

HOUSE BILL 198

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

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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. The Historically Underutilized Business  
2 Opportunity Act does not inhibit or prevent purchases of goods  
3 and services from businesses that are otherwise qualified to  
4 provide such goods and services.

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

7 A. "facilitating nonprofit agency" means a  
8 nonprofit agency that is organized to promote and enhance  
9 economic development opportunities; that can also provide  
10 business and workforce education with expertise in assisting  
11 historically underutilized businesses; and that is approved by  
12 the general services department to screen applicants;

13 B. "historically underutilized business" means a  
14 legally recognized for-profit business organization,  
15 corporation, sole proprietorship, partnership or joint venture  
16 that has a valid historically underutilized business  
17 certificate issued by the general services department  
18 certifying that:

19 (1) it has an average gross revenue for the  
20 preceding three fiscal years that does not exceed five million  
21 dollars (\$5,000,000) or an average number of employees for the  
22 preceding three fiscal years that does not exceed fifty;

23 (2) is a "resident business" as certified by  
24 the taxation and revenue department pursuant to Section 13-1-22  
25 NMSA 1978; and

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1 (3) at least fifty-one percent of the business  
2 is owned by a woman or a person who is a member of one or more  
3 of the following minorities: African American, Latino or  
4 Hispanic, Asian, Pacific Islander, Native American or Alaska  
5 Native; and

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

11 SECTION 4. [NEW MATERIAL] DUTIES OF GENERAL SERVICES

12 DEPARTMENT.--The general services department shall:

13 A. establish the procedures for:

14 (1) identification of qualified applicants for  
15 certification;

16 (2) approval of facilitating nonprofit  
17 agencies;

18 (3) precertification screening of eligibility  
19 by facilitating nonprofit agencies;

20 (4) certification of applicants for  
21 historically underutilized business status;

22 (5) appeal of a denial of certification; and

23 (6) revocation of a certification;

24 B. produce an online, searchable database of  
25 businesses certified as historically underutilized businesses;

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1 C. conduct training sessions and seminars or use  
2 other suitable means for informing historically underutilized  
3 businesses of opportunities and procedures for doing business  
4 with state agencies;

5 D. review and approve each state agency's agency-  
6 specific goals for the utilization of historically  
7 underutilized businesses; and

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

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

12 (2) the total dollar amount of payments made  
13 directly to historically underutilized businesses or indirectly  
14 through subcontracts for the purchase of goods and services  
15 directly;

16 (3) the total number of contracts awarded by  
17 state agencies;

18 (4) the total number of contracts or  
19 procurements awarded directly to historically underutilized  
20 businesses or indirectly through subcontracts;

21 (5) the total number of bids from historically  
22 underutilized businesses received by state agencies; and

23 (6) a comparison of each state agency's goals  
24 for use of historically underutilized businesses to the actual  
25 purchase of goods and services directly from historically

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1 underutilized businesses or indirectly through subcontracts.

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

4 A. shall establish agency-specific goals for the  
5 use of historically underutilized businesses. Agency-specific  
6 goals shall be based on:

7 (1) the state agency's fiscal year  
8 expenditures and total contract expenditures;

9 (2) the availability of historically  
10 underutilized businesses;

11 (3) the state agency's historic utilization of  
12 historically underutilized businesses by contracting directly  
13 with historically underutilized businesses or indirectly  
14 through subcontracts;

15 (4) other relevant factors as determined by  
16 the state agency; and

17 (5) other relevant factors required by the  
18 general services department;

19 B. shall, before soliciting bids, proposals, offers  
20 or other applicable expressions of interest for contracts,  
21 including any renewals, determine whether subcontracting  
22 opportunities are probable under the contract and, if so,  
23 require respondents to submit a plan to subcontract with at  
24 least one historically underutilized business in its response;

25 C. shall maintain and compile monthly reports that

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1 provide the information to the general services department  
2 required by Subsection E of Section 4 of the Historically  
3 Underutilized Business Opportunity Act and any other  
4 information required by the general services department;

5 D. shall make a good-faith effort to utilize  
6 historically underutilized businesses in contracts; and

7 E. may achieve its agency-specific annual  
8 historically underutilized business goals by contracting  
9 directly with historically underutilized businesses or  
10 indirectly through subcontracts.