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HOUSE BILL 10

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

RAYMOND G. SANCHEZ

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO PROCUREMENT; PROVIDING FOR EQUAL TREATMENT OF NEW
MEXICO BUSINESSES WITH NEW YORK BUSINESSES IN PROCUREMENT
MATTERS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;
DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] EQUAL PROCUREMENT ACCESS FOR NEW
YORK BUSINESSES. --

A. Certain recent amendments to the New York state
procurement statutes have the effect of prohibiting New Mexico
businesses from selling goods or providing services to New York
state and local governments and quasi-governmental entities.
This act eliminates all differential treatment of any kind
between New York state business enterprises and New Mexico
businesses in New Mexico procurement and thereby negates the

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1 application to New Mexico businesses of the New York amendments
2 and protects the access of New Mexico businesses to the New York
3 market.

4 B. New York state business enterprises shall be
5 treated as New Mexico resident businesses or resident
6 manufactures for all procurement purposes.

7 Section 2. Section 13-1-21 NMSA 1978 (being Laws 1979,
8 Chapter 72, Section 1, as amended) is amended to read:

9 "13-1-21. APPLICATION OF PREFERENCES. --

10 A. For the purposes of this section:

11 (1) "resident business" means a New Mexico
12 resident business or a New York state business enterprise;

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

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

18 (b) has staffed an office and has paid appli-
19 cable state taxes for two years prior to the awarding of the bid
20 and has five or more employees who are residents of the state;
21 or

22 (c) is an affiliate of a business that meets
23 the requirements of Subparagraph (a) or (b) of this paragraph.

24 As used in this section, "affiliate" means an entity that
25 directly or indirectly through one or more intermediaries

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1 controls, is controlled by or is under common control with the
2 qualifying business through ownership of voting securities
3 representing a majority of the total voting power of the entity;

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

15 [~~(2)~~] (4) "resident manufacturer" means a person
16 who offers materials grown, produced, processed or manufactured
17 wholly in the state; provided, however, that a New York state
18 business enterprise shall be deemed to be a resident
19 manufacturer solely for the purpose of evaluating the New York
20 state business enterprise's bid against the bid of a resident
21 manufacturer that is now a New York state business enterprise;

22 [~~(3)~~] (5) "recycled content goods" means supplies
23 and materials composed in whole or in part of recycled
24 materials; provided that the recycled materials content meets or
25 exceeds the minimum content standards required by bid

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1 specifications; and

2 [~~(4)~~] (6) "virgin content goods" means supplies
3 and materials that are wholly composed of nonrecycled materials
4 or do not meet minimum recycled content standards required by
5 bid specification.

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

13 C. When bids are received only from nonresident busi-
14 nesses and resident manufacturers and the lowest responsible bid
15 is from a nonresident business, the contract shall be awarded to
16 the resident manufacturer whose bid is nearest to the bid price
17 of the otherwise low nonresident business bidder if the bid
18 price of the resident manufacturer is made lower than the bid
19 price of the nonresident business when multiplied by a factor of
20 .95.

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

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1 price of the resident manufacturer is made lower than the bid
2 price of the resident business when multiplied by a factor of
3 .95.

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

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

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1 G. When bids are received for virgin content goods
2 only or for recycled content goods only, Subsections B through F
3 of this section shall apply.

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

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

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

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

17 (b) the lowest bid price of the resident
18 business when multiplied by a factor of .90 is made lower than
19 the otherwise low virgin content goods bid price; 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 business or
24 resident manufacturer following application of the preference
25 allowed in Paragraph (1) or (2) of this subsection can be made

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1 sufficiently low; and

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

6 I. 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 nonresident business
9 or nonresident manufacturer, the contract shall be awarded to:

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

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

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

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

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

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

11 Section 3. Section 13-4-2 NMSA 1978 (being Laws 1984, Chap-
12 ter 66, Section 2, as amended) is amended to read:

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

15 A. [A] "Resident contractor" [~~is~~] means a New Mexico
16 resident contractor or a New York state business enterprise.

17 B. "New Mexico resident contractor" means any person,
18 firm, corporation or other legal entity if, at the time the
19 contract is advertised for bids and at the time bids are opened,
20 it has all required licenses and meets the following
21 requirements:

22 (1) if the bidder is a corporation, it shall be
23 incorporated in New Mexico and maintain its principal office and
24 place of business in New Mexico, and a majority of its
25 outstanding shares shall be beneficially owned by one or more

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1 individual citizens who are domiciled in the state;

2 (2) if the bidder is a partnership, general or
3 limited, or other legal entity, it shall maintain its principal
4 office and place of business in New Mexico, and the partners or
5 associates owning a majority beneficial interest shall be
6 domiciled in the state. If one or more partners or associates
7 are corporations, a majority of the outstanding shares of each
8 corporation shall be beneficially owned by individual citizens
9 who are domiciled in the state. If the entity is a trust, a
10 majority of the beneficial interest of the trust shall be owned
11 by individual citizens who are domiciled in the state;

12 (3) if the bidder is an individual, he shall
13 maintain his principal office and place of business in New
14 Mexico and the individual shall be a citizen of and domiciled in
15 the state; or

16 (4) if a bidder who is a telecommunications
17 company as defined by Subsection M of Section 63-9A-3 NMSA 1978
18 or an affiliate of a telecommunications company has paid
19 unemployment compensation to the employment security division of
20 the labor department at the applicable experience rate for that
21 employer pursuant to the [New Mexico] Unemployment Compensation
22 Law on no fewer than ten employees who have performed services
23 subject to contributions for the two-year period prior to
24 issuance of notice to bid, the bidder will be considered to have
25 fulfilled the requirements of Paragraph (1), (2) or (3) of this

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1 subsection. A successor to a previously qualified New Mexico
2 contractor or resident contractor, where the creation of the
3 bidder resulted from a court order, is entitled to credit for
4 qualifying contributions paid by the previously qualified New
5 Mexico contractor or resident contractor.

6 C. "New York state business enterprise" means a
7 business enterprise, including a sole proprietorship,
8 partnership or corporation, that offers for sale or lease or
9 other form of exchange, goods or commodities that are
10 substantially manufactured, produced or assembled in New York
11 state, or services, other than construction services, that are
12 substantially performed within New York state. For purposes of
13 construction services, a New York state business enterprise
14 means a business enterprise, including a sole proprietorship,
15 partnership or corporation, that has its principal place of
16 business in New York state.

17 [~~B.-~~] D. For purposes of this section:

18 (1) "affiliate" means an entity that directly or
19 indirectly through one or more intermediaries controls, is
20 controlled by or is under common control with a
21 telecommunications company through ownership of voting
22 securities representing a majority of the total voting power of
23 that entity; and

24 (2) "beneficially owned" or "beneficial interest"
25 means exercising actual management and control of all

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1 operations, including but not limited to financial decisions,
2 financial liability, labor relations, supervision of field
3 operations, purchases of goods, supplies and services, marketing
4 and sales.

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

21 (1) the state purchasing agent shall prepare an
22 application form for certification as a resident contractor,
23 requiring such information and proof as he deems necessary to
24 qualify the applicant under the terms of this section;

25 (2) the contractor seeking to qualify as a

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1 resident contractor shall complete the application form and
2 submit it to the state purchasing agent prior to the submission
3 of a bid on which the contractor desires to be given a
4 preference;

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

15 (4) the certification number issued pursuant to
16 Paragraph (3) of this subsection shall be revoked by the state
17 purchasing agent upon making a determination that the contractor
18 no longer meets the requirements of a resident contractor as
19 defined in this section."

20 Section 4. Section 13-4-5 NMSA 1978 (being Laws 1933,
21 Chapter 19, Section 1, as amended) is amended to read:

22 "13-4-5. USE OF NEW MEXICO MATERIALS. --

23 A. In all public works within New Mexico, whether
24 constructed or maintained by the state or by a department, a
25 board, a commission of the state or by any political subdivision

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1 thereof, or in any construction or maintenance to which the
2 state or any political subdivision thereof has granted aid,
3 preference shall be given to materials produced, grown,
4 processed or manufactured in New Mexico by citizens or residents
5 ~~[thereof]~~ of New Mexico or provided or offered by a New York
6 state business enterprise, and such materials shall be used
7 where ~~[the same]~~ they are deemed satisfactory for the intended
8 use. In any case where, in the judgment of the different
9 officers, boards, commissions or other authority in this state
10 now or hereafter vested with the power of contracting for
11 material used in the construction or maintenance of public works
12 ~~[herein above]~~ referred to in this section, it appears that an
13 attempt is being made by producers, growers, processors or
14 manufacturers in the state to form a trust or combination of any
15 kind for the purpose of fixing or regulating the price of
16 materials to be used in any public works to the detriment of or
17 loss to the state, then the provisions of this section shall not
18 apply.

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

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1 of 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 Section 5. EMERGENCY.--It is necessary for the public
6 peace, health and safety that this act take effect immediately.

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE

FIRST SESSION, 1997

January 23, 1997

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
been referred

HOUSE BILL 10

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 14, between lines 4 and 5, insert the
following new section:

“Section 5. SEVERABILITY. --If any part or application of this
act is held invalid, the remainder or its application to other
situations or persons shall not be affected.”.

2. Renumber the succeeding section accordingly.

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Respectfully submitted,

Fred Luna, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 11 For 0 Against

Yes: 11

Excused: Kissner

Absent: Corley

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