Chapter 200

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GENERAL PROVISIONS

200.005 Definitions for ORS 200.005 to 200.075, 200.160 to 200.200 and 279A.105. As used in ORS 200.005 to 200.075, 200.160 to 200.200 and 279A.105:

(1) "Disadvantaged business enterprise" means a small business concern:

(a) That is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or

(b) For which, in the case of a corporation, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals, and of which the management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(2) "Economically disadvantaged individual" means a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to other individuals in the same business area who are not socially disadvantaged individuals.

(3) "Emerging small business" means an independent business:

(a) With its principal place of business located in this state;

(b) That qualifies as a tier one firm or a tier two firm;

(c) That is properly licensed and legally registered in this state; and

(d) That is not a subsidiary or parent company belonging to a group of firms that are owned or controlled by the same individuals if, in the aggregate, the group of firms does not qualify as a tier one firm or a tier two firm.

(4) "Minority individual" means a person who is a citizen or lawful permanent resident of the United States, who is:

(a) Black, having origins in any of the black racial groups of Africa;

(b) Hispanic, having Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

(c) Asian American, having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

(d) Portuguese, having Portuguese, Brazilian or other Portuguese culture or origin, regardless of race;

(e) American Indian or Alaskan Native, having origins in any of the original peoples of North America; or

(f) A member of another group, or another individual who is socially and economically disadvantaged as determined by the Advocate for Minority, Women and Emerging Small Business.

(5) "Minority or women business enterprise" means a small business concern:

(a) That is at least 51 percent owned by one or more minority individuals or women; or

(b) For which, in the case of a corporation, at least 51 percent of the stock is owned by one or more individuals who are minority individuals or women, and of which the management and daily business operations are controlled by one or more of the minority individuals or women who own it.

(6) "Responsible bidder" means a bidder who, as determined by the Advocate for Minority, Women and Emerging Small Business, has undertaken both a policy and practice of actively pursuing participation by minority or women business enterprises in all bids, both public and private, submitted by the bidder.

(7) "Small business concern" means a small business as defined by the United States Small Business Administration in 13 C.F.R. part 121 and in effect on January 1, 2006.

(8) "Socially disadvantaged individual" means an individual who has been subjected to racial or ethnic prejudice or cultural bias, without regard to individual qualities, because of the individual's identity as a member of a group.

(9) "Tier one firm" means a business that employs fewer than 20 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed $1.5 million for a business performing construction, as defined in ORS 446.310, or $600,000 for a business not performing construction.

(10) "Tier two firm" means a business that employs fewer than 30 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed $3 million for a business performing construction, as defined in ORS 446.310, or $1 million for a business not performing construction.

(11) "Woman" means a person of the female sex who is a citizen or lawful permanent resident of the United States. [1987 c.893 §2; 1989 c.1043 §1; 1991 c.517 §9; 2001 c.104 §71; 2003 c.794 §213; 2005 c.22 §§150,151; 2005 c.683 §§4,5]

200.015 Legislative findings. (1) The Legislative Assembly supports the aspirations of minorities, women and emerging small businesses to enter the mainstream of Oregon social, political and economic life.

(2) The Legislative Assembly finds:

(a) The opportunity for full participation in our free enterprise system by minorities, women and emerging small businesses is essential;

(b) Greater economic opportunity for minorities, women and emerging small businesses is essential;

(c) Review of public programs to remedy historical patterns of exclusion of and discrimination against racial or ethnic groups and women is needed;

(d) Public policies and programs to eliminate the effects of long-term, open and pervasive exclusion of and discrimination against minorities and women from the business sector, including increased opportunities to integrate minorities and women into the full economic life of the community should be reviewed; and

(e) In cooperation with the private sector, the affected populations, interested groups and appropriate governmental entities, a program of review should be established to recommend remedies for the unfortunate effects of social, political and economic inequity that still exist.

(3) Women and minorities are rebuttably presumed to be:

(a) Economically disadvantaged.

(b) Socially disadvantaged. [1987 c.893 §3; 1989 c.1043 §2]

200.025 Advocate for Minority, Women and Emerging Small Business; office; duties. (1) There is created in the Office of the Governor, the Advocate for Minority, Women and Emerging Small Business who shall be appointed by the Governor.

(2) There is created in the Department of Consumer and Business Services the Office for Minority, Women and Emerging Small Business, the employees of which shall be appointed by the Director of the Department of Consumer and Business Services.

(3) The Advocate for Minority, Women and Emerging Small Business shall:

(a) Advise the Governor and the director on activities and initiatives that may promote the economic integration of minorities, women and emerging small businesses into the business sector;

(b) Prepare an annual report to the Governor, director and Legislative Assembly on the status of minorities and women in the marketplace, accomplishments and resolutions of issues of concern to minority and women's enterprises and recommendations for executive and legislative actions; and

(c) Carry out other duties that may be assigned by the Governor.

(4) The Office for Minority, Women and Emerging Small Business shall:

(a) Provide information to minority, women and emerging small businesses;

(b) Assist in the development and implementation of an aggressive strategy for this state, based on research and monitoring, that encourages participation of minorities, women and emerging small businesses in the state's economy;

(c) Make recommendations to the director on the research, development and implementation of the plan for the involvement of disadvantaged and minority groups and emerging small businesses in all state programs;

(d) Maintain an Oregon Opportunity Register and Clearinghouse for information on public agency and other contract solicitations for professional services, supplies and services and other bid opportunities, in consultation with the State Board of Higher Education, the Department of Transportation and other entities;

(e) Monitor the certification and compliance program for disadvantaged, minority, women and emerging small businesses under ORS 200.055;

(f) Investigate complaints and possible abuses of the certification program; and

(g) Assist in the promotion and coordination of plans, programs and operations of state government that strengthen minority and women participation in the economic life of this state. [1987 c.893 §4; 1989 c.1043 §3; 1993 c.500 §7; 1993 c.744 §§189,189a; 2003 c.794 §214; 2005 c.683 §§6,7]

200.035 When state agency to notify advocate of solicitations and contract awards. (1) For a public contract with a value of $5,000 or more, a state agency shall provide timely notice and information to the Advocate for Minority, Women and Emerging Small Business regarding:

(a) Bid or proposal solicitations; and

(b) Contract awards.

(2) Each state agency shall, in consultation with the advocate, establish a process and timeline for providing the notice and information required by subsection (1) of this section to the advocate. [1987 c.893 §5; 1997 c.145 §1; 1997 c.802 §10; 2005 c.351 §1]

200.045 Standards for good faith efforts to meet contract requirements; standards for establishing bidder's responsibility. (1) To determine whether a bidder that has failed to meet emerging small business enterprise contract requirements may be awarded the contract, the public contracting agency must decide whether the bidder's efforts to obtain participation by

emerging small business enterprises were good faith efforts to meet the requirements.

(2) Performing all of the following actions by a bidder constitutes a rebuttable presumption that the bidder has made a good faith effort to satisfy the subcontracting requirement for emerging small businesses. It shall be a rebuttable presumption that the bidder has not made a good faith effort if the bidder has not acted consistently with such actions. Efforts that are merely superficial are not good faith efforts:

(a) The bidder attended any presolicitation or prebid meetings that were scheduled by the contracting agency to inform emerging small business enterprises of contracting and subcontracting or material supply opportunities available on the project;

(b) The bidder identified and selected specific economically feasible units of the project to be performed by emerging small business enterprises in order to increase the likelihood of participation by such enterprises;

(c) The bidder advertised in general circulation, trade association, minority and trade oriented, women-focus publications, if any, concerning the subcontracting or material supply opportunities;

(d) The bidder provided written notice to a reasonable number of specific emerging small business enterprises, identified from a list of certified emerging small business enterprises provided or maintained by the Department of Consumer and Business Services for the selected subcontracting or material supply work, in sufficient time to allow the enterprises to participate effectively;

(e) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested;

(f) The bidder provided interested emerging small business enterprises with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;

(g) The bidder negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any emerging small business enterprises;

(h) Where applicable, the bidder advised and made efforts to assist interested emerging small business enterprises in obtaining bonding, lines of credit or insurance required by the contracting agency or contractor;

(i) The bidder's efforts to obtain emerging small business enterprise participation were reasonably expected to produce a level of participation sufficient to meet the goals or requirement of the public contracting agency; and

(j) The bidder used the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Advocate for Minority, Women and Emerging Small Business that provide assistance in the recruitment and placement of emerging small business enterprises.

(3) To determine whether a bidder is a responsible bidder, the performance of all the following actions constitutes a rebuttable presumption that the bidder is responsible. It shall be a rebuttable presumption that the bidder is not responsible if the bidder has not acted consistently with the actions described in this subsection. Efforts that are merely superficial are not good faith efforts.

(a) The bidder attended any presolicitation or prebid meetings that were scheduled by the contracting agency to inform minority or women business enterprises of contracting and subcontracting or material supply opportunities available on the project;

(b) The bidder identified and selected specific economically feasible units of the project to be performed by minority or women business enterprises in order to increase the likelihood of participation by such enterprises;

(c) The bidder advertised in general circulation, trade association, minority and trade oriented, women-focus publications, if any, concerning the subcontracting or material supply opportunities;

(d) The bidder provided written notice to a reasonable number of specific minority or women business enterprises, identified from a list of certified minority or women business enterprises provided or maintained by the Department of Consumer and Business Services for the selected subcontracting or material supply work, in sufficient time to allow the enterprises to participate effectively;

(e) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested;

(f) The bidder provided interested minority or women business enterprises with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;

(g) The bidder negotiated in good faith with interested, capable and competitive minority or women business enterprises submitting bids;

(h) Where applicable, the bidder advised and made efforts to assist interested minority or women business enterprises in obtaining bonding, lines of credit or insurance required by the contracting agency or contractor;

(i) The bidder's efforts to obtain minority or women business enterprise participation were reasonably expected to produce a level of participation sufficient to meet the goals of the public contracting agency; and

(j) The bidder used the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Advocate for Minority, Women and Emerging Small Business that provide assistance in the recruitment and placement of disadvantaged, minority or women business enterprises. [1987 c.893 §7; 1989 c.1043 §8; 1997 c.145 §2; 2003 c.794 §215]

CERTIFICATION

200.055 Certification of disadvantaged, minority, women or emerging small business enterprises; fee; rules; appeal. (1) Any disadvantaged, minority, women or emerging small business enterprise is entitled to be certified as such upon application to the Department of Consumer and Business Services. If the application is approved by the department, the department shall certify the applicant as a disadvantaged, minority, women or emerging small business enterprise. The enterprise shall be considered so certified by any public contracting agency.

(2) In consultation with the State Board of Higher Education and the Department of Transportation, and with the approval of the Advocate for Minority, Women and Emerging Small Business, the Department of Consumer and Business Services by rule shall adopt a uniform standard form and procedure designed to provide complete documentation that a business enterprise is certified as a disadvantaged, minority, women or emerging small business enterprise. The Department of Consumer and Business Services shall compile and make available upon request a list of certified disadvantaged, minority, women or emerging small business enterprises.

(3) Any business enterprise that is refused certification as a disadvantaged business enterprise or denied recertification as such or whose certification is revoked may appeal directly to the United States Department of Transportation.

(4) Any business enterprise that is refused certification as a minority, women or emerging small business enterprise or has its certification revoked may request a contested case hearing as provided in ORS chapter 183.

(5) The Department of Consumer and Business Services shall be the sole agency authorized to certify enterprises as disadvantaged, minority, women or emerging small business enterprises eligible to perform on public contracts in this state.

(6) The Department of Consumer and Business Services by rule may establish a fee not to exceed $100 for a copy of the list of certified disadvantaged, minority, women and emerging small business enterprises and may assess state agencies for services under ORS 200.005 to 200.075.

(7) The Department of Transportation may collect a fee, not to exceed $200, from a bidder upon bidder prequalifications to cover the costs of the Department of Consumer and Business Services in administering ORS 200.005 to 200.075. The Department of Transportation shall transfer such fees to the credit of the account established under subsection (8) of this section.

(8) The Department of Consumer and Business Services shall establish a special account in which to deposit fees and assessments. The special account is continuously appropriated to the Department of Consumer and Business Services to meet its expenses in administering ORS 200.005 to 200.075. [1987 c.893 §8; 1989 c.1043 §4; 1993 c.500 §8; 1997 c.145 §3; 2003 c.794 §216]

200.057 Designation of certified business as tier one or tier two firm. (1) A business may be certified as an emerging small business by the Department of Consumer and Business Services for up to 12 years and may be:

(a) Designated a tier one firm for up to six years unless the business no longer qualifies as a tier one firm.

(b) Designated a tier two firm for up to six years unless the business no longer qualifies as a tier two firm.

(2) The department shall adjust annually the amount of the average annual gross receipts required to qualify as a tier one firm or a tier two firm using the most recent three-year average of the Portland-Salem Consumer Price Index for All Urban Consumers for All Items, as reported by the United States Bureau of Labor Statistics.

(3) Notwithstanding the time limits established by subsection (1) of this section, if a tier one firm provides compelling information showing, in the judgment of the Department of Consumer and Business Services, that the firm has not been afforded an opportunity to bid on emerging small business projects during a year of eligibility, the department shall extend the tier one designation of the firm for one year. A tier one

firm may receive the extension described in this subsection only once. [2005 c.683 §2]

Note: 200.057 was added to and made a part of 200.005 to 200.075 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

200.065 Fraudulent conduct prohibited; sanctions. (1) It shall be unlawful for any person fraudulently to obtain or retain or attempt to obtain or retain or to aid another person fraudulently to obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise.

(2) It shall be unlawful knowingly to make a false claim that any person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a contract or subcontract or other benefit.

(3) The public contracting agency may withhold payment, suspend or terminate the contract and may impose on any person a civil penalty not to exceed 10 percent of the contract or subcontract price or $5,000, whichever is less, for each violation of subsection (1) or (2) of this section. The penalty shall be paid to the Office for Minority, Women and Emerging Small Business.

(4) The Department of Consumer and Business Services or an affected public contracting agency shall investigate any complaint that a person has violated subsection (1) or (2) of this section. In investigating such a complaint, the department or an affected public contracting agency may require any additional information, administer oaths, take depositions and issue subpoenas to compel the attendance of witnesses and the production of books, papers, records, memoranda or other information necessary to carry out its duties. If any person fails to comply with any subpoena issued under this subsection or refuses to testify on any matter on which a person may lawfully be interrogated, the procedure provided in ORS 183.440 shall be followed to compel compliance.

(5) An affected public contracting agency or the Department of Consumer and Business Services may disqualify any person found to have violated subsection (1) or (2) of this section or who admits to such violation under oath during the course of an investigation from bidding or participating in any public contract for a period of time specified by the agency or department, not to exceed three years. Any contracting agency that has notice of the finding of the fraudulent certification may also disqualify the person from bidding on or participating in any public contract. [1987 c.893 §9; 1989 c.1043 §5; 1997 c.145 §4]

200.075 Prohibited conduct; suspension of certification or right to participate in public contracts. (1) Any bidder or contractor or subcontractor on a public contract that knowingly commits any of the acts listed in paragraphs (a) to (c) of this subsection shall have its right to bid on or participate in any public contract suspended. The suspension shall occur only after notice and opportunity for hearing in such manner as the affected public contracting agency, by rule, shall provide. The suspension shall be for up to 90 days for a first violation, up to one year for a second violation and up to five years for a third violation. Each violation shall remain on record for five years. After five years the violation shall no longer be considered in reviewing future violations. The following acts are prohibited:

(a) Entering into any agreement representing that a disadvantaged, minority, women or emerging small business enterprise certified pursuant to ORS 200.055 will be performing work or supplying materials under the public improvement contract without the knowledge and consent of the disadvantaged, minority, women or emerging small business enterprise.

(b) Exercising management and decision making control over the internal operations of any certified disadvantaged, minority, women or emerging small business enterprise. As used in this paragraph, "internal operations" does not include normal scheduling, coordination, execution or performance as a subcontractor on a public contract.

(c) Using a disadvantaged, minority, women or emerging small business enterprise to perform a subcontract or supply material under a public improvement contract to meet an established goal or requirement when the disadvantaged, minority, women or emerging small business enterprise does not perform a commercially useful function in carrying out its responsibilities and obligations under the contract.

(2) Any disadvantaged, minority, women or emerging small business enterprise certified under ORS 200.055 that allows or commits any of the acts listed in paragraphs (a) to (c) of this subsection shall have its certification suspended for up to 90 days for the first violation, up to one year for a second violation and up to five years for a third violation. Each violation shall remain on record for five years. After five years the violation shall no longer be considered in reviewing future violations. The following acts are prohibited:

(a) Use of the firm's name to meet a disadvantaged, minority, women or emerging small business enterprise goal or requirement on a public contract when the firm

does not in fact intend to or does not actually perform the work under the subcontract or purchase and supply material to the project under a material supply contract.

(b) Use of any personnel of an uncertified business to operate, manage or otherwise control the disadvantaged, minority, women or emerging small business enterprise.

(c) Failure to perform a commercially useful function in carrying out its functions under a subcontract or a material supply contract entered into with a contractor or subcontractor on a public contract when represented as a certified business to meet an established goal or requirement.

(3) For the purpose of this section "commercially useful function" means the actual performance of a function or service by the business for which there is a demand in the marketplace, and for which the business receives payment not disproportionate to the work performed or in conformance with industry standards. Acting as a broker to provide for the performance of work by others does not constitute a "commercially useful function." [1987 c.893 §11; 1989 c.1043 §6; 1991 c.91 §1; 1995 c.452 §21]

200.085 [1987 c.893 §1; repealed by 1989 c.1043 §14]

RESPONSIBILITY OF PUBLIC AGENCIES

200.090 Public agencies to pursue policy of providing opportunities. Public agencies shall aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses and shall cooperate with the Advocate for Minority, Women and Emerging Small Business to determine the best means by which to make such opportunities available. [1989 c.1043 §10]

MENTOR PROGRAM

200.100 Definitions for ORS 200.100 to 200.120. As used in ORS 200.100 to 200.120:

(1) "Contractor" means a person who contracts on predetermined terms to be responsible for the performance of all or part of a job of preparation or construction in accordance with established specifications or plans, retaining control of means, method and manner of accomplishing the desired result, and who provides:

(a) Labor at the site; or

(b) Materials, supplies and labor at the site.

(2) "Disadvantaged business enterprise" means a small business concern that is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any corporation, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(3) "Minority or women business enterprise" means a small business concern which is at least 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of such individuals.

(4) "Minority individual" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black, a person having origins in any of the black racial groups of Africa;

(b) Hispanic, a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

(c) Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

(d) Portuguese, a person of Portuguese, Brazilian or other Portuguese culture or origin, regardless of race;

(e) American Indian or Alaskan Native, a person having origins in any of the original peoples of North America; or

(f) A member of another group or another individual that is socially and economically disadvantaged as determined by the Advocate for Minority, Women and Emerging Small Business.

(5) "Subcontractor" means a contractor who has no direct contractual relationship with the owner. [1991 c.559 §1; 2005 c.22 §152]

200.110 Mentor program; guidelines; eligibility. (1) The Economic and Community Development Department may recognize the mentor relationship between contractors and minority business enterprises or women business enterprises certified under this chapter. The mentor relationship shall offer the opportunity to foster and encourage minority and women business enterprises, to expand the capacity of presently existing minority and women businesses and to offer the opportunity for less experienced minority and women businesses to gain training and assistance.

(2) Guidelines for eligibility for the mentor relationship include, but are not limited to:

(a) Minority and women business enterprises that meet the certification requirements of the U.S. Department of Transportation are eligible for participation in a mentor program. Other minority and women business enterprises are also eligible if they meet the certification requirements of this chapter. An agency may grant approval of an enterprise application for certification concurrent with approval of a mentor arrangement.

(b) The minority or women business enterprise must be an independent organization, and the ownership by the individuals must be real. Other employment and business interests by the individuals are not precluded, if such employment or business interests do not conflict with the power of the minority or women owners to direct the management and policies of the minority or women enterprise to make day-to-day as well as major decisions on matters of management, policy and operations.

(c) The mentor program is intended to provide minority and women business enterprises with advice, assistance and training. The enterprise shall be responsible for management and operations of the business. The mentor shall not be responsible for the management of the firm. The mentor and the enterprise shall remain separate and independent business entities with the exception that facilities may be provided to the enterprise by the mentor if a separate lease agreement is maintained by the parties.

(d) Part ownership in a minority or women business enterprise by a nondisadvantaged party, including a mentor, is permitted if in compliance with 49 C.F.R. 23. Any property, equipment, supplies or other services which are sold, rented or donated to the enterprise and any investment made by nondisadvantaged individuals must be reported to the agency involved in the mentor program. Documentation shall be provided by bills of sale, lease agreements or similar documents.

(e) The mentor relationship may include an arrangement with an independent third party, such as a bank or accountant, to act as an agent. Third parties may receive progress payments for work accomplished by the minority or women business enterprise, made out jointly to the agent and the enterprise, and make payments, on behalf of the enterprise, to material suppliers or for federal and state payroll taxes.

(3) Types of assistance a mentor may provide to the minority or women business enterprise include:

(a) Financial assistance;

(b) Technical and management assistance;

(c) Equipment rental and use of personnel; and

(d) Bonding assistance. [1991 c.559 §2]

200.120 Standards for program participation. (1) Mentor relationships may be documented by a written development plan, approved by the Economic and Community Development Department in consultation with the Oregon Association of Minority Entrepreneurs. The development plan shall:

(a) Clearly set forth the objectives of the parties and their respective roles;

(b) Be for a specified length of time;

(c) Determine measurable goals to be reached by the minority or women business enterprise; and

(d) Provide that if resources of the mentor are utilized by the minority or women business enterprise in the performance of contracts or subcontracts for the mentor or for another contractor, the resources shall be separately identified, accounted for and compensated directly by the minority or women business enterprise to the mentor. If the plan provides for extensive use of the mentor's resources by the minority or women business enterprise, the arrangement may be closely monitored.

(2) The development plan may also include training to be provided by the mentor to the minority or women business enterprise. Training may include:

(a) Business planning;

(b) Record keeping;

(c) Technical training;

(d) Capital formation;

(e) Loan packaging;

(f) Financial counseling;

(g) Bonding; and

(h) Equipment utilization.

(3) The development plan may be reviewed annually by the Economic and Community Development Department and the Oregon Association of Minority Entrepreneurs to review the progress of the mentor program.

(4) The development plan shall contain a provision that the mentor relationship may be terminated by mutual consent or upon determination that:

(a) The mentor firm no longer meets the eligibility standards for certification as a minority or women business enterprise;

(b) Either party has failed or is unable to meet its obligations under the development plan;

(c) The minority or women business enterprise is not progressing or is not likely to progress in accordance with the development plan;

(d) The minority or women business enterprise has reached a satisfactory level of self-sufficiency to compete without resorting to special treatment provided in the development plan; or

(e) The plan or provisions thereof are contrary to the requirements of federal, state, or local law or regulation, or otherwise contrary to public policy.

(5) Copies of the development plan shall be retained by all parties to it, and by the Economic and Community Development Department and the Oregon Association of Minority Entrepreneurs.

(6) The development plan may include a provision that the arrangement shall be dissolved by either party for reason by notifying the Economic and Community Development Department and the Oregon Association of Minority Entrepreneurs. [1991 c.559 §3]

EMERGING SMALL BUSINESS ASSISTANCE PROGRAM

200.150 [1991 c.517 §1; repealed by 2005 c.683 §13]

200.160 Transportation Commission duties; report. The Oregon Transportation Commission shall appoint a committee to recommend plans whereby the Department of Transportation may assist emerging small businesses in overcoming barriers to participation in state public improvement and maintenance projects. The committee shall report biennially its recommendation to the commission and to the appropriate legislative committee. [1991 c.517 §2; 2005 c.683 §8]

200.170 Eligibility for participation. (1) Subject to subsection (2) of this section, to participate in the emerging small business program under ORS 200.160 to 200.200, an applicant must:

(a) Be certified by the Department of Consumer and Business Services under ORS 200.005 to 200.075 as an emerging small business;

(b) Show that the applicant's place of business and the work in which the applicant seeks to participate are located in this state; and

(c) Show that the applicant is in compliance with applicable licensing and registration requirements.

(2) The Department of Transportation may limit eligibility for participation on a specific project or contract to emerging small businesses that are located in or draw a part of their workforce from economically distressed areas or enterprise zones in this state, as designated by the Economic and Community Development Department in consultation with the Employment Department.

(3) An applicant who participates under ORS 200.160 to 200.200 must perform at least 51 percent of the labor provided by the applicant on a public improvement or maintenance project using the applicant's own workforce. [1991 c.517 §§3,6; 2005 c.103 §1; 2005 c.683 §9]

200.180 Emerging Small Business Account; uses. The Emerging Small Business Account is established within the State Highway Fund. The Emerging Small Business Account is an investment fund for purposes of ORS 293.701 to 293.820. Moneys in the account are continuously appropriated to the Department of Transportation for the purpose of assisting emerging small businesses under the plans recommended under ORS 200.160. Interest earnings on moneys in the account are credited to the account. [1991 c.517 §4; 1993 c.744 §189b; 2005 c.683 §10]

200.190 Deposit of one percent of highway construction contract amount. The Department of Transportation, when undertaking a public improvement highway construction contract, shall deposit with the State Treasurer an amount equal to not more than one percent of the contract award amount. The State Treasurer shall credit the amount reserved to the Emerging Small Business Account established in the State Highway Fund. The deposit must be made within 30 days of the date on which the contract award is made. [1991 c.517 §5; 1993 c.744 §189c; 2005 c.683 §11]

200.200 Security for performance by emerging small business. (1) When any requirement exists under ORS 279.835 to 279.855 or ORS chapter 279A, 279B or 279C to provide a surety bond or other security for the faithful performance of a public contract, an emerging small business may provide:

(a) A surety bond issued by a corporate surety qualified by law to issue surety insurance as defined in ORS 731.186;

(b) A stipulation or undertaking with one or more individual sureties; or

(c) Any other form of security specified in the statute requiring the security.

(2) When the security for the faithful performance of a public contract is in the form of a stipulation or undertaking with one or more individual sureties, the individual sureties must be residents of this state. The

total net worth of all the individual sureties on the stipulation or undertaking must be at least twice the sum specified in the stipulation or undertaking. The public agency requiring the security shall determine if the sureties possess the qualifications prescribed by this subsection. [1991 c.517 §8; 2003 c.794 §217]