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SENATE BILL 698

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Richard C. Martinez

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 [~~5~~] (4) "recycled content goods" means
7 supplies 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 [~~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 (7) "small business" means a resident business

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1 as defined in Paragraph (5) of this subsection that employs
2 twenty or fewer employees; and

3 [~~(6)~~] (8) "virgin content goods" means
4 supplies and materials that are wholly composed of nonrecycled
5 materials or do not meet minimum recycled content standards
6 required by bid specification.

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

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

23 D. When bids are received only from resident
24 businesses and resident manufacturers and the lowest
25 responsible bid is from a resident business, the contract shall

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

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

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

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

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

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

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

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

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

20 (b) the lowest bid price of the resident
21 business when multiplied by a factor of .90 is made lower than
22 the otherwise low virgin content goods bid price; 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 content
10 goods and virgin content goods and the lowest responsible bid
11 is for recycled content goods offered by a nonresident business
12 or nonresident manufacturer, the contract shall be awarded to:

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

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

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

24 (b) the lowest bid price of the resident
25 business when multiplied by a factor of .95 is made lower than

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1 the otherwise low recycled content goods bid price offered by a
2 nonresident business or manufacturer.

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

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

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

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

24 (2) give resident manufacturers and New Mexico
25 resident businesses that manufacture buses an equal opportunity

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1 to sell their buses in states that have reciprocal preference
2 laws; and

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

8 M. The provisions of this section shall not apply
9 to:

10 (1) construction contracts, construction
11 services, construction maintenance contracts or construction
12 contracts based on unit pricing; or

13 (2) construction materials to be used in any
14 contract or service specified in Paragraph (1) of this
15 subsection.

16 N. When bids are received from a small business and
17 the lowest responsible bid is from a nonresident business or a
18 resident business that is not a small business, the contract
19 shall be awarded to the small business whose bid is nearest to
20 the otherwise low bidder if the bid price of the small business
21 is made lower than the bid price of the otherwise low bidder
22 when multiplied by a factor of .90. When a resident bid
23 preference is combined with a small business bid preference,
24 the total maximum preference awarded may not exceed ten
25 percent.

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1 O. When bids are received from a disadvantaged
2 small business and the lowest responsible bid is from a
3 nonresident business or a resident business that is not a
4 disadvantaged small business, the contract shall be awarded to
5 the disadvantaged small business whose bid is nearest to the
6 otherwise low bidder if the bid price of the disadvantaged
7 small business is made lower than the bid price of the
8 otherwise low bidder when multiplied by a factor of .85. When
9 a resident bid preference is combined with a disadvantaged
10 small business bid preference, the total maximum preference
11 awarded may not exceed fifteen percent.

12 P. When proposals that include prices are received
13 from a resident business, those prices shall be multiplied by
14 .95 prior to awarding evaluation points as outlined in the
15 request for proposals.

16 Q. When proposals that include prices are received
17 from a small business, those prices shall be multiplied by .90
18 prior to awarding evaluation points as outlined in the request
19 for proposals. When a resident bid preference is combined with
20 a small business bid preference, the total maximum preference
21 awarded may not exceed ten percent.

22 R. When proposals that include prices are received
23 from a disadvantaged small business, those prices shall be
24 multiplied by .85 prior to awarding evaluation points as
25 outlined in the request for proposals. When a resident bid

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1 preference is combined with a disadvantaged small business bid
2 preference, the total maximum preference awarded may not exceed
3 fifteen percent."

4 Section 2. Section 13-1-21.2 NMSA 1978 (being Laws 1997,
5 Chapter 1, Section 1 and Laws 1997, Chapter 2, Section 1) is
6 amended to read:

7 "13-1-21.2. EQUAL PROCUREMENT ACCESS FOR NEW YORK
8 BUSINESSES.-- [A. ~~Certain recent amendments to the New York~~
9 ~~state procurement statutes have the effect of prohibiting New~~
10 ~~Mexico businesses from selling goods or providing services to~~
11 ~~New York state and local governments and quasi-governmental~~
12 ~~entities. This act eliminates all differential treatment of~~
13 ~~any kind between New York state business enterprises and New~~
14 ~~Mexico businesses in New Mexico procurement and thereby negates~~
15 ~~the application to New Mexico businesses of the New York~~
16 ~~amendments and protects the access of New Mexico businesses to~~
17 ~~the New York market.~~

18 B.] New York state business enterprises shall be
19 treated as New Mexico resident businesses or resident
20 [manufactures] manufacturers for all procurement purposes."

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

23 "13-1-22. RESIDENT BUSINESS AND MANUFACTURER
24 CERTIFICATION--APPLICATION--INFORMATION.--No resident business,
25 [or] resident manufacturer, small business or disadvantaged

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1 small business, as those terms are defined in Subsection A of
2 Section 13-1-21 NMSA 1978, shall be given any preference in the
3 awarding of contracts for furnishing materials or services to a
4 state agency unless the resident business, [~~or~~] resident
5 manufacturer, [~~shall have~~] small business or disadvantaged
6 small business has qualified with the state purchasing agent as
7 a resident business, [~~or~~] resident manufacturer, small business
8 or [~~both~~] disadvantaged small business by making application to
9 the state purchasing agent and receiving from [~~him~~] the state
10 purchasing agent a certification number. The procedure for
11 application and certification shall be as follows:

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

18 B. the resident business, [~~or~~] resident
19 manufacturer, small business or disadvantaged small business
20 shall complete the application form and submit it to the state
21 purchasing agent prior to the awarding of any contract in which
22 the resident business, [~~or~~] resident manufacturer, small
23 business or disadvantaged small business desires to be given a
24 preference; and

25 C. the state purchasing agent shall examine the

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

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