

HOUSE STATE GOVERNMENT, ELECTIONS AND INDIAN AFFAIRS  
COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 384

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

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

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 applied for and received a valid historically  
17 underutilized business certificate issued by the taxation and  
18 revenue department 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) as certified by the taxation and revenue  
2 department, more than fifty percent of the business is owned by  
3 women or persons who are members of one or more of the  
4 following minorities: African American, Latino or Hispanic,  
5 Asian, Pacific Islander, Native American or Alaska 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, that procures, purchases, rents, leases  
10 or otherwise acquires items of tangible personal property,  
11 services or construction, but does not include the legislative  
12 or judicial branch or local public bodies.

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

15 A. The taxation and revenue department shall  
16 establish the procedures for:

17 (1) identification of qualified applicants for  
18 certification;

19 (2) approval of facilitating nonprofit  
20 agencies;

21 (3) precertification screening of eligibility  
22 by facilitating nonprofit agencies;

23 (4) certification of applicants for  
24 historically underutilized business status;

25 (5) appeal of a denial of certification;

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1 (6) revocation of a certification; and

2 (7) recertification.

3 B. The general services department shall develop an  
4 online, searchable database of businesses certified as  
5 historically underutilized businesses.

6 C. The taxation and revenue department shall  
7 develop training sessions and seminars or use other suitable  
8 means for informing historically underutilized businesses of  
9 opportunities and procedures for doing business with state  
10 agencies.

11 D. State agencies shall develop procedures for the  
12 utilization of historically underutilized businesses.

13 E. At the end of every fiscal year, each state  
14 agency shall prepare and submit a report to the general  
15 services department that includes:

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

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

22 (3) the total number of contracts and  
23 procurements awarded directly to historically underutilized  
24 businesses or indirectly through subcontracts; and

25 (4) the total number of bids from historically

1 underutilized businesses received by state agencies.

2 F. The general services department shall prepare an  
3 annual consolidated report based on the information submitted  
4 by the state agencies.

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

7 A. shall establish agency-specific goals for the  
8 use of historically underutilized businesses. Agency-specific  
9 goals shall be based on:

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

12 (2) the availability of historically  
13 underutilized businesses;

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

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

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

25 C. shall make a good-faith effort to utilize

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1 historically underutilized businesses in contracts; and

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

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