

HOUSE BILL 82

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

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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

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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 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:

HCEDC→~~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;~~←HCEDC

HCEDC→~~B.~~←HCEDC HCEDC→~~A.~~←HCEDC "historically underutilized business" means a legally recognized for-profit business organization, corporation, sole proprietorship, partnership or joint venture that has applied for and received

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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 HCEDC→minorities←HCEDC HCEDC→communities of color←HCEDC : African American, Latino or Hispanic, Asian, Pacific Islander, Native American or Alaska Native; HCEDC→and←HCEDC

HCEDC→B. "qualified facilitating nonprofit entity" means a nonprofit entity 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 in the identification of qualified applicants for certification and to assist applicants in applying for and maintaining certification

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as a historically underutilized business, including
precertification screening of eligibility, appeal of a denial
or revocation of certification and recertification; and ←HCEDC

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
HCEDC→~~to allow nonprofit entities to be qualified as~~
~~facilitating~~ ←HCEDC HCEDC→to qualify nonprofit entities as
qualified facilitating ←HCEDC nonprofit entities HCEDC→to
~~assist in the:~~

~~(1) identification of qualified applicants for~~
~~certification;~~

~~(2) precertification screening of eligibility;~~

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~~(3) appeal of a denial of certification;~~

~~(4) revocation of a certification; and~~

~~(5) recertification~~←HCEDC .

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;

HCEDC→~~(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~~←HCEDC

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HCEDC→(3) the total number and corresponding dollar amount of state agency contracts awarded to contractors and the total number and corresponding dollar amount of state agency contracts awarded directly or indirectly through subcontracts to historically underutilized businesses; and←HCEDC

(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;

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(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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