

1 HOUSE BILL 539

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

3 INTRODUCED BY

4 Jim R. Trujillo

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10 AN ACT

11 RELATING TO ECONOMIC DEVELOPMENT; PROTECTING CERTAIN NEW MEXICO
12 SMALL BUSINESSES.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

17 "13-1-21. APPLICATION OF PREFERENCES.--

18 A. For the purposes of this section:

19 [~~(1) "resident business" means a New Mexico
20 resident business or a New York state business enterprise;~~]

21 (1) "bid" means an offer to do work or supply
22 goods at a stated price by competitive process;

23 (2) "disadvantaged small business" means a
24 resident business as defined in Paragraph (4) of this
25 subsection, at least fifty-one percent of which is owned by a

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1 woman, a United States military veteran who was not
2 dishonorably discharged, including a disabled veteran, or any
3 other minority person as defined by the minority business
4 development agency of the United States department of commerce;

5 (3) "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 [~~(2) — New Mexico~~] (4) "resident business"
11 means a business that is authorized to do and is doing business
12 under the laws of this state and that:

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

15 (b) has staffed an office and has paid
16 applicable state taxes for two years prior to the awarding of
17 the bid and has five or more full-time-equivalent employees who
18 are residents of the state; provided that the requirement of
19 five or more full-time equivalent employees who are residents
20 is waived for disadvantaged small businesses; or

21 (c) is an affiliate of a business that
22 meets the requirements of Subparagraph (a) or (b) of this
23 paragraph. As used in this section, "affiliate" means an
24 entity that directly or indirectly through one or more
25 intermediaries controls, is controlled by or is under common

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1 control with the qualifying business through ownership of
2 voting securities representing a majority of the total voting
3 power of the entity;

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

15 ~~(4)]~~ (5) "resident manufacturer" means a
16 person who offers materials grown, produced, processed or
17 manufactured wholly in the state; ~~[provided, however, that a~~
18 ~~New York state business enterprise shall be deemed to be a~~
19 ~~resident manufacturer solely for the purpose of evaluating the~~
20 ~~New York state business enterprise's bid against the bid of a~~
21 ~~resident manufacturer that is not a New York state business~~
22 ~~enterprise;~~

23 ~~(5)~~ ~~"recycled content goods" means supplies~~
24 ~~and materials composed in whole or in part of recycled~~
25 ~~materials; provided that the recycled materials content meets~~

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1 ~~or exceeds the minimum content standards required by bid~~
2 ~~specifications;]~~

3 (6) "small business" means a resident business
4 as defined in Paragraph (4) of this subsection that employs
5 twenty-five or fewer full-time-equivalent employees; and

6 [~~(6)~~] (7) "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 C. 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 G. When bids are received for virgin content goods
7 only or for recycled content goods only, Subsections B through
8 F of this section shall apply.

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

12 (1) a resident manufacturer offering the
13 lowest bid on recycled content goods of equal quality if the
14 bid price of the resident manufacturer when multiplied by a
15 factor of .90 is made lower than the otherwise low virgin
16 content goods bid price;

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

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

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

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1 (3) a nonresident business or nonresident
2 manufacturer offering recycled content goods of equal quality
3 if:

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

8 (b) the lowest bid price of a
9 nonresident business or nonresident manufacturer offering
10 recycled content goods when multiplied by a factor of .95 is
11 made lower than the otherwise low virgin content bid price.

12 I. When bids are received for both recycled content
13 goods and virgin content goods and the lowest responsible bid
14 is for recycled content goods offered by a nonresident business
15 or nonresident manufacturer, 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 .95 is made lower than the otherwise low recycled
20 content goods bid price; or

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 .95 is made lower than
4 the otherwise low recycled content goods bid price offered by a
5 nonresident business or manufacturer.

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

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

18 ~~[L. The provisions of this section shall not apply~~
19 ~~to the purchase of buses from a resident manufacturer or a New~~
20 ~~Mexico resident business that manufactures buses in New Mexico.~~
21 ~~It is the purpose of this subsection to:~~

22 ~~(1) allow any bus manufacturer or business~~
23 ~~that manufactures buses to compete openly for public~~
24 ~~procurement contracts in New Mexico without giving preference~~
25 ~~to a business based on the location of the place of manufacture~~

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1 ~~of the buses;~~

2 ~~(2) give resident manufacturers and New Mexico~~
3 ~~resident businesses that manufacture buses an equal opportunity~~
4 ~~to sell their buses in states that have reciprocal preference~~
5 ~~laws; and~~

6 ~~(3) eliminate all different treatment of any~~
7 ~~kind under New Mexico law and by all political jurisdictions in~~
8 ~~the state between New Mexico resident businesses and~~
9 ~~manufacturers that manufacture buses and businesses in other~~
10 ~~states that manufacture and sell buses.]~~

11 L. The provisions of this section shall not apply
12 to:

13 (1) construction contracts, construction
14 services, construction maintenance contracts or construction
15 contracts based on unit pricing; or

16 (2) construction materials to be used in any
17 contract or service specified in Paragraph (1) of this
18 subsection.

19 M. When bids are received from a small business and
20 the lowest responsible bid is from a nonresident business, a
21 resident business that is not a small business, a nonresident
22 manufacturer or a resident manufacturer, the contract shall be
23 awarded to the small business whose bid is nearest to the
24 otherwise low bidder if the bid price of the small business is
25 made lower than the bid price of the otherwise low bidder when

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1 multiplied by a factor of .90. When a resident business bid
2 preference is combined with a small business bid preference,
3 the total maximum preference awarded shall not exceed ten
4 percent.

5 N. When bids are received from a disadvantaged
6 small business and the lowest responsible bid is from a
7 nonresident business, a resident business that is not a
8 disadvantaged small business, a nonresident manufacturer or a
9 resident manufacturer, the contract shall be awarded to the
10 disadvantaged small business whose bid is nearest to the
11 otherwise low bidder if the bid price of the disadvantaged
12 small business is made lower than the bid price of the
13 otherwise low bidder when multiplied by a factor of .85. When
14 a resident business bid preference is combined with a
15 disadvantaged small business bid preference, the total maximum
16 preference awarded shall not exceed fifteen percent.

17 O. When bids are received from a disadvantaged
18 small business and the lowest responsible bid is from a small
19 business, the contract shall be awarded to the disadvantaged
20 small business whose bid is nearest to the otherwise low bidder
21 if the bid price of the disadvantaged small business is nearest
22 to the otherwise low bidder when multiplied by a factor of .95.

23 P. When proposals that include prices are received
24 from a resident business, those prices shall be multiplied by
25 .95 prior to awarding evaluation points as outlined in the

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1 request for proposals.

2 Q. When proposals that include prices are received
3 from a small business, those prices shall be multiplied by .90
4 prior to awarding evaluation points as outlined in the request
5 for proposals. When a resident business bid preference is
6 combined with a small business bid preference, the total
7 maximum preference awarded shall not exceed ten percent.

8 R. When proposals that include prices are received
9 from a disadvantaged small business, those prices shall be
10 multiplied by .85 prior to awarding evaluation points as
11 outlined in the request for proposals. When a resident
12 business bid preference is combined with a disadvantaged small
13 business bid preference, the total maximum preference awarded
14 shall not exceed fifteen percent."

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~~] PREFERRED
18 BUSINESS CERTIFICATION--APPLICATION--INFORMATION.--No resident
19 business or resident manufacturer, small business or
20 disadvantaged small business, as those terms are defined in
21 Subsection A of Section 13-1-21 NMSA 1978, shall be given any
22 preference in the awarding of contracts for furnishing
23 materials or services to a state agency unless the resident
24 business, [~~or~~] resident manufacturer, [~~shall have~~] small
25 business or disadvantaged small business has qualified with the

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1 state purchasing agent as a resident business, [~~or~~] resident
2 manufacturer [~~or both~~], small business or disadvantaged small
3 business by making application to the state purchasing agent
4 and receiving [~~from him~~] a certification number. The procedure
5 for application and certification shall be as follows:

6 A. the state purchasing agent shall prepare an
7 application form for certification as a resident business, [~~or~~]
8 small business, resident manufacturer or disadvantaged small
9 business requesting such information and proof as [~~he deems~~]
10 necessary to qualify the applicant under the terms of Section
11 13-1-21 NMSA 1978;

12 B. the resident business, [~~or~~] resident
13 manufacturer, small business or disadvantaged small business
14 shall complete the application form and submit it to the state
15 purchasing agent prior to the awarding of any contract in which
16 the resident business, [~~or~~] resident manufacturer, small
17 business or disadvantaged small business desires to be given a
18 preference; and

19 C. the state purchasing agent shall examine the
20 application and if necessary may seek additional information or
21 necessary proof to [~~assure himself~~] ensure that the prospective
22 resident business, [~~or~~] resident manufacturer, small business
23 or disadvantaged small business is indeed entitled to the
24 statutory preference. If all is in order, [~~he~~] the state
25 purchasing agent shall issue the [~~supplier~~] resident business,

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1 resident manufacturer, small business or disadvantaged small
2 business a distinctive certification number [~~which~~] that shall
3 be valid until revoked and [~~which~~] when used on bids and other
4 purchasing documents shall entitle the resident business, [~~or~~]
5 resident manufacturer, small business or disadvantaged small
6 business to the statutory preference."

7 SECTION 3. REPEAL.--Section 13-1-21.2 NMSA 1978 (being
8 Laws 1997, Chapter 1, Section 1 and Laws 1997, Chapter 2,
9 Section 1) is repealed.

10 SECTION 4. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2011.