

By: Miles

H.B. No. 3356

A BILL TO BE ENTITLED

AN ACT

relating to the state's historically underutilized business program, including the establishment of a contractor point system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 2161, Government Code, is amended by adding Section 2161.184 to read as follows:

Sec. 2161.184. POINT SYSTEM. (a) A state agency shall require a contractor to undertake the good faith efforts described by this section, to the extent required by the comptroller, on projects subject to this subchapter.

(b) The comptroller shall adopt rules establishing points to be awarded for taking each good faith effort and the minimum number of points required, depending on project size, cost, type, and other factors considered relevant by the comptroller. In establishing the point system, the comptroller may not require a contractor to earn more than 50 points, and the comptroller must assign each of the efforts listed in Subsections (c)(1) through (10) at least 10 points. A state agency may require that additional good faith efforts be taken, as indicated in its bid specifications.

(c) For purposes of the system established under this section, good faith efforts include:

(1) contacting historically underutilized businesses that reasonably could have been expected to submit a quote and that

1 were known to the contractor or available on state maintained lists  
2 at least 10 days before the date the bid or proposal is due and  
3 notifying the businesses of the nature and scope of the work to be  
4 performed;

5           (2) making the construction plans, specifications,  
6 and requirements available for review by historically  
7 underutilized businesses or providing those documents to the  
8 businesses at least 10 days before the date the bid or proposal is  
9 due;

10           (3) breaking down or combining elements of work into  
11 economically feasible units to facilitate historically  
12 underutilized business participation;

13           (4) working with trade, community, or contractor  
14 organizations for economically disadvantaged persons identified by  
15 the comptroller and included in the bid documents that provide  
16 assistance in recruitment of historically underutilized  
17 businesses;

18           (5) attending any pre-bid meetings scheduled by the  
19 state agency;

20           (6) providing assistance in obtaining a required bond  
21 or insurance or providing alternatives to bonding or insurance for  
22 subcontractors;

23           (7) negotiating in good faith with interested  
24 historically underutilized businesses and not rejecting a business  
25 as unqualified without sound reasons based on the business's  
26 capability and, if a historically underutilized business is  
27 rejected based on lack of qualifications, documenting the reasons

1 in writing;

2 (8) providing assistance to an otherwise qualified  
3 historically underutilized business in securing needed equipment,  
4 loan capital, lines of credit, or joint pay agreements, including  
5 waiving credit that is ordinarily required, and assisting  
6 historically underutilized businesses in obtaining the same unit  
7 pricing with the bidder's suppliers in order to help historically  
8 underutilized businesses in establishing credit;

9 (9) negotiating joint venture and partnership  
10 arrangements with historically underutilized businesses in order  
11 to increase opportunities for historically underutilized business  
12 participation on a state construction or repair project when  
13 possible; and

14 (10) providing quick pay agreements and policies to  
15 enable historically underutilized business contractors and  
16 suppliers to meet cash flow demands.

17 SECTION 2. Section 2161.253, Government Code, is amended by  
18 adding Subsections (f) and (g) to read as follows:

19 (f) If evidence of a good faith effort to implement a  
20 historically underutilized business subcontracting plan required  
21 under Section 2161.252 includes notice to minority or women trade  
22 organizations or development centers to assist in identifying  
23 historically underutilized businesses, the notice must be provided  
24 at least 10 working days before the due date for submission of the  
25 response, including a bid, proposal, offer, or other applicable  
26 expression of interest.

27 (g) If evidence of a good faith effort to implement a

1 historically underutilized business subcontracting plan required  
2 under Section 2161.252 includes notice to historically  
3 underutilized businesses that the contractor intends to  
4 subcontract under a contract, the contractor may not require  
5 historically underutilized businesses to respond to the notice  
6 before the 10th working day after the date the notice is provided.

7       SECTION 3. Section 2161.253, Government Code, as amended by  
8 this Act, applies only to a contract for which a state agency first  
9 advertises or otherwise solicits bids, proposals, offers, or  
10 qualifications, as applicable, on or after September 1, 2011.

11       SECTION 4. This Act takes effect September 1, 2011.