

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 517

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO PUBLIC PURCHASING; ENACTING THE HISTORICALLY
UNDERUTILIZED BUSINESS OPPORTUNITY ACT; PROVIDING ADDITIONAL
DUTIES FOR THE STATE AUDITOR; REQUIRING CERTAIN 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
promote 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 purchasing decisions.

.198606.6

underscoring material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

1 SECTION 3. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the
2 Historically Underutilized Business Opportunity Act:

3 A. "facilitating nonprofit agency" means a
4 nonprofit agency that is organized to promote and enhance
5 economic development opportunities; that can also provide
6 business and work force education with expertise in assisting
7 historically underutilized businesses; and that is approved by
8 the state auditor to assist in screening applicants and
9 otherwise assist in identifying qualified applicants for
10 certification;

11 B. "historically underutilized business" means a
12 legally recognized for-profit business organization,
13 corporation, sole proprietorship, partnership or joint venture
14 that has a valid historically underutilized business
15 certificate issued by the state auditor certifying that:

16 (1) it has an average volume for the preceding
17 three fiscal years that does not exceed one million five
18 hundred thousand dollars (\$1,500,000) or an average number of
19 employees for the preceding three fiscal years that does not
20 exceed one hundred fifty;

21 (2) its principal place of business is in New
22 Mexico; and

23 (3) at least fifty-one percent of the business
24 is owned by a woman, a veteran or a person who is African
25 American, Hispanic, Asian-Pacific American or Native American;

underscoring material = new
~~[bracketed material] = delete~~

1 and

2 C. "state agency" means any department, commission,
3 council, board, committee, institution, agency, government
4 corporation or educational institution, including any office or
5 officer of the above but does not include the legislative or
6 judicial branch or local public bodies.

7 SECTION 4. [NEW MATERIAL] HISTORICALLY UNDERUTILIZED
8 BUSINESS PROGRAM--GOALS.--

9 A. The state auditor shall set initial statewide
10 goals for fiscal year 2016 of not less than ten percent for the
11 use of historically underutilized businesses in the procurement
12 of the following goods or services:

13 (1) heavy construction other than building
14 contracts;

15 (2) all building construction, including
16 general contractors and operative builders contracts;

17 (3) all special trade construction contracts;

18 (4) professional services contracts;

19 (5) all other services contracts; and

20 (6) commodities contracts.

21 B. Beginning in fiscal year 2017, the state auditor
22 shall modify these goals consistent with the university of New
23 Mexico bureau of business and economic research review of
24 United States economic census data and its most recent findings
25 and recommendations related to historically underutilized

.198606.6

underscored material = new
[bracketed material] = delete

1 businesses.

2 C. Each state agency shall make a good-faith effort
3 to utilize historically underutilized businesses in contracts
4 for each procurement category listed in Subsection A of this
5 section.

6 D. Each agency may achieve its agency-specific
7 annual historically underutilized business goals by contracting
8 directly with historically underutilized businesses or
9 indirectly through subcontracting opportunities.

10 SECTION 5. [NEW MATERIAL] DUTIES OF STATE AUDITOR.--The
11 state auditor shall:

12 A. establish the procedures for:

- 13 (1) certification of applicants for
14 historically underutilized business status;
- 15 (2) precertification screening of eligibility;
- 16 (3) appeal of a denial of certification;
- 17 (4) revocation of a certification; and
- 18 (5) approval of facilitating nonprofit
19 agencies;

20 B. at least semiannually, produce an online,
21 searchable database of businesses certified as historically
22 underutilized businesses;

23 C. offer forums in which historically underutilized
24 businesses deliver to state agencies technical and business
25 presentations that demonstrate their capability to do business

.198606.6

underscored material = new
[bracketed material] = delete

1 with state agencies;

2 D. review and approve each state agency's agency-
3 specific goals for the utilization of historically
4 underutilized businesses; and

5 E. at the end of every fiscal year, prepare and
6 publish a consolidated annual report that includes the total:

7 (1) dollar amount of payments made by state
8 agencies for the purchase of goods and services;

9 (2) dollar amount of payments made by state
10 agencies for the purchase of goods and services from
11 historically underutilized businesses;

12 (3) number of contracts awarded by state
13 agencies;

14 (4) number of contracts awarded to
15 historically underutilized businesses by state agencies;

16 (5) number of bids received by state agencies;

17 (6) number of bids from historically
18 underutilized businesses received by state agencies; and

19 (7) number of historically underutilized
20 businesses actually paid by state agencies.

21 SECTION 6. [NEW MATERIAL] DUTIES OF STATE AGENCIES.--Each
22 state agency shall:

23 A. establish agency-specific goals for the use of
24 historically underutilized businesses for each procurement
25 category listed in Section 4 of the Historically Underutilized

underscoring material = new
~~[bracketed material] = delete~~

1 Business Opportunity Act. Agencies may set their agency-
2 specific goals higher than the statewide historically
3 underutilized business goals set by the state auditor. Agency-
4 specific goals shall be based on:

5 (1) the agency's fiscal year expenditures and
6 total contract expenditures;

7 (2) the availability of historically
8 underutilized businesses in each procurement category;

9 (3) the agency's historic utilization of
10 historically underutilized businesses;

11 (4) other relevant factors as determined by
12 the agency; and

13 (5) other relevant factors required by the
14 state auditor;

15 B. before soliciting bids, proposals, offers or
16 other applicable expressions of interest for a contract with a
17 value of one hundred thousand dollars (\$100,000) or more over
18 the life of the contract, including any renewals, determine
19 whether subcontracting opportunities are probable under the
20 contract and, if so, require respondents to submit a plan to
21 subcontract with at least one historically underutilized
22 business in its response; and

23 C. maintain and compile monthly reports that
24 provide the information to the state auditor required by
25 Subsection E of Section 5 of the Historically Underutilized

.198606.6

underscoring material = new
~~[bracketed material] = delete~~

1 Business Opportunity Act and any other information required by
2 the state auditor.

3 - 7 -
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25