

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

1 manage the revolving loan program.

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

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

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

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

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

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

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

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

1 anniversary of the date the historically underutilized business
2 defaulted on the bond.

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

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

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

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

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

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

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

1 amount up to:

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

4 (2) \$500,000 if the business is:

5 (A) a prime contractor; or

6 (B) a subcontractor:

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

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

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

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

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

25 (c) A historically underutilized business described by
26 Subsection (a) may not contract with a governmental entity until
27 the business has repaid at least one-half of the loan amount

1 received by the business under the revolving loan program for
2 purchase of the performance or payment bond subject to the default.

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

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

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

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

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

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

19 (4) notwithstanding Section [404.071](#), all interest
20 attributable to money held in the account.

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

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

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

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

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

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

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

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

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

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

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

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

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