

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 722

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

AN ACT

RELATING TO PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; 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

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1 public purchasing decisions.

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

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

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

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

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

24 (3) at least fifty-one percent of the business
25 is owned by a woman, a veteran or a person who is African

1 American, Hispanic, Asian-Pacific American or Native American;
2 and

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

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

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

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

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

18 (3) all special trade construction contracts;

19 (4) professional services contracts;

20 (5) all other services contracts; and

21 (6) commodities contracts.

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

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1 and recommendations related to historically underutilized
2 businesses.

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

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

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

13 A. establish the procedures for:

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

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

24 C. offer forums in which historically underutilized
25 businesses deliver to state agencies technical and business

1 presentations that demonstrate their capability to do business
2 with state agencies;

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

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

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

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

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

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

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

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

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

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

24 A. establish agency-specific goals for the use of
25 historically underutilized businesses for each procurement

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

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

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

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

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

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

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

24 C. maintain and compile monthly reports that
25 provide the information to the state auditor required by

1 Subsection E of Section 5 of the Historically Underutilized
2 Business Opportunity Act and any other information required by
3 the state auditor.

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