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**HOUSE BILL 89**

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

**INTRODUCED BY**

**Luciano "Lucky" Varela**

**FOR THE LEGISLATIVE FINANCE COMMITTEE**

**AN ACT**

**RELATING TO PUBLIC WORKS; AMENDING THE DEFINITION OF RESIDENT CONTRACTOR.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

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

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

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

**B. "New Mexico resident contractor" means any person, firm, corporation or other legal entity if, at the time the contract is advertised for bids and at the time bids**

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1 are opened, it has all required licenses and meets the  
2 following requirements:

3 (1) if the bidder is a corporation, it shall  
4 be incorporated in New Mexico and maintain its principal  
5 office and place of business in New Mexico [~~and a majority of~~  
6 ~~its outstanding shares shall be beneficially owned by one or~~  
7 ~~more individual citizens who are domiciled in the state~~];

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

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

23 (4) if a bidder who is a telecommunications  
24 company as defined by Subsection M of Section 63-9A-3 NMSA  
25 1978 or an affiliate of a telecommunications company has paid

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1 unemployment compensation to the employment security division  
2 of the labor department at the applicable experience rate for  
3 that employer pursuant to the Unemployment Compensation Law on  
4 no fewer than ten employees who have performed services  
5 subject to contributions for the two-year period prior to  
6 issuance of notice to bid, the bidder will be considered to  
7 have fulfilled the requirements of Paragraph (1), (2) or (3)  
8 of this subsection. A successor to a previously qualified New  
9 Mexico contractor or resident contractor, where the creation  
10 of the bidder resulted from a court order, is entitled to  
11 credit for qualifying contributions paid by the previously  
12 qualified New Mexico contractor or resident contractor.

13 C. "New York state business enterprise" means a  
14 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 D. For purposes of this section, [~~(1)~~] "affiliate"  
25 means an entity that directly or indirectly through one or

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1 more intermediaries controls, is controlled by or is under  
2 common control with a telecommunications company through  
3 ownership of voting securities representing a majority of the  
4 total voting power of that entity [and

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

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

19 F. No contractor shall be treated as a resident  
20 contractor in the awarding of public works contracts by a  
21 state agency or a local public body unless the contractor has  
22 qualified with the state purchasing agent as a resident  
23 contractor pursuant to this section by making application to  
24 the state purchasing agent and receiving from him a  
25 certification number. The procedure for application and

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1 certification is as follows:

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

6 (2) the contractor seeking to qualify as a  
7 resident contractor shall complete the application form and  
8 submit it to the state purchasing agent prior to the  
9 submission of a bid on which the contractor desires to be  
10 given a preference;

11 (3) the state purchasing agent shall examine  
12 the application and if necessary may seek additional  
13 information or proof so as to be assured that the prospective  
14 contractor is indeed entitled to certification as a resident  
15 contractor. If the application is in proper form, the state  
16 purchasing agent shall issue the contractor a distinctive  
17 certification number which is valid until revoked and which,  
18 when used on bids and other purchasing documents for state  
19 agencies or local public bodies, entitles the contractor to  
20 treatment as a resident contractor under Subsection E of this  
21 section; and

22 (4) the certification number issued pursuant to  
23 Paragraph (3) of this subsection shall be revoked by the state  
24 purchasing agent upon making a determination that the  
25 contractor no longer meets the requirements of a resident

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contractor as defined in this section. "