

BILL ANALYSIS

Senate Research Center

H.B. 3032
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Finance
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Engrossed

DIGEST

The Historically Underutilized Business (HUB) program was instituted in 1991 in order to increase the opportunities available to companies owned by minorities and women. These companies experience low levels of participation in state procurement opportunities. Of the six legislated HUB contracting goals, no state agency has met all six goals and only some state agencies have met or exceeded one or two of the goals. The State Auditor's Report of March 1998 found that prime contractors do not suffer a loss or penalty for low HUB participation, and some contracts close before prime contractors are required to show good faith in subcontracting with HUBs. Under current law, there is a broad definition for HUBs, leaving an opportunity for fraud. Furthermore, there is no program to educate and aid new or recertified HUBs about state contracting opportunities and procedures. H.B. 3032 requires the General Services Commission to include information for each state agency to reflect whether the agency substantially failed to meet the applicable HUB contracting goals during the preceding fiscal year.

PURPOSE

As proposed, H.B. 3032 requires the General Services Commission to include information for each state agency to reflect whether the agency substantially failed to meet the applicable Historically Underutilized Business contracting goals during the preceding fiscal year.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2155.074(g), Government Code, to require a state agency to post in the business daily either the entire bid or proposal solicitation package or a notice that includes all information necessary to make a successful bid, proposal, or other applicable expression of interest for the procurement contract, including certain information.

SECTION 2. Amends Chapter 2161A, Government Code, by adding Section 2161.0015, as follows:

Sec. 2161.0015. Authorizes the General Services Commission (commission) to establish size standards that a business is prohibited from exceeding if it is to be considered a historically underutilized business (HUB) under this chapter. Requires the commission, in determining the size standards, to determine the size at which a business should be considered sufficiently large that the business probably does not significantly suffer from the effects of past discriminatory practices.

SECTION 3. Amends Chapter 2161A, Government Code, by adding Section 2161.003, as follows:

Sec. 2161.003. TRANSFER OF FUNDS FOR PURCHASING. Requires the commissioner and the state auditor to cooperate to develop procedures to periodically monitor state agency compliance with Section 2161.123. Requires the state auditor to report to the commission a state agency that is not complying with that section. Requires the commission to report that fact to the legislative budget board (LBB), if the auditor reports to the commission that a state agency is not complying with Sections 2161.123. Authorizes the LBB to direct the emergency transfer of the agency's appropriated funds for making purchases under purchasing authority delegated under Section 2155.131 or 2155.133 to the appropriated funds for making purchases under purchasing authority delegated under Section 2155.131 or 2155.133 to the appropriate state agency. Requires the amount transferred from the agency's funds to the appropriate agency to be an amount

determined by the LBB.

SECTION 4. Amends Sections 2161.061(b) and (c), Government Code, to authorize the commission as one or its certification procedure to take certain action. Requires the commission to enter into agreements with local governments in this state that conduct certification programs described by Subsection (b). Requires the agreement to take effect immediately and take certain action. Deletes text requiring a municipality.

SECTION 5. Amends Section 2161.062, Government Code, by adding Subsections (d) and (e), to require the commission to send HUB an and orientation package on certification or recertification. Requires the package to include certain information. Requires a state agency with a budget that exceeds \$5 million during a state fiscal year to designate a staff member to serve as the HUB coordinator for the agency during the fiscal year. Authorizes the procurement director to serve as the coordinator. Requires the position of coordinator, to by least equal to the position of procurement director. Requires the coordinator to take certain action.

SECTION 6. Amends Section 2161.063(b), Government Code, to require the commission to assist the Texas Department of Economic Development, rather than the Texas Department of Commerce, in performing the department's duties under Section 481.0068, rather than 481.103.

SECTION 7. Amends Section 2161.064(b), Government Code, to require the commission at least semiannually to update the directory and provide access to the directory electronically or in another form, rather than provide a copy of the directory, to each state agency.

SECTION 8. Amends Sections 2161.121(a) and (e), Government Code, to require the commission to prepare a consolidated report that tracks, by vendor identification number and, to the extent allowed by federal law, by social security number, the graduation rates for HUBs that grew to exceed the size standards determined by the commission. Deletes the members of the legislature from those that are required to receive a report on the preceding fiscal year by the commission. Makes a conforming change.

SECTION 9. Amends Chapter 2161, Government Code, by adding Sections 2161.065 and 2161.066, as follows:

Sec. 2161.065. MENTOR-PROTÉGÉ PROGRAM. Sets forth requirements for the mentor-protégé program.

Sec. 2161.066. HISTORICALLY UNDERUTILIZED BUSINESS FORUMS. Set forth certain requirements for HUB forums.

SECTION 10. Amends Section 2161.122(c), Government Code, to delete text regarding Section 2155.139(b).

SECTION 11. Amend Chapter 2161C, Government Code, by adding Sections 2161.126 and 2161.127, as follows:

Sec. 2161.126. EDUCATION AND OUTREACH BY COMMISSION. Requires the commission, before September 1 of each year, to report to the governor, the lieutenant governor, and the speaker of the house of representatives on the education and training efforts that the commission has made toward HUBs. Specifies the provisions of the report related to HUBs included in the report.

Sec. 2161.127. LEGISLATIVE APPROPRIATIONS REQUESTS. Requires each state agency to include as part of its legislative appropriations request a detailed report for consideration by the budget committees of the legislature that shows the extent to which the agency met the applicable HUB contracting goals established by this chapter and by rules of the commission during the two calendar years preceding the calendar year in which the request is submitted. Provides that if a state agency did not meet an applicable goal, the report must demonstrate the reasons for that fact. Provides that the extent to which a state agency meets applicable goals is considered a performance measure for purposes of the appropriations process.

SECTION 12. Amends Chapter 2161, Government Code, by adding Subchapter F, as follows:

SUBCHAPTER F. SUBCONTRACTING

Sec. 2161.251. APPLICABILITY. Provides that this subchapter applies to all contracts entered into by a state agency with an expected value of \$100,000 or more including certain contracts. Provides that this subchapter applies to the contracts without regard to certain characteristics of the contract.

Sec. 2161.252. AGENCY DETERMINATION REGARDING SUBCONTRACTING OPPORTUNITIES; BUSINESS SUBCONTRACTING PLAN. Sets forth requirements for agency determinations regarding subcontracting opportunities and HUB subcontracting plan.

Sec. 2161.253. AGENCY EVALUATION OF BUSINESS SUBCONTRACTING PLAN. Sets forth requirements for an agency evaluation of business subcontracting plan.

Sec. 2161.254. REQUIRED CONTRACT CLAUSES. Sets forth requirements for required contract clauses.

Sec. 2161.255. DETERMINING WHETHER TO ASSESS PENALTIES. Sets forth requirement for determining whether to assess penalties.

SECTION 13. Amends Section 2161.231, Government Code, to provide that a person commits an offense if the person takes certain action.

SECTION 14. (a) Effective date: September 1, 1999.

(b) Provides that Chapter 2161F, Government Code, as added by this Act, applies only to subcontracting under a contract entered into by a state agency for which the request for bids, proposals, offers, or other applicable expressions of interest is published or otherwise disseminated on or after that date.

SECTION 15. Emergency clause.