

1 SENATE BILL 19

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Timothy M. Keller and Larry A. Larrañaga

5  
6  
7 FOR THE WATER AND NATURAL RESOURCES COMMITTEE AND  
8 THE ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

9  
10 AN ACT

11 RELATING TO PROCUREMENT; MODIFYING THE PREFERENCE ADVANTAGE FOR  
12 IN-STATE BUSINESS; CHANGING THE DEFINITIONS OF "RESIDENT  
13 BUSINESS" AND "RESIDENT CONTRACTOR"; CHANGING THE PROCESS FOR  
14 OBTAINING CERTIFICATION AS A RESIDENT BUSINESS OR RESIDENT  
15 CONTRACTOR; ELIMINATING PREFERENCES FOR RESIDENT MANUFACTURERS,  
16 NEW YORK STATE BUSINESSES AND RECYCLED CONTENT GOODS; PROVIDING  
17 PENALTIES; REPEALING SECTION 13-1-21.2 NMSA 1978 (BEING LAWS  
18 1997, CHAPTER 1, SECTION 1 AND LAWS 1997, CHAPTER 2, SECTION  
19 1).

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

22 SECTION 1. Section 13-1-21 NMSA 1978 (being Laws 1979,  
23 Chapter 72, Section 1, as amended) is amended to read:

24 "13-1-21. APPLICATION OF PREFERENCES.--

25 A. For the purposes of this section:

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1 (1) "business" means a commercial enterprise  
2 carried on for profit, including growing, producing, processing  
3 or distributing agricultural products for profit;

4 (2) "public body" means the executive,  
5 legislative and judicial branches of state and local  
6 governments, the New Mexico finance authority, the New Mexico  
7 mortgage finance authority, the New Mexico renewable energy  
8 transmission authority, the New Mexico exposition center  
9 authority, the New Mexico hospital equipment loan council,  
10 entities on state-owned land and all agencies or entities  
11 created by the constitution of New Mexico or any branch of  
12 government that receives public funding, including political  
13 subdivisions, home rule municipalities, special taxing  
14 districts, school districts and institutions of higher  
15 education; and

16 (3) "resident business" means a [~~New Mexico~~  
17 ~~resident business or a New York state business enterprise~~]  
18 business that has a valid resident business certificate issued  
19 by the state auditor pursuant to Section 13-1-22 NMSA 1978.

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

23 (a) ~~that maintains its principal place~~  
24 ~~of business in the state;~~

25 (b) ~~has staffed an office and has paid~~

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1 ~~applicable state taxes for two years prior to the awarding of~~  
2 ~~the bid and has five or more employees who are residents of the~~  
3 ~~state; or~~

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

12 ~~(3) "New York state business enterprise" means~~  
13 ~~a 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 ~~(4) "resident manufacturer" means a person who~~  
24 ~~offers materials grown, produced, processed or manufactured~~  
25 ~~wholly in the state; provided, however, that a New York state~~

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1 ~~business enterprise shall be deemed to be a resident~~  
2 ~~manufacturer solely for the purpose of evaluating the New York~~  
3 ~~state business enterprise's bid against the bid of a resident~~  
4 ~~manufacturer that is not a New York state business enterprise;~~

5 ~~(5) "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; and~~

10 ~~(6) "virgin content goods" means supplies and~~  
11 ~~materials that are wholly composed of nonrecycled materials or~~  
12 ~~do not meet minimum recycled content standards required by bid~~  
13 ~~specification.~~

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

22 ~~C. When bids are received only from nonresident~~  
23 ~~businesses and resident manufacturers and the lowest~~  
24 ~~responsible bid is from a nonresident business, the contract~~  
25 ~~shall be awarded to the resident manufacturer whose bid is~~

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

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

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

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

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1 ~~nonresident business bidder if the bid price of the resident~~  
2 ~~manufacturer is evaluated as lower than the bid price of the~~  
3 ~~nonresident business when multiplied by a factor of .95. If~~  
4 ~~there is no resident manufacturer eligible for award under this~~  
5 ~~provision, then the contract shall be awarded to the resident~~  
6 ~~business whose bid is nearest to the bid price of the otherwise~~  
7 ~~low nonresident business bidder if the bid price of the~~  
8 ~~resident business is made lower than the bid price of the~~  
9 ~~nonresident business when multiplied by a factor of .95.~~

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

13 ~~H. When bids are received for both recycled content~~  
14 ~~goods and virgin content goods and the lowest responsible bid~~  
15 ~~is for virgin content goods, 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 .90 is made lower than the otherwise low virgin~~  
20 ~~content goods bid price;~~

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 .90 is made lower than~~  
4 ~~the otherwise low virgin content goods bid price; or~~

5 ~~(3) a nonresident business or nonresident~~  
6 ~~manufacturer offering recycled content goods of equal quality~~  
7 ~~if:~~

8 ~~(a) the bid price of no resident~~  
9 ~~business or resident manufacturer following application of the~~  
10 ~~preference allowed in Paragraph (1) or (2) of this subsection~~  
11 ~~can be made sufficiently low; and~~

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

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

20 ~~(1) a resident manufacturer offering the~~  
21 ~~lowest bid on recycled content goods of equal quality if the~~  
22 ~~bid price of the resident manufacturer when multiplied by a~~  
23 ~~factor of .95 is made lower than the otherwise low recycled~~  
24 ~~content goods bid price; or~~

25 ~~(2) a resident business offering a bid on~~

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1 ~~recycled content goods of equal quality if:~~

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

6 ~~(b) the lowest bid price of the resident~~  
7 ~~business when multiplied by a factor of .95 is made lower than~~  
8 ~~the otherwise low recycled content goods bid price offered by a~~  
9 ~~nonresident business or manufacturer.~~

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

18 B. When a public body makes a purchase using a  
19 formal bid process, the public body shall deem the bids  
20 submitted by resident businesses to be five percent lower than  
21 the bids actually submitted.

22 C. When a public body makes a purchase using a  
23 formal request for proposals process:

24 (1) five percent of the relative weight of all  
25 the factors used in evaluating the proposals shall be based on

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1 whether the proposal was submitted by a resident business; or  
2 (2) if the contract is awarded based on a  
3 point-based system, resident businesses shall be awarded the  
4 equivalent of five percent of the total possible points to be  
5 awarded.

6 D. When a joint bid or joint proposal is submitted  
7 by both resident and nonresident businesses, the resident  
8 business preference provided pursuant to Subsection B or C of  
9 this section shall be reduced in proportion to the percentage  
10 of the contract, based on the dollar amount of the goods or  
11 services provided under the contract, that will be performed by  
12 a nonresident business as specified in the joint bid or  
13 proposal.

14 E. The procedures provided in Sections 13-1-172  
15 through 13-1-183 NMSA 1978 apply to a protest to a public body  
16 concerning the awarding of a contract in violation of this  
17 section.

18 ~~[K.] F. This section shall not apply when the~~  
19 ~~expenditure of federal funds designated for a specific purchase~~  
20 ~~is involved. [or for any bid price greater than five million~~  
21 ~~dollars (\$5,000,000).]~~

22 ~~L. The provisions of this section shall not apply~~  
23 ~~to the purchase of buses from a resident manufacturer or a New~~  
24 ~~Mexico resident business that manufactures buses in New Mexico.~~  
25 ~~It is the purpose of this subsection to:~~

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1                   ~~(1) allow any bus manufacturer or business~~  
2 ~~that manufactures buses to compete openly for public~~  
3 ~~procurement contracts in New Mexico without giving preference~~  
4 ~~to a business based on the location of the place of manufacture~~  
5 ~~of the buses;~~

6                   ~~(2) give resident manufacturers and New Mexico~~  
7 ~~resident businesses that manufacture buses an equal opportunity~~  
8 ~~to sell their buses in states that have reciprocal preference~~  
9 ~~laws; and~~

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

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

17           "13-1-22. RESIDENT BUSINESS AND [MANUFACTURER] RESIDENT  
18 CONTRACTOR CERTIFICATION [APPLICATION--INFORMATION].-- [No  
19 ~~resident business or resident manufacturer, as those terms are~~  
20 ~~defined in Subsection A of Section 13-1-21 NMSA 1978, shall be~~  
21 ~~given any preference in the awarding of contracts for~~  
22 ~~furnishing materials or services to a state agency unless the~~  
23 ~~resident business or resident manufacturer shall have qualified~~  
24 ~~with the state purchasing agent as a resident business or~~  
25 ~~resident manufacturer or both by making application to the~~

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1 ~~state purchasing agent and receiving from him a certification~~  
2 ~~number. The procedure for application and certification shall~~  
3 ~~be as follows:~~

4 ~~A. the state purchasing agent shall prepare an~~  
5 ~~application form for certification as a resident business or~~  
6 ~~manufacturer, requesting such information and proof as he deems~~  
7 ~~necessary to qualify the applicant under the terms of Section~~  
8 ~~13-1-21 NMSA 1978;~~

9 ~~B. the resident business or resident manufacturer~~  
10 ~~shall complete the application form and submit it to the state~~  
11 ~~purchasing agent prior to the awarding of any contract in which~~  
12 ~~the resident business or manufacturer desires to be given a~~  
13 ~~preference; and~~

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

23 A. To receive a resident business preference  
24 pursuant to Section 13-1-21 NMSA 1978 or a resident contractor  
25 preference pursuant to Section 13-4-2 NMSA 1978, a business or

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1 contractor shall submit with its bid or proposal a copy of a  
2 valid resident business certificate or valid resident  
3 contractor certificate issued by the state auditor.

4 B. An application for a resident business  
5 certificate shall include an affidavit from a certified public  
6 accountant setting forth that the business is authorized to do  
7 and is doing business under the laws of this state and  
8 maintains its principal place of business in this state and  
9 that:

10 (1) the business has paid property taxes or  
11 rent on real property in New Mexico and paid at least one other  
12 tax administered by the taxation and revenue department in each  
13 of the five years immediately preceding the submission of the  
14 affidavit;

15 (2) if the business is an entrepreneur's  
16 business, the entrepreneur has resided in New Mexico during the  
17 five-year period immediately preceding the submission of the  
18 affidavit and has not applied for a resident business or  
19 resident contractor certificate pursuant to this section during  
20 that time period;

21 (3) if the business is a relocated business,  
22 at least eighty percent of the total personnel of the business  
23 in the year immediately preceding the submission of the  
24 affidavit were residents of New Mexico; or

25 (4) the business is identical in every way to

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1 a previously certified business that meets all criteria but has  
2 changed its name from that of the previously certified  
3 business.

4 C. An application for a resident contractor  
5 certificate shall include an affidavit from a certified public  
6 accountant setting forth that the contractor is currently  
7 licensed in this state and maintains its principal office and  
8 place of business in this state and that:

9 (1) in each of the five years immediately  
10 preceding the submission of the affidavit, the contractor has:

11 (a) paid property taxes or rent on real  
12 property in New Mexico and paid at least one other tax  
13 administered by the taxation and revenue department;

14 (b) paid unemployment compensation on at  
15 least three full-time employees who are residents of the state;  
16 and

17 (c) registered with the state at least  
18 one vehicle;

19 (2) if the contractor is an entrepreneur, the  
20 entrepreneur has resided in New Mexico during the five-year  
21 period immediately preceding the submission of the affidavit  
22 and has not applied for a resident business or resident  
23 contractor certificate pursuant to this section during that  
24 time period;

25 (3) if the contractor is a relocated business,

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1 at least eighty percent of the total personnel of the business  
2 in the year immediately preceding the submission of the  
3 affidavit were residents of New Mexico; or

4 (4) the contractor is identical in every way  
5 to a previously certified contractor that meets all criteria  
6 but has changed its name from that of the previously certified  
7 contractor.

8 D. The state auditor shall prescribe the form and  
9 content of the application and required affidavit. The state  
10 auditor shall examine the application and affidavit and, if  
11 necessary, may seek additional information to ensure that the  
12 business or contractor is eligible to receive the certificate  
13 pursuant to the provisions of this section. If all is in  
14 order, the state auditor shall issue a certificate within  
15 thirty days of the submission of an application. A certificate  
16 is valid for three years from the date of its issuance.

17 E. A business or contractor whose application for a  
18 certificate is denied has fifteen days from the date of the  
19 state auditor's decision to file an objection with the state  
20 auditor. The person filing the objection shall submit evidence  
21 to support the objection. The state auditor shall review the  
22 evidence and issue a decision within fifteen days of the filing  
23 of the objection.

24 F. If, following a hearing and an opportunity to be  
25 heard, the state auditor finds that a business or contractor

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1 provided false information to the state auditor in order to  
2 obtain a certificate or that a business or contractor used a  
3 certificate to obtain a resident business or resident  
4 contractor preference for a joint bid or proposal and the  
5 resident business or contractor did not perform the percentage  
6 of the contract specified in the joint bid or proposal, the  
7 business or contractor:

8 (1) is not eligible to receive a certificate  
9 or a preference pursuant to Section 13-1-21 or 13-4-2 NMSA 1978  
10 for a period of five years from the date on which the state  
11 auditor became aware of the submission of the false information  
12 or the failure to perform the contract as specified in the  
13 joint bid or proposal; and

14 (2) is subject to an administrative penalty of  
15 up to fifty thousand dollars (\$50,000) for each violation.

16 G. The state auditor may assess a reasonable fee  
17 for the issuance of a certificate to cover the costs of  
18 administering the state auditor's duties pursuant to this  
19 section.

20 H. For purposes of this section:

21 (1) "entrepreneur" means a person who is an  
22 owner and operator of an entirely new business that did not  
23 exist in any form and that has been in existence for less than  
24 five years; and

25 (2) "relocated business" means a business that

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1 moved its principal place of business from another state to New  
2 Mexico in the past five years."

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

5 "13-4-2. RESIDENT CONTRACTOR DEFINED--APPLICATION OF  
6 PREFERENCE.--

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

9 B. ~~"New Mexico resident contractor" means any~~  
10 ~~person, firm, corporation or other legal entity if, at the time~~  
11 ~~the contract is advertised for bids and at the time bids are~~  
12 ~~opened, it has all required licenses and meets the following~~  
13 ~~requirements:~~

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

17 ~~(2) if the bidder is a partnership, general or~~  
18 ~~limited, or other legal entity, it shall maintain its principal~~  
19 ~~office and place of business in New Mexico;~~

20 ~~(3) if the bidder is an individual, he shall~~  
21 ~~maintain his principal office and place of business in New~~  
22 ~~Mexico; or~~

23 ~~(4) if a bidder who is a telecommunications~~  
24 ~~company as defined by Subsection M of Section 63-9A-3 NMSA 1978~~  
25 ~~or an affiliate of a telecommunications company has paid~~

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1 ~~unemployment compensation to the employment security division~~  
2 ~~of the labor department at the applicable experience rate for~~  
3 ~~that employer pursuant to the Unemployment Compensation Law on~~  
4 ~~no fewer than ten employees who have performed services subject~~  
5 ~~to contributions for the two-year period prior to issuance of~~  
6 ~~notice to bid, the bidder will be considered to have fulfilled~~  
7 ~~the requirements of Paragraph (1), (2) or (3) of this~~  
8 ~~subsection. A successor to a previously qualified New Mexico~~  
9 ~~contractor or resident contractor, where the creation of the~~  
10 ~~bidder resulted from a court order, is entitled to credit for~~  
11 ~~qualifying contributions paid by the previously qualified New~~  
12 ~~Mexico contractor or resident contractor.~~

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

24 ~~D. For purposes of this section, "affiliate" means~~  
25 ~~an entity that directly or indirectly through one or more~~

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1 ~~intermediaries controls, is controlled by or is under common~~  
2 ~~control with a telecommunications company through ownership of~~  
3 ~~voting securities representing a majority of the total voting~~  
4 ~~power of that entity.~~

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 ~~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~~  
18 ~~the state purchasing agent and receiving from him a~~  
19 ~~certification number. The procedure for application and~~  
20 ~~certification is as follows:~~

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

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

21 A. For the purposes of this section:

22 (1) "public body" means the executive,  
23 legislative and judicial branches of state and local  
24 governments, the New Mexico finance authority, the New Mexico  
25 mortgage finance authority, the New Mexico renewable energy

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1 transmission authority, the New Mexico exposition center  
2 authority, the New Mexico hospital equipment loan council,  
3 entities on state-owned land and all agencies or entities  
4 created by the constitution of New Mexico or any branch of  
5 government that receives public funding, including political  
6 subdivisions, home rule municipalities, special taxing  
7 districts, school districts and institutions of higher  
8 education;

9 (2) "public works contract" means a contract  
10 for construction, construction management, architectural,  
11 landscape architectural, engineering, surveying or interior  
12 design services; and

13 (3) "resident contractor" means any person,  
14 firm, corporation or other legal entity that has a valid  
15 resident contractor certificate issued by the state auditor  
16 pursuant to Section 13-1-22 NMSA 1978.

17 B. For the purpose of awarding a public works  
18 contract, a public body shall deem the bids submitted by  
19 resident contractors to be five percent lower than the bids  
20 actually submitted.

21 C. When a public body awards a contract using a  
22 formal request for proposals process:

23 (1) five percent of the relative weight of all  
24 the factors used in evaluating the proposals shall be based on  
25 whether the proposal was submitted by a resident contractor; or

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1                   (2) if the contract is awarded based on a  
2 point-based system, resident contractors shall be awarded the  
3 equivalent of five percent of the total possible points to be  
4 awarded.

5                   D. When a joint bid or joint proposal is submitted  
6 by both resident and nonresident contractors, the resident  
7 contractor preference provided pursuant to Subsection B or C of  
8 this section shall be reduced in proportion to the percentage  
9 of the contract, based on the dollar amount of the goods or  
10 services provided under the contract, that will be performed by  
11 a nonresident contractor as specified in the joint bid or joint  
12 proposal.

13                   E. The procedures provided in Sections 13-1-172  
14 through 13-1-183 NMSA 1978 apply to a protest to a public body  
15 concerning the awarding of a contract in violation of this  
16 section."

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

21                   "13-4-5. USE OF NEW MEXICO MATERIALS.--~~[A.]~~ In all public  
22 works within New Mexico, whether constructed or maintained by  
23 the state or by a department, ~~[a]~~ board ~~[a]~~ or commission of  
24 the state or by any political subdivision ~~[thereof]~~ of the  
25 state, or in any construction or maintenance to which the state

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underscoring material = new  
[bracketed material] = delete

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

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

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underscoring material = new  
[bracketed material] = delete

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

4 SECTION 5. TEMPORARY PROVISION.--A certification as a  
5 resident business or resident manufacturer by the general  
6 services department that is in effect on June 30, 2011 is valid  
7 until January 1, 2012 for the purpose of obtaining a resident  
8 business preference pursuant to Section 13-1-21 NMSA 1978. A  
9 certification as a resident contractor by the general services  
10 department that is in effect on June 30, 2011 is valid until  
11 January 1, 2012 for the purpose of obtaining a resident  
12 contractor preference pursuant to Section 13-4-2 NMSA 1978.

13 SECTION 6. 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 7. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2011.