not apply when the
15 expenditure of federal funds designated for a specific purchase
16 is involved or for any bid price greater than [~~five million~~
17 ~~dollars (\$5,000,000)~~] ten million dollars (\$10,000,000).

18 [~~L. The provisions of this section shall not apply~~
19 ~~to the purchase of buses from a resident manufacturer or a New~~
20 ~~Mexico resident business that manufactures buses in New Mexico.~~
21 ~~It is the purpose of this subsection to:~~

22 (~~1) allow any bus manufacturer or business~~
23 ~~that manufactures buses to compete openly for public~~
24 ~~procurement contracts in New Mexico without giving preference~~
25 ~~to a business based on the location of the place of manufacture~~

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1 ~~of the buses;~~

2 ~~(2) give resident manufacturers and New Mexico~~
 3 ~~resident businesses that manufacture buses an equal opportunity~~
 4 ~~to sell their buses in states that have reciprocal preference~~
 5 ~~laws; and~~

6 ~~(3) eliminate all different treatment of any~~
 7 ~~kind under New Mexico law and by all political jurisdictions in~~
 8 ~~the state between New Mexico resident businesses and~~
 9 ~~manufacturers that manufacture buses and businesses in other~~
 10 ~~states that manufacture and sell buses.]"~~

11 Section 2. Section 13-1-114 NMSA 1978 (being Laws 1984,
 12 Chapter 65, Section 87) is amended to read:

13 "13-1-114. COMPETITIVE SEALED PROPOSALS--EVALUATION
 14 FACTORS--RESIDENT BUSINESS PREFERENCE.--

15 A. The request for proposals shall state:

16 (1) the relative weight to be given to the
 17 factors in evaluating proposals; and

18 (2) a resident business preference, the weight
 19 of which shall be determined by the state agency or local
 20 public body requesting the proposals.

21 B. For the purposes of this section, "resident
 22 business" means a business that is authorized to do and is
 23 doing business under the laws of this state and that:

24 (1) maintains its principal place of business
 25 in the state; and

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1 (2) has staffed an office and has paid
2 applicable state taxes for two years prior to the awarding of
3 the proposal."

4 Section 3. Section 13-4-2 NMSA 1978 (being Laws 1984,
5 Chapter 66, Section 2, as amended) is amended to read:

6 "13-4-2. RESIDENT CONTRACTOR DEFINED--APPLICATION OF
7 PREFERENCE.--

8 A. "Resident contractor" means [~~a New Mexico~~
9 ~~resident contractor or a New York state business enterprise.~~

10 B. ~~"New Mexico resident contractor" means]~~ any
11 person, firm, corporation or other legal entity if, at the time
12 the contract is advertised for bids and at the time bids are
13 opened [~~it~~]:

14 (1) the bidder has all required licenses and
15 meets the following requirements:

16 [~~(1)~~] (a) if the bidder is a
17 corporation, it shall be incorporated in New Mexico and
18 maintain its principal office and place of business in New
19 Mexico;

20 [~~(2)~~] (b) if the bidder is a partnership,
21 general or limited, or other legal entity, it shall maintain
22 its principal office and place of business in New Mexico; or

23 [~~(3)~~] (c) if the bidder is an individual,
24 [~~he~~] the person shall maintain [~~his~~] the principal office and
25 place of the business in New Mexico; [~~or~~] and

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1 [~~(4) if a~~] (2) the bidder [~~who is a~~
2 ~~telecommunications company as defined by Subsection M of~~
3 ~~Section 63-9A-3 NMSA 1978]~~ or an affiliate [~~of a~~
4 ~~telecommunications company]~~ has paid unemployment compensation
5 to the [~~employment security division of the labor]~~ workforce
6 transition services division of the workforce solutions
7 department at the applicable experience rate for that employer
8 pursuant to the Unemployment Compensation Law on no fewer than
9 ten employees who have performed services subject to
10 contributions for the two-year period prior to issuance of
11 notice to bid [~~the bidder will be considered to have fulfilled~~
12 ~~the requirements of Paragraph (1), (2) or (3) of this~~
13 ~~subsection]. A successor to a previously qualified [New Mexico~~
14 ~~contractor or]~~ resident contractor, where the creation of the
15 bidder resulted from a court order, is entitled to credit for
16 qualifying contributions paid by the previously qualified [~~New~~
17 ~~Mexico contractor or]~~ resident contractor.

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

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1 ~~means a business enterprise, including a sole proprietorship,~~
2 ~~partnership or corporation, that has its principal place of~~
3 ~~business in New York state.~~

4 ~~D.]~~ B. For purposes of this section, "affiliate"
5 means an entity that directly or indirectly through one or more
6 intermediaries controls, is controlled by or is under common
7 control [~~with a telecommunications company~~] through ownership
8 of voting securities representing a majority of the total
9 voting power of that entity.

10 ~~[E.]~~ C. When bids are received only from nonresident
11 contractors and resident contractors and the lowest responsible
12 bid is from a nonresident contractor, the contract shall be
13 awarded to the resident contractor whose bid is nearest to the
14 bid price of the otherwise low nonresident contractor if the
15 bid price of the resident contractor is made lower than the bid
16 price of the nonresident contractor when multiplied by a factor
17 of [~~.95~~] .90.

18 ~~[F.]~~ D. No contractor shall be treated as a
19 resident contractor in the awarding of public works contracts
20 by a state agency or a local public body unless the contractor
21 has qualified with the state purchasing agent as a resident
22 contractor pursuant to this section by making application to
23 the state purchasing agent and receiving from [~~him~~] the state
24 purchasing agent a certification number. The procedure for
25 application and certification is as follows:

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

5 (2) the contractor seeking to qualify as a
6 resident contractor shall complete the application form and
7 submit it to the state purchasing agent prior to the submission
8 of a bid on which the contractor desires to be given a
9 preference;

10 (3) the state purchasing agent shall examine
11 the application and if necessary may seek additional
12 information or proof so as to be assured that the prospective
13 contractor is indeed entitled to certification as a resident
14 contractor. If the application is in proper form, the state
15 purchasing agent shall issue the contractor a distinctive
16 certification number [~~which~~] that is valid until revoked and
17 [~~which~~] when used on bids and other purchasing documents for
18 state agencies or local public bodies, entitles the contractor
19 to treatment as a resident contractor under Subsection [~~E~~] C of
20 this section; and

21 (4) the certification number issued pursuant
22 to Paragraph (3) of this subsection shall be revoked by the
23 state purchasing agent upon making a determination that the
24 contractor no longer meets the requirements of a resident
25 contractor as defined in this section."

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

5 "13-4-5. USE OF NEW MEXICO MATERIALS.--~~[A.]~~ In all public
6 works within New Mexico, whether constructed or maintained by
7 the state or by a department, a board, a commission of the
8 state or by any political subdivision ~~[thereof]~~ of the state,
9 or in any construction or maintenance to which the state or any
10 political subdivision ~~[thereof]~~ of the state has granted aid,
11 preference shall be given to materials produced, grown,
12 processed or manufactured in New Mexico by citizens or
13 residents of New Mexico ~~[or provided or offered by a New York~~
14 ~~state business enterprise]~~, and such materials shall be used
15 where they are deemed satisfactory for the intended use. In
16 any case where, in the judgment of the different officers,
17 boards, commissions or other ~~[authority]~~ authorities in this
18 state ~~[now or hereafter]~~ vested with the power of contracting
19 for material used in the construction or maintenance of public
20 works referred to in this section, it appears that an attempt
21 is being made by producers, growers, processors or
22 manufacturers in the state to form a trust or combination of
23 any kind for the purpose of fixing or regulating the price of
24 materials to be used in any public works to the detriment of or
25 loss to the state, ~~[then]~~ the provisions of this section shall

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1 not apply.

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

13 Section 5. REPEAL.--Section 13-1-21.2 NMSA 1978 (being
14 Laws 1997, Chapter 1, Section 1 and Laws 1997, Chapter 2,
15 Section 1) is repealed.

16 Section 6. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2010.

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