

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 225

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO PUBLIC PURCHASING; ENACTING THE HISTORICALLY  
UNDERUTILIZED AND DISADVANTAGED BUSINESS OPPORTUNITY ACT;  
PROVIDING ADDITIONAL DUTIES FOR THE GENERAL SERVICES  
DEPARTMENT; REQUIRING CERTAIN STATE AGENCIES TO USE  
HISTORICALLY UNDERUTILIZED AND DISADVANTAGED 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 and Disadvantaged  
Business Opportunity Act".

SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the  
Historically Underutilized and Disadvantaged 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 and

.202703.3

underscoring material = new  
~~[bracketed material] = delete~~

underscoring material = new  
~~[bracketed material] = delete~~

1       disadvantaged businesses by state agencies in all public  
2       purchasing decisions.

3               **SECTION 3. [NEW MATERIAL] DEFINITIONS.--**As used in the  
4       Historically Underutilized and Disadvantaged Business  
5       Opportunity Act:

6               A. "disadvantaged business" means a business that  
7       meets the criteria set forth in Paragraphs (1) and (2) of  
8       Subsection C of this section and that can demonstrate evidence  
9       of social disadvantage, including:

10               (1) at least one objective distinguishing  
11       element such as race, ethnicity, gender, physical disability,  
12       long-term residence in an environment isolated from the  
13       mainstream of American society or other similar element not  
14       common to individuals who are not socially disadvantaged;

15               (2) personal experiences of substantial and  
16       chronic social disadvantage in American society, not in other  
17       countries; and

18               (3) negative impact on the individual's  
19       entrance into the business world because of the stated  
20       disadvantages;

21               B. "facilitating nonprofit agency" means a  
22       nonprofit agency that is organized to promote and enhance  
23       economic development opportunities; that can also provide  
24       business and workforce education with expertise in assisting  
25       historically underutilized and disadvantaged businesses; and

.202703.3

underscored material = new  
~~[bracketed material] = delete~~

1 that is approved by the general services department to screen  
2 applicants;

3 C. "historically underutilized business" means a  
4 legally recognized for-profit business organization,  
5 corporation, sole proprietorship, partnership or joint venture  
6 that has a valid historically underutilized and disadvantaged  
7 business certificate issued by the general services department  
8 certifying that:

9 (1) it has an average gross revenue for the  
10 preceding three fiscal years that does not exceed five million  
11 dollars (\$5,000,000) or an average number of employees for the  
12 preceding three fiscal years that does not exceed fifty;

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

16 (3) at least fifty-one percent of the business  
17 is owned by a woman, a veteran or a person who is a member of  
18 one or more of the following minorities: African American,  
19 Latino or Hispanic, Asian, Pacific Islander, Native American or  
20 Alaska Native; and

21 D. "state agency" means any department, commission,  
22 council, board, committee, institution, agency, government  
23 corporation or educational institution, including any office or  
24 officer of the above, but does not include the legislative or  
25 judicial branch or local public bodies.

.202703.3

1           SECTION 4. [NEW MATERIAL] HISTORICALLY UNDERUTILIZED AND  
2 DISADVANTAGED BUSINESS PROGRAM--GOALS.--

3           A. The general services department shall apply the  
4 following initial statewide goals for the use of historically  
5 underutilized and disadvantaged businesses in the procurement  
6 of the following goods or services:

7	Industry	Veteran-, Women- or Minority-Owned
8	(1) agriculture, forestry,	
9	fishing and hunting	40%
10	(2) mining, quarrying and	
11	oil and gas extraction	34%
12	(3) utilities	9%
13	(4) construction	36%
14	(5) manufacturing	30%
15	(6) wholesale trade	39%
16	(7) retail trade	42%
17	(8) transportation and warehousing	52%
18	(9) information	35%
19	(10) finance and insurance	18%
20	(11) real estate and rental and leasing	30%
21	(12) professional, scientific and	
22	technical services	35%
23	(13) management of companies and	
24	enterprises	37%
25	(14) administrative and	

.202703.3

underscored material = new  
[bracketed material] = delete

- 1 support and waste management 55%
- 2 (15) educational services 64%
- 3 (16) health care and social assistance 46%
- 4 (17) arts, entertainment and recreation 49%
- 5 (18) accommodation and food services 42%
- 6 (19) other services (except public
- 7 administration) 50%.

8 B. Beginning in fiscal year 2018, the general  
9 services department shall modify the goals provided in  
10 Subsection A of this section consistent with the university of  
11 New Mexico bureau of business and economic research review of  
12 the United States census bureau survey of business owners and  
13 its most recent findings of the most up-to-date percentages  
14 listed in Subsection A of this section.

15 SECTION 5. [NEW MATERIAL] DUTIES OF GENERAL SERVICES  
16 DEPARTMENT.--The general services department shall:

- 17 A. establish the procedures for:
  - 18 (1) identification of qualified applicants for
  - 19 certification;
  - 20 (2) approval of facilitating nonprofit
  - 21 agencies;
  - 22 (3) precertification screening of eligibility
  - 23 by facilitating nonprofit agencies;
  - 24 (4) certification of applicants for
  - 25 historically underutilized or disadvantaged business status;

.202703.3

1 (5) appeal of a denial of certification; and

2 (6) revocation of a certification;

3 B. at least monthly, produce an online, searchable  
4 database of businesses certified as historically underutilized  
5 or disadvantaged businesses;

6 C. offer forums in which historically underutilized  
7 or disadvantaged businesses deliver to state agencies technical  
8 and business presentations that demonstrate their capability to  
9 do business with state agencies;

10 D. review and approve each state agency's agency-  
11 specific goals for the utilization of historically  
12 underutilized or disadvantaged businesses; and

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

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

17 (2) dollar amount of payments made by state  
18 agencies for the purchase of goods and services from  
19 historically underutilized businesses;

20 (3) dollar amount of payments made by state  
21 agencies for the purchase of goods and services from  
22 disadvantaged businesses;

23 (4) number of contracts awarded by state  
24 agencies;

25 (5) number of contracts awarded to

underscored material = new  
[bracketed material] = delete

1 historically underutilized businesses by state agencies;

2 (6) number of contracts awarded to  
3 disadvantaged businesses by state agencies;

4 (7) number of bids from historically  
5 underutilized businesses received by state agencies;

6 (8) number of bids from disadvantaged  
7 businesses received by state agencies;

8 (9) dollar amount of payments made by state  
9 agencies to historically underutilized businesses; and

10 (10) dollar amount of payments made by state  
11 agencies to disadvantaged businesses.

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

14 A. shall establish agency-specific goals for the  
15 use of historically underutilized and disadvantaged businesses  
16 for each procurement category listed in Subsection A of Section  
17 4 of the Historically Underutilized and Disadvantaged Business  
18 Opportunity Act. State agencies may set their agency-specific  
19 goals higher than the statewide historically underutilized and  
20 disadvantaged business goals. Agency-specific goals shall be  
21 based on:

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

24 (2) the availability of historically  
25 underutilized and disadvantaged businesses in each procurement

.202703.3

underscoring material = new  
~~[bracketed material] = delete~~

1 category;

2 (3) the state agency's historic utilization of  
3 historically underutilized and disadvantaged businesses;

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

6 (5) other relevant factors required by the  
7 general services department;

8 B. shall, before soliciting bids, proposals, offers  
9 or other applicable expressions of interest for a contract with  
10 a value of one hundred thousand dollars (\$100,000) or more over  
11 the life of the contract, including any renewals, determine  
12 whether subcontracting opportunities are probable under the  
13 contract and, if so, require respondents to submit a plan to  
14 subcontract with at least one historically underutilized or  
15 disadvantaged business in its response;

16 C. shall maintain and compile monthly reports that  
17 provide the information to the general services department  
18 required by Subsection E of Section 5 of the Historically  
19 Underutilized and Disadvantaged Business Opportunity Act and  
20 any other information required by the general services  
21 department;

22 D. shall make a good-faith effort to utilize  
23 historically underutilized or disadvantaged businesses in  
24 contracts for each procurement category listed in Subsection A  
25 of Section 4 of the Historically Underutilized and

.202703.3



underscoring material = new  
~~[bracketed material]~~ = delete

1 Disadvantaged Business Opportunity Act; and  
2 E. may achieve its agency-specific annual  
3 historically underutilized or disadvantaged business goals by  
4 contracting directly with historically underutilized or  
5 disadvantaged businesses or indirectly through subcontracting  
6 opportunities.

7 - 9 -  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25