

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 HOUSE BILL 3876

By: Boatman

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5
6 AS INTRODUCED

7 An Act relating to state purchasing; defining terms;
8 authorizing promulgation of rules; determining size
9 standards for historically underutilized business;
10 providing for certification; providing for assistance
11 to certain businesses; authorizing mentor-protege
12 program; providing for planning and reporting
13 requirements; providing for purchasing goals;
14 providing penalty; authorizing subcontracting;
15 requiring good-faith compliance; providing for
16 codification; and providing an effective date.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 84.1 of Title 74, unless there
20 is created a duplication in numbering, reads as follows:

As used in this act:

- 21 1. "Goods" means supplies, materials, or equipment;
- 22 2. "Historically underutilized business" means an entity with
23 its principal place of business in this state that is:
 - 24 a. a corporation formed for the purpose of making a
profit in which fifty-one percent (51%) or more of all

1 classes of the shares of stock or other equitable
2 securities are owned by one or more economically
3 disadvantaged persons who have a proportionate
4 interest and actively participate in the corporation's
5 control, operation, and management,

6 b. a sole proprietorship created for the purpose of
7 making a profit that is completely owned, operated,
8 and controlled by an economically disadvantaged
9 person,

10 c. a partnership formed for the purpose of making a
11 profit in which fifty-one (51%) percent or more of the
12 assets and interest in the partnership are owned by
13 one or more economically disadvantaged persons who
14 have a proportionate interest and actively participate
15 in the partnership's control, operation, and
16 management,

17 d. a joint venture in which each entity in the venture is
18 a historically underutilized business, or

19 e. a supplier contract between a historically
20 underutilized business and a prime contractor under
21 which the historically underutilized business is
22 directly involved in the manufacture or distribution
23 of the goods or otherwise warehouses and ships the
24 goods;

1 3. "Economically disadvantaged person" means a person who:

2 a. is economically disadvantaged because of the person's
3 identification as a member of a certain group,

4 including:

5 (1) Black Americans,

6 (2) Hispanic Americans,

7 (3) women,

8 (4) Asian Pacific Americans,

9 (5) Native Americans, or

10 (6) veterans as defined by 38 U.S.C., Section 101(2)

11 who have suffered at least a twenty percent (20%)

12 service-connected disability as defined by 38

13 U.S.C., Section 101(16), and

14 b has suffered the effects of discriminatory practices

15 or other similar insidious circumstances over which

16 the person has no control; and

17 4. "Contract" includes an arrangement under which a state
18 agency receives professional or investment brokerage services.

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 84.2 of Title 74, unless there
21 is created a duplication in numbering, reads as follows:

22 The Director of the Office of Management and Enterprise Services
23 shall promulgate rules to efficiently and effectively administer
24 this act. The rules shall provide goals for increasing the contract

1 awards for the purchase of goods or services by state agencies to
2 businesses that qualify as historically underutilized businesses
3 because the businesses are owned or owned, operated, and controlled,
4 as applicable, wholly or partly by one or more veterans, as defined
5 by 38 U.S.C., Section 101(2), who have a service-connected
6 disability as defined by 38 U.S.C., Section 101(16).

7 SECTION 3. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 84.3 of Title 74, unless there
9 is created a duplication in numbering, reads as follows:

10 The Director of the Office of Management and Enterprise Services
11 shall establish size standards that a business may not exceed if it
12 is to be considered a historically underutilized business under this
13 act. In determining the size standards, the Director shall
14 determine the size at which a business should be considered
15 sufficiently large that the business does not significantly suffer
16 from the effects of past discriminatory practices.

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 84.4 of Title 74, unless there
19 is created a duplication in numbering, reads as follows:

20 A. The Director of the Office of Management and Enterprise
21 Services shall certify historically underutilized businesses.

22 B. As one of its certification procedures, the Director may:

23 1. Approve the certification program of one or more local
24 governments or nonprofit organizations in this state that certify

1 historically underutilized businesses, minority business
2 enterprises, women's business enterprises, or disadvantaged business
3 enterprises under substantially the same definition, to the extent
4 applicable, if the local government or nonprofit organization meets
5 or exceeds the standards established by the Director; and

6 2. Certify a business that is certified by a local government
7 or by a nonprofit organization as a historically underutilized
8 business pursuant to this act.

9 C. To maximize the number of certified historically
10 underutilized businesses, the Director shall enter into agreements
11 with local governments in this state that conduct certification
12 programs described by subsection B of this section and with
13 nonprofit organizations. The Director may terminate an agreement if
14 a local government or nonprofit organization fails to meet the
15 standards established by the Director for certifying historically
16 underutilized businesses. The agreements shall take effect
17 immediately and:

18 1. Allow for automatic certification of businesses certified by
19 the local government or nonprofit organization;

20 2. Provide for the efficient updating of the Director's
21 database containing information about historically underutilized
22 businesses and potential historically underutilized businesses; and

23 3. Provide for a method by which the Director may efficiently
24 communicate with businesses certified by the local government or

1 nonprofit organization and provide those businesses with information
2 about the state historically underutilized business program.

3 D. A local government or a nonprofit organization that
4 certifies historically underutilized businesses, minority business
5 enterprises, women's business enterprises, or disadvantaged business
6 enterprises as defined in Section 1 of this act shall complete the
7 certification of an applicant or provide an applicant with written
8 justification of the applicant's certification denial within the
9 period established by the Director in its rules for certification
10 activities.

11 E. A local government or a nonprofit organization that
12 certifies historically underutilized businesses under subsection C
13 of this section or that conducts a certification program described
14 by and approved pursuant to subsection B of this section shall make
15 available to the public an online searchable database containing
16 information about historically underutilized businesses, minority
17 business enterprises, women's business enterprises, and
18 disadvantaged business enterprises certified by the local government
19 or nonprofit organization, including:

- 20 1. The name of the business;
- 21 2. The contact person or owner of the business;
- 22 3. The address and telephone number of the business;

1 4. The type or category of business, including relevant
2 capabilities of the business and the North American Industry
3 Classification System codes for the business; and

4 5. The expiration date of the business's certification.

5 SECTION 5. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 84.5 of Title 74, unless there
7 is created a duplication in numbering, reads as follows:

8 A. The Director of the Office of Management and Enterprise
9 Services shall seek the advice of the Governor, Legislature, and
10 state agencies in identifying and developing opportunities for
11 historically underutilized businesses.

12 B. The Director shall offer historically underutilized
13 businesses assistance and training regarding state procurement
14 procedures.

15 C. The Director shall advise historically underutilized
16 businesses of available state contracts and shall advise
17 historically underutilized businesses to apply for registration on
18 the Director's master bidders list.

19 D. The Director shall send historically underutilized
20 businesses an orientation package on certification or
21 recertification. The package shall include:

22 1. A certificate issued in the historically underutilized
23 business's name;

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1 2. A description of the significance and value of
2 certification;

3 3. A list of state purchasing personnel;

4 4. Information regarding electronic commerce opportunities; and

5 5. Additional information about the state procurement process.

6 E. A state agency with a budget that exceeds Ten Million
7 Dollars (\$10,000,000.00) shall designate a staff member to serve as
8 the historically underutilized businesses coordinator for the agency
9 during the fiscal year. The procurement director may serve as the
10 coordinator. In agencies that employ a historically underutilized
11 businesses coordinator, the position of coordinator, within the
12 agency's structure, shall be at least equal to the position of
13 procurement director. In addition to any other responsibilities,
14 the coordinator shall:

15 1. Coordinate training programs for the recruitment and
16 retention of historically underutilized businesses;

17 2. Report required information to the Director; and

18 3. Match historically underutilized businesses with key staff
19 within the agency.

20 SECTION 6. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 84.6 of Title 74, unless there
22 is created a duplication in numbering, reads as follows:

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1 The Director of the Office of Management and Enterprise Services
2 shall encourage state agencies to use historically underutilized
3 businesses by:

4 1. Working with state agencies to establish a statewide policy
5 for increasing the use of historically underutilized businesses;

6 2. Assisting state agencies in seeking historically
7 underutilized businesses capable of supplying required goods or
8 services;

9 3. Assisting state agencies in identifying and advising
10 historically underutilized businesses on the types of goods and
11 services the agencies need; and

12 4. Assisting state agencies in increasing the amount of
13 business placed with historically underutilized businesses.

14 SECTION 7. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 84.7 of Title 74, unless there
16 is created a duplication in numbering, reads as follows:

17 A. The Director of the Office of Management and Enterprise
18 Services shall compile, in the most cost-efficient form, a directory
19 of businesses certified as historically underutilized businesses
20 under Section 4 of this act.

21 B. The Director, at least semiannually, shall update the
22 directory and provide access to the directory electronically or in
23 another form to each state agency.

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1 C. Depending on the needs of a state agency, the Director shall
2 provide access to the directory electronically or in another form.

3 D. The Director shall provide a copy of the directory to every
4 municipality in January and July of each year. On request, the
5 Director shall make the directory available to other local
6 governments and the public.

7 E. A state agency, including the Director, shall use the
8 directory in determining awards of state purchasing and public works
9 contracts.

10 SECTION 8. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 84.8 of Title 74, unless there
12 is created a duplication in numbering, reads as follows:

13 A. The Director of the Office of Management and Enterprise
14 Services shall design a mentor-protege program to foster long-term
15 relationships between prime contractors and historically
16 underutilized businesses and to increase the ability of historically
17 underutilized businesses to contract with the state or to receive
18 subcontracts under a state contract. Each state agency with an
19 appropriation that exceeds Ten Million Dollars (\$10,000,000.00)
20 shall implement the program designed by the Director.

21 B. Participation in the program shall be voluntary for both the
22 contractor and the historically underutilized business
23 subcontractor.

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1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 84.9 of Title 74, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Director of the Office of Management and Enterprise
5 Services shall design a program of forums in which historically
6 underutilized businesses are invited by state agencies to deliver
7 technical and business presentations that demonstrate their
8 capability to do business with the agency to:

9 1. Senior managers and procurement personnel at state agencies
10 that acquire goods and services of a type supplied by the
11 historically underutilized businesses; and

12 2. Contractors with the state who may be subcontracting for
13 goods and services of a type supplied by the historically
14 underutilized businesses.

15 B. The forums shall be held at state agency offices.

16 C. Each state agency with an appropriation that exceeds Ten
17 Million Dollars (\$10,000,000.00) shall participate in the program by
18 sending senior managers and procurement personnel to attend relevant
19 presentations and by informing the agency's contractors about
20 presentations that may be relevant to anticipated subcontracting
21 opportunities.

22 D. Each state agency that has a historically underutilized
23 businesses coordinator shall:

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1 1. Design its own program and model the program to the extent
2 appropriate on the program developed by the Director under this
3 section; and

4 2. Sponsor presentations by historically underutilized
5 businesses at the agency.

6 E. The Director and each state agency that has a historically
7 underutilized businesses coordinator shall aggressively identify and
8 notify individual historically underutilized businesses regarding
9 opportunities to make presentations regarding the types of goods and
10 services supplied by the historically underutilized business and
11 shall advertise in appropriate trade publications that target
12 historically underutilized businesses regarding opportunities to
13 make presentations.

14 SECTION 10. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 84.10 of Title 74, unless there
16 is created a duplication in numbering, reads as follows:

17 A. The Director of the Office of Management and Enterprise
18 Services shall prepare a consolidated report that:

19 1. Includes the number and dollar amount of contracts awarded
20 and paid to historically underutilized businesses certified by the
21 Director;

22 2. Analyzes the relative level of opportunity for historically
23 underutilized businesses for various categories of acquired goods
24 and services; and

1 3. Tracks, by vendor identification number and, to the extent
2 allowed by federal law, by Social Security number, the graduation
3 rates for historically underutilized businesses that grew to exceed
4 the size standards determined by the Director.

5 B. Each state agency shall send to the Director information
6 required by Section 11 of this act and other information required by
7 the Director for the preparation of the Director's report not later
8 than March 15 and September 15 of each year.

9 C. The Director shall base its report on the compilation and
10 analysis of reports received under subsection B of this section and
11 other information maintained or received by the Director.

12 D. The Director shall send to the presiding officer of each
13 chamber of the Legislature:

14 1. On May 15 of each year, a report on the previous six-month
15 period; and

16 2. On November 15 of each year, a report on the preceding
17 fiscal year.

18 SECTION 11. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 84.11 of Title 74, unless there
20 is created a duplication in numbering, reads as follows:

21 A. To ensure accuracy in reporting, a state agency shall
22 maintain and compile monthly information relating to the use by the
23 agency and each of its operating divisions of historically
24 underutilized businesses, including information regarding

1 subcontractors and suppliers required by subsection B of this
2 section.

3 B. A contractor or supplier awarded a contract by a state
4 agency shall report to the agency the identity of each historically
5 underutilized business to whom the contractor or supplier awarded a
6 subcontract for the purchase of goods or services.

7 C. Each state agency shall report to the Director of the Office
8 of Management and Enterprise Services the following information with
9 regard to the expenditure of funds:

10 1. The total dollar amount of purchases and payments made under
11 contracts awarded to historically underutilized businesses;

12 2. The number of businesses participating in any issuance of
13 state bonds by the agency;

14 3. The number of contracts awarded to businesses with regard to
15 the agency's acquisition, construction, or equipping of a facility
16 or implementation of a program; and

17 4. The number of bids, proposals, or other applicable
18 expressions of interest made by historically underutilized
19 businesses with regard to the agency's acquisition, construction, or
20 equipping of a facility or implementation of a program.

21 D. A state agency participating in a group purchasing program
22 shall send to the Director in the agency's report under Section 10
23 of this act a separate list of purchases from historically
24 underutilized businesses that are made through the group purchasing

1 program, including the dollar amount of each purchase allocated to
2 the reporting agency.

3 E. A state agency's report is a record of the agency's
4 purchases for which the agency selected the vendor. If the vendor
5 was selected by the Director as part of its state contract program,
6 the Director shall include the purchase in the Director's report of
7 its own purchases unless the Director made a sole source purchase
8 for the agency pursuant to Section 85.44D1 of Title 74 of the
9 Oklahoma Statutes. The state agency for which the purchase was made
10 shall report the selection of the vendor on its report as if the
11 agency selected the vendor when the agency drew specifications for
12 goods or services that are proprietary to one vendor.

13 SECTION 12. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 84.12 of Title 74, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Each state agency shall have a strategic plan for increasing
17 the agency's use of historically underutilized businesses in
18 purchasing and public works contracting.

19 B. The plan shall include:

20 1. A policy or mission statement relating to increasing the use
21 of historically underutilized businesses by the state agency;

22 2. Goals to be met by the agency in carrying out the policy or
23 mission; and

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1 3. Specific programs to be conducted by the agency to meet the
2 goals stated in the plan, including a specific program to encourage
3 contractors to use historically underutilized businesses as partners
4 and subcontractors.

5 C. On request, the Director of the Office of Management and
6 Enterprise Services shall provide technical assistance to a state
7 agency that is preparing its plan.

8 D. The Director and the state auditor and inspector shall
9 cooperate to develop procedures providing for random periodic
10 monitoring of state agency compliance with this section. The state
11 auditor shall report to the Director a state agency that is not
12 complying with this section. In determining whether a state agency
13 is making a good-faith effort to comply, the state auditor shall
14 consider whether the agency:

15 1. Has adopted rules pursuant to this act;

16 2. Has used the Director's directory under Section 7 of this
17 act and other resources to identify historically underutilized
18 businesses that are able and available to contract with the agency;

19 3. Made good-faith, timely efforts to contact identified
20 historically underutilized businesses regarding contracting
21 opportunities;

22 4. Conducted its procurement program in accordance with the
23 good faith effort methodology; and
24

1 5. Established goals for contracting with historically
2 underutilized businesses in each procurement category based on:

- 3 a. scheduled fiscal year expenditures, and
- 4 b. the availability of historically underutilized
5 businesses in each category as determined by rules
6 adopted under Section 2 of this act.

7 E. In conducting an audit of an agency's compliance with this
8 section or an agency's making of a good-faith effort to implement
9 the plan adopted under this section, the state auditor and inspector
10 shall consider the success or failure of the agency to contract with
11 historically underutilized businesses in accordance with the
12 agency's goals.

13 F. If the state auditor and inspector reports to the Director
14 that a state agency is not complying with this section, the Director
15 shall assist the agency in complying.

16 SECTION 13. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 84.13 of Title 74, unless there
18 is created a duplication in numbering, reads as follows:

19 A. Each state agency shall prepare a report for each fiscal
20 year documenting progress under its plan to increase the use of
21 historically underutilized businesses.

22 B. The Director of the Office of Management and Enterprise
23 Services shall develop a standard form for the report.

1 C. The state agency shall file the report with the Governor,
2 Lieutenant Governor, the Speaker of the House of Representatives,
3 and President Pro Tempore of the Senate not later than December 31
4 of each year.

5 SECTION 14. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 84.14 of Title 74, unless there
7 is created a duplication in numbering, reads as follows:

8 The Director of the Office of Management and Enterprise
9 Services, in cooperation with each state agency reporting under this
10 act, shall categorize each historically underutilized business
11 included in a report under this subchapter by sex, race, and
12 ethnicity and by whether the business qualifies as a historically
13 underutilized business because it is owned or owned, operated, and
14 controlled, as applicable, wholly or partly by one or more veterans
15 as defined by 38 U.S.C., Section 101(2) who have suffered at least a
16 twenty percent (20%) service-connected disability as defined by 38
17 U.S.C., Section 101(16).

18 SECTION 15. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 84.15 of Title 74, unless there
20 is created a duplication in numbering, reads as follows:

21 Before October 15 of each year, the Director of the Office of
22 Management and Enterprise Services shall report to the Governor, the
23 Speaker of the Oklahoma House of Representatives, and the President
24 Pro Tempore of the Senate on the education and training efforts that

1 the Director has made toward historically underutilized businesses.
2 The report shall include the following as related to historically
3 underutilized businesses:

- 4 1. The Director's vision, mission, and philosophy;
- 5 2. Marketing materials and other educational materials
6 distributed by the Director;
- 7 3. The Director's policy regarding education, outreach, and
8 dissemination of information;
- 9 4. Goals that the Director has attained during the fiscal year;
- 10 5. The Director's goals, objectives, and expected outcome
11 measures for each outreach and educational event; and
- 12 6. The Director's planned future initiatives on education and
13 outreach.

14 SECTION 16. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 84.16 of Title 74, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Each state agency shall include as part of its legislative
18 appropriations request a detailed report for consideration by the
19 budget committees of the Legislature that shows the extent to which
20 the agency complied with this act and rules promulgated by the
21 Director of the Office of Management and Enterprise Services during
22 the two (2) calendar years preceding the calendar year in which the
23 request is submitted. To the extent the state agency did not
24 comply, the report shall demonstrate the reasons for that fact. The

1 extent to which a state agency complies with this act is considered
2 a key performance measure for purposes of the appropriations
3 process.

4 B. The report shall include:

5 1. The agency's goals established under Section 12 of this act
6 for contracting with historically underutilized businesses during
7 the two (2) calendar years preceding the calendar year in which the
8 request is submitted;

9 2. A statement regarding whether the goals established under
10 Section 12 of this act were met during the two (2) calendar years
11 preceding the calendar year in which the request is submitted; and

12 3. If the goals established under Section 12 of this act were
13 not met during the two (2) calendar years preceding the calendar
14 year in which the request is submitted:

15 a. a statement of the percentage by which the agency's
16 actual use of historically underutilized businesses
17 deviated from the agency's goals, and

18 b. an explanation of why the goals were not met.

19 SECTION 17. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 84.17 of Title 74, unless there
21 is created a duplication in numbering, reads as follows:

22 A state agency shall make a good-faith effort to increase the
23 contract awards for the purchase of goods or services that the
24 agency expects to make during a fiscal year to historically

1 underutilized businesses based on rules adopted by the Director of
2 the Office of Management and Enterprise Services.

3 SECTION 18. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 84.18 of Title 74, unless there
5 is created a duplication in numbering, reads as follows:

6 A state agency that contracts for a construction project shall
7 make a good-faith effort to increase the construction contract
8 awards that the agency expects to make during a fiscal year to
9 historically underutilized businesses based on rules adopted by the
10 Director of the Office of Management and Enterprise Services.

11 SECTION 19. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 84.19 of Title 74, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Not later than the 60th day of its fiscal year, a state
15 agency shall:

16 1. Estimate the total value of contract awards the agency
17 expects to make for that fiscal year that are subject to Section 17
18 of this act; and

19 2. Shall estimate the total value of contract awards the agency
20 expects to make for that fiscal year.

21 B. The state agency may revise an estimate as new information
22 requires.

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1 SECTION 20. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 84.20 of Title 74, unless there
3 is created a duplication in numbering, reads as follows:

4 A person who:

5 1. Intentionally applies as a historically underutilized
6 business for an award of a purchasing contract or public works
7 contract under this subtitle; and

8 2. Knows the person is not a historically underutilized
9 business;

10 shall be guilty of a felony.

11 SECTION 21. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 84.21 of Title 74, unless there
13 is created a duplication in numbering, reads as follows:

14 A. This section applies to all contracts entered into by a
15 state agency with an expected value of One Hundred Thousand Dollars
16 (\$100,000.00) or more, including:

17 1. Contracts for the acquisition of a good or service; and

18 2. Contracts for or related to the construction of a public
19 building, road, or other public work.

20 B. This section applies to the contract without regard to:

21 1. Whether the contract is otherwise subject to this subtitle;

22 or

23 2. The source of funds for the contract, except that to the
24 extent federal funds are used to pay for the contract, this

1 subchapter does not apply if federal law prohibits the application
2 of this act in relation to the expenditure of federal funds.

3 SECTION 22. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 84.22 of Title 74, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Each state agency that considers entering into a contract
7 with an expected value of One Hundred Thousand Dollars (\$100,000.00)
8 or more shall, before the agency solicits bids, proposals, offers,
9 or other applicable expressions of interest for the contract,
10 determine whether there will be subcontracting opportunities under
11 the contract. If the state agency determines that there is that
12 probability, the agency shall require that each bid, proposal,
13 offer, or other applicable expression of interest for the contract
14 include a historically underutilized business subcontracting plan.

15 B. When a state agency requires a historically underutilized
16 business subcontracting plan under subsection A of this section, a
17 bid, proposal, offer, or other applicable expression of interest for
18 the contract must contain a plan to be considered responsive.

19 SECTION 23. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 84.23 of Title 74, unless there
21 is created a duplication in numbering, reads as follows:

22 A. When a state agency requires a historically underutilized
23 business subcontracting plan under Section 22 of this act, the
24 awarded contract shall contain, as a provision of the contract that

1 must be fulfilled, the plan that the contractor submitted in its
2 bid, proposal, offer, or other applicable expression of interest for
3 the contract. The contractor shall make good-faith efforts to
4 implement the plan. A contractor's participation in a mentor-
5 protege program under Section 8 of this act and submission of a
6 protege as a subcontractor in the contractor's historically
7 underutilized business subcontracting plan constitutes a good-faith
8 effort under this section for the particular area of the
9 subcontracting plan involving the protege.

10 B. To the extent that subcontracts are not contracted for as
11 originally submitted in the historically underutilized business
12 subcontracting plan, the contractor shall report to the state agency
13 all the circumstances that explain that fact and describe the good-
14 faith efforts made to find and subcontract with another historically
15 underutilized business.

16 C. The state agency shall audit the contractor's compliance
17 with the historically underutilized business subcontracting plan.
18 In determining whether the contractor made the required good-faith
19 effort, the agency may not consider the success or failure of the
20 contractor to subcontract with historically underutilized businesses
21 in any specific quantity. The agency's determination is restricted
22 to considering factors indicating good faith.

23 D. If a determination is made that the contractor failed to
24 implement the plan in good faith, the agency, in addition to any

1 other remedies, may bar the contractor from further contracting
2 opportunities with the agency.

3 SECTION 24. This act shall become effective November 1, 2022.

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