88R2836 MCK-D

By:  West S.B. No. 949

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a revolving loan program to fund the purchase by historically underutilized businesses of certain bonds required for public work contracts.

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

SECTION 1.  Chapter 2253, Government Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. REVOLVING LOAN PROGRAM FOR BOND ASSISTANCE

Sec. 2253.101.  DEFINITIONS. In this subchapter:

(1)  "Historically underutilized business" has the meaning assigned by Section 2161.001.

(2)  "Revolving loan program" means the program established by the comptroller under this subchapter.

Sec. 2253.102.  REVOLVING LOAN PROGRAM. (a) The comptroller by rule shall establish a revolving loan program to provide loans to historically underutilized businesses to assist the businesses in the purchase of performance and payment bonds required by this chapter for public work contracts with a governmental entity. The comptroller may not charge interest on a loan provided under the program.

(b)  The comptroller by rule shall set the terms and other requirements for a loan made under the revolving loan program, including guidelines for the repayment of the loans.

(c)  The comptroller may not contract with another entity to manage the revolving loan program.

Sec. 2253.103.  ELIGIBILITY FOR LOANS. (a) To be eligible for a loan under the revolving loan program, an applicant must:

(1)  be a historically underutilized business operating in the construction business or a building trade;

(2)  have been in business at least one year before applying for the loan;

(3)  have its principal place of business in this state; and

(4)  demonstrate the ability to meet all experience and financial standards required for the contract for which the business is seeking the bond assistance.

(b)  A historically underutilized business that has not previously replied to a solicitation for a public work contract as a prime contractor or subcontractor may apply for a loan under the revolving loan program. A historically underutilized business that has previously entered into a public work contract with a governmental entity and paid for its own bonds required under the contract is not precluded from applying for a loan under the revolving loan program.

(c)  The comptroller may by rule adopt additional eligibility requirements for participation in the revolving loan program.

Sec. 2253.104.  INELIGIBILITY FOR LOAN. (a) A historically underutilized business that has defaulted on a performance or payment bond required under a public work contract is not eligible to receive a loan under the revolving loan program before the fifth anniversary of the date the historically underutilized business defaulted on the bond.

(b)  A historically underutilized business that has filed for bankruptcy is not eligible to receive a loan under the revolving loan program before the seventh anniversary of the date the historically underutilized business filed for bankruptcy.

Sec. 2253.105.  SUBCONTRACTING. A historically underutilized business that receives a loan under the revolving loan program for bond assistance for a public work contract with a governmental entity and who is a prime contractor:

(1)  may not subcontract more than 75 percent of the contract; and

(2)  shall use the historically underutilized business guidelines under Chapter 2161, the governmental entity's guidelines, or the guidelines specified in the contract in awarding any subcontracts under the contract.

Sec. 2253.106.  LOAN AMOUNTS. (a) A historically underutilized business that has not previously entered into a public work contract with a governmental entity may receive a loan under the revolving loan program in an amount up to $100,000.

(b)  A historically underutilized business that has completed at least one public work contract with a governmental entity may receive a loan under the revolving loan program in an amount up to $200,000.

(c)  A historically underutilized business that has completed two or more public work contracts with a governmental entity may receive a loan under the revolving loan program in an amount up to:

(1)  $250,000 if the business is a subcontractor except as provided by Subdivision (2)(B); or

(2)  $500,000 if the business is:

(A)  a prime contractor; or

(B)  a subcontractor:

(i)  on a public work contract in which the value of the subcontract is greater than $10 million; or

(ii)  that can demonstrate an inability to secure a bond under normal market conditions.

Sec. 2253.107.  PAYMENT TO SURETY. The comptroller shall pay the proceeds of a loan made under the revolving loan program under this subchapter directly to the surety company issuing the bond.

Sec. 2253.108.  DEFAULT. (a) If a historically underutilized business that receives a loan under the revolving loan program defaults on a performance or payment bond for which the loan was provided, the comptroller and the attorney general shall institute appropriate proceedings for any available legal remedy to recover the amount of the loan.

(b)  The comptroller may withhold any state money owed to a historically underutilized business described by Subsection (a) for other contracts or business with the state conducted by the historically underutilized business.

(c)  A historically underutilized business described by Subsection (a) may not contract with a governmental entity until the business has repaid at least one-half of the loan amount received by the business under the revolving loan program for purchase of the performance or payment bond subject to the default.

Sec. 2253.109.  TEXAS HISTORICALLY UNDERUTILIZED BUSINESS BOND ASSISTANCE REVOLVING LOAN ACCOUNT. (a) The Texas historically underutilized business bond assistance revolving loan account is an account in the general revenue fund administered by the comptroller.

(b)  Money in the account may be used only for loans made under this subchapter.

(c)  The comptroller shall deposit to the credit of the account:

(1)  money appropriated to the comptroller for the purpose of this subchapter;

(2)  money the comptroller receives as a gift, grant, or donation for the purpose of this subchapter;

(3)  money received by the comptroller for the repayment of a loan made under the revolving loan program, and any fee charged to make the loan; and

(4)  notwithstanding Section 404.071, all interest attributable to money held in the account.

(d)  Money in the account may be appropriated only to the comptroller for the purposes of administering the account.

(e)  The comptroller may not contract with another entity to administer the account.

Sec. 2253.110.  GIFTS AND GRANTS. The comptroller may solicit and accept gifts and grants from any public or private source for the purposes of this subchapter.

Sec. 2253.111.  RULEMAKING AUTHORITY. The comptroller shall adopt rules to implement this subchapter.

Sec. 2253.112.  REPORTING REQUIREMENTS. Not later than January 15 of each year, the comptroller shall report to the legislature:

(1)  the total dollar amount of assistance provided in the preceding year;

(2)  the total number of businesses to which assistance was provided in the preceding year;

(3)  the total number of state contracts secured by businesses to which assistance was provided in the preceding year;

(4)  the total number of applications for assistance in the preceding year; and

(5)  the remaining dollar balance in the Texas historically underutilized business bond assistance revolving loan account as of December 31 of the preceding year.

Sec. 2253.113.  AUDIT BY STATE AUDITOR. (a) The state auditor shall conduct a biennial financial audit and effectiveness audit of the revolving loan program to evaluate the program's performance.

(b)  The state auditor shall report the results of the audits to the legislature not later than January 8 of each odd-numbered year.

SECTION 2.  This Act takes effect September 1, 2023.