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HOUSE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC PURCHASING; ENACTING THE HISTORICALLY UNDERUTILIZED BUSINESS OPPORTUNITY ACT; PROVIDING ADDITIONAL DUTIES FOR STATE AGENCIES; ENCOURAGING STATE AGENCIES TO USE HISTORICALLY UNDERUTILIZED BUSINESSES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Historically Underutilized Business Opportunity Act".

SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the Historically Underutilized Business Opportunity Act is to stimulate economic development and job creation by promoting full and equal business opportunities for all businesses by encouraging and setting goals for the use of historically underutilized businesses by state agencies in all public

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1 purchasing decisions and collecting data on the usage of
2 historically underutilized businesses by state agencies. The
3 Historically Underutilized Business Opportunity Act does not
4 inhibit or prevent purchases of goods and services from
5 businesses that are otherwise qualified to provide such goods
6 and services.

7 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
8 Historically Underutilized Business Opportunity Act:

9 A. "facilitating nonprofit agency" means a
10 nonprofit agency that is organized to promote and enhance
11 economic development opportunities; that can also provide
12 business and workforce education with expertise in assisting
13 historically underutilized businesses; and that is approved by
14 the general services department to assist applicants in
15 applying for certification as a historically underutilized
16 business;

17 B. "historically underutilized business" means a
18 legally recognized for-profit business organization,
19 corporation, sole proprietorship, partnership or joint venture
20 that has applied for and received a valid historically
21 underutilized business certificate issued by the taxation and
22 revenue department certifying that:

23 (1) it has an average gross revenue for the
24 preceding three calendar years that does not exceed five
25 million dollars (\$5,000,000) or an average number of New Mexico

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1 resident employees for the preceding three calendar years that
2 does not exceed fifty;

3 (2) it is a "resident business" as certified
4 by the taxation and revenue department pursuant to Section
5 13-1-22 NMSA 1978; and

6 (3) as certified by the taxation and revenue
7 department, more than fifty percent of the business is owned by
8 women or persons who are members of one or more of the
9 following minorities: African American, Latino or Hispanic,
10 Asian, Pacific Islander, Native American or Alaska Native; and

11 C. "state agency" means any department, commission,
12 council, board, committee, institution, agency, government
13 corporation or educational institution, including any office or
14 officer of the above, that procures, purchases, rents, leases
15 or otherwise acquires items of tangible personal property,
16 services or construction, but does not include the legislative
17 or judicial branch or local public bodies.

18 SECTION 4. [NEW MATERIAL] DUTIES OF TAXATION AND REVENUE
19 DEPARTMENT AND GENERAL SERVICES DEPARTMENT.--

20 A. The taxation and revenue department shall
21 establish the procedures for the certification of applicants
22 for historically underutilized business status.

23 B. The general services department shall develop an
24 online, searchable database of businesses certified as
25 historically underutilized businesses and establish procedures

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1 to allow nonprofit entities to be qualified as facilitating
2 nonprofit entities to assist in the:

3 (1) identification of qualified applicants for
4 certification;

5 (2) precertification screening of eligibility;

6 (3) appeal of a denial of certification;

7 (4) revocation of a certification; and

8 (5) recertification.

9 C. The general services department shall develop
10 training sessions and seminars or use other suitable means for
11 informing historically underutilized businesses of
12 opportunities and procedures for doing business with state
13 agencies.

14 D. State agencies shall develop procedures, as
15 approved by the general services department, for the
16 utilization of historically underutilized businesses.

17 E. In accordance with rules promulgated by the
18 general services department, each state agency shall prepare
19 and submit to the general services department a report for each
20 fiscal year that includes:

21 (1) the total dollar amount of payments made
22 by state agencies for the purchase of goods and services;

23 (2) the total dollar amount of payments made
24 directly to historically underutilized businesses or indirectly
25 through subcontracts for the purchase of goods and services

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1 directly;

2 (3) the total number of contracts awarded by
3 the state agency and the total number of contracts and
4 procurements awarded directly to historically underutilized
5 businesses or indirectly through subcontracts; and

6 (4) the total number of bids from historically
7 underutilized businesses received by the state agency.

8 F. The general services department shall prepare an
9 annual consolidated report based on the information submitted
10 by the state agencies. The general services department shall
11 make the report available by:

12 (1) posting the report to the website of the
13 general services department and the sunshine portal; and

14 (2) providing a copy of the report to the
15 legislative finance committee.

16 SECTION 5. [NEW MATERIAL] DUTIES OF STATE AGENCIES.--Each
17 state agency:

18 A. shall establish agency-specific goals for the
19 use of historically underutilized businesses by July 1, 2022.
20 Agency-specific goals shall be based on:

21 (1) the state agency's fiscal year
22 expenditures and total contract expenditures;

23 (2) the availability of historically
24 underutilized businesses;

25 (3) the state agency's historic utilization of

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1 historically underutilized businesses by contracting directly
2 with historically underutilized businesses or indirectly
3 through subcontracts; and

4 (4) other relevant factors as determined by
5 the state agency;

6 B. shall require respondents to submit a plan to
7 identify and attempt to subcontract with applicable
8 historically underutilized businesses when soliciting bids,
9 proposals, offers or other applicable expressions of interest
10 for contracts, including any renewals;

11 C. shall make a good-faith effort to utilize
12 historically underutilized businesses in contracts; and

13 D. may achieve its agency-specific annual
14 historically underutilized business goals by contracting
15 directly with historically underutilized businesses or
16 indirectly through subcontracts.