AMENDMENTS TO LB790
(Amendments to E & R amendments, ER178)

Introduced by Wayne, 13.

1. Insert the following new sections:

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

   Sec. 2. (1) The Legislature finds:

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

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

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

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

   (e) That the utilization of historically underutilized businesses is
critical to creating a vibrant, sustainable, and diverse business community in Nebraska; and

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

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

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

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

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

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

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

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

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

(6) Construction contractor is a person or business that enters into
a construction contract with a government entity as the builder of the
prime construction contract for the project and which is responsible for
the means and methods, material, labor, and equipment to be used in the
execution of the project in accordance with the plans, specifications,
and contract documents;

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

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

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

(a) Constitutional office;

(b) State agency; or

(c) Political subdivision;

(10) Historically underutilized business or HUB means:

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

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

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

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

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

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

(B) The net worth of individual owners may not exceed the sum of one point thirty two million dollars subject to change from time to time based upon rules promulgated by the United States Department of Transportation, after excluding the individual's equity in the business
seeking certification and the individual's equity in his or her primary residence. As used in this subdivision, the word owner includes any person holding any percentage ownership in the business;

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

(iii) The owner or owners of which:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) Subcontractor means a person or business who contracts with a
prime contractor to work or contribute toward completing work for a
government entity;
(23) Tier I HUB means any historically underutilized business that is self-certified under penalty of perjury and:
(a) Has a principal place of business located within Nebraska and within an economic redevelopment area; and
(b) Twenty percent or more of its employees reside in Nebraska and within an economic redevelopment area;

(24) Tier II HUB means any historically underutilized business that is self-certified under penalty of perjury and:
(a) Has a principal place of business located within Nebraska and within an economic redevelopment area; or
(b) Twenty percent or more of its employees reside in Nebraska and within an economic redevelopment area; and

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

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

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

(3) Once a business has been certified as a historically underutilized business, the certification shall remain in place for five years, as long as the certification status of the business does not change. The business must complete an annual affidavit of certification that states its current certification status, regardless of whether variables have changed. A business may apply to be recertified as a historically underutilized business if the business maintains its qualifications for certification, subject to the limits set forth in this
section. A historically underutilized business shall only be permitted to recertify four times for a maximum of twenty years. No business that was initially certified as a historically underutilized business shall participate in the historically underutilized business program for a period greater than twenty-five years.

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

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

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

(a) Ten percent for heavy construction other than building contracts;
(b) Twenty percent for all building construction, including general contractors and operative builders contracts;
(c) Twenty percent for all special trade construction contracts;
(d) Ten percent for professional services contracts;
(e) Ten percent for all other services contracts; and

(f) Ten percent for commodities contracts.

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

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

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

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

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

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

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

(f) Other relevant factors.

(5)(a) Each government entity shall make a good faith effort to assist historically underutilized businesses in receiving a portion of the total contract value of all contracts that the government entity expects to award in a fiscal year.
(b) Each government entity that considers entering into a contract with an expected value of one hundred thousand dollars or more over the life of the contract, including any renewals, shall, before the government entity solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract pursuant to subsection (6) of this section. Factors in determining a government entity's good faith effort and if subcontracting opportunities are probable shall include:

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

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

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

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

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

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

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

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

(ix) Ensuring that specifications, terms, and conditions reflect a
government entity's actual requirements, are clearly stated, and do not impose unreasonable or unnecessary contract requirements.

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

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

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

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

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

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

(i) Certification that respondent has made a good faith effort to meet the requirements of this section. When determining whether a good
faith effort has been made in the development of the required HUB subcontracting plan, a government entity may require the respondent to submit supporting documentation explaining how the respondent has made a good faith effort according to the following criterion:

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

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

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

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

(I) Notifying at least three historically underutilized businesses of the subcontracting opportunities that the respondent intended to subcontract. The respondent shall provide such notice to three or more historically underutilized businesses per each subcontracting opportunity that provides the type of work required for each subcontracting opportunity identified in the contract specifications or any other subcontracting opportunity the respondent cannot complete with its own equipment, supplies, materials, and employees. The notification shall be in writing, and the respondent must document the historically underutilized businesses contacted on the forms prescribed by the Commissioner of Labor. The notice shall, in all instances, include the scope of the work, adequate information about bonding, insurance, the availability of plans, the specifications, required qualifications, identity of a contact person, and other requirements of the contract allowing reasonable time for historically underutilized businesses to participate effectively. The notice shall be provided to potential HUB subcontractors at least seven working days prior to submission of the respondent's response, unless circumstances require a different time
period, which is determined by the government entity and documented in
the contract file;

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

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

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

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

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

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

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

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

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

(h) A government entity shall require a respondent to state whether
it is a certified historically underutilized business.

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

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

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

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

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

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

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

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

(iii) During the term of the contract, the government entity shall monitor the HUB subcontracting plan monthly to determine if the value of the subcontracts to historically underutilized businesses meets or
exceeds the HUB subcontracting provisions specified in the contract. Accordingly, each government entity shall audit and require a prime contractor to report to the government entity the identity and the amount paid to its subcontractors.

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

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

(m) If, after the bid opening and during contract performance, the successful contractor determines that a historically underutilized business identified in the bid is unable to perform successfully or is not performing satisfactorily, such contractor shall make every reasonable effort to replace a HUB subcontractor with another historically underutilized business. Prior to substituting such replacement historically underutilized business, the apparent successful contractor must show good cause for the replacement. All substitutions shall be approved in writing.
(n) If a government entity expands the original scope of work through a change order or contract amendment, including a contract renewal that expands the scope of work, the government entity shall determine if the additional scope of work contains additional probable subcontracting opportunities not identified in the initial solicitation. If the government entity determines probable subcontracting opportunities exist, the government entity shall require the selected respondent to submit a HUB subcontracting plan or revised HUB subcontracting plan for the additional probable subcontracting opportunities.

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

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

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

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

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

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

(d) Maintain and report required contract statistics for quarterly reports to the Department of Labor. The department shall make such
statistics publicly available, including on its web site.

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

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

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

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

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

(a) Withholding payments that are due to the contractor who is in
violation under the involved contract until it is determined that the contractor or subcontractor is in compliance with the provisions of the contract; or

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

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

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

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

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

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

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

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

(d) Information regarding electronic commerce opportunities;

(e) Information regarding online contact information; and
(f) Additional information about the state and local procurement process.

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

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

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

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

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

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

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

(a) The number and dollar amount of contracts awarded and paid to
certified historically underutilized businesses;

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

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

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

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

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

Sec. 12. (1) The Nebraska Historically Underutilized Business Program Act applies to all contracts entered into by a government entity with an expected value of one hundred thousand dollars or more, including:
(a) Contracts for the acquisition of a good or service; and
(b) Contracts for or related to the construction of a public building, road, or other public work.

(2) The Nebraska Historically Underutilized Business Program Act applies to a contract without regard to:
   (a) Whether the contract is otherwise subject to the act; or
   (b) The source of funds for the contract, except that to the extent federal funds are used to pay for the contract, the act does not apply if federal law prohibits the application of the act in relation to the expenditure of federal funds.

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

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

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

2. Renumber the remaining sections accordingly.