HOUSE BILL 82

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

INTRODUCED BY

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FOR THE ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

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

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

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

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

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

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

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

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

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

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

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

B. The general services department shall develop an
online, searchable database of businesses certified as
historically underutilized businesses and establish procedures
to allow nonprofit entities to be qualified as facilitating nonprofit entities to assist in the:

(1) identification of qualified applicants for certification;

(2) precertification screening of eligibility;

(3) appeal of a denial of certification;

(4) revocation of a certification; and

(5) recertification.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) the availability of historically
underutilized businesses;

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

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

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

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

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

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