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HOUSE BILL 507

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

J. "Andy" Kissner

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

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1 time the contract is advertised for bids and at the time bids
2 are opened, it has all required licenses and meets the
3 following requirements:

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

10 (2) if the bidder ~~[is a partnership, general~~
11 ~~or limited, or other legal entity, it shall maintain its~~
12 ~~principal office and place of business in New Mexico, and the~~
13 ~~partners or associates owning a majority beneficial interest~~
14 ~~shall be domiciled in the state. If one or more partners or~~
15 ~~associates are corporations, a majority of the outstanding~~
16 ~~shares of each corporation shall be beneficially owned by~~
17 ~~individual citizens who are domiciled in the state. If the~~
18 ~~entity is a trust, a majority of the beneficial interest of~~
19 ~~the trust shall be owned by individual citizens who are~~
20 ~~domiciled in the state]~~ has staffed an office and has paid
21 applicable state taxes for two years prior to the awarding of
22 the bid and has five or more employees who are residents of
23 the state;

24 (3) if the bidder is an ~~[individual, he shall~~
25 ~~maintain his principal office and place of business in~~

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1 ~~New Mexico, and the individual shall be a citizen of and~~
2 ~~domiciled in the state]~~ affiliate of a business that meets the
3 requirements of Paragraph (1) or (2) of this subsection; or

4 (4) if [~~a bidder who~~] the bidder is a
5 telecommunications company as defined by Subsection M of
6 Section 63-9A-3 NMSA 1978 or an affiliate of a
7 telecommunications company that has paid unemployment
8 compensation to the employment security division of the labor
9 department at the applicable experience rate for that employer
10 pursuant to the Unemployment Compensation Law on no fewer than
11 ten employees who have performed services subject to
12 contributions for the two-year period prior to issuance of
13 notice to bid, the bidder will be considered to have fulfilled
14 the requirements of Paragraph (1), (2) or (3) of this
15 subsection. A successor to a previously qualified New Mexico
16 contractor or resident contractor, where the creation of the
17 bidder resulted from a court order, is entitled to credit for
18 qualifying contributions paid by the previously qualified New
19 Mexico contractor or resident contractor.

20 C. "New York state business enterprise" means a
21 business enterprise, including a sole proprietorship,
22 partnership or corporation, that offers for sale or lease or
23 other form of exchange, goods or commodities that are
24 substantially manufactured, produced or assembled in New York
25 state, or services, other than construction services, that are

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1 substantially performed within New York state. For purposes
2 of construction services, a New York state business enterprise
3 means a business enterprise, including a sole proprietorship,
4 partnership or corporation, that has its principal place of
5 business in New York state.

6 D. For purposes of this section:

7 (1) "affiliate" means an entity that directly
8 or indirectly through one or more intermediaries controls, is
9 controlled by or is under common control with a qualifying
10 business or with a telecommunications company through
11 ownership of voting securities representing a majority of the
12 total voting power of that entity; and

13 (2) "beneficially owned" or "beneficial
14 interest" means exercising actual management and control of
15 all operations, including [~~but not limited~~] to financial
16 decisions, financial liability, labor relations, supervision
17 of field operations, purchases of goods, supplies and
18 services, marketing and sales.

19 E. When bids are received only from nonresident
20 contractors and resident contractors and the lowest
21 responsible bid is from a nonresident contractor, the contract
22 shall be awarded to the resident contractor whose bid is
23 nearest to the bid price of the otherwise low nonresident
24 contractor if the bid price of the resident contractor is made
25 lower than the bid price of the nonresident contractor when

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1 multiplied by a factor of .95.

2 F. No contractor shall be treated as a resident
3 contractor in the awarding of public works contracts by a
4 state agency or a local public body unless the contractor has
5 qualified with the state purchasing agent as a resident
6 contractor pursuant to this section by making application to
7 the state purchasing agent and receiving from him a
8 certification number. The procedure for application and
9 certification is as follows:

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

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

19 (3) the state purchasing agent shall examine
20 the application and if necessary may seek additional
21 information or proof so as to be assured that the prospective
22 contractor is indeed entitled to certification as a resident
23 contractor. If the application is in proper form, the state
24 purchasing agent shall issue the contractor a distinctive
25 certification number which is valid until revoked and which,

1 when used on bids and other purchasing documents for state
2 agencies or local public bodies, entitles the contractor to
3 treatment as a resident contractor under Subsection E of this
4 section; and

5 (4) the certification number issued pursuant to
6 Paragraph (3) of this subsection shall be revoked by the state
7 purchasing agent upon making a determination that the
8 contractor no longer meets the requirements of a resident
9 contractor as defined in this section. "

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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5
6 February 25, 1999

7
8 Mr. Speaker:

9
10 Your TRANSPORTATION COMMITTEE, to whom has been
11 referred

12
13 HOUSE BILL 507

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15 has had it under consideration and reports same with
16 recommendation that it DO NOT PASS, but that

17 HOUSE TRANSPORTATION COMMITTEE SUBSTITUTE FOR HOUSE
18 BILL 507

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20 DO PASS.
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3CSHB 507

Page 8

5 Respectfully submitted,

11 _____
12 Daniel P. Silva, Chairman

14 Adopted _____ Not Adopted _____

15 (Chief Clerk)

16 (Chief Clerk)

17 Date _____

19 The roll call vote was 10 For 0 Against

20 Yes: 10

21 Excused: Chavez, Godbey, Whittaker

22 Absent: None

24 J:\99BillsWP\H0507

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1 HOUSE BILL 507
2 44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

3 HOUSE TRANSPORTATION COMMITTEE SUBSTITUTE FOR
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8 AN ACT

9 RELATING TO PUBLIC WORKS CONTRACTS; REVISING THE DEFINITION OF
10 NEW MEXICO RESIDENT CONTRACTOR; AMENDING A SECTION OF THE NMSA
11 1978.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "13-4-2. RESIDENT CONTRACTOR DEFINED--APPLICATION OF
19 PREFERENCE. --

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

22 B. "New Mexico resident contractor" means any person,
23 firm, corporation or other legal entity if, at the time the
24 contract is advertised for bids and at the time bids are opened,
25 it has all required licenses and meets the following
requirements:

- (1) if the bidder is a corporation, it shall be

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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; [or]

(4) if ~~[a bidder who]~~ 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-

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3 year period prior to issuance of notice to bid, the bidder will
4 be considered to have fulfilled the requirements of Paragraph
5 (1), (2) or (3) of this subsection. A successor to a previously
6 qualified New Mexico contractor or resident contractor, where
7 the creation of the bidder resulted from a court order, is
8 entitled to credit for qualifying contributions paid by the
9 previously qualified New Mexico contractor or resident
10 contractor; or

11 (5) if the bidder is a highway contractor, it has
12 staffed an office and has paid applicable state taxes for two
13 years prior to the awarding of the bid and has five or more
14 employees who are residents of the state;

15 C. "New York state business enterprise" means a
16 business enterprise, including a sole proprietorship,
17 partnership or corporation, that offers for sale or lease or
18 other form of exchange, goods or commodities that are
19 substantially manufactured, produced or assembled in New York
20 state, or services, other than construction services, that are
21 substantially performed within New York state. For purposes of
22 construction services, a New York state business enterprise
23 means a business enterprise, including a sole proprietorship,
24 partnership or corporation, that has its principal place of
25 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

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3 controlled by or is under common control with a qualifying
4 business or with a telecommunications company through ownership
5 of voting securities representing a majority of the total voting
6 power of that entity; and

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

12 E. When bids are received only from nonresident
13 contractors and resident contractors and the lowest responsible
14 bid is from a nonresident contractor, the contract shall be
15 awarded to the resident contractor whose bid is nearest to the
16 bid price of the otherwise low nonresident contractor if the bid
17 price of the resident contractor is made lower than the bid
18 price of the nonresident contractor when 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 state
21 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 the
24 state purchasing agent and receiving from him a certification
25 number. The procedure for application and certification is as
follows:

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(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 state purchasing agent upon making a determination that the contractor no longer meets the requirements of a resident contractor as defined in this section. "

1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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5 March 9, 1999
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7 Mr. Speaker:
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9 Your BUSINESS AND INDUSTRY COMMITTEE, to whom
10 has been referred

11 HOUSE TRANSPORTATION COMMITTEE SUBSTITUTE FOR
12 HOUSE BILL 507
13

14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:
16

17 1. On page 2, line 2, after "meets" insert "one of".

18 2. On page 3, line 15, strike "a highway contractor" and
19 insert in lieu thereof:
20

21 "submitting a bid for any state or local highway, bridge,
22 flood control or road improvement project".
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HBIC/HTCS/HB 507

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Respectfully submitted,

Fred Luna, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HBIC/HTCS/HB 507

Page 16

1 The roll call vote was 10 For 0 Against
2 Yes: 10
3 Excused: None
4 Absent: Mohorovi c, T. Taylor

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1 FORTY- FOURTH LEGI SLATURE
2 FIRST SESSI ON, 1999

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4 March 15, 1999

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6 Mr. Presi dent:

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8 Your CORPORATIONS & TRANSPORTATION COMMI TTEE, to
9 whom has been referred

10 HOUSE TRANSPORTATION COMMI TTEE SUBSTITUTE FOR
11 HOUSE BILL 507, as amended

12
13 has had it under consideration and reports same with
14 recommendat ion that it DO PASS.

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16 Respectfully submi tted,

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21 Roman M. Maes, Chai rman

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24 Adopted _____ Not

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HTC/HB 507

1 Adopted _____

2 (Chief Clerk)

(Chief Clerk)

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Date _____

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8 The roll call vote was 4 For 3 Against

9 Yes: 4

10 No: Kysar, Macias, McKibben

11 Excused: Aragon, Fidel, Robinson

12 Absent: None

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