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HOUSE BILL 598

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

INTRODUCED BY

Don L. Tripp

AN ACT

RELATING TO PROCUREMENT; ESTABLISHING A PREFERENCE FOR RESIDENT  
VETERAN BUSINESSES AND CONTRACTORS FOR STATE PURCHASING  
CONTRACTS AND STATE PUBLIC WORKS CONTRACTS; ELIMINATING  
PREFERENCES FOR RESIDENT MANUFACTURERS, RECYCLED CONTENT GOODS  
AND NEW YORK STATE BUSINESSES; PROVIDING FOR CERTIFICATION AS A  
RESIDENT VETERAN BUSINESS OR CONTRACTOR; 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 that:

5 (a) [~~that~~] maintains its principal place  
6 of 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"~~  
20 ~~means 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~~

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

12 ~~(5) "recycled content goods" means supplies~~  
13 ~~and materials composed in whole or in part of recycled~~  
14 ~~materials; provided that the recycled materials content meets~~  
15 ~~or exceeds the minimum content standards required by bid~~  
16 ~~specification;~~

17 ~~(6) "virgin content goods" means supplies and~~  
18 ~~materials that are wholly composed of nonrecycled materials or~~  
19 ~~do not meet minimum recycled content standards required by bid~~  
20 ~~specification]; and~~

21 (2) "resident veteran business" means a  
22 resident business, the majority ownership of which is held by  
23 New Mexico residents who have been honorably discharged from  
24 membership in the armed forces of the United States.

25 [B. ~~When bids are received only from nonresident~~

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

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

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

24 ~~E. When bids are received from resident~~  
25 ~~manufacturers, resident businesses and nonresident businesses~~

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1 ~~and the lowest responsible bid is from a resident business, the~~  
2 ~~contract shall be awarded to the resident manufacturer whose~~  
3 ~~bid is nearest to the bid price of the otherwise low resident~~  
4 ~~business bidder if the bid price of the resident manufacturer~~  
5 ~~is made lower than the bid price of the resident business when~~  
6 ~~multiplied by a factor of .95.~~

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

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

24 ~~H. When bids are received for both recycled content~~  
25 ~~goods and virgin content goods and the lowest responsible bid~~

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1 ~~is for virgin content goods, the contract shall be awarded to:~~

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

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

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

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

16 ~~(3) a nonresident business or nonresident~~  
17 ~~manufacturer offering recycled content goods of equal quality~~  
18 ~~if:~~

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

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

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1 ~~content bid price.~~

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

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

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

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

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

21 ~~J. When bids are received for both recycled content~~  
22 ~~goods and virgin content goods and the lowest responsible bid~~  
23 ~~is for recycled content goods offered by a resident business,~~  
24 ~~the contract shall be awarded to a resident manufacturer~~  
25 ~~offering the lowest bid on recycled content goods of equal~~

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

4 B. When bids are received pursuant to an invitation  
5 for bids, each bid price submitted by a bidder that is not a  
6 resident business shall be multiplied by 1.0, each bid price  
7 submitted by a resident business that is not a resident veteran  
8 business shall be multiplied by 0.95 and each bid price  
9 submitted by a resident veteran business shall be multiplied by  
10 0.90. After the multiplications, the contract shall be awarded  
11 to the bidder whose bid price yields the lowest result.

12 C. When a purchase is made using a formal request  
13 for proposals process:

14 (1) five percent of the relative weight of all  
15 the factors used in evaluating the proposals shall be based on  
16 whether the proposal was submitted by a resident business and  
17 ten percent of the relative weight of all the factors used in  
18 evaluating the proposals shall be based on whether the proposal  
19 was submitted by a resident veteran business; or

20 (2) if the contract is awarded based on a  
21 point-based system, resident businesses shall be awarded the  
22 equivalent of five percent of the total possible points to be  
23 awarded and resident veteran businesses shall be awarded the  
24 equivalent of ten percent of the total possible points to be  
25 awarded.

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1           ~~[K.]~~ D. This section shall not apply when the  
2 expenditure of federal funds designated for a specific purchase  
3 is involved or for any bid price greater than five million  
4 dollars (\$5,000,000).

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

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

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

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

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

25           "13-1-22. RESIDENT BUSINESS AND ~~[MANUFACTURER]~~ RESIDENT  
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1 VETERAN BUSINESS CERTIFICATION--APPLICATION--INFORMATION.--No  
2 resident business or resident [~~manufacturer~~] veteran business,  
3 as those terms are defined in Subsection A of Section 13-1-21  
4 NMSA 1978, shall be given any preference in the awarding of  
5 contracts for furnishing materials or services to a state  
6 agency unless the resident business or resident [~~manufacturer~~  
7 ~~shall have~~] veteran business has qualified with the state  
8 purchasing agent as a resident business or resident  
9 [~~manufacturer or both~~] veteran business by making application  
10 to the state purchasing agent and receiving [~~from him~~] a  
11 certification number. The procedure for application and  
12 certification shall be as follows:

13 A. the state purchasing agent shall prepare an  
14 application form for certification as a resident business or  
15 [~~manufacturer~~] resident veteran business, requesting such  
16 information and proof as [~~he deems~~] necessary to qualify the  
17 applicant under the terms of Section 13-1-21 NMSA 1978;  
18 provided that an applicant may qualify as a resident veteran  
19 business if, in addition to demonstrating that it is a resident  
20 business, the applicant demonstrates proof of New Mexico  
21 residency and:

22 (1) verification by the federal department of  
23 veterans affairs as being either a veteran-owned small business  
24 or a service-disabled veteran-owned small business; or

25 (2) verification of veteran status as

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1 indicated by the United States department of defense DD form  
2 214 certificate of release or discharge from active duty or of  
3 service-disabled veteran status by the department of veterans  
4 affairs and proof that veterans own a majority of the business;

5 B. the resident business or resident [~~manufacturer~~]  
6 veteran business shall complete the application form and submit  
7 it to the state purchasing agent prior to the awarding of any  
8 contract in which the resident business or [~~manufacturer~~]  
9 resident veteran business desires to be given a preference; and

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

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

22 "13-4-2. RESIDENT CONTRACTOR AND RESIDENT VETERAN  
23 CONTRACTOR DEFINED--APPLICATION OF PREFERENCE.--

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

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1 B. ~~"New Mexico]~~

2 A. As used in this section:

3 (1) "resident contractor" means any person,  
4 firm, corporation or other legal entity if, at the time the  
5 contract is advertised for bids and at the time bids are  
6 opened, it has all required licenses and meets the following  
7 requirements:

8 [~~1~~] (a) if the bidder is a  
9 corporation, it shall be incorporated in New Mexico and  
10 maintain its principal office and place of business in New  
11 Mexico;

12 [~~2~~] (b) if the bidder is a  
13 partnership, general or limited, or other legal entity, it  
14 shall maintain its principal office and place of business in  
15 New Mexico;

16 [~~3~~] (c) if the bidder is an  
17 individual, [~~he~~] the person shall maintain [~~his~~] the principal  
18 office and place of the business in New Mexico; or

19 [~~4~~] (d) if a bidder who is a  
20 telecommunications company as defined by Subsection M of  
21 Section 63-9A-3 NMSA 1978 or an affiliate of a  
22 telecommunications company has paid unemployment compensation  
23 to the [~~employment security division of the labor~~] workforce  
24 transition services division of the workforce solutions  
25 department at the applicable experience rate for that employer

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1 pursuant to the Unemployment Compensation Law on no fewer than  
2 ten employees who have performed services subject to  
3 contributions for the two-year period prior to issuance of  
4 notice to bid, the bidder will be considered to have fulfilled  
5 the requirements of [~~Paragraph (1), (2) or (3) of this~~  
6 ~~subsection~~] Subparagraph (a), (b) or (c) of this paragraph. A  
7 successor to a previously qualified [~~New Mexico contractor or~~  
8 resident contractor, where the creation of the bidder resulted  
9 from a court order, is entitled to credit for qualifying  
10 contributions paid by the previously qualified [~~New Mexico~~  
11 ~~contractor or~~] resident contractor;

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

23 D. ~~For purposes of this section]~~

24 (2) "affiliate" means an entity that directly  
25 or indirectly through one or more intermediaries controls, is

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1 controlled by or is under common control with a  
2 telecommunications company through ownership of voting  
3 securities representing a majority of the total voting power of  
4 that entity; and

5 ~~[E. When bids are received only from nonresident~~  
6 ~~contractors and resident contractors and the lowest responsible~~  
7 ~~bid is from a nonresident contractor, the contract shall be~~  
8 ~~awarded to the resident contractor whose bid is nearest to the~~  
9 ~~bid price of the otherwise low nonresident contractor if the~~  
10 ~~bid price of the resident contractor is made lower than the bid~~  
11 ~~price of the nonresident contractor when multiplied by a factor~~  
12 ~~of .95]~~

13 (3) "resident veteran contractor" means a  
14 resident contractor, the majority ownership of which is held by  
15 New Mexico residents who have been honorably discharged from  
16 membership in the armed forces of the United States.

17 B. When bids are received, each bid price submitted  
18 by a bidder that is not a resident contractor shall be  
19 multiplied by 1.0, each bid price submitted by a resident  
20 contractor that is not a resident veteran contractor shall be  
21 multiplied by 0.95 and each bid price submitted by a resident  
22 veteran contractor shall be multiplied by 0.90. After the  
23 multiplications, the contract shall be awarded to the bidder  
24 whose bid price yields the lowest result.

25 C. When a contract is awarded using a formal

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1 request for proposals process:

2 (1) five percent of the relative weight of all  
3 the factors used in evaluating the proposals shall be based on  
4 whether the proposal was submitted by a resident contractor and  
5 ten percent of the relative weight of all the factors used in  
6 evaluating the proposals shall be based on whether the proposal  
7 was submitted by a resident veteran contractor; or

8 (2) if the contract is awarded based on a  
9 point-based system, resident contractors shall be awarded the  
10 equivalent of five percent of the total possible points to be  
11 awarded and resident veteran businesses shall be awarded the  
12 equivalent of ten percent of the total possible points to be  
13 awarded.

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

23 (1) the state purchasing agent shall prepare  
24 an application form for certification as a resident contractor  
25 or a resident veteran contractor, requiring such information

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1 and proof as [~~he deems~~] necessary to qualify the applicant  
2 under the terms of this section; provided that an applicant may  
3 qualify as a resident veteran contractor if, in addition to  
4 demonstrating that it is a resident contractor, the applicant  
5 demonstrates proof of New Mexico residency and:

6 (a) verification by the federal  
7 department of veterans affairs as being either a veteran-owned  
8 small business or a service-disabled veteran-owned small  
9 business; or

10 (b) verification of veteran status as  
11 indicated by the United States department of defense DD form  
12 214 certificate of release or discharge from active duty or of  
13 service-disabled veteran status by the department of veterans  
14 affairs and proof that veterans own a majority of the business;

15 (2) the contractor seeking to qualify as a  
16 resident contractor or a resident veteran contractor shall  
17 complete the application form and submit it to the state  
18 purchasing agent prior to the submission of a bid on which the  
19 contractor desires to be given a preference;

20 (3) the state purchasing agent shall examine  
21 the application and if necessary may seek additional  
22 information or proof so as to be assured that the prospective  
23 contractor is indeed entitled to certification as a resident  
24 contractor or a resident veteran contractor. If the  
25 application is in proper form, the state purchasing agent shall

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1 issue the contractor a distinctive certification number [~~which~~  
2 that is valid until revoked and [~~which~~] when used on bids and  
3 other purchasing documents for state agencies or local public  
4 bodies, entitles the contractor to treatment as a resident  
5 contractor or a resident veteran contractor under Subsection  
6 [~~E~~] B of this section; and

7 (4) the certification number issued pursuant  
8 to Paragraph (3) of this subsection shall be revoked by the  
9 state purchasing agent upon making a determination that the  
10 contractor no longer meets the requirements of a resident  
11 contractor or a resident veteran contractor as defined in this  
12 section."

13 SECTION 4. 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 5. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2011.