

STATE OF NEW MEXICO
McKINLEY COUNTY
BOARD OF COUNTY COMMISSIONERS
ORDINANCE No. JAN-14-002 AMENDED

An Ordinance Establishing a Three and One-Half Percent McKinley County Procurement Preference; Requiring a McKinley County Preference Certificate to Establish Eligibility for the Preference; Establishing Application Requirements; Providing for Protest of Denial of Certificates; Establishing Penalties.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONER OF MCKINLEY COUNTY THAT:

SECTION 1: Short Title. This Ordinance may be cited as the "McKinley County Procurement Preferences Ordinance," or the "Procurement Preference."

SECTION 2: Applicability. This Ordinance shall apply to procurement by McKinley County under State law and the County's Procurement Policy. This Ordinance shall not apply to a procurement by McKinley County that is governed, pursuant to a grant agreement, by the federal acquisition regulations, 48, CFR Part I *et seq.*

SECTION 3. Definitions.

- A. The phrase "McKinley County Business" shall mean a business that has its primary and permanent office or business location or primarily conducts its business within the statutory boundaries of McKinley County for at least one (1) year preceding the submission of an application for a McKinley County procurement preference, and which, if a foreign corporation, has filed a unitary return pursuant to the Corporate Income and Franchise Tax Act and NMSA 1978, Section 7-2A-8.3 at the time of application for a preference certificate pursuant to this Ordinance.
- B. The phrase "McKinley County Preference Certificate" or "Preference Certificate" shall refer to the certificate authorized pursuant to Section 5 of this Ordinance.
- C. The phrase "McKinley County Procurement Manager" or "Procurement Manager" shall mean the person appointed to serve as the County's Procurement Manager pursuant to the McKinley County designation under NMSA

SECTION 4. McKinley County Procurement Preference Established.

- A. A McKinley County procurement preference is hereby established, as described in this Ordinance.
- B. When McKinley County procures services, construction or items of tangible personal property pursuant to NMSA 1978, Section 13-1-102 (2007) a bid submitted by a McKinley County Business shall be deemed to be three and one-half percent (3.5%) lower than the bid actually submitted.

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- C. When McKinley County procures services using competitive sealed proposals pursuant to NMSA 1978, Section 13-1-111 (2007), an offer submitted by a McKinley County Business shall be deemed to receive three and one-half percent (3.5%) of the overall total points awarded in connection with the evaluation of the proposals.
- D. In applying the preference provided in this Ordinance, the McKinley County Procurement Preference shall be applied in addition to any other preference required by Law.

SECTION 5. Eligibility of the McKinley County Procurement Preference. A McKinley County Business shall be eligible to claim the preference established in this Ordinance only when presenting, prior to or at the time established in the solicitation for receipt of proposals or invitation for bids, a McKinley County Preference Certificate issued by the Procurement Manager.

SECTION 6. Obtaining a Preference Certificate; Application Required.

- A. A McKinley County Business may obtain a Preference Certificate by filing an application with the Procurement Manager.
- B. The application shall be completed on a form provided by the Procurement Manager that contains a sworn affidavit from the president or an owner of the business setting forth each of the following:
 - 1. The name, address, telephone number and name of the business and its registered agent (if applicable);
 - 11. If a corporation, information that the corporation is registered to do business in the State of New Mexico and is in good standing;
 - 111. If the business is a foreign corporation, information that the business is registered to do business in the State of New Mexico and is in good standing;
 - 1v. A copy of a valid business registration to do business in McKinley County (if such a business registration is issued by McKinley County at the time of application) or a copy of the appropriate municipal business license, if located within a municipality within McKinley County (if such a business license is issued by the municipality at the time of application).
 - v. A statement that the business has maintained its primary and permanent office or business location or primarily conducts its business within the statutory boundaries of McKinley County for at least one (1) year preceding the submission of the application;
 - vi. A copy of the business's Gross Receipts Tax return for the one (1) year preceding the submission of the application (income amounts and taxes paid may be redacted); and
 - vu. If a foreign corporation, copies of the most recent State and federal tax returns applicable to the business.

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- C. The Procurement Manager shall issue a Preference Certificate if the application demonstrates, to the satisfaction of the Procurement Manager, that the business holds a current County Business registration, if available, or municipal business license, if available, at the time of application for a preference certificate pursuant to this Ordinance; that the business has its primary and permanent office or business location or primarily conducts its business within the statutory boundaries of McKinley County for at least one (1) consecutive year preceding the submission of the application; and if a foreign corporation, has filed a unitary return pursuant to the Corporate Income and Franchise Tax Act and NMSA 1978, Section 7-2A-8.3.

SECTION 7. Denial of Certificate; Protest; Revocation.

- A. If the Purchasing Manager determines that an applicant is not eligible for certification, the Purchasing Manager shall deny the application and shall issue of a notice of denial.
- B. A business whose application for a Preference Certificate is denied may protest the denial to the Procurement Manager in conformity with the protest procedure of the McKinley County Purchasing Policy.
- C. If facts are developed by the Procurement Manager that information provided by an application seeking a Preference Certificate has provided inaccurate or misleading information that resulted in the issuance of a certificate, the Procurement Manager shall revoke the certificate and notify the applicant.

SECTION 8. Expiration of Certificate. A Preference Certificate shall be valid for four (4) years from the date of its issues or once the applicant no longer meets the criteria detailed in this Ordinance.

SECTION 9. Penalties. Knowingly providing false or misleading information on an application for a Procurement Preference shall constitute a violation of this Ordinance and shall be punished as set forth in NMSA 1978 , Section 4-37-3 (1993); knowingly providing false or misleading information on an application for a Procurement Preference may also expose the person providing such information to additional criminal penalties as provided by State Law.

SECTION 10. Severability. If any article, section, subsection, paragraph, sentence, clause, phrase, provision or portion of any article, section, subsection, paragraph, sentence, clause, phrase or provision in this Ordinance is, for any reason, held to be unconstitutional, invalid or void, the remaining portion shall not be affected since it is the express intention of the McKinley County Board of County Commissioners to pass such article, section, subsection, paragraph, sentence, clause, phrase or provision and every part thereof separately and independently from every other part.

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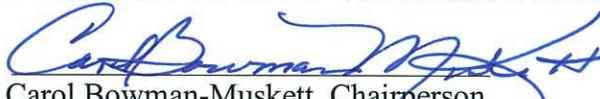
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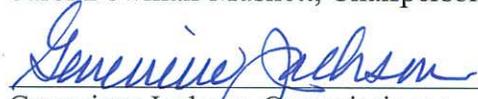


SECTION 11. History and Repealer. This Ordinance No. JAN-14-002 AMENDED shall operate to amend and replace Ordinance No. JAN-14-002 adopted on the 18th day of February, 2014, and recorded with the County Clerk February 18th, 2014 as Document No. 366529. This Ordinance was inadvertently recorded by the County Clerk as Document No. 368873 after the first reading of the Ordinance at the Commission meeting of September 30, 2014.

APPROVED, ADOPTED, AND PASSED on this 21 day of October, 2014

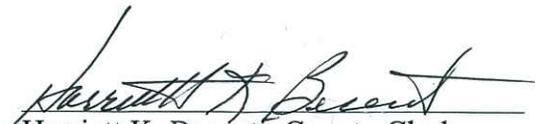
BOARD OF COUNTY COMMISSIONERS


Carol Bowman-Muskett, Chairperson


Genevieve Jackson, Commissioner


Anthony Tanner, Commissioner

ATTEST:


Harriett K. Becenti, County Clerk

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