

AN ACT

RELATING TO PROCUREMENT; ELIMINATING RESIDENT PREFERENCE FOR
BUS MANUFACTURERS; 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 Laws 1997, Chapter 2, Section 2 and also by Laws 1997, Chapter 3, Section 1) 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) that maintains its principal place of business in the state;

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

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

voting securities representing a majority of the total voting power of the entity;

(3) "New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state. For purposes of construction services, a New York state business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation, that has its principal place of business in New York state;

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

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

(6) "virgin content goods" means supplies

and materials that are wholly composed of nonrecycled materials or do not meet minimum recycled content standards required by bid specification.

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

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

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

E. When bids are received from resident

manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a resident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low resident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the resident business when multiplied by a factor of .95.

F. When bids are received from resident manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident manufacturer is evaluated as lower than the bid price of the nonresident business when multiplied by a factor of .95. If there is no resident manufacturer eligible for award under this provision, then the contract shall be awarded to the resident business whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident business is made lower than the bid price of the nonresident business when multiplied by a factor of .95.

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

H. When bids are received for both recycled content goods and virgin content goods and the lowest responsible bid is for virgin content goods, the contract

shall be awarded to:

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

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

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

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

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

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

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

I. When bids are received for both recycled

content goods and virgin content goods and the lowest responsible bid is for recycled content goods offered by a nonresident business or nonresident manufacturer, the contract shall be awarded to:

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

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

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

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

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

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

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

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

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

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

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Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately._____