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SENATE BILL 14

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

INTRODUCED BY

Timothy M. Keller

FOR THE ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

AN ACT

RELATING TO PROCUREMENT; INCREASING THE PREFERENCE ADVANTAGE
FOR IN-STATE BUSINESS; NARROWING THE DEFINITION OF "NEW MEXICO
RESIDENT BUSINESS".

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

~~(a) maintains its principal place of~~

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1 ~~business in the state;~~

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

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

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

25 (1) "recycled content goods" means supplies

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1 and materials composed in whole or in part of recycled
2 materials; provided that the recycled materials content meets
3 or exceeds the minimum content standards required by bid
4 specifications;

5 (2) "resident business" means a business that
6 is authorized to do and is doing business under the laws of
7 this state and that:

8 (a) maintains its principal place of
9 business in the state; and

10 (b) has staffed an office and has paid
11 applicable state taxes for two years prior to the awarding of
12 the bid and has five or more employees who are residents of the
13 state;

14 [~~(4)~~] (3) "resident manufacturer" means a
15 person who offers materials grown, produced, processed or
16 manufactured wholly in the state; [~~provided, however, that a~~
17 ~~New York state business enterprise shall be deemed to be a~~
18 ~~resident manufacturer solely for the purpose of evaluating the~~
19 ~~New York state business enterprise's bid against the bid of a~~
20 ~~resident manufacturer that is not a New York state business~~
21 ~~enterprise;~~

22 ~~(5) "recycled content goods" means supplies~~
23 ~~and materials composed in whole or in part of recycled~~
24 ~~materials; provided that the recycled materials content meets~~
25 ~~or exceeds the minimum content standards required by bid~~

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1 ~~specifications;~~] and

2 [~~(6)~~] (4) "virgin content goods" means
3 supplies and materials that are wholly composed of nonrecycled
4 materials or do not meet minimum recycled content standards
5 required by bid specification.

6 B. When bids are received only from nonresident
7 businesses and resident businesses and the lowest responsible
8 bid is from a nonresident business, the contract shall be
9 awarded to the resident business whose bid is nearest to the
10 bid price of the otherwise low nonresident business bidder if
11 the bid price of the resident bidder is made lower than the bid
12 price of the nonresident business when multiplied by a factor
13 of [~~.95~~] .90.

14 C. When bids are received only from nonresident
15 businesses and resident manufacturers and the lowest
16 responsible bid is from a nonresident business, the contract
17 shall be awarded to the resident manufacturer whose bid is
18 nearest to the bid price of the otherwise low nonresident
19 business bidder if the bid price of the resident manufacturer
20 is made lower than the bid price of the nonresident business
21 when multiplied by a factor of [~~.95~~] .90.

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

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

13 F. When bids are received from resident
14 manufacturers, resident businesses and nonresident businesses
15 and the lowest responsible bid is from a nonresident business,
16 the contract shall be awarded to the resident manufacturer
17 whose bid is nearest to the bid price of the otherwise low
18 nonresident business bidder if the bid price of the resident
19 manufacturer is evaluated as lower than the bid price of the
20 nonresident business when multiplied by a factor of [~~+.95~~] .90.
21 If there is no resident manufacturer eligible for award under
22 this provision, then the contract shall be awarded to the
23 resident business whose bid is nearest to the bid price of the
24 otherwise low nonresident business bidder if the bid price of
25 the resident business is made lower than the bid price of the

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1 nonresident business when multiplied by a factor of [~~.95~~] .90.

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

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

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

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

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

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

22 (3) a nonresident business or nonresident
23 manufacturer offering recycled content goods of equal quality
24 if:

25 (a) the bid price of no resident

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1 business or resident manufacturer following application of the
2 preference allowed in Paragraph (1) or (2) of this subsection
3 can be made sufficiently low; and

4 (b) the lowest bid price of a
5 nonresident offering recycled content goods when multiplied by
6 a factor of .95 is made lower than the otherwise low virgin
7 content bid price.

8 I. When bids are received for both recycled content
9 goods and virgin content goods and the lowest responsible bid
10 is for recycled content goods offered by a nonresident business
11 or nonresident manufacturer, 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 [~~.95~~] .90 is made lower than the otherwise low
16 recycled content goods bid price; or

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 [~~.95~~] .90 is made lower
25 than the otherwise low recycled content goods bid price offered

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1 by a nonresident business or manufacturer.

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

10 K. 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)] ten million dollars (\$10,000,000).~~

14 [~~L. The provisions of this section shall not apply~~
15 ~~to the purchase of buses from a resident manufacturer or a New~~
16 ~~Mexico resident business that manufactures buses in New Mexico.~~
17 ~~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 13-4-2 NMSA 1978 (being Laws 1984,
8 Chapter 66, Section 2, as amended) is amended to read:

9 "13-4-2. RESIDENT CONTRACTOR DEFINED--APPLICATION OF
10 PREFERENCE.--

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

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

18 (1) if the bidder is a corporation, it shall
19 be incorporated in New Mexico and maintain its principal office
20 and place of business in New Mexico;

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

24 (3) if the bidder is an individual, [~~he~~] the
25 person shall maintain [~~his~~] the principal office and place of

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1 the business in New Mexico; or

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

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

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

5 ~~D.]~~ B. For purposes of this section, "affiliate"
6 means an entity that directly or indirectly through one or more
7 intermediaries controls, is controlled by or is under common
8 control with a telecommunications company through ownership of
9 voting securities representing a majority of the total voting
10 power of that entity.

11 ~~[E.]~~ C. When bids are received only from nonresident
12 contractors and resident contractors and the lowest responsible
13 bid is from a nonresident contractor, the contract shall be
14 awarded to the resident contractor whose bid is nearest to the
15 bid price of the otherwise low nonresident contractor if the
16 bid price of the resident contractor is made lower than the bid
17 price of the nonresident contractor when multiplied by a factor
18 of ~~[.95]~~ .90.

19 ~~[F.]~~ D. No contractor shall be treated as a
20 resident contractor in the awarding of public works contracts
21 by a state agency or a local public body unless the contractor
22 has qualified with the state purchasing agent as a resident
23 contractor pursuant to this section by making application to
24 the state purchasing agent and receiving from ~~[him]~~ the state
25 purchasing agent a certification number. The procedure for

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1 application and certification is as follows:

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

6 (2) the contractor seeking to qualify as a
7 resident contractor shall complete the application form and
8 submit it to the state purchasing agent prior to the submission
9 of a bid on which the contractor desires to be given a
10 preference;

11 (3) the state purchasing agent shall examine
12 the application and if necessary may seek additional
13 information or proof so as to be assured that the prospective
14 contractor is indeed entitled to certification as a resident
15 contractor. If the application is in proper form, the state
16 purchasing agent shall issue the contractor a distinctive
17 certification number [~~which~~] that is valid until revoked and
18 [~~which~~] when used on bids and other purchasing documents for
19 state agencies or local public bodies, entitles the contractor
20 to treatment as a resident contractor under Subsection [E] C of
21 this section; and

22 (4) the certification number issued pursuant
23 to Paragraph (3) of this subsection shall be revoked by the
24 state purchasing agent upon making a determination that the
25 contractor no longer meets the requirements of a resident

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1 contractor as defined in this section."

2 Section 3. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2010.

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