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SENATE BILL 301

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Steve Komadina

AN ACT

**RELATING TO PROCUREMENT; AMENDING AND REPEALING CERTAIN
SECTIONS OF THE NMSA 1978 CONCERNING PROCUREMENT PREFERENCES.**

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) that maintains its principal place
of business in the state;**

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

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

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

24 [~~(4) "resident manufacturer" means a person~~
25 ~~who offers materials grown, produced, processed or~~

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1 ~~manufactured wholly in the state; provided, however, that a~~
2 ~~New York state business enterprise shall be deemed to be a~~
3 ~~resident manufacturer solely for the purpose of evaluating the~~
4 ~~New York state business enterprise's bid against the bid of a~~
5 ~~resident manufacturer that is not a New York state business~~
6 ~~enterprise;~~

7 ~~(5)~~ (4) "recycled content goods" means
8 supplies and materials composed in whole or in part of
9 recycled materials; provided that the recycled materials
10 content meets or exceeds the minimum content standards
11 required by bid specifications; and

12 ~~(6)~~ (5) "virgin content goods" means
13 supplies and materials that are wholly composed of nonrecycled
14 materials or do not meet minimum recycled content standards
15 required by bid specification.

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

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

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1 ~~responsible bid is from a nonresident business, the contract~~
2 ~~shall be awarded to the resident manufacturer whose bid is~~
3 ~~nearest to the bid price of the otherwise low nonresident~~
4 ~~business bidder if the bid price of the resident manufacturer~~
5 ~~is made lower than the bid price of the nonresident business~~
6 ~~when multiplied by a factor of .95.~~

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

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

23 ~~F. When bids are received from resident~~
24 ~~manufacturers, resident businesses and nonresident businesses~~
25 ~~and the lowest responsible bid is from a nonresident business,~~

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1 ~~the contract shall be awarded to the resident manufacturer~~
2 ~~whose bid is nearest to the bid price of the otherwise low~~
3 ~~nonresident business bidder if the bid price of the resident~~
4 ~~manufacturer is evaluated as lower than the bid price of the~~
5 ~~nonresident business when multiplied by a factor of .95. If~~
6 ~~there is no resident manufacturer eligible for award under~~
7 ~~this provision, then the contract shall be awarded to the~~
8 ~~resident business whose bid is nearest to the bid price of the~~
9 ~~otherwise low nonresident business bidder if the bid price of~~
10 ~~the resident business is made lower than the bid price of the~~
11 ~~nonresident business when multiplied by a factor of .95.]~~
12 nonresident business only if its bid is the same percentage
13 less than the lowest responsible bid submitted by a resident
14 business as would be required for such a resident business to
15 succeed over the nonresident business on a like contract or
16 bid being let in the nonresident business' domiciliary state.
17 Where a preference other than a percentage adjustment of bids
18 is provided by the domiciliary state of a nonresident
19 business, resident businesses shall be granted in a
20 procurement in this state the same preference over the
21 nonresident business in the same manner and on the basis and
22 to the same extent as the preference that would be granted to
23 the nonresident business in its domiciliary state against the
24 resident businesses.

25 [G.] C. When bids are received for virgin content

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1 goods only or for recycled content goods only, [~~Subsections B~~
2 ~~through F of this section shall apply~~] Subsection B of this
3 section applies.

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

8 [~~(1) a resident manufacturer~~] the bidder
9 offering the lowest bid on recycled content goods of equal
10 quality if the bid price of the [~~resident manufacturer~~] bidder
11 when multiplied by a factor of .90 is made lower than the
12 otherwise low virgin 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~~
17 ~~in Paragraph (1) of this subsection can be made sufficiently~~
18 ~~low, and~~

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

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

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

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

9 ~~I. When bids are received for both recycled~~
10 ~~content goods and virgin content goods and the lowest~~
11 ~~responsible bid is for recycled content goods offered by a~~
12 ~~nonresident business or nonresident manufacturer, the contract~~
13 ~~shall be awarded to:~~

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

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

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

25 ~~(b) the lowest bid price of the~~

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1 ~~resident business when multiplied by a factor of .95 is made~~
2 ~~lower than the otherwise low recycled content goods bid price~~
3 ~~offered by a nonresident business or manufacturer.~~

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

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

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

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

25 (2) give [~~resident manufacturers and~~] New

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1 Mexico resident businesses that manufacture buses an equal
2 opportunity to sell their buses in states that have reciprocal
3 preference laws; and

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

9 Section 2. Section 13-1-22 NMSA 1978 (being Laws 1969,
10 Chapter 184, Section 1, as amended) is amended to read:

11 "13-1-22. RESIDENT BUSINESS AND MANUFACTURER
12 CERTIFICATION--APPLICATION--INFORMATION.--No resident
13 business, [~~or resident manufacturer, as those terms are~~] as
14 that term is defined in Subsection A of Section 13-1-21 NMSA
15 1978, shall be given any preference in the awarding of
16 contracts for furnishing materials or services to a state
17 agency unless the resident business [~~or resident manufacturer~~
18 ~~shall have~~] has qualified with the state purchasing agent as a
19 resident business [~~or resident manufacturer or both~~] by making
20 application to the state purchasing agent and receiving from
21 him a certification number. The procedure for application and
22 certification shall be as follows:

23 A. the state purchasing agent shall prepare an
24 application form for certification as a resident business [~~or~~
25 ~~manufacturer~~], requesting such information and proof as he

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1 deems necessary to qualify the applicant under the terms of
2 Section 13-1-21 NMSA 1978;

3 B. the resident business [~~or resident~~
4 ~~manufacturer~~] shall complete the application form and submit
5 it to the state purchasing agent prior to the awarding of any
6 contract in which the resident business [~~or manufacturer~~]
7 desires to be given a preference; and

8 C. the state purchasing agent shall examine the
9 application and if necessary may seek additional information
10 or proof to assure himself that the prospective business [~~or~~
11 ~~manufacturer~~] is indeed entitled to the statutory preference.
12 If all is in order, he shall issue the [~~supplier~~] business a
13 distinctive certification number which shall be valid until
14 revoked and which when used on bids and other purchasing
15 documents shall entitle the business [~~or manufacturer~~] to the
16 statutory preference. "

17 Section 3. Section 13-1-110 NMSA 1978 (being Laws 1984,
18 Chapter 65, Section 83) is amended to read:

19 "13-1-110. COMPETITIVE SEALED BIDS--IDENTICAL BIDS.--
20 When competitive sealed bids are used and two or more of the
21 bids submitted are identical in price and are the low bid, the
22 state purchasing agent or a central purchasing office may:

23 A. award pursuant to the multiple source award
24 provisions of Sections [~~126 and 127 of the Procurement Code~~]
25 13-1-153 and 13-1-154 NMSA 1978;

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1 B. award to a resident business if the identical
2 low bids are submitted by a resident business and a
3 nonresident business;

4 ~~[C. award to a resident manufacturer if the~~
5 ~~identical low bids are submitted by a resident manufacturer~~
6 ~~and a resident business;~~

7 ~~D.]~~ C. award by lottery to one of the identical
8 low bidders; or

9 ~~[E.]~~ D. reject all bids and resolicit bids or
10 proposals for the required services, construction or items of
11 tangible personal property. "

12 Section 4. Section 13-4-2 NMSA 1978 (being Laws 1984,
13 Chapter 66, Section 2, as amended by Laws 1997, Chapter 1,
14 Section 3 and also by Laws 1997, Chapter 2, Section 3) is
15 amended to read:

16 "13-4-2. RESIDENT CONTRACTOR DEFINED-- APPLICATION OF
17 PREFERENCE. --

18 A. "Resident contractor" means a New Mexico
19 resident contractor or a New York state business enterprise.

20 B. "New Mexico resident contractor" means ~~[any]~~ a
21 person, firm, corporation or other legal entity ~~[if]~~ that, at
22 the time the contract is advertised for bids and at the time
23 bids are opened, ~~[it]~~ has all required licenses and meets the
24 following requirements:

25 (1) if the bidder is a corporation, it shall

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1 be incorporated in New Mexico and maintain its principal
2 office and place of business in New Mexico [~~and a majority of~~
3 ~~its outstanding shares shall be beneficially owned by one or~~
4 ~~more individual citizens who are domiciled in the state~~];

5 (2) if the bidder is a partnership, general
6 or limited, or other legal entity, it shall maintain its
7 principal office and place of business in New Mexico [~~and the~~
8 ~~partners or associates owning a majority beneficial interest~~
9 ~~shall be domiciled in the state. If one or more partners or~~
10 ~~associates are corporations, a majority of the outstanding~~
11 ~~shares of each corporation shall be beneficially owned by~~
12 ~~individual citizens who are domiciled in the state. If the~~
13 ~~entity is a trust, a majority of the beneficial interest of~~
14 ~~the trust shall be owned by individual citizens who are~~
15 ~~domiciled in the state~~];

16 (3) if the bidder is an individual, he shall
17 maintain his principal office and place of business in
18 New Mexico [~~and the individual shall be a citizen of and~~
19 ~~domiciled in the state~~]; or

20 (4) if a bidder who is a telecommunications
21 company as defined by Subsection M of Section 63-9A-3 NMSA
22 1978 or an affiliate of a telecommunications company has paid
23 unemployment compensation to the employment security division
24 of the labor department at the applicable experience rate for
25 that employer pursuant to the Unemployment Compensation Law on

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1 no fewer than ten employees who have performed services
2 subject to contributions for the two-year period prior to
3 issuance of notice to bid, the bidder will be considered to
4 have fulfilled the requirements of Paragraph (1), (2) or (3)
5 of this subsection. A successor to a previously qualified New
6 Mexico contractor or resident contractor, where the creation
7 of the bidder resulted from a court order, is entitled to
8 credit for qualifying contributions paid by the previously
9 qualified New Mexico contractor or resident contractor.

10 C. "New York state business enterprise" means a
11 business enterprise, including a sole proprietorship,
12 partnership or corporation, that offers for sale or lease or
13 other form of exchange, goods or commodities that are
14 substantially manufactured, produced or assembled in New York
15 state, or services, other than construction services, that are
16 substantially performed within New York state. For purposes
17 of construction services, a New York state business enterprise
18 means a business enterprise, including a sole proprietorship,
19 partnership or corporation, that has its principal place of
20 business in New York state.

21 D. For purposes of this section,

22 [~~(1)~~] "affiliate" means an entity that
23 directly or indirectly through one or more intermediaries
24 controls, is controlled by or is under common control with a
25 telecommunications company through ownership of voting

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1 securities representing a majority of the total voting power
2 of that entity [and

3 ~~(2) "beneficially owned" or "beneficial~~
4 ~~interest" means exercising actual management and control of~~
5 ~~all operations, including but not limited to financial~~
6 ~~decisions, financial liability, labor relations, supervision~~
7 ~~of field operations, purchases of goods, supplies and~~
8 ~~services, marketing and sales].~~

9 E. When bids are received [~~only~~] from nonresident
10 contractors and resident contractors and the lowest
11 responsible bid is from a nonresident contractor, the contract
12 shall be awarded to the [~~resident contractor whose bid is~~
13 ~~nearest to the bid price of the otherwise low nonresident~~
14 ~~contractor if the bid price of the resident contractor is made~~
15 ~~lower than the bid price of the nonresident contractor when~~
16 ~~multiplied by a factor of .95] nonresident contractor only if
17 its bid is the same percentage less than the lowest
18 responsible bid submitted by a resident contractor as would be
19 required for such a resident contractor to succeed over the
20 nonresident contractor on a like contract or bid being let in
21 the nonresident contractor's domiciliary state. Where a
22 preference other than a percentage adjustment of bids is
23 provided by the domiciliary state of a nonresident contractor,
24 resident contractors shall be granted in a procurement in this
25 state the same preference over the nonresident contractor in~~

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1 the same manner and on the basis and to the same extent as the
2 preference that would be granted to the nonresident contractor
3 in its domiciliary state against the resident contractors.

4 F. No contractor shall be treated as a resident
5 contractor in the awarding of public works contracts by a
6 state agency or a local public body unless the contractor has
7 qualified with the state purchasing agent as a resident
8 contractor pursuant to this section by making application to
9 the state purchasing agent and receiving from him a
10 certification number. The procedure for application and
11 certification is as follows:

12 (1) the state purchasing agent shall prepare an
13 application form for certification as a resident contractor,
14 requiring such information and proof as he deems necessary to
15 qualify the applicant under the terms of this section;

16 (2) the contractor seeking to qualify as a
17 resident contractor shall complete the application form and
18 submit it to the state purchasing agent prior to the
19 submission of a bid on which the contractor desires to be
20 given a preference;

21 (3) the state purchasing agent shall examine
22 the application and if necessary may seek additional
23 information or proof so as to be assured that the prospective
24 contractor is indeed entitled to certification as a resident
25 contractor. If the application is in proper form, the state

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1 purchasing agent shall issue the contractor a distinctive
2 certification number which is valid until revoked and which,
3 when used on bids and other purchasing documents for state
4 agencies or local public bodies, entitles the contractor to
5 treatment as a resident contractor under Subsection E of this
6 section; and

7 (4) the certification number issued pursuant to
8 Paragraph (3) of this subsection shall be revoked by the state
9 purchasing agent upon making a determination that the
10 contractor no longer meets the requirements of a resident
11 contractor as defined in this section. "

12 Section 5. REPEAL. -- Section 13-4-1 NMSA 1978 (being Laws
13 1933, Chapter 50, Section 1, as amended) is repealed.