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SENATE BILL 149

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

INTRODUCED BY

David Ulibarri

FOR THE MILITARY AND VETERANS' AFFAIRS COMMITTEE

AN ACT

RELATING TO PROCUREMENT; PROTECTING CERTAIN NEW MEXICO SMALL
BUSINESSES; AMENDING THE PROCUREMENT CODE TO PROVIDE FOR A
THREE PERCENT PREFERENCE FOR VETERAN-OWNED BUSINESSES.

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]~~

"bid" means an offer to do work or supply goods at a stated
price made by competitive process;

(2) "New Mexico resident business" means a
business that is authorized to do and is doing business under

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1 the laws of this state and that:

2 (a) ~~[that]~~ maintains its principal place
3 of business in the state;

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

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

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

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1 business in New York state;

2 (4) "public body" means the executive,
3 legislative and judicial branches of state and local
4 governments, including home rule municipalities;

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;

10 (6) "resident business" means a New Mexico
11 resident business or a New York state business enterprise;

12 [~~4~~] (7) "resident manufacturer" means a
13 person who offers materials grown, produced, processed or
14 manufactured wholly in the state; provided, however, that a New
15 York state business enterprise shall be deemed to be a resident
16 manufacturer solely for the purpose of evaluating the New York
17 state business enterprise's bid against the bid of a resident
18 manufacturer that is not a New York state business enterprise;

19 [~~5~~] ~~"recycled content goods" means supplies~~
20 ~~and materials composed in whole or in part of recycled~~
21 ~~materials; provided that the recycled materials content meets~~
22 ~~or exceeds the minimum content standards required by bid~~
23 ~~specifications; and]~~

24 (8) "veteran-owned business" means a resident
25 business, at least fifty-one percent of which is owned by an

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1 honorably discharged member of the United States armed forces;

2 (9) "veteran-owned manufacturer" means a
3 resident manufacturer, at least fifty-one percent of which is
4 owned by an honorably discharged member of the United States
5 armed forces; and

6 [~~(6)~~] (10) "virgin content goods" means
7 supplies and materials that are wholly composed of nonrecycled
8 materials or do not meet minimum recycled content standards
9 required by bid specification.

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

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

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

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

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

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

6 B. When a public body receives bids and the lowest
7 responsible bid is from a nonresident business, the contract
8 shall be awarded to:

9 (1) the veteran-owned manufacturer whose bid
10 is nearest to the bid price of the otherwise low nonresident
11 business if the bid price of the veteran-owned manufacturer is
12 made lower than the bid price of the nonresident business when
13 multiplied by a factor of .92;

14 (2) the resident manufacturer whose bid is
15 nearest to the bid price of the otherwise low nonresident
16 business if the bid price of the resident manufacturer is made
17 lower than the bid price of the:

18 (a) nonresident business when multiplied
19 by a factor of .95; and

20 (b) veteran-owned manufacturer when
21 multiplied by a factor of 1.03;

22 (3) the veteran-owned business whose bid is
23 nearest to the bid price of the otherwise low nonresident
24 business if the bid price of the veteran-owned business is made
25 lower than the bid price of the:

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1 (a) nonresident business when multiplied
2 by a factor of .92;

3 (b) veteran-owned manufacturer when
4 multiplied by a factor of 1.05; and

5 (c) resident manufacturer when
6 multiplied by a factor of 1.02; or

7 (4) the resident business whose bid is nearest
8 to the bid price of the otherwise low nonresident business if
9 the bid price of the resident business is made lower than the
10 bid price of the:

11 (a) nonresident business when multiplied
12 by a factor of .95;

13 (b) veteran-owned manufacturer when
14 multiplied by a factor of 1.08;

15 (c) resident manufacturer when
16 multiplied by a factor of 1.05; and

17 (d) veteran-owned business when
18 multiplied by a factor of 1.02.

19 C. When a public body receives bids and the lowest
20 responsible bid is from a resident business, the contract shall
21 be awarded to:

22 (1) the veteran-owned manufacturer whose bid
23 is nearest to the bid price of the otherwise low resident
24 business if the bid price of the veteran-owned manufacturer is
25 made lower than the bid price of the resident business when

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1 multiplied by a factor of .92;

2 (2) the resident manufacturer whose bid is
3 nearest to the bid price of the otherwise low resident business
4 if the bid price of the resident manufacturer is made lower
5 than the bid price of the:

6 (a) resident business when multiplied by
7 a factor of .95; and

8 (b) veteran-owned manufacturer when
9 multiplied by a factor of 1.03; or

10 (3) the veteran-owned business whose bid is
11 nearest to the bid price of the otherwise low resident business
12 if the bid price of the veteran-owned business is made lower
13 than the bid price of the:

14 (a) resident business when multiplied by
15 a factor of .97;

16 (b) veteran-owned manufacturer when
17 multiplied by a factor of 1.05; and

18 (c) resident manufacturer when
19 multiplied by a factor of 1.02.

20 D. When a public body receives bids and the lowest
21 responsible bid is from a veteran-owned business, the contract
22 shall be awarded to:

23 (1) the veteran-owned manufacturer whose bid
24 is nearest to the bid price of the otherwise low veteran-owned
25 business if the bid price of the veteran-owned manufacturer is

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1 made lower than the bid price of the veteran-owned business
2 when multiplied by a factor of .95; or

3 (2) the resident manufacturer whose bid is
4 nearest to the bid price of the otherwise low veteran-owned
5 business if the bid price of the resident manufacturer is made
6 lower than the bid price of the:

7 (a) veteran-owned business when
8 multiplied by a factor of .98; and

9 (b) veteran-owned manufacturer when
10 multiplied by a factor of 1.03.

11 E. When bids are received by a public body and the
12 lowest responsible bid is from a resident manufacturer, the
13 contract shall be awarded to the veteran-owned manufacturer
14 whose bid is nearest to the bid price of the otherwise low
15 resident manufacturer if the bid price of the veteran-owned
16 manufacturer is made lower than the bid price of the resident
17 manufacturer when multiplied by a factor of .97.

18 [~~G.~~] F. When bids are received by a public body for
19 virgin content goods only or for recycled content goods only,
20 Subsections B through [~~F~~] E of this section shall apply.

21 [~~H.~~] G. When bids are received by a public body for
22 both recycled content goods and virgin content goods and the
23 lowest responsible bid is for virgin content goods, the
24 contract shall be awarded to:

25 (1) a veteran-owned manufacturer offering the

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1 lowest bid on recycled content goods of equal quality if the
2 bid price of the veteran-owned manufacturer is made lower than
3 the otherwise low virgin content goods bid price when
4 multiplied by a factor of .87;

5 [~~(1)~~] (2) a resident manufacturer offering the
6 lowest bid on recycled content goods of equal quality if the
7 bid price of the resident manufacturer [~~when multiplied by a~~
8 ~~factor of .90~~] is made lower than:

9 (a) the otherwise low virgin content
10 goods bid price when multiplied by a factor of .90; and

11 (b) the veteran-owned manufacturer when
12 multiplied by a factor of 1.03;

13 (3) a veteran-owned business offering the
14 lowest bid on recycled content goods of equal quality if the
15 bid price of the veteran-owned business is made lower than:

16 (a) the otherwise low virgin content
17 goods bid price when multiplied by a factor of .87;

18 (b) the veteran-owned manufacturer when
19 multiplied by a factor of 1.05; and

20 (c) the resident manufacturer when
21 multiplied by a factor of 1.02;

22 [~~(2)~~] (4) a resident business offering [~~a~~] the
23 lowest bid on recycled content goods of equal quality if

24 [~~(a) the bid price of no resident~~
25 ~~manufacturer following application of the preference allowed in~~

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1 Paragraph (1) of this subsection can be made sufficiently low;
2 and

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

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

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

13 (b) the lowest bid price of a
14 nonresident offering recycled content goods when multiplied by
15 a factor of .95 is made lower than the otherwise low virgin
16 content bid price] the bid price of the resident business is
17 made lower than:

18 (a) the otherwise low virgin content
19 goods bid price when multiplied by a factor of .90;

20 (b) the veteran-owned manufacturer when
21 multiplied by a factor of 1.08;

22 (c) the resident manufacturer when
23 multiplied by a factor of 1.05; and

24 (d) the veteran-owned business when
25 multiplied by a factor of 1.03; or

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1 (5) a nonresident business offering recycled
2 content goods of equal quality if the bid price of the
3 nonresident business is made lower than:

4 (a) the otherwise low virgin content
5 goods bid price when multiplied by a factor of .95;

6 (b) the veteran-owned manufacturer when
7 multiplied by a factor of 1.08;

8 (c) the resident manufacturer when
9 multiplied by a factor of 1.05;

10 (d) the veteran-owned business when
11 multiplied by a factor of 1.08; and

12 (e) the resident business when
13 multiplied by a factor of 1.05.

14 [~~F.~~] H. When bids are received by a public body for
15 both recycled content goods and virgin content goods and the
16 lowest responsible bid is for recycled content goods offered by
17 a nonresident business or nonresident manufacturer, the
18 contract shall be awarded to:

19 (1) a veteran-owned manufacturer offering the
20 lowest bid on recycled content goods of equal quality if the
21 bid price of the veteran-owned manufacturer is made lower than
22 the otherwise low recycled content goods bid price when
23 multiplied by a factor of .92;

24 [~~(1)~~] (2) a resident manufacturer offering the
25 lowest bid on recycled content goods of equal quality if the

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1 bid price of the resident manufacturer [~~when multiplied by a~~
2 ~~factor of .95~~] is made lower than:

3 (a) the otherwise low recycled content
4 goods bid price [~~or~~] when multiplied by a factor of .95; and

5 (b) the veteran-owned manufacturer when
6 multiplied by a factor of 1.03;

7 (3) a veteran-owned business offering the
8 lowest bid on recycled content goods of equal quality if the
9 bid price of the veteran-owned business is made lower than:

10 (a) the otherwise low recycled content
11 goods bid price when multiplied by a factor of .92;

12 (b) the veteran-owned manufacturer when
13 multiplied by a factor of 1.05; and

14 (c) the resident manufacturer when
15 multiplied by a factor of 1.02; or

16 [~~(2)~~] (4) a resident business offering a bid
17 on recycled content goods of equal quality if

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

22 (b) [~~the lowest~~] the bid price of the
23 resident business [~~when multiplied by a factor of .95~~] is made
24 lower than:

25 (a) the otherwise low recycled content

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1 goods bid price [~~offered by a nonresident business or~~
2 ~~manufacturer~~] when multiplied by a factor of .95;

3 (b) the veteran-owned manufacturer when
4 multiplied by a factor of 1.08;

5 (c) the resident manufacturer when
6 multiplied by a factor of 1.05; and

7 (d) the veteran-owned business when
8 multiplied by a factor of 1.03.

9 [J.] I. When bids are received by a public body for
10 both recycled content goods and virgin content goods and the
11 lowest responsible bid is for recycled content goods offered by
12 a resident business, the contract shall be awarded to:

13 (1) a veteran-owned manufacturer offering the
14 lowest bid on recycled content goods of equal quality if the
15 bid price of the veteran-owned manufacturer is made lower than
16 the otherwise low recycled content goods bid price when
17 multiplied by a factor of .92;

18 (2) a resident manufacturer offering the
19 lowest bid on recycled content goods of equal quality if the
20 bid price of the resident manufacturer [~~when multiplied by a~~
21 ~~factor of .95~~] is made lower than:

22 (a) the otherwise low recycled content
23 goods bid price when multiplied by a factor of .95; and

24 (b) the veteran-owned manufacturer when
25 multiplied by a factor of 1.03; or

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1 (3) a veteran-owned business offering the
2 lowest bid on recycled content goods of equal quality if the
3 bid price of the veteran-owned business is made lower than:

4 (a) the otherwise low recycled content
5 goods bid price when multiplied by a factor of .97;

6 (b) the veteran-owned manufacturer when
7 multiplied by a factor of 1.05; and

8 (c) the resident manufacturer when
9 multiplied by a factor of 1.02.

10 J. When bids are received by a public body for both
11 recycled content goods and virgin content goods and the lowest
12 responsible bid is for recycled content goods offered by a
13 veteran-owned business, the contract shall be awarded to:

14 (1) a veteran-owned manufacturer offering the
15 lowest bid on recycled content goods of equal quality if the
16 bid price of the veteran-owned manufacturer is made lower than
17 the otherwise low recycled content goods bid price when
18 multiplied by a factor of .95; or

19 (2) a resident manufacturer offering the
20 lowest bid on recycled content goods of equal quality if the
21 bid price of the resident manufacturer is made lower than:

22 (a) the otherwise low recycled content
23 goods bid price when multiplied by a factor of .98; and

24 (b) the veteran-owned manufacturer when
25 multiplied by a factor of 1.03.

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1 K. When bids are received by a public body for both
2 recycled content goods and virgin content goods and the lowest
3 responsible bid is for recycled content goods offered by a
4 resident manufacturer, the contract shall be awarded to a
5 veteran-owned manufacturer offering the lowest bid on recycled
6 content goods of equal quality if the bid price of the veteran-
7 owned manufacturer is made lower than the otherwise low
8 recycled content goods bid price when multiplied by a factor of
9 .95.

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

14 ~~[L-]~~ M. The provisions of this section shall not
15 apply to the purchase of buses from a resident manufacturer or
16 a New Mexico resident business that manufactures buses in New
17 Mexico. It is the purpose of this subsection to:

18 (1) allow any bus manufacturer or business
19 that manufactures buses to compete openly for public
20 procurement contracts in New Mexico without giving preference
21 to a business based on the location of the place of manufacture
22 of the buses;

23 (2) give resident manufacturers and New Mexico
24 resident businesses that manufacture buses an equal opportunity
25 to sell their buses in states that have reciprocal preference

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1 laws; and

2 (3) eliminate all different treatment of any
3 kind under New Mexico law and by all political jurisdictions in
4 the state between New Mexico resident businesses and
5 manufacturers that manufacture buses and businesses in other
6 states that manufacture and sell buses."

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

9 "13-1-22. RESIDENT AND VETERAN BUSINESS AND MANUFACTURER
10 CERTIFICATION--APPLICATION--INFORMATION.--[No] A veteran-owned
11 business, veteran-owned manufacturer, resident business or
12 resident manufacturer, as those terms are defined in Subsection
13 A of Section 13-1-21 NMSA 1978, shall not be given any
14 preference in the awarding of contracts for furnishing
15 materials or services to a state agency unless the veteran-
16 owned business, veteran-owned manufacturer, resident business
17 or resident manufacturer [~~shall have~~] has qualified with the
18 state purchasing agent as a veteran-owned business, veteran-
19 owned manufacturer, resident business or resident manufacturer,
20 or [~~both~~] a combination thereof, by making application to the
21 state purchasing agent and receiving [~~from him~~] a certification
22 number. The procedure for application and certification shall
23 be as follows:

24 A. the state purchasing agent shall prepare an
25 application form for certification as a veteran-owned business,

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1 veteran-owned manufacturer, resident business or resident
2 manufacturer, requesting such information and proof as [~~he~~
3 ~~deems~~] necessary to qualify the applicant under the terms of
4 Section 13-1-21 NMSA 1978;

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

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