

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 14

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

AN ACT

RELATING TO PROCUREMENT; MODIFYING THE PREFERENCE ADVANTAGE FOR  
IN-STATE BUSINESS; 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  
resident business or a New York state business enterprise;~~

~~(2) "New Mexico resident business" means a~~

.181574.1

underscored material = new  
[bracketed material] = delete

1 ~~business that is authorized to do and is doing business under~~  
2 ~~the laws of this state and:~~

3 ~~(a) maintains its principal place of~~  
4 ~~business in the state;~~

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

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

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

.181574.1

1 ~~partnership or corporation, that has its principal place of~~  
2 ~~business in New York state;]~~

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

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

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

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

16 ~~[(4)] (3) "resident manufacturer" means a~~  
17 ~~person who offers materials grown, produced, processed or~~  
18 ~~manufactured wholly in the state; [provided, however, that a~~  
19 ~~New York state business enterprise shall be deemed to be a~~  
20 ~~resident manufacturer solely for the purpose of evaluating the~~  
21 ~~New York state business enterprise's bid against the bid of a~~  
22 ~~resident manufacturer that is not a New York state business~~  
23 ~~enterprise;~~

24 ~~(5) "recycled content goods" means supplies~~  
25 ~~and materials composed in whole or in part of recycled~~

.181574.1

1 ~~materials; provided that the recycled materials content meets~~  
2 ~~or exceeds the minimum content standards required by bid~~  
3 ~~specifications;] and~~

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

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

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

24 ~~D. When bids are received only from resident~~  
25 ~~businesses and resident manufacturers and the lowest~~

.181574.1

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

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

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

.181574.1

1 ~~low nonresident business bidder if the bid price of the~~  
2 ~~resident business is made lower than the bid price of the~~  
3 ~~nonresident business when multiplied by a factor of .95.~~

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

7 B. Except as provided in Subsections C and E of  
8 this section, when a contract is to be awarded to a bidder, a  
9 resident business or a resident manufacturer shall be given a  
10 preference against a nonresident business equal to the  
11 preference given or required by the state in which the  
12 nonresident business is a resident.

13 C. If equally low bids are received in response to  
14 an invitation for bids:

15 (1) a resident business or resident  
16 manufacturer shall be given preference over a nonresident  
17 business; and

18 (2) a resident manufacturer shall be given  
19 preference over a resident business.

20 [~~H.~~] D. When bids are received for both recycled  
21 content goods and virgin content goods and the lowest  
22 responsible bid is for virgin content goods, the contract shall  
23 be awarded to

24 [~~(1)~~] a [~~resident manufacturer~~] bidder offering  
25 the lowest bid on recycled content goods of equal quality if

1 the bid price [~~of the resident manufacturer~~] when multiplied by  
 2 a factor of .90 is made lower than the otherwise low virgin  
 3 content goods bid price.

4 ~~[(2) a resident business offering a bid on~~  
 5 ~~recycled content goods of equal quality if:~~

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

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

13 ~~(3) a nonresident business or nonresident~~  
 14 ~~manufacturer offering recycled content goods of equal quality~~  
 15 ~~if:~~

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

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

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

.181574.1

1 ~~is for recycled content goods offered by a nonresident business~~  
2 ~~or nonresident manufacturer, the contract shall be awarded to:~~

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

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

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

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

18 ~~J. When bids are received for both recycled content~~  
19 ~~goods and virgin content goods and the lowest responsible bid~~  
20 ~~is for recycled content goods offered by a resident business,~~  
21 ~~the contract shall be awarded to a resident manufacturer~~  
22 ~~offering the lowest bid on recycled content goods of equal~~  
23 ~~quality if the bid price of the resident manufacturer when~~  
24 ~~multiplied by a factor of .95 is made lower than the otherwise~~  
25 ~~low recycled content goods bid price.~~

.181574.1



1           ~~K.]~~ E. 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.] ten million dollars~~  
 23 ~~(\$10,000,000).~~"

24           Section 2. Section 13-1-117 NMSA 1978 (being Laws 1984,  
 25 Chapter 65, Section 90, as amended) is amended to read:

.181574.1

underscoring material = new  
 bracketed material = delete

1 "13-1-117. COMPETITIVE SEALED PROPOSALS--AWARD.--

2 A. The award shall be made to the responsible  
3 offeror [~~or offerors~~] whose proposal is most advantageous to  
4 the state agency or a local public body, taking into  
5 consideration the evaluation factors set forth in the request  
6 for proposals. If two or more proposals appear to be equally  
7 advantageous to the state agency or local public body, a  
8 resident business shall be given preference over a nonresident  
9 business.

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

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

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

18 Section 3. Section 13-1-117.1 NMSA 1978 (being Laws 1987,  
19 Chapter 348, Section 7) is amended to read:

20 "13-1-117.1. PROCUREMENT OF PROFESSIONAL SERVICES--LOCAL  
21 PUBLIC BODIES--LEGISLATIVE BRANCH--SELECTION AND AWARD.--

22 A. Each agency within the legislative branch of  
23 government operating under the provisions of the Procurement  
24 Code and each local public body shall adopt regulations  
25 regarding its selection and award of professional services

.181574.1

1 contracts.

2 B. The award shall be made to the responsible  
 3 offeror [~~or offerors~~] whose proposal is most advantageous to  
 4 the local public body or legislative agency respectively,  
 5 taking into consideration the evaluation factors set forth in  
 6 the request for proposals. If two or more proposals appear to  
 7 be equally advantageous to the local public body or legislative  
 8 agency, a resident business shall be given preference over a  
 9 nonresident business.

10 C. For the purposes of this section, "resident  
 11 business" means a business that is authorized to do and is  
 12 doing business under the laws of this state and that:

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

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

18 Section 4. Section 13-4-1 NMSA 1978 (being Laws 1933,  
 19 Chapter 50, Section 1, as amended) is amended to read:

20 "13-4-1. PUBLIC WORKS CONTRACTS.--~~[It is the duty of~~  
 21 ~~every office, department, institution, board, commission or~~  
 22 ~~other governing body or officer thereof of this state or of any~~  
 23 ~~political subdivision thereof to award all contracts for the~~  
 24 ~~construction of public works or for the repair, reconstruction,~~  
 25 ~~including highway reconstruction, demolition or alteration~~

.181574.1

underscored material = new  
 [bracketed material] = delete

1 ~~thereof, to a resident contractor whenever practicable.]~~

2 A. Except as provided in Subsection B of this  
3 section, when a public works contract is to be awarded to a  
4 bidder, a resident contractor shall be given a preference  
5 against a nonresident contractor equal to the preference given  
6 or required by the state in which the nonresident contractor is  
7 a resident.

8 B. If equally low bids are received in response to  
9 an invitation for bids, a resident contractor shall be given  
10 preference over a nonresident contractor."

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

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

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

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

21 (1) the bidder has all required licenses and  
22 meets the following requirements:

23 [~~1~~] (a) if the bidder is a  
24 corporation, it shall be incorporated in New Mexico and  
25 maintain its principal office and place of business in New

1 Mexico;

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

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

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

.181574.1

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

12           ~~D.]~~ B. For purposes of this section, "affiliate"  
13 means an entity that directly or indirectly through one or more  
14 intermediaries controls, is controlled by or is under common  
15 control ~~[with a telecommunications company]~~ through ownership  
16 of voting securities representing a majority of the total  
17 voting power of that entity.

18           ~~[E. When bids are received only from nonresident~~  
19 ~~contractors and resident contractors and the lowest responsible~~  
20 ~~bid is from a nonresident contractor, the contract shall be~~  
21 ~~awarded to the resident contractor whose bid is nearest to the~~  
22 ~~bid price of the otherwise low nonresident contractor if the~~  
23 ~~bid price of the resident contractor is made lower than the bid~~  
24 ~~price of the nonresident contractor when multiplied by a factor~~  
25 ~~of .95.~~

.181574.1

underscored material = new  
[bracketed material] = delete

1           F.] C. No contractor shall be treated as a resident  
 2 contractor in the awarding of public works contracts by a state  
 3 agency or a local public body unless the contractor has  
 4 qualified with the state purchasing agent as a resident  
 5 contractor pursuant to this section by making application to  
 6 the state purchasing agent and receiving from ~~[him]~~ the state  
 7 purchasing agent a certification number. The procedure for  
 8 application and certification is as follows:

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

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

18                   (3) the state purchasing agent shall examine  
 19 the application and if necessary may seek additional  
 20 information or proof so as to be assured that the prospective  
 21 contractor is indeed entitled to certification as a resident  
 22 contractor. If the application is in proper form, the state  
 23 purchasing agent shall issue the contractor a distinctive  
 24 certification number ~~[which]~~ that is valid until revoked and  
 25 ~~[which]~~ when used on bids and other purchasing documents for

.181574.1

1 state agencies or local public bodies, entitles the contractor  
2 to treatment as a resident contractor under [~~Subsection E of~~  
3 ~~this~~] Section 13-4-1 NMSA 1978; and

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

9 Section 6. Section 13-4-5 NMSA 1978 (being Laws 1933,  
10 Chapter 19, Section 1, as amended by Laws 1997, Chapter 1,  
11 Section 4 and also by Laws 1997, Chapter 2, Section 4) is  
12 amended to read:

13 "13-4-5. USE OF NEW MEXICO MATERIALS.--~~[A.]~~ In all public  
14 works within New Mexico, whether constructed or maintained by  
15 the state or by a department, a board, a commission of the  
16 state or by any political subdivision [~~thereof~~] of the state,  
17 or in any construction or maintenance to which the state or any  
18 political subdivision [~~thereof~~] of the state has granted aid,  
19 preference shall be given to materials produced, grown,  
20 processed or manufactured in New Mexico by citizens or  
21 residents of New Mexico [~~or provided or offered by a New York~~  
22 ~~state business enterprise~~], and such materials shall be used  
23 where they are deemed satisfactory for the intended use. In  
24 any case where, in the judgment of the different officers,  
25 boards, commissions or other [~~authority~~] authorities in this

.181574.1



1 state ~~[now or hereafter]~~ vested with the power of contracting  
 2 for material used in the construction or maintenance of public  
 3 works referred to in this section, it appears that an attempt  
 4 is being made by producers, growers, processors or  
 5 manufacturers in the state to form a trust or combination of  
 6 any kind for the purpose of fixing or regulating the price of  
 7 materials to be used in any public works to the detriment of or  
 8 loss to the state, ~~[then]~~ the provisions of this section shall  
 9 not apply.

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

21 Section 7. A new section of the Procurement Code is  
 22 enacted to read:

23 "[NEW MATERIAL] SCHEDULE FOR EVALUATING BIDS.--The state  
 24 purchasing agent shall annually prepare and distribute to  
 25 central purchasing offices a schedule providing which states

.181574.1

1 give bidders in their states a preference and the extent of the  
2 preference. The schedule shall be used by state agencies and  
3 local public bodies in evaluating bids."

4 Section 8. REPEAL.--Section 13-1-21.2 NMSA 1978 (being  
5 Laws 1997, Chapter 1, Section 1 and Laws 1997, Chapter 2,  
6 Section 1) is repealed.

7 Section 9. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is July 1, 2010.