

AMENDMENTS TO LB790

(Amendments to E & R amendments, ER178)

Introduced by Wayne, 13.

1 1. Insert the following new sections:

2 Section 1. Sections 1 to 14 of this act shall be known and may be
3 cited as the Nebraska Historically Underutilized Business Program Act.

4 Sec. 2. (1) The Legislature finds:

5 (a) That the promotion of historically underutilized businesses is a
6 matter of state concern, particularly in communities which contain a
7 large number of historically underutilized businesses. The state
8 regulates public contracts and the procurement process of political
9 subdivisions through the County Purchasing Act, Interlocal Cooperation
10 Act, Joint Public Agency Act, and various other statutory provisions;

11 (b) That it is necessary and expedient to require the inclusion of
12 certain provisions in contracts with constitutional offices, state
13 agencies, and political subdivisions to promote and encourage the
14 creation of business opportunities for historically underutilized
15 businesses of this state, and businesses in economic redevelopment areas,
16 to promote equality of access to public contracts;

17 (c) That it is in the best interest of the people of Nebraska to
18 promote the interests of historically underutilized businesses because it
19 is vital that all Nebraskans have an opportunity to contribute
20 economically by participating in business opportunities existing in
21 government;

22 (d) That a coordinated effort is necessary to eliminate any barriers
23 impeding equal opportunity for historically underutilized businesses
24 doing business with a constitutional office, state agency, or political
25 subdivision;

26 (e) That the utilization of historically underutilized businesses is

1 critical to creating a vibrant, sustainable, and diverse business
2 community in Nebraska; and

3 (f) That it is the policy of this state to encourage the use of
4 historically underutilized businesses by constitutional offices, state
5 agencies, and political subdivisions and to assist such offices,
6 agencies, and political subdivisions in the implementation of this policy
7 through means that are neutral as to race, ethnicity, and gender.

8 (2) The purpose of the Nebraska Historically Underutilized Business
9 Program Act is to promote full and equal business opportunities for all
10 businesses in an effort to remedy disparities in state and local
11 procurement and contracting.

12 (3) The Nebraska Historically Underutilized Business Program Act
13 describes the minimum steps and requirements to be undertaken by a
14 government entity to fulfill the state's historically underutilized
15 business policy and attain aspirational goals.

16 Sec. 3. For purposes of the Nebraska Historically Underutilized
17 Business Program Act:

18 (1) Applicant means a person or business that applies to the
19 Commissioner of Labor for certification as a historically underutilized
20 business;

21 (2) Application means the Department of Labor's form for applicants
22 to request certification as a historically underutilized business;

23 (3) Bidder means any person or business seeking to be awarded a
24 government entity contract;

25 (4) Commodities means any tangible good provided by a contractor to
26 the state;

27 (5) Construction contract means any government entity contract for
28 the construction, demolition, rehabilitation, alteration, conversion,
29 extension, or repair of buildings, streets, or other improvements to real
30 estate or property annexed to real estate;

31 (6) Construction contractor is a person or business that enters into

1 a construction contract with a government entity as the builder of the
2 prime construction contract for the project and which is responsible for
3 the means and methods, material, labor, and equipment to be used in the
4 execution of the project in accordance with the plans, specifications,
5 and contract documents;

6 (7) Contract means any contract awarded by a government entity
7 whereby the government entity is committed to expend or does expend
8 public funds, including, but not limited to, any public funds received
9 from other government entities, tax incentive programs, or tax increment
10 financing expenditures, including public funds used for work, labor
11 services, financial services, technical services, professional services,
12 supplies, equipment, materials, or any combination of the foregoing;

13 (8) Economic redevelopment area means an area in which: (a) The
14 average rate of unemployment in the area during the period covered by the
15 most recent federal decennial census or American Community Survey 5-Year
16 Estimate by the United States Bureau of the Census is at least one
17 hundred fifty percent of the average rate of unemployment in the state
18 during the same period; and (b) the average poverty rate in the area
19 exceeds twenty percent for the total federal census tract or tracts or
20 federal census block group or block groups in the area;

21 (9) Government entity means any of the following with a biennial
22 budget that exceeds one hundred million dollars or an annual budget of
23 fifty million dollars:

24 (a) Constitutional office;

25 (b) State agency; or

26 (c) Political subdivision;

27 (10) Historically underutilized business or HUB means:

28 (a) A person or business with its principal place of business in
29 this state that is a participant in the Nebraska Department of
30 Transportation's disadvantaged business enterprise program and adheres to
31 the requirements and guidance contained in 49 C.F.R. part 26, as such

1 part existed on the operative date of this act; or

2 (b) A person or business with its principal place of business
3 located in this state and within an economic redevelopment area and:

4 (i)(A) That is one of the following:

5 (I) A construction contractor, including a building constructor or
6 heavy and civil engineering constructor as described in subsectors 236
7 and 237, respectively, of the NAICS, whose average annual gross receipts
8 from the past three years does not exceed the size standard, in millions
9 of dollars, or the size standard in number of employees, twenty-five
10 percent of NAICS code, for those subsectors of the NAICS as published in
11 the United States Small Business Administration Table of Small Business
12 Size Standards Matched to the North American Industry Classification
13 System Codes;

14 (II) A specialty trade contractor as described in subsector 238 of
15 the NAICS whose average annual gross receipts from the past three years
16 does not exceed the size standard, millions of dollars, or the size
17 standard in number of employees, twenty-five percent of the NAICS code,
18 for those subsections of the NAICS as published in the United States
19 Small Business Administration Table of Small Business Size Standards
20 Matched to North American Industry Classification System Codes; or

21 (III) Any other contractor whose average annual gross receipts from
22 the past three years does not exceed the size standard, millions of
23 dollars, or the size standard in number of employees, twenty-five percent
24 of NAICS code, as published in the current United States Small Business
25 Administration Table of Small Business Standards Matched to North
26 American Industry Classification System Codes; and that is not an
27 affiliate or subsidiary of a business in its field of operation.

28 (B) The net worth of individual owners may not exceed the sum of one
29 point thirty two million dollars subject to change from time to time
30 based upon rules promulgated by the United States Department of
31 Transportation, after excluding the individual's equity in the business

1 seeking certification and the individual's equity in his or her primary
2 residence. As used in this subdivision, the word owner includes any
3 person holding any percentage ownership in the business;

4 (ii) That is not: A manufacturer's representative; a franchise,
5 unless operating as an independent entrepreneur utilizing a franchise
6 name only; a business for which the owner is an owner or part owner of
7 another similar business; or a non-stocking retailer or wholesaler; and

8 (iii) The owner or owners of which:

9 (A) Have a net worth less than the sum of one million three hundred
10 twenty thousand dollars after excluding the equity of the individual or
11 individuals in the business seeking certification and such individual's
12 or individuals' equity in their primary residences; and

13 (B) Hold no more than ten percent ownership in any other single
14 business, unless the other business is certified as a historically
15 underutilized business;

16 (11) HUB subcontracting plan means a written document that outlines
17 the use of subcontractors, which is required to be submitted with a
18 response to a government entity solicitation with an expected value of
19 one hundred thousand dollars or more and for which subcontracting
20 opportunities have been determined by the government entity to be
21 probable. The HUB subcontracting plan subsequently becomes a provision of
22 the awarded contract and shall be monitored for compliance by the
23 government entity during the term of the contract;

24 (12) Mentor-protégé program means a program under section 10 of this
25 act designed to assist government entities in identifying prime
26 contractors and historically underutilized businesses to foster long-term
27 relationships and potential long-term contractual relationships;

28 (13) North American Industry Classification System or NAICS means
29 the standard established by the United States Office of Management and
30 Budget and used by federal statistical agencies in classifying business
31 establishments for the purpose of collecting, analyzing, and publishing

1 statistical data related to the United States business economy;

2 (14) Owner means any person or business holding any percentage
3 ownership in a business;

4 (15) Other contractor means a person or business that contracts with
5 a government entity to provide commodities or services, including
6 professional services;

7 (16) Prime contractor is a person or business that is awarded a
8 government entity contract;

9 (17) Principal place of business means the location where the owner
10 or owners of the business direct, control, and coordinate the business's
11 daily operations and activities;

12 (18) Professional services means services of licensed or registered
13 professions that are purchased by a government entity;

14 (19) Reside, when used in reference to a requirement that a person
15 reside within this state, means that a person:

16 (a) Physically resides in this state for a period of not less than
17 twelve consecutive months prior to submitting an application for HUB
18 certification and lists Nebraska as such person's residency in such
19 person's most recent federal tax return; or

20 (b) Has established, to the satisfaction of the Department of
21 Revenue, a Nebraska domicile for a period of time sufficient to
22 demonstrate an intention to permanently reside in this state consistently
23 over a substantial period of time;

24 (20) Respondent means a person or business that submits a response;

25 (21) Response means a submission made in answer to an invitation for
26 bids, requests for proposals, or other purchase solicitation documents,
27 which may take the form of a bid, proposal, offer, or other applicable
28 expression of interest;

29 (22) Subcontractor means a person or business who contracts with a
30 prime contractor to work or contribute toward completing work for a
31 government entity;

1 (23) Tier I HUB means any historically underutilized business that
2 is self-certified under penalty of perjury and:

3 (a) Has a principal place of business located within Nebraska and
4 within an economic redevelopment area; and

5 (b) Twenty percent or more of its employees reside in Nebraska and
6 within an economic redevelopment area;

7 (24) Tier II HUB means any historically underutilized business that
8 is self-certified under penalty of perjury and:

9 (a) Has a principal place of business located within Nebraska and
10 within an economic redevelopment area; or

11 (b) Twenty percent or more of its employees reside in Nebraska and
12 within an economic redevelopment area; and

13 (25) Tier III HUB means any historically underutilized business that
14 is self-certified under penalty of perjury and is not a Tier I HUB or
15 Tier II HUB.

16 Sec. 4. (1) A business desiring to be certified as a historically
17 underutilized business must complete a form prescribed by the Department
18 of Labor or participate in the Department of Transportation's Nebraska
19 Unified Certification Program.

20 (2) The Department of Labor and the Department of Transportation may
21 request any additional information determined necessary to evaluate a
22 business's qualifications for certification prior to a decision to
23 certify an applicant as a historically underutilized business.

24 (3) Once a business has been certified as a historically
25 underutilized business, the certification shall remain in place for five
26 years, as long as the certification status of the business does not
27 change. The business must complete an annual affidavit of certification
28 that states its current certification status, regardless of whether
29 variables have changed. A business may apply to be recertified as a
30 historically underutilized business if the business maintains its
31 qualifications for certification, subject to the limits set forth in this

1 section. A historically underutilized business shall only be permitted to
2 recertify four times for a maximum of twenty years. No business that was
3 initially certified as a historically underutilized business shall
4 participate in the historically underutilized business program for a
5 period greater than twenty-five years.

6 (4) When a business no longer meets the criteria of the historically
7 underutilized business program, the business shall be decertified and
8 shall no longer participate in the program. However, if a business is
9 certified to participate in the program at the time it enters into any
10 contract, the business shall remain certified for that contract only
11 until the expiration of the contract. Nothing in this subsection shall
12 prohibit the Department of Labor or the Department of Transportation from
13 decertifying any business that violates any rule, policy, or procedure of
14 the historically underutilized business program.

15 Sec. 5. (1) Each government entity shall make a good faith effort
16 to utilize historically underutilized businesses in contracts for
17 construction, services, including professional and consulting services,
18 and commodities purchases. Each government entity may achieve the
19 statewide or office, agency, political subdivision-specific annual HUB
20 goals specified in the constitutional office's or state agency's
21 appropriations request or the political subdivision's budget by
22 contracting directly with historically underutilized businesses or
23 indirectly through subcontracting opportunities.

24 (2) The statewide HUB goals for the procurement categories for this
25 state are:

26 (a) Ten percent for heavy construction other than building
27 contracts;

28 (b) Twenty percent for all building construction, including general
29 contractors and operative builders contracts;

30 (c) Twenty percent for all special trade construction contracts;

31 (d) Ten percent for professional services contracts;

1 (e) Ten percent for all other services contracts; and

2 (f) Ten percent for commodities contracts.

3 (3) Priorities shall be set forth as follows: If there is an
4 adequate number of qualified and certified historically underutilized
5 businesses, first priority shall be given to Tier I HUBs; if not, then
6 the next priority will be given to Tier II HUBs; and then Tier III HUBs.

7 (4) Government entities shall establish their own specific
8 historically underutilized business goals for each procurement category
9 outlined in subsections (2) and (3) of this section, however, at a
10 minimum, the statewide HUB goals should be each government entity's
11 starting point for establishing specific goals. Such goals should be
12 based on:

13 (a) A government entity's fiscal year expenditures and total
14 contract expenditures;

15 (b) The availability to a government entity of historically
16 underutilized businesses in each procurement category;

17 (c) The government entity's historic utilization of historically
18 underutilized businesses;

19 (d) The government entity's identification of potential
20 subcontracting opportunities in all contracts and the requirement of a
21 HUB subcontracting plan for contracts of one hundred thousand dollars or
22 more over the life of the contract, including any renewals, where such
23 opportunities exist;

24 (e) The identification of HUB subcontracting or prime contracting in
25 contracts that are less than one hundred thousand dollars, whenever
26 possible; and

27 (f) Other relevant factors.

28 (5)(a) Each government entity shall make a good faith effort to
29 assist historically underutilized businesses in receiving a portion of
30 the total contract value of all contracts that the government entity
31 expects to award in a fiscal year.

1 (b) Each government entity that considers entering into a contract
2 with an expected value of one hundred thousand dollars or more over the
3 life of the contract, including any renewals, shall, before the
4 government entity solicits bids, proposals, offers, or other applicable
5 expressions of interest, determine whether subcontracting opportunities
6 are probable under the contract pursuant to subsection (6) of this
7 section. Factors in determining a government entity's good faith effort
8 and if subcontracting opportunities are probable shall include:

9 (i) Preparation and distribution of information on procurement
10 procedures in a manner that encourages participation in contracts by all
11 businesses;

12 (ii) Examining the scope of work to be performed under the proposed
13 contract and determining if it is likely that some of the work may be
14 performed by a subcontractor;

15 (iii) Researching the HUB directory compiled under section 9 of this
16 act, Internet resources, or other directories as identified by the
17 Commissioner of Labor, for historically underutilized businesses, that
18 may be available to perform the contract work;

19 (iv) Where feasible, assessment of bond and insurance requirements
20 and design requirements that reasonably permit more than one business to
21 perform the work;

22 (v) Division of proposed requisitions into reasonable lots in
23 keeping with industry standards and competitive bid requirements;

24 (vi) Determining if subcontracting is probable for only a subset of
25 the work expected to be performed or the funds to be expended under the
26 contract;

27 (vii) Reviewing the history of similar government entity purchasing
28 transactions;

29 (viii) Specification of reasonable, realistic delivery schedules
30 consistent with a government entity's actual requirements; and

31 (ix) Ensuring that specifications, terms, and conditions reflect a

1 government entity's actual requirements, are clearly stated, and do not
2 impose unreasonable or unnecessary contract requirements.

3 (6)(a) If the government entity determines, as set forth in
4 subsection (5) of this section, that subcontracting opportunities are
5 probable, the government entity shall require that each bid, proposal,
6 offer, or other applicable expression of interest for the contract
7 include a HUB subcontracting plan in order to be considered responsive.

8 (b) The HUB subcontracting plan shall be submitted with the
9 respondent's response on or before the due date for responses, except for
10 construction contracts involving alternative delivery methods. For
11 construction contracts involving alternative delivery methods, the HUB
12 subcontracting plan may be submitted up to twenty-four hours following
13 the date and time that responses are due.

14 (c) Responses that do not include a completed HUB subcontracting
15 plan in accordance with this subsection shall be rejected.

16 (d) If a properly submitted HUB subcontracting plan contains minor
17 deficiencies such as a failure to sign or date the plan or a failure to
18 submit already-existing evidence that three historically underutilized
19 businesses were contacted, the government entity may contact the
20 respondent for clarification to the plan, if it contains sufficient
21 evidence that the respondent developed and submitted the plan in good
22 faith. The respondent shall have twenty-four hours to clarify the plan or
23 cure a defect in the plan.

24 (e) If the government entity determines that a submitted HUB
25 subcontracting plan was not developed in good faith, the government
26 entity shall treat that as a material failure to comply with advertised
27 specifications, and the subject response shall be rejected. The reasons
28 for rejection shall be recorded in the procurement file.

29 (f) The HUB subcontracting plan shall include the following:

30 (i) Certification that respondent has made a good faith effort to
31 meet the requirements of this section. When determining whether a good

1 faith effort has been made in the development of the required HUB
2 subcontracting plan, a government entity may require the respondent to
3 submit supporting documentation explaining how the respondent has made a
4 good faith effort according to the following criterion:

5 (A) How the respondent divided the contract work into reasonable
6 lots or portions consistent with prudent industry practices;

7 (B) How the respondent negotiated in good faith with qualified
8 historically underutilized businesses who were the responsive bidders;

9 (C) How the respondent provided written justification of the
10 selection process if the selected subcontractor is not a historically
11 underutilized business; and

12 (D) How the respondent provided documentation of meeting one or more
13 of the following requirements:

14 (I) Notifying at least three historically underutilized businesses
15 of the subcontracting opportunities that the respondent intended to
16 subcontract. The respondent shall provide such notice to three or more
17 historically underutilized businesses per each subcontracting opportunity
18 that provides the type of work required for each subcontracting
19 opportunity identified in the contract specifications or any other
20 subcontracting opportunity the respondent cannot complete with its own
21 equipment, supplies, materials, and employees. The notification shall be
22 in writing, and the respondent must document the historically
23 underutilized businesses contacted on the forms prescribed by the
24 Commissioner of Labor. The notice shall, in all instances, include the
25 scope of the work, adequate information about bonding, insurance, the
26 availability of plans, the specifications, required qualifications,
27 identity of a contact person, and other requirements of the contract
28 allowing reasonable time for historically underutilized businesses to
29 participate effectively. The notice shall be provided to potential HUB
30 subcontractors at least seven working days prior to submission of the
31 respondent's response, unless circumstances require a different time

1 period, which is determined by the government entity and documented in
2 the contract file;

3 (II) Submitting documentation that one hundred percent of all
4 available subcontracting opportunities will be performed by one or more
5 historically underutilized businesses; or

6 (III) Submitting documentation that one or more HUB subcontractors
7 will be utilized and that the total value of those subcontracts will meet
8 or exceed the statewide goal for the appropriate contract category set
9 forth in subsection (2) of section 5 of this act, or the government
10 entity's specific goal for the contracting category established by the
11 procuring government entity, whichever is higher; and

12 (E) A respondent's participation in a mentor-protégé program. The
13 submission of a protégé as a subcontractor in the HUB subcontracting plan
14 constitutes a good faith effort for the particular area to be
15 subcontracted with the protégé. When submitted, a government entity may
16 accept a mentor-protégé agreement that has been entered into by the
17 respondent (mentor) and a certified historically underutilized business
18 (protégé).

19 (g) The government entity shall consider the following in
20 determining the respondent's good faith effort to participate in a
21 mentor-protégé program:

22 (i) If the respondent has entered into a fully executed mentor-
23 protégé agreement that has been registered with the Department of Labor
24 prior to submitting the plan;

25 (ii) If the respondent's HUB subcontracting plan identifies the
26 areas of subcontracting that will be performed by the protégé;

27 (iii) The identification of the subcontractors that will be used
28 during the course of the contract;

29 (iv) The expected percentage of work to be subcontracted; and

30 (v) The approximate dollar value of that percentage of work.

31 (h) A government entity shall require a respondent to state whether

1 it is a certified historically underutilized business.

2 (i) The successful respondent shall provide all additional
3 documentation required by the government entity to demonstrate compliance
4 with good faith effort requirements prior to contract award. If the
5 successful respondent fails to provide supporting documentation such as
6 telephone logs, fax transmittals, or electronic mail within the timeframe
7 specified by the government entity to demonstrate compliance with this
8 subsection prior to contract award, that respondent's response shall be
9 rejected.

10 (j) If the respondent is able to fulfill all of the potential
11 subcontracting opportunities identified with its own equipment, supplies,
12 materials, and employees, the respondent must sign an affidavit and
13 provide a statement explaining how the respondent intends to fulfill each
14 subcontracting opportunity. The respondent must agree to provide the
15 following, if requested by the government entity:

16 (i) Evidence of existing staffing to meet contract objectives;

17 (ii) Monthly certified payroll records showing company staff fully
18 engaged in the contract;

19 (iii) Onsite reviews of company headquarters or worksites where
20 services are to be performed; and

21 (iv) Documentation proving employment of qualified personnel holding
22 the necessary licenses and certificates required to perform the work.

23 (k)(i) The government entity shall audit the contractor's compliance
24 with the HUB subcontracting plan.

25 (ii) Prime contractors shall maintain business records documenting
26 compliance with the HUB subcontracting plan and shall submit a compliance
27 report in a format required by the Commissioner of Labor to the
28 contracting government entity as a condition for payment.

29 (iii) During the term of the contract, the government entity shall
30 monitor the HUB subcontracting plan monthly to determine if the value of
31 the subcontracts to historically underutilized businesses meets or

1 exceeds the HUB subcontracting provisions specified in the contract.
2 Accordingly, each government entity shall audit and require a prime
3 contractor to report to the government entity the identity and the amount
4 paid to its subcontractors.

5 (iv) If the selected respondent decides to subcontract any part of
6 the contract in a manner that is not consistent with its HUB
7 subcontracting plan, the selected respondent must submit a revised HUB
8 subcontracting plan before subcontracting any of the work under the
9 contract. If the selected respondent subcontracts any of the work without
10 prior authorization, the selected respondent is deemed to have breached
11 the contract and is subject to any remedial actions provided by
12 applicable state law and the Nebraska Historically Underutilized Business
13 Program Act. A government entity shall report such breaches to the
14 Department of Labor.

15 (l) If, at any time during the term of the contract, the selected
16 respondent desires to make changes to the approved HUB subcontracting
17 plan, proposed changes must be received for prior review and approval by
18 the government entity before changes will be effective under the
19 contract. The government entity shall approve changes by amending the
20 contract or by another form of written approval by the government entity.
21 The reasons for amendments or other written approval shall be recorded in
22 the procurement file.

23 (m) If, after the bid opening and during contract performance, the
24 successful contractor determines that a historically underutilized
25 business identified in the bid is unable to perform successfully or is
26 not performing satisfactorily, such contractor shall make every
27 reasonable effort to replace a HUB subcontractor with another
28 historically underutilized business. Prior to substituting such
29 replacement historically underutilized business, the apparent successful
30 contractor must show good cause for the replacement. All substitutions
31 shall be approved in writing.

1 (n) If a government entity expands the original scope of work
2 through a change order or contract amendment, including a contract
3 renewal that expands the scope of work, the government entity shall
4 determine if the additional scope of work contains additional probable
5 subcontracting opportunities not identified in the initial solicitation.
6 If the government entity determines probable subcontracting opportunities
7 exist, the government entity shall require the selected respondent to
8 submit a HUB subcontracting plan or revised HUB subcontracting plan for
9 the additional probable subcontracting opportunities.

10 (o) If a determination is made that the prime contractor failed to
11 implement the HUB subcontracting plan in good faith, the government
12 entity, in addition to any other remedies, may bar the contractor from
13 further contracting opportunities with the government entity. In
14 addition, if the prime contractor failed to implement the HUB
15 subcontracting plan in good faith, the government entity may revoke the
16 contract for breach of contract and make a claim against the prime
17 contractor.

18 (p) All historically underutilized businesses will be paid no later
19 than fourteen days after the submission of their invoice and all prime
20 contractors utilizing a HUB subcontracting plan will be paid no later
21 than thirty days after the submission of their invoice.

22 Sec. 6. (1) Any government entity that enters into a contract with
23 an expected value of one hundred thousand dollars or more shall:

24 (a) Implement rules, regulations, and procedures to effectuate the
25 provisions of the Nebraska Historically Underutilized Business Program
26 Act;

27 (b) Make all appropriate determinations as to compliance with the
28 act;

29 (c) Meet with contracting parties for such purposes; and

30 (d) Maintain and report required contract statistics for quarterly
31 reports to the Department of Labor. The department shall make such

1 statistics publicly available, including on its web site.

2 (2)(a) Any government entity that enters into a contract with an
3 expected value of one hundred thousand dollars or more shall immediately
4 adopt and promulgate rules, regulations, resolutions, or ordinances
5 establishing formal protest procedures under the Nebraska Historically
6 Underutilized Business Program Act, including provisions for a contested
7 case hearing for any contract awarded pursuant to the act.

8 (b) If the government entity receives a formal protest from a
9 respondent pursuant to subdivision (a) of this subsection, the government
10 entity shall proceed with notice and hearing for a contested case
11 pursuant to the Administrative Procedure Act or, if the government entity
12 is a political subdivision, the political subdivision shall proceed with
13 notice and hearing for a contested case in the same manner as under the
14 Administrative Procedure Act. The hearing shall be held by the government
15 entity within sixty days after receipt of the protest.

16 (c) Either party may appeal the final decision, and the appeal shall
17 be in accordance with the Administrative Procedure Act. An appeal shall
18 be made to the district court of Lancaster County if the government
19 entity is a constitutional office or state agency. An appeal shall be
20 made to the district court of the judicial district in which the case
21 originated if the government entity is a political subdivision. An appeal
22 shall only be made after all administrative remedies have been exhausted.

23 (d) The formal protest procedures established under this section,
24 and any subsequent review under the Administrative Procedure Act, shall
25 be the sole and exclusive means of protesting or otherwise challenging a
26 contract award decision.

27 Sec. 7. (1) Refusal or noncompliance by a contractor or
28 subcontractor to comply with any portion of the Nebraska Historically
29 Underutilized Business Program Act may subject the offending party to any
30 or all of the following penalties:

31 (a) Withholding payments that are due to the contractor who is in

1 violation under the involved contract until it is determined that the
2 contractor or subcontractor is in compliance with the provisions of the
3 contract; or

4 (b) Exclusion from bidding on any contracts with the government
5 entity until such time as the contractor or subcontractor demonstrates
6 that it has established and will carry out the policies of the program.

7 (2) In the event the sanctions or penalties contained in subsection
8 (1) of this section are invoked, the government entity shall notify the
9 contractor or subcontractor of the facts or circumstances which formed
10 the basis for the allegation that the contractor or subcontractor has not
11 complied with the act. Such notice shall be in writing and received at
12 least ten days prior to any action being taken by the government entity,
13 during which time the contractor or subcontractor may clarify or make
14 corrections.

15 (3) A protest under this section shall be in accordance with the
16 Administrative Procedure Act or, if the government entity is a political
17 subdivision, the protest shall be in the same manner as under the
18 Administrative Procedure Act. An appeal shall only be made after all
19 administrative remedies have been exhausted.

20 Sec. 8. (1) The Department of Labor shall offer historically
21 underutilized businesses assistance and training regarding state
22 procurement procedures.

23 (2) The Department of Labor shall send historically underutilized
24 businesses an orientation package upon certification or recertification.
25 The package shall include:

26 (a) A certificate issued in the historically underutilized
27 business's name;

28 (b) A description of the significance and value of certification;

29 (c) A list of state and local purchasing personnel;

30 (d) Information regarding electronic commerce opportunities;

31 (e) Information regarding online contact information; and

1 (f) Additional information about the state and local procurement
2 process.

3 (3) A government entity with a biennial budget that exceeds two
4 hundred million dollars or an annual budget that exceeds one hundred
5 million dollars in contracts shall designate a staff member to serve as
6 the HUB coordinator for the agency during the fiscal year. The
7 procurement director or person acting as procurement director may serve
8 as the HUB coordinator. In government entities that employ a historically
9 underutilized businesses coordinator, the position of coordinator, within
10 the government entity's structure, must be at least equal to the position
11 of procurement director.

12 Sec. 9. (1) The Department of Labor shall compile, in the most
13 cost-efficient form, a directory of businesses certified as historically
14 underutilized businesses.

15 (2) The Department of Labor shall update the directory and provide
16 access to the HUB directory electronically or in another acceptable form
17 to each government entity.

18 (3) The Department of Labor shall provide a copy of the directory to
19 every government entity in January and July of each year.

20 Sec. 10. (1) The Department of Labor shall design a mentor-protégé
21 program to foster long-term relationships between prime contractors and
22 historically underutilized businesses and to increase the ability of
23 historically underutilized businesses to contract with the government
24 entities or to receive subcontracts under government entity contracts.

25 (2) Participation in the program must be voluntary for both the
26 contractor and the historically underutilized business subcontractor.

27 Sec. 11. (1) Each government entity shall make publicly available
28 the information set forth in this section and any other information
29 required by the Department of Labor not later than November 15 of each
30 year. The information must include:

31 (a) The number and dollar amount of contracts awarded and paid to

1 certified historically underutilized businesses;

2 (b) An analysis of the relative level of opportunity for
3 historically underutilized businesses for various categories of acquired
4 goods and services;

5 (c) The goals established under the Nebraska Historically
6 Underutilized Business Program Act for contracting with historically
7 underutilized businesses during the two calendar years preceding the
8 calendar year in which the request is submitted;

9 (d) A statement regarding whether the goals established were met
10 during the two calendar years preceding the calendar year in which the
11 request is submitted; and

12 (e) If the goals established were not met during the two calendar
13 years preceding the calendar year, an explanation of why the goals were
14 not met.

15 (2) Each constitutional office or state agency must include as part
16 of its appropriations request a detailed report for consideration by the
17 Appropriations Committee of the Legislature that shows the extent to
18 which the office or agency complied with the Nebraska Historically
19 Underutilized Business Program Act during the two calendar years
20 preceding the calendar year in which the request is submitted. To the
21 extent the constitutional office or state agency does not comply, the
22 report must demonstrate the reasons for noncompliance. The extent to
23 which a constitutional office or state agency complies with the Nebraska
24 Historically Underutilized Business Program Act and rules and regulations
25 of the Director of Administrative Services adopted and promulgated to
26 assist in carrying out the act is considered a key performance measure
27 for purposes of the appropriations process.

28 Sec. 12. (1) The Nebraska Historically Underutilized Business
29 Program Act applies to all contracts entered into by a government entity
30 with an expected value of one hundred thousand dollars or more,
31 including:

- 1 (a) Contracts for the acquisition of a good or service; and
2 (b) Contracts for or related to the construction of a public
3 building, road, or other public work.

4 (2) The Nebraska Historically Underutilized Business Program Act
5 applies to a contract without regard to:

- 6 (a) Whether the contract is otherwise subject to the act; or
7 (b) The source of funds for the contract, except that to the extent
8 federal funds are used to pay for the contract, the act does not apply if
9 federal law prohibits the application of the act in relation to the
10 expenditure of federal funds.

11 Sec. 13. The Nebraska Historically Underutilized Business Program
12 Act shall not apply to any emergency contract resulting from a natural
13 disaster, tornado, blizzard, flood, energy shortage, or similar
14 occurrence, so long as a mayor or other head of a political subdivision
15 or the Governor declares such an occurrence to be an emergency.

16 Sec. 14. The Commissioner of Labor may adopt and promulgate rules
17 and regulations to administer the Nebraska Historically Underutilized
18 Business Program Act.

19 Sec. 24. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14
20 of this act become operative on August 1, 2021. The other sections of
21 this act become operative on their effective date.

22 2. Renumber the remaining sections accordingly.