

AN ACT

RELATING TO PUBLIC WORKS CONTRACTS; REVISING THE DEFINITION OF NEW MEXICO RESIDENT CONTRACTOR; AMENDING A SECTION OF THE NMSA 1978.

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 are opened, it has all required licenses and meets one of the following requirements:

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

(2) if the bidder is a partnership, general

or limited, or other legal entity, it shall maintain its principal office and place of business in New Mexico, and the partners or associates owning a majority beneficial interest shall be domiciled in the state. If one or more partners or associates are corporations, a majority of the outstanding shares of each corporation shall be beneficially owned by individual citizens who are domiciled in the state. If the entity is a trust, a majority of the beneficial interest of the trust shall be owned by individual citizens who are domiciled in the state;

(3) if the bidder is an individual, he shall maintain his principal office and place of business in New Mexico, and the individual shall be a citizen of and domiciled in the state;

(4) if the bidder is a telecommunications company as defined by Subsection M of Section 63-9A-3 NMSA 1978 or an affiliate of a telecommunications company that has paid unemployment compensation to the employment security division of the labor department at the applicable experience rate for that employer pursuant to the Unemployment Compensation Law on no fewer than ten employees who have performed services subject to contributions for the two-year period prior to issuance of notice to bid, the bidder will be considered to have fulfilled the requirements of Paragraph (1), (2) or (3) of this subsection. A successor to a

previously qualified New Mexico contractor or resident contractor, where the creation of the bidder resulted from a court order, is entitled to credit for qualifying contributions paid by the previously qualified New Mexico contractor or resident contractor; or

(5) if the bidder is submitting a bid for any state or local highway, bridge, flood control or road improvement project, is a business that is authorized to do business under New Mexico law, has staffed an office in New Mexico has paid applicable state taxes for two years prior to the awarding of the bid and has five or more employees who are residents of the state;

C. "New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state. For purposes of construction services, a New York state business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation, that has its principal place of business in New York state.

D. For purposes of this section:

(1) "affiliate" means an entity that

directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a qualifying business or with a telecommunications company through ownership of voting securities representing a majority of the total voting power of that entity; and

(2) "beneficially owned" or "beneficial interest" means exercising actual management and control of all operations, including financial decisions, financial liability, labor relations, supervision of field operations, purchases of goods, supplies and services, marketing and sales.

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

F. No contractor shall be treated as a resident contractor in the awarding of public works contracts by a state agency or a local public body unless the contractor has qualified with the state purchasing agent as a resident contractor pursuant to this section by making application to the state purchasing agent and receiving from him a

certification number. The procedure for application and certification is as follows:

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

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

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

(4) the certification number issued pursuant to Paragraph (3) of this subsection shall be revoked by the

