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SENATE BILL 18

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

Timothy Z. Jennings

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

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

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1 of 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
5 the 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"
15 means 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
20 are substantially performed within New York state. For
21 purposes of construction services, a New York state business
22 enterprise means a business enterprise, including a sole
23 proprietorship, partnership or corporation, that has its
24 principal place of business in New York state;

25 (4) "resident manufacturer" means a person
who offers materials grown, produced, processed or
manufactured wholly in the state; provided, however, that a

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1 New York state business enterprise shall be deemed to be a
2 resident manufacturer solely for the purpose of evaluating
3 the New York state business enterprise's bid against the bid
4 of a resident manufacturer that is not a New York state
5 business enterprise;

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

11 (6) "virgin content goods" means supplies
12 and materials that are wholly composed of nonrecycled
13 materials or do not meet minimum recycled content standards
14 required by bid specification.

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

23 C. When bids are received only from nonresident
24 businesses and resident manufacturers and the lowest
25 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

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1 business bidder if the bid price of the resident manufacturer
2 is made lower than the bid price of the nonresident business
3 when multiplied by a factor of .95.

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

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

20 F. When bids are received from resident
21 manufacturers, resident businesses and nonresident businesses
22 and the lowest responsible bid is from a nonresident
23 business, the contract shall be awarded to the resident
24 manufacturer whose bid is nearest to the bid price of the
25 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

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1 of .95. If there is no resident manufacturer eligible for
2 award under this provision, then the contract shall be
3 awarded to the resident business whose bid is nearest to the
4 bid price of the otherwise low nonresident business bidder if
5 the bid price of the resident business is made lower than the
6 bid price of the nonresident business when multiplied by a
7 factor of .95.

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

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

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

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

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

(b) the lowest bid price of the
resident business when multiplied by a factor of .90 is made

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1 lower than the otherwise low virgin content goods bid price;
2 or

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

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

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

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

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

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

(a) the bid price of no resident
manufacturer following application of the preference allowed

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

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

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

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

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

24 (1) allow any bus manufacturer or business
25 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

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1 manufacture of the buses;

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

6 (3) eliminate all different treatment of any
7 kind under New Mexico law and by all political jurisdictions
8 in 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 Section 2. EMERGENCY.--It is necessary for the public
12 peace, health and safety that this act take effect
13 immediately.