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SENATE BILL 122

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

INTRODUCED BY

TIMOTHY Z. JENNINGS

AN ACT

AMENDING SECTION 13-1-21 NMSA 1978 (BEING LAWS 1979, CHAPTER 72,  
SECTION 1, AS AMENDED BY LAWS 1997, CHAPTER 1, SECTION 2 AND  
ALSO BY LAWS 1997, CHAPTER 2, SECTION 2) TO CORRECT AN ERROR;  
DECLARING AN EMERGENCY.

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 by Laws 1997, Chapter 1,  
Section 2 and also by Laws 1997, Chapter 2, Section 2 ) 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

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

3 (a) that 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 entity  
12 that directly or indirectly through one or more intermediaries  
13 controls, is controlled by or is under common control with the  
14 qualifying business through ownership of voting securities  
15 representing a majority of the total voting 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) "resident manufacturer" means a person who  
3 offers materials grown, produced, processed or manufactured  
4 wholly in the state; provided, however, that a  
5 New York state business enterprise shall be deemed to be a  
6 resident manufacturer solely for the purpose of evaluating the  
7 New York state business enterprise's bid against the bid of a  
8 resident manufacturer that is [~~now~~] not a New York state  
9 business enterprise;

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

15 (6) "virgin content goods" means supplies and  
16 materials that are wholly composed of nonrecycled materials or  
17 do not meet minimum recycled content standards required by bid  
18 specification.

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

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1 . 95.

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

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

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

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

15           G. When bids are received for virgin content goods  
16 only or for recycled content goods only, Subsections B through F  
17 of this section shall apply.

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

21                   (1) a resident manufacturer offering the lowest  
22 bid on recycled content goods of equal quality if the bid price  
23 of the resident manufacturer when multiplied by a factor of .90  
24 is made lower than the otherwise low virgin content goods bid  
25 price;

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

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

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

10 (3) a nonresident business or nonresident  
11 manufacturer offering recycled content goods of equal quality  
12 if:

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

17 (b) the lowest bid price of a nonresident  
18 offering recycled content goods when multiplied by a factor of  
19 .95 is made lower than the otherwise low virgin content bid  
20 price.

21 I. When bids are received for both recycled content  
22 goods and virgin content goods, and the lowest responsible bid  
23 is for recycled content goods offered by a nonresident business  
24 or nonresident manufacturer, the contract shall be awarded to:

25 (1) a resident manufacturer offering the lowest

1 bid on recycled content goods of equal quality if the bid price  
2 of the resident manufacturer when multiplied by a factor of .95  
3 is made lower than the otherwise low recycled content goods bid  
4 price; or

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

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

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

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

23 K. This section shall not apply when the expenditure  
24 of federal funds designated for a specific purchase is involved  
25 or for any bid price greater than five million dollars

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1 (\$5, 000, 000). "

2 Section 2. SEVERABILITY.--If any part or application of  
3 this act is held invalid, the remainder or its application to  
4 other situations or persons shall not be affected.

5 Section 3. EMERGENCY.--It is necessary for the public  
6 peace, health and safety that this act take effect immediately.

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