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HOUSE BILL 845

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

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

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 and Section
13-1-22 NMSA 1978:

(1) "bid" means an offer made by a competitive
sealed bid pursuant to Section 13-1-102 NMSA 1978;

(2) "disadvantaged small business" means a
resident business, at least fifty-one percent of which is owned
by a woman, a United States military veteran who was not
dishonorably discharged, including a disabled veteran, or any

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1 other minority person as defined by the minority business
2 development agency of the United States department of commerce;

3 (3) "proposal" means an offer made by a
4 competitive sealed proposal pursuant to Section 13-1-102 NMSA
5 1978;

6 (4) "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;

11 [~~(1)~~] (5) "resident business" means a [New
12 ~~Mexico resident business or a New York state business~~

13 ~~enterprise;~~
14 ~~(2) "New Mexico resident business" means a]~~
15 business that is authorized to do and is doing business under
16 the laws of this state and:

17 (a) that maintains its principal place
18 of business in the state;

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

23 (c) is an affiliate of a business that
24 meets the requirements of Subparagraph (a) or (b) of this
25 paragraph. As used in this section, "affiliate" means an

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1 entity that directly or indirectly through one or more
2 intermediaries controls, is controlled by or is under common
3 control with the qualifying business through ownership of
4 voting securities representing a majority of the total voting
5 power of the entity;

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

17 ~~(4)]~~ (6) "resident manufacturer" means a
18 person who offers materials grown, produced, processed or
19 manufactured wholly in the state; ~~[provided, however, that a~~
20 ~~New York state business enterprise shall be deemed to be a~~
21 ~~resident manufacturer solely for the purpose of evaluating the~~
22 ~~New York state business enterprise's bid against the bid of a~~
23 ~~resident manufacturer that is not a New York state business~~
24 ~~enterprise;~~

25 ~~(5) "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; and]~~

5 (7) "small business" means a resident business
6 as defined in Paragraph (5) of this subsection that employs
7 twenty or fewer employees; and

8 [~~(6)~~] (8) "virgin content goods" means
9 supplies and materials that are wholly composed of nonrecycled
10 materials or do not meet minimum recycled content standards
11 required by bid specification.

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

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

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1 is made lower than the bid price of the nonresident business
2 when multiplied by a factor of .95.

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

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

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

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

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

11 H. When bids are received for both recycled content
12 goods and virgin content goods and the lowest responsible bid
13 is for virgin content goods, the contract 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 .90 is made lower than the otherwise low virgin
18 content goods bid price;

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

25 (b) the lowest bid price of the resident

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1 business when multiplied by a factor of .90 is made lower than
2 the otherwise low virgin content goods bid price; 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 the
8 preference allowed in Paragraph (1) or (2) of this subsection
9 can be made sufficiently low; and

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

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

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

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

25 (a) the bid price of no resident

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

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

8 J. 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 resident business,
11 the contract shall be awarded to a resident manufacturer
12 offering the lowest bid on recycled content goods of equal
13 quality if the bid price of the resident manufacturer when
14 multiplied by a factor of .95 is made lower than the otherwise
15 low recycled content goods bid price.

16 K. This section shall not apply when the
17 expenditure of federal funds designated for a specific purchase
18 is involved or for any bid price greater than five million
19 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 New
22 Mexico resident business that manufactures buses in New Mexico.
23 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

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1 procurement contracts in New Mexico without giving preference
2 to a business based on the location of the place of manufacture
3 of the buses;

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

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

13 M. The provisions of this section shall not apply
14 to:

15 (1) construction contracts, construction
16 services, construction maintenance contracts or construction
17 contracts based on unit pricing; or

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

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

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1 is made lower than the bid price of the otherwise low bidder
2 when multiplied by a factor of .90. When a resident bid
3 preference is combined with a small business bid preference,
4 the total maximum preference awarded may not exceed ten
5 percent.

6 O. When bids are received from a disadvantaged
7 small business and the lowest responsible bid is from a
8 nonresident business or a resident business that is not a
9 disadvantaged small business, the contract shall be awarded to
10 the 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 bid preference is combined with a disadvantaged
15 small business bid preference, the total maximum preference
16 awarded may not exceed fifteen percent.

17 P. When proposals that include prices are received
18 from a resident business, those prices shall be multiplied by
19 .95 prior to awarding evaluation points as outlined in the
20 request for proposals.

21 Q. When proposals that include prices are received
22 from a small business, those prices shall be multiplied by .90
23 prior to awarding evaluation points as outlined in the request
24 for proposals. When a resident bid preference is combined with
25 a small business bid preference, the total maximum preference

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1 awarded may not exceed ten percent.

2 R. When proposals that include prices are received
3 from a disadvantaged small business, those prices shall be
4 multiplied by .85 prior to awarding evaluation points as
5 outlined in the request for proposals. When a resident bid
6 preference is combined with a disadvantaged small business bid
7 preference, the total maximum preference awarded may not exceed
8 fifteen percent."

9 Section 2. Section 13-1-21.2 NMSA 1978 (being Laws 1997,
10 Chapter 1, Section 1 and Laws 1997, Chapter 2, Section 1) is
11 amended to read:

12 "13-1-21.2. EQUAL PROCUREMENT ACCESS FOR NEW YORK
13 ~~BUSINESSES.--[A. Certain recent amendments to the New York~~
14 ~~state procurement statutes have the effect of prohibiting New~~
15 ~~Mexico businesses from selling goods or providing services to~~
16 ~~New York state and local governments and quasi-governmental~~
17 ~~entities. This act eliminates all differential treatment of~~
18 ~~any kind between New York state business enterprises and New~~
19 ~~Mexico businesses in New Mexico procurement and thereby negates~~
20 ~~the application to New Mexico businesses of the New York~~
21 ~~amendments and protects the access of New Mexico businesses to~~
22 ~~the New York market.~~

23 ~~B.]~~ New York state business enterprises shall be
24 treated as New Mexico resident businesses or resident
25 ~~[manufactures]~~ manufacturers for all procurement purposes."

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1 Section 3. Section 13-1-22 NMSA 1978 (being Laws 1969,
2 Chapter 184, Section 1, as amended) is amended to read:

3 "13-1-22. RESIDENT BUSINESS AND MANUFACTURER
4 CERTIFICATION--APPLICATION--INFORMATION.--No resident business,
5 [~~or~~] resident manufacturer, small business or disadvantaged
6 small business, as those terms are defined in Subsection A of
7 Section 13-1-21 NMSA 1978, shall be given any preference in the
8 awarding of contracts for furnishing materials or services to a
9 state agency unless the resident business, [~~or~~] resident
10 manufacturer, [~~shall have~~] small business or disadvantaged
11 small business has qualified with the state purchasing agent as
12 a resident business, [~~or~~] resident manufacturer, small business
13 or [~~both~~] disadvantaged small business by making application to
14 the state purchasing agent and receiving from [~~him~~] the state
15 purchasing agent a certification number. The procedure for
16 application and certification shall be as follows:

17 A. the state purchasing agent shall prepare an
18 application form for certification as a resident business, [~~or~~]
19 small business, resident manufacturer or disadvantaged small
20 business, requesting such information and proof as [~~he deems~~]
21 deemed necessary to qualify the applicant under the terms of
22 Section 13-1-21 NMSA 1978;

23 B. the resident business, [~~or~~] resident
24 manufacturer, small business or disadvantaged small business
25 shall complete the application form and submit it to the state

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1 purchasing agent prior to the awarding of any contract in which
2 the resident business, [~~or~~] resident manufacturer, small
3 business or disadvantaged small business desires to be given a
4 preference; and

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