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HOUSE BILL 453

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Nathan P. Cote

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; PROTECTING CERTAIN NEW MEXICO
SMALL BUSINESSES; AMENDING THE PROCUREMENT CODE TO PROVIDE FOR
PREFERENCES FOR DISABLED VETERAN-OWNED BUSINESSES; ENACTING A
NEW SECTION OF THE PROCUREMENT CODE TO PROVIDE FOR SEPARATE
PRICING OF CERTAIN COMPONENTS IN CERTAIN CIRCUMSTANCES.

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

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1 (2) "disabled veteran-owned business" means a
2 resident business, at least fifty-one percent of which is owned
3 by a United States military veteran who was not dishonorably
4 discharged or by a certified disabled veteran;

5 (3) "New Mexico resident business" means a
6 business that is authorized to do and is doing business under
7 the laws of this state and:

8 (a) that maintains its principal place
9 of business in the state;

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

14 (c) is an affiliate of a business that
15 meets the requirements of Subparagraph (a) or (b) of this
16 paragraph. As used in this section, "affiliate" means an
17 entity that directly or indirectly through one or more
18 intermediaries controls, is controlled by or is under common
19 control with the qualifying business through ownership of
20 voting securities representing a majority of the total voting
21 power of the entity;

22 [+3+] (4) "New York state business enterprise"
23 means a business enterprise, including a sole proprietorship,
24 partnership or corporation, that offers for sale or lease or
25 other form of exchange, goods or commodities that are

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1 substantially manufactured, produced or assembled in New York
2 state, or services, other than construction services, that are
3 substantially performed within New York state. For purposes of
4 construction services, a New York state business enterprise
5 means a business enterprise, including a sole proprietorship,
6 partnership or corporation, that has its principal place of
7 business in New York state;

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

13 (6) "resident business" means a New Mexico
14 resident business or a New York state business enterprise;

15 ~~[(4)]~~ (7) "resident manufacturer" means a
16 person who offers materials grown, produced, processed or
17 manufactured wholly in the state; provided, however, that a New
18 York state business enterprise shall be deemed to be a resident
19 manufacturer solely for the purpose of evaluating the New York
20 state business enterprise's bid against the bid of a resident
21 manufacturer that is not a New York state business enterprise;
22 and

23 ~~[(5) "recycled content goods" means supplies~~
24 ~~and materials composed in whole or in part of recycled~~
25 ~~materials; provided that the recycled materials content meets~~

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1 ~~or exceeds the minimum content standards required by bid~~
2 ~~specifications; and~~

3 ~~(6)]~~ (8) "virgin content goods" means supplies
4 and materials that are wholly composed of nonrecycled materials
5 or do not meet minimum recycled content standards required by
6 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 disabled veteran-
17 owned business and the lowest responsible bid is from a
18 nonresident business or a resident business that is not a
19 disabled veteran-owned business, the contract shall be awarded
20 to the disabled veteran-owned business whose bid is nearest to
21 the otherwise low bidder if the bid price of the disabled
22 veteran-owned business is made lower than the bid price of the
23 otherwise low bidder when multiplied by a factor of .85. When
24 a resident bid preference is combined with a disabled veteran-
25 owned business bid preference, the total maximum preference

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1 awarded may not exceed fifteen percent.

2 O. When proposals that include prices are received
3 from a resident business, those prices shall be multiplied by
4 .95 prior to awarding evaluation points as outlined in the
5 request for proposals.

6 P. When proposals that include prices are received
7 from a disabled veteran-owned business, those prices shall be
8 multiplied by .85 prior to awarding evaluation points as
9 outlined in the request for proposals. When a resident bid
10 preference is combined with a disabled veteran-owned business
11 bid preference, the total maximum preference awarded may not
12 exceed fifteen percent."

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

15 "13-1-22. RESIDENT BUSINESS AND MANUFACTURER
16 CERTIFICATION--APPLICATION--INFORMATION.--[Nø] A resident
17 business, [øƣ] resident manufacturer or disabled veteran-owned
18 business, as those terms are defined in Subsection A of Section
19 13-1-21 NMSA 1978, shall not be given any preference in the
20 awarding of contracts for furnishing materials or services to a
21 state agency unless the resident business, [øƣ] resident
22 manufacturer [~~shall have~~] or disabled veteran-owned business
23 has qualified with the state purchasing agent as a resident
24 business, [øƣ] resident manufacturer or [~~both~~] disabled
25 veteran-owned business by making application to the state

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1 purchasing agent and receiving [~~from him~~] a certification
2 number. The procedure for application and certification shall
3 be as follows:

4 A. the state purchasing agent shall prepare an
5 application form for certification as a resident business, [~~or~~]
6 resident manufacturer or disabled veteran-owned business
7 requesting such information and proof as [~~he deems~~] necessary
8 to qualify the applicant under the terms of Section 13-1-21
9 NMSA 1978;

10 B. the resident business, [~~or~~] resident
11 manufacturer or disabled veteran-owned business shall complete
12 the application form and submit it to the state purchasing
13 agent prior to the awarding of any contract in which the
14 resident business, [~~or~~] resident manufacturer or disabled
15 veteran-owned business desires to be given a preference; and

16 C. the state purchasing agent shall examine the
17 application and if necessary may seek additional information or
18 proof [~~to assure himself~~] that the prospective resident
19 business, [~~or~~] resident manufacturer or disabled veteran-owned
20 business is [~~indeed~~] entitled to the statutory preference. If
21 all is in order, [~~he~~] the state purchasing agent shall issue
22 the [~~supplier~~] resident business, resident manufacturer or
23 disabled veteran-owned business a distinctive certification
24 number [~~which~~] that shall be valid until revoked and, [~~which~~]
25 when used on bids and other purchasing documents, shall entitle

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1 the resident business, [~~or~~] resident manufacturer or disabled
2 veteran-owned business to the statutory preference."

3 Section 3. A new section of the Procurement Code is
4 enacted to read:

5 "[NEW MATERIAL] SEPARATE PRICING OF CERTAIN COMPONENTS.--
6 Prior to submitting a bid or proposal for a state public works
7 project or a local public works project, if the state
8 purchasing agent, the central purchasing office, a bidder or an
9 offeror determines that there is only one source for a specific
10 service, construction or item of tangible personal property
11 that is required in the specifications, then the state
12 purchasing agent, central purchasing office, responsible bidder
13 or offeror may require a subcontractor or supplier to submit,
14 on the bid that the subcontractor or supplier submits, a
15 separate price for the specific service, construction or item
16 of tangible personal property."

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