

1 HOUSE BILL 384

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Antonio Maestas

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10 AN ACT

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

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

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

20 SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the
21 Historically Underutilized Business Opportunity Act is to
22 stimulate economic development and job creation by promoting
23 full and equal business opportunities for all businesses by
24 encouraging and setting goals for the use of historically
25 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) it is a "resident business" as certified
24 by the taxation and revenue department pursuant to Section
25 13-1-22 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.

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