

**CHAPTER 565**

AN ACT

HB 3303

Relating to certain disadvantaged businesses; creating new provisions; amending ORS 184.404, 200.005, 200.025, 200.035, 200.045, 200.055, 200.065, 200.075, 200.090, 200.110, 200.120, 279A.105, 279A.110, 279A.142, 279C.110, 279C.836, 285B.740, 286A.615, 293.796, 351.070, 353.130 and 470.560 and section 18, chapter 4, Oregon Laws 2013, and sections 2, 4 and 5, chapter 325, Oregon Laws 2015 (Enrolled House Bill 2716); repealing ORS 200.100 and sections 3, 6, 7, 8, 9 and 10, chapter 325, Oregon Laws 2015 (Enrolled House Bill 2716); and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 200.005 is amended to read: 200.005. As used in ORS 200.005 to 200.075, 200.110, 200.120, 200.160 to 200.200 and 279A.105:

(1) **“Contracting agency” has the meaning given that term in ORS 279A.010.**

(2) **“Contractor” means a person that agrees to legally enforceable terms and conditions under which the person performs services or supplies materials in accordance with a contracting agency’s specifications and for the purpose of accomplishing results the contracting agency intends, while retaining control of the means, methods and manner of performing the services or supplying the materials.**

[(1)] (3) **“Disadvantaged business enterprise” means a small business concern:**

(a) [That is] At least 51 percent [owned by] of which one or more socially and economically disadvantaged individuals own; 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.]

(b) **At least 51 percent of the stock of which, if the small business concern is a corporation, is owned by one or more economically disadvantaged individuals who also control and manage the daily business operations of the small business concern.**

[(2)] (4) **“Economically disadvantaged individual” means a socially disadvantaged individual [whose ability to compete in the free enterprise system has been impaired due to] for whom diminished capital and credit opportunities have impaired the individual’s ability to compete in the free enterprise system as compared to other individuals in the same business area who are not socially disadvantaged individuals.**

[(3)] (5) **“Emerging small business” means an independent business concern that:**

(a) [With its] **Has a 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] that belongs to a group of firms that [are owned or controlled by] the same individuals own or control if, in the aggregate, the group of firms does not qualify as a tier one firm or a tier two firm.**

[(4)] (6) **“Minority individual” means [a person] an individual who is a citizen or lawful permanent resident of the United States[, who] and is:**

(a) [Black] **African American, having origins in any of the [black racial groups of] original peoples 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 Asia, 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] **Any other individual or member of another group[, or another individual who] that the Certification Office for Business Inclusion and Diversity determines 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) **“Minority-owned business,” “woman-owned business” or “business that a service-disabled veteran owns” means, as appropriate, a small business concern:**

(a) **At least 51 percent of which one or more minority individuals, women or service-disabled veterans own and control; or**

(b) **At least 51 percent of the stock of which, if the small business concern is a corporation, is owned by one or more minority individuals, women or service-disabled veterans who also**

control and manage the daily business operations of the small business concern.

(8) “Responsible bidder or proposer” means a bidder or proposer that the Governor’s Policy Advisor for Economic and Business Equity determines has undertaken both a policy and practice of actively pursuing participation by minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own or emerging small businesses in all of the bidder’s or proposer’s bids or proposals, both public and private.

(9) “Service-disabled veteran” means a veteran who has a United States Department of Veterans Affairs disability rating of at least zero percent as a result of an injury or illness that the veteran incurred, or that was aggravated, during active military service and who received a discharge or release under other than dishonorable conditions.

[(7)] (10) “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.], as in effect on the operative date specified in section 30 of this 2015 Act.

[(8)] (11) “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.

(12) “State contracting agency” has the meaning given that term in ORS 279A.010.

(13) “Subcontractor” means a contractor that does not have a direct contractual relationship with a contracting agency.

[(9)] (14) “Tier one firm” means a business that employs [fewer than 20] not more than 19 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] an amount that the Oregon Business Development Department specifies by rule.

[(10)] (15) “Tier two firm” means a business that employs [fewer than 30] not more than 29 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] an amount that the Oregon Business Development Department specifies by rule.

[(11)] (16) “Woman” means a person of the female [sex] gender who is a citizen or lawful permanent resident of the United States.

**SECTION 2.** ORS 200.025 is amended to read:

200.025. (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.] **The Governor shall appoint a**

**Governor’s Policy Advisor for Economic and Business Equity within the office of the Governor.**

(2) [There is created in the Oregon Business Development Department the Office for Minority, Women and Emerging Small Business, the employees of which shall be appointed by] **The Certification Office for Business Inclusion and Diversity is created within the Oregon Business Development Department, and the Director of the Oregon Business Development Department shall appoint the employees of the office.**

[(3)](a) *The director may prescribe the duties and assignments of all officers and employees of the Office for Minority, Women and Emerging Small Business. The director shall establish the compensation of all officers and employees of the office.*

[(b) *The officers and employees of the office shall be allowed reimbursement for reasonable and necessary travel and other expenses incurred in the performance of their duties.*]

[(4)] (3) The [Advocate for Minority, Women and Emerging Small Business] **Governor’s Policy Advisor for Economic and Business Equity** shall:

(a) Advise the Governor and the director on activities and initiatives that may promote the economic integration of minorities, women, **service-disabled veterans** 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*]

(b) **Prepare an annual report to the Governor, director and Legislative Assembly on disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses that examines:**

(A) **The status of the enterprises and businesses in the marketplace;**

(B) **Accomplishments and resolutions that have occurred with respect to issues that concern the enterprises and businesses; and**

(C) **Recommendations for executive and legislative action; and**

(c) Carry out other duties that [may be assigned by] the Governor **may assign.**

[(5)] (4) The [Office for Minority, Women and Emerging Small Business] **Certification Office for Business Inclusion and Diversity** shall:

(a) Provide information to [minority, women and] **minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses;**

(b) Assist in [the development and implementation of] **developing and implementing** an aggressive strategy for this state, based on research and monitoring, that encourages [participation of] minorities, women, **service-disabled veterans** and emerging

small businesses to participate 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]* **Recommend to the director methods for researching, developing and implementing a plan to involve minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses in all state programs;**

(d) **Maintain, in consultation with the State Board of Higher Education, the Department of Transportation and other entities, 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] about contracting agency solicitations and other opportunities to submit bids or proposals to contracting agencies to provide goods, supplies and services, including professional services;**

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

**(e) Monitor the certification and compliance program under ORS 200.055 for:**

**(A) Disadvantaged business enterprises;**

**(B) Minority-owned businesses, woman-owned businesses and businesses that service-disabled veterans own; and**

**(C) Emerging small businesses;**

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

(g) Assist in *[the promotion and coordination of]* **promoting and coordinating** plans, programs and operations of state government that *[strengthen minority and women participation]* **help minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses to participate in the economic life of this state.**

**SECTION 3.** ORS 200.035 is amended to read:

200.035. *[(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.]*

**(1) A state contracting agency shall give timely notice and information to the Governor's Policy Advisor for Economic and Business Equity if the state contracting agency intends to advertise or solicit bids or proposals for a public contract with a contract price of \$10,000 or more and shall notify the policy advisor when the state contracting agency has awarded the contract.**

(2) Each state **contracting** agency shall, in consultation with the *[advocate]* **policy advisor**, establish a process and timeline for providing **the policy advisor with** the notice and information required by subsection (1) of this section *[to the advocate]*.

**SECTION 4.** ORS 200.045 is amended to read:

200.045. *[(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:]*

**(1) As used in this section, "required participant" means:**

**(a) A disadvantaged business enterprise;**

**(b) A minority-owned business, a woman-owned business or a business that a service-disabled veteran owns; or**

**(c) An emerging small business.**

**(2) If a public contract requires participation from a required participant and a bidder or proposer for the public contract is not a required participant, a contracting agency may award the public contract to the bidder or proposer only if the bidder or proposer:**

**(a) Demonstrates that the bidder or proposer is responsible; and**

**(b) Has made good faith efforts to encourage required participants to participate in the public contract.**

**(3) A contracting agency may rebuttably presume that for the purposes of this section a bidder or proposer is responsible and has made good faith efforts to encourage required participants to participate in the public contract if the bidder or proposer takes all of these actions:**

**(a) [The bidder attended any] Attends** presolicitation or prebid meetings that *[were scheduled by]* the contracting agency **scheduled** to inform **disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small [business enterprises] businesses** of contracting and subcontracting or material supply opportunities available *[on the project]* **in connection with a public contract;**

**(b) [The bidder identified and selected] Identifies and selects** specific economically feasible units of the *[project to be performed by]* **public contract that disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small [business enterprises] busi-**

nesses may perform in order to increase the likelihood [of participation by such enterprises] that required participants will participate in the public contract;

(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] Advertises the opportunities described in paragraphs (a) and (b) of this subsection in general circulation publications, trade association publications and publications that serve an audience or readership that consists primarily of minorities, women, service-disabled veterans and emerging small businesses;

(d) [The bidder provided] Provides written notice of the opportunities described in paragraphs (a) and (b) of this subsection to a reasonable number of specific disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small [business enterprises,] businesses that the bidder or proposer identified from a list of [certified emerging small business enterprises provided or maintained by] enterprises or businesses that the [Oregon Business Development Department] Certification Office for Business Inclusion and Diversity certified under ORS 200.055 [for the selected subcontracting or material supply work], in sufficient time to allow the enterprises or businesses to participate effectively;

(e) [The bidder followed up] Follows up on the bidder's or proposer's initial solicitations of interest by contacting the enterprises or businesses to which the bidder or proposer provided notice under paragraph (d) of this subsection to determine with certainty whether the enterprises or businesses [were] are interested in the opportunities described in paragraphs (a) and (b) of this subsection;

(f) [The bidder provided] Provides interested disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small [business enterprises] businesses with adequate information about [the] plans, specifications and requirements for [the selected] subcontracting or material supply work in connection with the public contract;

(g) [The bidder negotiated] Negotiates in good faith with [the enterprises] interested disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses, and did not without justifiable reason reject as unsatisfactory bids [prepared by any emerging small business enterprises] or proposals that the enterprises or businesses prepared;

(h) [Where applicable, the bidder advised and made efforts to assist] Advises and assists interested disadvantaged business enterprises, minority-owned businesses, woman-owned busi-

nesses, businesses that service-disabled veterans own and emerging small [business enterprises in obtaining] businesses to obtain, when necessary, bonding, lines of credit or insurance [required by] that the contracting agency or contractor requires;

[(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]

(i) Makes efforts to encourage disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses to participate in the public contract that the contracting agency may reasonably expect will produce a level of participation that meets the contracting agency's goals or requirements; and

(j) [The bidder used] Uses 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] that the Governor's Policy Advisor for Economic and Business Equity identifies as providing assistance in recruiting disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses for participation in public contracts.

[(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 Oregon Business Development Department 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.]

**(4) A contracting agency may rebuttably presume that for the purposes of this section a bidder or proposer is not responsible and has not made good faith efforts to encourage required participants to participate in a public contract if the bidder or proposer does not take all of the actions required under subsection (3) of this section. Superficial or pro forma efforts do not demonstrate responsibility or constitute adequate good faith efforts under this section.**

**SECTION 5.** ORS 200.055, as amended by section 1, chapter 148, Oregon Laws 2015 (Enrolled Senate Bill 584), is amended to read:

200.055. [(1) A business enterprise may apply to the Oregon Business Development Department for certification as a disadvantaged, minority, women or emerging small business enterprise. If the business enterprise is qualified as provided in ORS 200.005 to 200.075 and the department approves the application, the department shall certify the applicant as a disadvantaged, minority, women or emerging small business enterprise. All public contracting agencies shall treat a business enterprise that receives a certification under this section as a disadvantaged, minority, women or emerging small business enterprise for the purposes of awarding public contracts.]

**(1)(a) An enterprise or business may apply to the Certification Office for Business Inclusion and Diversity for certification as:**

**(A) A disadvantaged business enterprise;**

**(B) A minority-owned business;**

**(C) A woman-owned business;**

**(D) A business that a service-disabled veteran owns; or**

**(E) An emerging small business.**

**(b) An enterprise or business shall submit a separate application for each category of certification the enterprise or business seeks under paragraph (a) of this subsection.**

**(c) If an enterprise or business qualifies under ORS 200.005 to 200.075 and if the office approves an application from the enterprise or business, the office shall certify the enterprise or business under one or more of the categories described in paragraph (a) of this subsection.**

**(d) For purposes of awarding a public contract, a contracting agency shall recognize an enterprise or business with a certification from the office as the category of enterprise or business described in the certification and as having met the requirements set forth in ORS 200.005 to 200.075. For purposes of awarding a subcontract in connection with a public contract, a contractor may recognize a subcontractor with a certification from the office as the category of enterprise or business described in the certification and as having met the requirements set forth in ORS 200.005 to 200.075.**

(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] Governor's Policy Advisor for Economic and Business Equity, the Oregon Business Development Department 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 shall compile and make available upon request a list of certified disadvantaged, minority, women or emerging small business enterprises.] of an enterprise's or a business' status as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business. The department shall compile and make available a list of enterprises and businesses that the Certification Office for Business Inclusion and Diversity certifies under this section.

[(3) If the department denies, revokes or refuses to renew a business enterprise's certification as a disadvantaged business enterprise, the business enterprise may appeal directly to the United States Department of Transportation.]

**(3) If the Certification Office for Business Inclusion and Diversity denies a certification as, or decertifies, a disadvantaged business enterprise, an affected business enterprise may appeal directly to the United States Department of Transportation.**

(4) If the [department] **Certification Office for Business Inclusion and Diversity** denies, revokes or refuses to renew a [business enterprise's] **business's** certification as a [minority, women or emerging small business enterprise] **minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business**, the business [enterprise] may request a contested case hearing as provided in ORS chapter 183.

(5) The Oregon Business Development Department, **through the Certification Office for Business Inclusion and Diversity**, is the sole agency [authorized to] **that may certify enterprises [as disadvantaged, minority, women or emerging small business enterprises] and businesses as disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses** that are eligible to perform public contracts in this state.

(6) The Oregon Business Development Department 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] **described in subsection (2) of this section** and may assess [state] **contracting** 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 **or proposer at the time the bidder or proposer prequalifies to perform public contracts** [upon bidder prequalifications] to cover the costs of the Oregon Business Development Department in administering ORS 200.005 to 200.075. The Department of Transportation shall transfer [the] fees **that the Department of Transportation collects under this subsection** to the credit of the account established under subsection (8) of this section.

(8) The Oregon Business Development Department shall establish a special account in which to deposit fees and assessments. The special account is continuously appropriated to the **Oregon Business Development** Department to meet the **Oregon Business Development** Department's expenses in administering ORS 200.005 to 200.075.

**SECTION 6.** ORS 200.065, as amended by section 2, chapter 148, Oregon Laws 2015 (Enrolled Senate Bill 584), is amended to read:

200.065. (1) A person may not fraudulently obtain or retain, attempt to **fraudulently** obtain or retain or aid another person [to] **in fraudulently [obtain or retain or attempt to] obtaining or retaining or attempting to fraudulently** obtain or retain certification as a [disadvantaged, minority, women or emerging small business enterprise] **disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business**.

(2) A person may not knowingly make a false claim that any person is qualified for certification

or is certified under ORS 200.055 for the purpose of [gaining a] **obtaining a public** contract or subcontract or other benefit.

(3) An affected [public] contracting agency may withhold payment, may suspend or terminate a public contract and may impose on any person a civil penalty [not to] **that does not** 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 person shall pay the penalty to the affected contracting agency. If the affected contracting agency does not impose a civil penalty on the person under this subsection, the Oregon Business Development Department may independently impose a civil penalty that does not exceed \$5,000 for each violation of subsection (1) or (2) of this section. The person shall pay a penalty that the department imposes to the Certification Office for Business Inclusion and Diversity.**

(4) The [Oregon Business Development] department or an affected [public] contracting agency shall investigate [any complaint that a person has violated] **violations** of subsection (1) or (2) of this section. In investigating a [complaint] **violation**, the department or an affected [public] contracting agency may require any additional information, administer oaths, take depositions and issue subpoenas to compel witnesses to attend and [to produce] **compel the production of** books, papers, records, memoranda or other information necessary to carry out the department's or the affected [public] contracting agency's duties. If a person fails to comply with any subpoena **that** the department or the affected [public] contracting agency [issues] **issued** under this subsection or refuses to testify on any matter on which a person may lawfully be interrogated, the department or the affected [public] contracting agency shall follow the procedure provided in ORS 183.440 to compel compliance.

(5) The department or an affected [public] contracting agency may disqualify **from submitting a bid or proposal or receiving an award of a public contract, for a period of not more than three years**, any person that under oath during the course of an investigation admits to violating subsection (1) or (2) of this section[,] or that the department or the affected [public] contracting agency finds to have violated subsection (1) or (2) of this section[, from submitting a bid or proposal for, or receiving an award of, a public contract for a period of not more than three years]. Any [public] 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.

**SECTION 7.** ORS 200.075, as amended by section 3, chapter 148, Oregon Laws 2015 (Enrolled Senate Bill 584), is amended to read:

200.075. (1) An affected [public] contracting agency shall suspend any bidder's, proposer's, contractor's or subcontractor's right to submit a bid or proposal for, or receive an award of, a public

contract in the future if the bidder, proposer, contractor or subcontractor knowingly commits any of the acts listed in [paragraphs (a) to (d) of] this subsection. The affected [public] contracting agency shall suspend the right only after providing notice and opportunity for hearing in a manner that the affected [public] contracting agency provides by rule. The affected [public] contracting agency shall specify a time for the suspension that is up to one year for a first violation, up to three years for a second violation and up to five years for a third violation. Each violation must remain on record for five years. After five years the affected [public] contracting agency may not consider the violation in reviewing future violations. A bidder, proposer, contractor or subcontractor may not:

(a) *Enter into any agreement to represent that a disadvantaged, minority, women or emerging small business enterprise certified pursuant to ORS 200.055 will perform a public contract or subcontract or supply material under a public improvement contract without the knowledge and consent of the disadvantaged, minority, women or emerging small business enterprise.]*

**(a) Enter into any agreement to represent that a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business certified under ORS 200.055 will perform work or supply materials under a public contract without the knowledge and consent of the disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business.**

(b) Exercise or permit another bidder, proposer, contractor or subcontractor to exercise management and decision making control over the internal operations of a [certified disadvantaged, minority, women or emerging small business enterprise] **disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business**, other than the bidder's, proposer's, contractor's or subcontractor's own [business] enterprise **or business**. As used in this paragraph, "internal operations" does not include normal scheduling, coordination, execution or performance as a subcontractor on a public contract.

(c) Use a [disadvantaged, minority, women or emerging small business enterprise] **disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business** to perform a public contract or subcontract or to supply material under a public [improvement] contract to meet an established goal or requirement if the [disadvantaged, minority, women or emerging small business enterprise] **disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small**

**business** does not perform a commercially useful function in carrying out responsibilities and obligations under the **public** contract.

(d) Fail to perform a commercially useful function in performing a public contract or subcontract or in supplying material to a contractor or subcontractor that is performing a public contract **or subcontract** if the bidder, proposer, contractor or subcontractor is presented as a certified [disadvantaged, minority, women or emerging small business enterprise] **disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business** to meet an established goal or requirement.

(2) The [Oregon Business Development Department] **Certification Office for Business Inclusion and Diversity** shall revoke [a business] **an enterprise's or a business's** certification under ORS 200.055 as a [disadvantaged, minority, women or emerging small business enterprise, if] **disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business if**, after conducting an investigation in a manner similar to the manner provided in ORS 200.065 (4) for investigating a violation of ORS 200.065 (1) or (2), the **Oregon Business Development** Department finds that the [business] enterprise **or business** allows or commits any of the acts listed in [paragraphs (a) to (c) of] this subsection. A [disadvantaged, minority, women or emerging small business enterprise] **disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business** may not:

(a) Use the [business] enterprise's **or business's** name to meet a [disadvantaged, minority, women or emerging small business enterprise] goal or requirement [on] **for disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own or emerging small businesses to participate in a public contract or subcontract if the [business] enterprise or business** does not in fact intend to or does not actually perform [the] work under the public contract or subcontract or does not intend to or does not purchase and supply material under a public contract or subcontract to supply material.

(b) Use personnel of an uncertified [business] enterprise **or business** to operate, manage or otherwise control the [disadvantaged, minority, women or emerging small business enterprise] **disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business**.

(c) Exhibit a pattern of failing to perform a commercially useful function in performing a public contract or subcontract or supplying material to a contractor or subcontractor on a public contract if the [business] enterprise **or business** is represented

as a [certified disadvantaged, minority, women or emerging small business enterprise to meet] **disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business certified under ORS 200.055 for the purpose of meeting** an established goal or requirement.

(3)(a) An affected [public] contracting agency shall notify the department if the affected [public] contracting agency investigates a [disadvantaged, minority, women or emerging small business enterprise] **disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business** for failing to perform a commercially useful function.

(b) The department may conduct an independent investigation of a [disadvantaged, minority, women or emerging small business enterprise] **disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business** for exhibiting a pattern of failing to perform a commercially useful function in response to notifications from one or more affected [public] contracting agencies under paragraph (a) of this subsection.

(4)(a) For the purpose of] **As used in this section, “commercially useful function”:**

(a) Means a function or service:

(A) That the [business] enterprise **or business** actually performs;

(B) For which [there is] a demand **exists** in the marketplace; and

(C) For which the [business] enterprise **or business** receives payment that is proportionate to the work that the [business] enterprise **or business** performs or that conforms with industry standards.

(b) [“Commercially useful function”] Does not include acting as a broker to provide for others to perform work.

**SECTION 8.** ORS 200.090 is amended to read:

200.090. [Public] **Contracting** agencies shall aggressively pursue a policy of providing opportunities for [available contracts to emerging small businesses] **disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses** and shall cooperate with the [Advocate for Minority, Women and Emerging Small Business] **Governor’s Policy Advisor for Economic and Business Equity** to determine the best means by which to make such opportunities available.

**SECTION 9.** ORS 200.110 is amended to read:

200.110. (1) The Oregon Business Development Department may recognize [the] **a** mentor relationship between contractors and [minority business enterprises or women business enterprises certified under this chapter] **disadvantaged business enter-**

**prises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses that are certified under ORS 200.055. In order to qualify for the department’s recognition, the mentor relationship [shall] must offer the opportunity for the contractor to foster and encourage [minority and women business enterprises,] disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses to expand the capacity of [presently existing minority and women] existing enterprises and businesses and to offer the opportunity for less experienced [minority and women] enterprises and businesses to gain training and assistance.**

(2) [Guidelines for eligibility for] **To have the department recognize** the mentor relationship described in subsection (1) of this section, a **disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business must follow guidelines that include, but are not limited to:**

(a) [Minority and women business enterprises that meet] **Meeting** 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] **or ORS 200.055. The Certification Office for Business Inclusion and Diversity may approve** an application for certification under **ORS 200.055 at the same time the department approves [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.] **Remaining independent from the contractor and maintaining a minority individual’s, woman’s or service-disabled veteran’s actual ownership of the enterprise or business. A minority individual, woman or service-disabled veteran who owns the enterprise or business may have other employment and business interests [by the individuals are not precluded, if such] if the employment or business interests do not conflict with the [power of the minority or women owners] minority individual’s, woman’s or service-disabled veteran’s power to direct the management and policies of the [minority or women enterprise] disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business and to make day-to-day [as well as] and major decisions on matters of management, policy and operations. A contractor may provide facilities to the enterprise or business if the contractor and the enterprise or business maintain a separate lease agreement.**

*[(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)] (c) Complying with 49 C.F.R. 26 as to an individual's or entity's 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] **disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business if the individual or entity is not certified under ORS 200.055. The enterprise or business shall report any property, equipment, supplies or other services [which are sold, rented or donated to the enterprise] that the enterprise or business buys, rents or receives as a donation and any investment [made by nondisadvantaged individuals must be reported to the agency involved in the mentor program. Documentation shall be provided by] that an individual or entity makes in the enterprise or business if the individual or entity is not certified under ORS 200.055. The report must include bills of sale, lease agreements or similar documents.***

*[(e)] (3) [The] A mentor relationship may include an arrangement with an independent third party, such as a bank or accountant, to act as an agent. A third [parties] party may receive progress payments for work [accomplished by the minority or women business enterprise] **that a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business accomplishes, made out jointly to the [agent] third party and the enterprise or business, and may make payments[,] on behalf of the enterprise[,] or business 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:]*

*(4) Types of assistance that a contractor may provide in a mentor relationship to a **disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business include:***

- (a) Financial assistance;*
- (b) Technical and management assistance;*
- (c) Equipment rental and use of personnel; and*
- (d) Bonding assistance.*

**SECTION 10.** ORS 200.120 is amended to read:

200.120. (1) *[Mentor relationships may be documented by a written development plan, approved by] The Oregon Business Development Department, in*

consultation with the Oregon Association of Minority Entrepreneurs, **may approve a written development plan as part of a mentor relationship.** The development plan *[shall] must:*

*(a) Clearly set forth the objectives and roles 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] **that the disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business must reach; and***

*(d) Provide that if [resources of the mentor are utilized by the minority or women business enterprise in the performance of] a **disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business uses a mentor's resources in performing contracts or subcontracts for the mentor or for another contractor, the enterprise or business shall separately identify, account for and directly compensate the mentor for the resources [shall be separately identified, accounted for and compensated directly by the minority or women business enterprise to the mentor]. The department may closely monitor a development plan that [If the plan] provides [for extensive use of] that the enterprise or business will use the mentor's resources [by the minority or women business enterprise, the arrangement may be closely monitored] extensively.***

*(2) The development plan may also [include training to be provided by the mentor to the minority or women business enterprise] **provide for the mentor to train the disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns, or emerging small business.** 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] Oregon Business Development Department and the Oregon Association of Minority Entrepreneurs [to review the progress of the mentor program] **may review the development plan annually to monitor progress.***

*(4) The development plan [shall contain a provision] **must provide** that the mentor relationship may be terminated by mutual consent or [upon termination that] **if:***

*(a) [The mentor firm no longer meets the eligibility standards] **An enterprise or a business no longer qualifies for certification under ORS 200.055 as a [minority or women business enterprise]***

**disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business;**

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

(c) The [minority or women business enterprise] **disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business** is not progressing or is not likely to progress in accordance with the development plan;

(d) The [minority or women business enterprise] **disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business** 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] **of the plan** 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 parties to the development plan**, the Oregon Business Development Department and the Oregon Association of Minority Entrepreneurs **shall retain copies of the plan.**

(6) The development plan may [include a provision] **provide** that [the arrangement shall be dissolved by] either party **may dissolve the plan for any** reason by notifying the Oregon Business Development Department and the Oregon Association of Minority Entrepreneurs.

**SECTION 11.** ORS 184.404 is amended to read:

184.404. (1) The Director of the Oregon Department of Administrative Services, with the approval of the State Treasurer, may enter into one or more agreements on behalf of the State of Oregon to grant the incremental baseball tax revenues for a period of not more than 30 years. The grant agreements must:

(a) Provide that the granted amounts may be used only to pay for the costs of financing, developing, constructing and furnishing a major league stadium;

(b) Provide that:

(A) The total payments to the grantees are limited so that the grantees do not receive, in the aggregate, more than \$150 million for costs of developing, constructing and furnishing a major league stadium, plus the actual, reasonable financing costs incurred by the grantees for that amount; and

(B) If the incremental baseball tax revenues in a year substantially exceed the amount reasonably required to amortize a loan of \$150 million over a period of 30 years with interest, the excess may be retained by the state;

(c) Terminate when:

(A) The State of Oregon has made all payments assigned to the state in the grant agreements for the costs allowed under this subsection; and

(B) The grantees have returned any amounts required to be returned under paragraph (i) of this subsection;

(d) Require the Director of the Department of Revenue to estimate incremental baseball tax revenues, specify the methodology for estimating incremental baseball tax revenues and notify the Director of the Oregon Department of Administrative Services of the estimated incremental baseball tax revenues;

(e) Specify the methodology for determining actual incremental baseball tax revenues;

(f) Require the Director of the Oregon Department of Administrative Services to request that the Legislative Assembly appropriate an amount equal to the estimated incremental baseball tax revenues from the General Fund to the Major League Stadium Grant Fund established in ORS 184.408 so that those moneys may be disbursed under the grant agreements authorized by this section;

(g) Require the Director of the Department of Revenue to determine the actual incremental baseball tax revenues and, if the actual incremental baseball tax revenues exceed the estimated incremental baseball tax revenues, notify the Director of the Oregon Department of Administrative Services of the excess;

(h) Require the Director of the Oregon Department of Administrative Services, if notified of an excess under paragraph (g) of this subsection, to request that the Legislative Assembly appropriate an amount equal to the excess, adjusted for the limits and retentions described in paragraph (b) of this subsection, from the General Fund to the Major League Stadium Grant Fund so that those moneys may be disbursed under the grant agreements authorized by this section;

(i) Require the grantees to return to the Director of the Oregon Department of Administrative Services for deposit in the General Fund amounts transferred to the grantees from the Major League Stadium Grant Fund that exceed the actual incremental baseball tax revenues;

(j) Provide that the amounts requested for appropriations may not be reduced because of any reduction that may be enacted in Oregon personal income tax rates;

(k) Require the Director of the Oregon Department of Administrative Services to disburse amounts in the Major League Stadium Grant Fund to the grantees on particular dates;

(L) Provide assurances of full and fair participation in the construction, furnishing and operation of the major league stadium by [women, minorities and] **minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses;**

(m) Provide for the maximization of economic benefits for Oregon workers in the construction,

furnishing and operation of the major league stadium to the greatest extent permitted by law; and

(n) Require the State of Oregon and the grantees to take any other action that the State Treasurer, the Director of the Oregon Department of Administrative Services or the Director of the Department of Revenue determines is desirable to ensure that:

(A) The granted funds are used for the purposes described in ORS 184.400 to 184.408;

(B) The grant agreements are administered efficiently and the interests of the State of Oregon are protected; and

(C) The requests for appropriation of amounts equal to the incremental baseball tax revenues are made as described in ORS 184.400 to 184.408.

(2) The obligation of the State of Oregon, under ORS 184.400 to 184.408 and the grant agreements authorized by this section, to transfer estimated or actual incremental baseball tax revenues to the Major League Stadium Grant Fund is subject to an appropriation being made for that purpose by the Legislative Assembly. The State of Oregon is not liable to any party for any reason if the Legislative Assembly fails to appropriate all or a portion of the amounts requested under subsection (1)(f) and (h) of this section to the Major League Stadium Grant Fund. However, if the Legislative Assembly does appropriate amounts for deposit in the Major League Stadium Grant Fund and those amounts are deposited in the Major League Stadium Grant Fund pursuant to the grant agreements authorized by this section, the obligation of the State of Oregon to disburse the amounts in the Major League Stadium Grant Fund is unconditional. The grant agreements authorized by this section are not a pledge of the full faith and credit or the taxing power of the State of Oregon, and the State of Oregon does not pledge its full faith and credit or taxing power. The grant agreements do not create an indebtedness of the State of Oregon in violation of [section 7,] Article XI, **section 7**, of the Oregon Constitution. If a provision of a grant agreement is construed to have the effect of creating a debt in violation of [section 7,] Article XI, **section 7**, of the Oregon Constitution, the provision is void.

(3) The Legislative Assembly does not have a legal obligation to appropriate any amounts for disbursement under the grant agreements authorized by this section. However, the Legislative Assembly declares its current intention to appropriate amounts equal to the estimated incremental baseball tax revenues and amounts equal to the amount by which the actual incremental baseball tax revenues exceed the estimated incremental baseball tax revenues from the General Fund to the Major League Stadium Grant Fund, as provided in ORS 184.400 to 184.408, so that the amounts may be disbursed pursuant to the grant agreements authorized by this section.

(4) Before commencing negotiations on a grant agreement authorized by this section, the Oregon Department of Administrative Services shall obtain one or more agreements from benefited parties to

pay the state's costs associated with negotiating and executing the grant agreement.

**SECTION 12.** ORS 279A.105 is amended to read:

279A.105. (1) A contracting agency may require a contractor to subcontract some part of a contract to, or to obtain materials [*to be used*] **for use** in performing the contract from, a business [*enterprise*] that is certified under ORS 200.055 as an emerging small business or [*a business enterprise that is owned or controlled by a disabled veteran, as defined in ORS 408.225*] **as a business that a service-disabled veteran owns.**

(2) A contracting agency may require a contractor to subcontract some part of a contract to, or to obtain materials to be used in performing the contract from, a business [*enterprise*] that is certified under ORS 200.055 as an emerging small business and that, as identified by the contracting agency, is located in or draws the [*business enterprise's*] **business's** workforce from economically distressed areas, as designated by the Oregon Business Development Department.

(3) A contracting agency may require that a public contract be awarded to a responsible bidder **or proposer**, as defined in ORS 200.005, [*who*] **that** the contracting agency determines has made good faith efforts as prescribed in ORS 200.045 [(3)]. [*For purposes of this subsection, "responsible bidder" includes a responsible proposer that has made good faith efforts as prescribed in ORS 200.045 (3).*]

**SECTION 13.** ORS 279A.110 is amended to read:

279A.110. (1) A bidder or proposer [*who*] **that** competes for or is awarded a public contract may not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a [*minority, women or emerging small business enterprise*] **disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is** certified under ORS 200.055 [*or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225*].

(2) A contracting agency may debar or disqualify, under ORS 279B.130 or 279C.440, as appropriate, a bidder or proposer if the contracting agency finds that the bidder or proposer has violated subsection (1) of this section in awarding a subcontract in connection with a contract [*advertised by*] the contracting agency **advertised or otherwise solicited** or a contract between the contracting agency and the bidder or proposer. A debarred or disqualified bidder or proposer may appeal the debarment or disqualification under ORS 279B.425 or ORS 279C.445 and 279C.450, as appropriate.

(3) A contracting agency may not allege an occurrence of discrimination in subcontracting as a basis for debarring or disqualifying a bidder or proposer under subsection (2) of this section more than three years after the alleged discriminatory conduct occurred or more than three years after the

contracting agency, in the exercise of reasonable diligence, should have discovered the conduct, whichever is later.

(4) A bidder or proposer shall certify in the [documents accompanying the bidder's or proposer's offer to enter into a public contract] **bid or proposal** that the bidder or proposer has not discriminated and will not discriminate, in violation of subsection (1) of this section, against [any minority, women or emerging small business enterprise or against a business enterprise that is owned or controlled by or that employs a disabled veteran in obtaining a required subcontract] **a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business in awarding a subcontract.**

[5] After a contractor is awarded a public contract, if the contractor violates the certification made under subsection (4) of this section, the contracting agency may regard the violation as a breach of contract that permits the contracting agency to:]

(5) **If a contracting agency awards a public contract to a contractor and the contractor violates the contractor's certification under subsection (4) of this section, the contracting agency may regard the violation as a breach of contract that permits the contracting agency to:**

- (a) Terminate the contract; or
- (b) Exercise any of the remedies for breach of contract that are reserved in the contract.

**SECTION 14.** ORS 279A.142 is amended to read: 279A.142. A contracting agency may, by appropriate ordinance, resolution or rule, limit competition for a public contract to emerging small [business enterprises] **businesses** certified under ORS 200.055 if the contract **price** is estimated [to cost] **at** \$100,000 or less and is funded by the Emerging Small Business Account established under ORS 200.180.

**SECTION 15.** ORS 279C.110 is amended to read: 279C.110. (1) A contracting agency shall select consultants to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services on the basis of the consultant's qualifications for the type of professional service required. A contracting agency may solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation only after the contracting agency has selected a candidate pursuant to subsection (2) of this section.

(2) Subject to the requirements of subsection (1) of this section, the procedures that a contracting agency creates to screen and select consultants and to select a candidate under this section are at the contracting agency's sole discretion. The contracting agency may adjust the procedures to accommodate the contracting agency's scope, schedule or objec-

tives for a particular project if the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for the project does not exceed \$250,000.

(3) A contracting agency's screening and selection procedures under this section, regardless of the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for a project, may include considering each candidate's:

(a) Specialized experience, capabilities and technical competence, which the candidate may demonstrate with the candidate's proposed approach and methodology to meet the project requirements;

(b) Resources committed to perform the work and the proportion of the time that the candidate's staff would spend on the project, including time for specialized services, within the applicable time limits;

(c) Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(d) Ownership status and employment practices regarding [minority, women and] **disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own**, emerging small businesses or historically underutilized businesses;

(e) Availability to the project locale;

(f) Familiarity with the project locale; and

(g) Proposed project management techniques.

(4) If the screening and selection procedures a contracting agency creates under subsection (2) of this section result in the contracting agency's determination that two or more candidates are equally qualified, the contracting agency may select a candidate through any process the contracting agency adopts that is not based on the candidate's pricing policies, proposals or other pricing information.

(5) The contracting agency and the selected candidate shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation level and performance schedule, based on the scope of services. The compensation level paid must be reasonable and fair to the contracting agency as determined solely by the contracting agency. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.

(6) If the contracting agency and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the contracting agency, the contracting agency shall, either orally or in writing, formally terminate negotiations with the selected candidate. The contracting agency may then negotiate with the next most qualified candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the

contracting agency terminates the consultant contracting process.

(7) It is the goal of this state to promote a sustainable economy in the rural areas of the state. In order to monitor progress toward this goal, a state contracting agency shall keep a record of the locations in which architectural, engineering, photogrammetric mapping, transportation planning or land surveying services contracts and related services contracts are performed throughout the state, the locations of the selected consultants and the direct expenses on each contract. This record must include the total number of contracts awarded to each consultant firm over a 10-year period. The record of direct expenses must include all personnel travel expenses as a separate and identifiable expense on the contract. Upon request, the state contracting agency shall make these records available to the public.

(8) Notwithstanding the provisions of subsection (1) of this section, a contracting agency may directly appoint a consultant if the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for the project does not exceed \$100,000.

(9) Notwithstanding the provisions of subsections (1) and (8) of this section, a contracting agency may directly appoint a consultant for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services in an emergency.

**SECTION 16.** ORS 279C.836 is amended to read: 279C.836. (1) Except as provided in subsection (4), (7), (8) or (9) of this section, before starting work on a contract or subcontract for a public works project, a contractor or subcontractor shall file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in this state in the amount of \$30,000. The bond must provide that the contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under this section, unless the surety sooner cancels the bond. The surety may cancel the bond by giving 30 days' written notice to the contractor or subcontractor, to the board and to the Bureau of Labor and Industries. When the bond is canceled, the surety is relieved of further liability for work performed on contracts entered into after the cancellation. The cancellation does not limit the surety's liability for work performed on contracts entered into before the cancellation.

(2) Before permitting a subcontractor to start work on a public works project, the contractor shall verify that the subcontractor has filed a public works bond as required under this section, has elected not to file a public works bond under sub-

section (7) or (8) of this section or is exempt under subsection (4) or (9) of this section.

(3) A contractor or subcontractor is not required under this section to file a separate public works bond for each public works project for which the contractor or subcontractor has a contract.

(4) A person that is not required under ORS 279C.800 to 279C.870 to pay prevailing rates of wage on a public works project is not required to file a public works bond under this section.

(5) A public works bond required by this section is in addition to any other bond the contractor or subcontractor is required to obtain.

(6) The board may, by rule, require a contractor or subcontractor to obtain a new public works bond if a surety pays a claim out of an existing public works bond. The new bond must be in the amount of \$30,000. The board may allow a contractor or subcontractor to obtain, instead of a new bond, a certification that the surety remains liable for the full penal sum of the existing bond, notwithstanding payment by the surety on the claim.

(7)(a) A [*disadvantaged, minority, women or emerging small business enterprise*] **disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business** certified under ORS 200.055 may, for up to four years after certification, elect not to file a public works bond as required under subsection (1) of this section. If [*a*] **an enterprise or a business** [*enterprise*] elects not to file a public works bond, the **enterprise or business** [*enterprise*] shall give the board written verification of the certification and written notice that the **enterprise or business** [*enterprise*] elects not to file the bond.

(b) [*A*] **An enterprise or a business** [*enterprise*] that elects not to file a public works bond under this subsection shall notify the public agency for whose benefit the contract was awarded or, if the **enterprise or business** [*enterprise*] is a subcontractor, the contractor of the election before starting work on a public works project. When [*a business*] **an enterprise or a business** elects not to file a public works bond under this subsection, a claim for unpaid wages may be made against the payment bond of the **enterprise or business** [*enterprise*] or, if the [*business*] **enterprise or business** is a subcontractor, the payment bond of the contractor.

(c) An election not to file a public works bond expires four years after the date the **enterprise or business** [*enterprise*] is certified. After an election has expired and before starting or continuing work on a contract or subcontract for a public works project, the [*business*] **enterprise or business** shall file a public works bond with the board as required under subsection (1) of this section.

(8) A contractor or subcontractor may elect not to file a public works bond as required under subsection (1) of this section for any public works project for which the contract price does not exceed \$100,000.

(9) In cases of emergency, or when the interest or property of the public agency for whose benefit the contract was awarded probably would suffer material injury by delay or other cause, the requirement for filing a public works bond may be excused, if a declaration of the emergency is made in accordance with rules adopted under ORS 279A.065.

(10) The board shall make available on a searchable public website information concerning public works bonds filed with the board, claims made on those bonds, elections made by certified business enterprises not to file those bonds and the expiration date of each election. The board may adopt rules necessary to perform the duties required of the board by this section.

(11) The Commissioner of the Bureau of Labor and Industries, with approval of the board, shall adopt rules that establish language for public works bonds.

**SECTION 17.** ORS 285B.740, as amended by section 2, chapter 3, Oregon Laws 2014, is amended to read:

285B.740. It is the intent of the Legislative Assembly that in the administration of ORS 285B.740 to 285B.758, the Oregon Business Development Department work closely with regional economic development organizations, community development corporations, small business development centers and organizations that promote and assist [*small businesses owned and operated by women and minorities*] **minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses, as those terms are defined in ORS 200.005**, and utilize policies, priorities and practices that further entrepreneurial and small business development in rural communities. The department, to the maximum extent feasible and consistent with prudent financial controls, may delegate the administration and operation of the loan program created by ORS 285B.740 to 285B.758 to local and community-based entities. To carry out the policy described in this section:

(1) The department may contract with any nonprofit corporation or agency with experience and expertise in business finance to administer all or any part of the loan program created by ORS 285B.740 to 285B.758.

(2) When entering into an agreement for the administration of the loan program by any nonprofit corporation or agency, the department may agree to waive any claims it may have against such corporation or agency for losses arising out of the normal course of business, as long as the corporation or agency does not act negligently or fraudulently in providing loans under ORS 285B.740 to 285B.758.

(3) When entering into an agreement to have a nonprofit corporation or agency administer the loan program created by ORS 285B.740 to 285B.758, the department may pay loan origination and loan servicing fees to the corporation or agency. The amount of such fees may be determined in the agreement

between the department and the administering corporation or agency.

**SECTION 18.** ORS 286A.615 is amended to read: 286A.615. (1) The Private Activity Bond Committee is established. It shall consist of the State Treasurer or the designee of the State Treasurer, one representative from the Oregon Department of Administrative Services and one public representative appointed to serve at the pleasure of the Governor.

(2) The State Treasurer, or the State Treasurer's designee, shall serve as chair of the committee.

(3) The purpose of private activity bonding in this state is to maximize the economic benefits of private activity bonding to the citizens of this state. The committee shall adopt by rule standards for amounts allocated to the committee for further allocation for economic development, housing, education, redevelopment, public works, energy, waste management, waste and recycling collection, transportation and other activities that the committee determines will benefit the citizens of this state. In developing standards, the committee shall:

(a) Survey the expected need for private activity bond allocations at least once each year;

(b) Develop strategies for reserving and allocating the limit that are designed to maximize the availability of tax exempt financing among competing sectors of the Oregon economy; and

(c) Ensure that the standards include but are not limited to standards that:

(A) Support projects that increase the number of family wage jobs in this state.

(B) Promote economic recovery in small cities heavily dependent on a single industry.

(C) Emphasize development in underdeveloped rural areas of this state.

(D) Utilize educational resources available at public universities listed in ORS 352.002.

(E) Support development of the state's small businesses, especially [*businesses owned by women and members of minority groups*] **minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses, as those terms are defined in ORS 200.005**.

(F) Encourage use of Oregon's human and natural resources in endeavors that harness Oregon's economic comparative advantages.

(4) The state private activity bond volume cap allocated to the Private Activity Bond Committee as provided in ORS 286A.620 shall be allocated and reallocated among issuers by the Private Activity Bond Committee as follows:

(a) Any amounts not reserved to an issuer or a class of issuers under the authorization adopted by the Legislative Assembly under ORS 286A.035 shall be allocated or reallocated by the committee under rules adopted under subsection (3) of this section.

(b) Any amounts provided for in the authorization adopted by the Legislative Assembly under ORS 286A.035 that are unused shall be carried for-

ward for use as provided by rules adopted under subsection (3) of this section.

(c) The rules adopted by the committee shall limit the period of time for which an allocation of private activity bonding authority is effective. The rules shall ensure that allocations made during a calendar year are used during that calendar year or that the unused amount of the allocation is reallocated or carried forward.

(5) Unused allocations are not transferable among issuers but are available for reallocation.

**SECTION 19.** ORS 293.796 is amended to read:

293.796. (1) The Legislative Assembly finds that:

(a) The availability of venture capital for the start-up and subsequent expansion of new businesses is critical to the continued growth and development of the economy of Oregon.

(b) There exists an estimated gap of between \$100 million and \$200 million between available venture capital resources and the need of Oregon businesses for such resources.

*[(c) Investments in start-up and expanding businesses, in minority or women business enterprises and in emerging growth businesses can produce substantial positive returns for long-term investors.]*

**(c) Investments in start-up and expanding businesses, in minority-owned businesses, woman-owned businesses and businesses that service-disabled veterans own and in emerging growth businesses can produce substantial positive returns for long-term investors.**

(d) Pension funds managed by the Oregon Investment Council constitute a major financial resource of the State of Oregon, and that such funds may be prudently invested in start-up and emerging growth businesses in this state under policies established by the Oregon Investment Council.

(2) As used in this section:

(a) "Emerging growth business" means an individual or group of individuals or a new or small company, including but not limited to any new or small partnership, limited liability company, corporation, firm, association or other business entity, that has the capacity, upon obtaining appropriate capital, to generate significant high-skill, high-wage employment.

*[(b) "Minority or women business enterprise" has the meaning given that term in ORS 200.005.]*

**(b) "Minority-owned business," "woman-owned business" and "business that a service-disabled veteran owns" have the meanings given those terms in ORS 200.005.**

**SECTION 20.** ORS 351.070 is amended to read:

351.070. (1) The State Board of Higher Education shall develop standards to implement a personnel system for the Oregon University System and may engage in collective bargaining with the employees. All collective bargaining with any certified or recognized exclusive employee representative shall be under the direction and supervision of the Chancellor of the Oregon University System. The

board and the Oregon University System shall have payroll authority.

(2)(a) The board shall establish competitive procedures for the purchasing, procurement and contracting of goods, services and information technology, for the benefit of the Oregon University System and all the public universities and offices, departments and activities under the control of the board. The board may also establish exemptions from the competitive procedures when appropriate.

(b) The board shall ensure that the hourly rate of wage paid by any contractor upon all public improvements contracts undertaken for the board shall not be less than the same rate of wage as determined by the Bureau of Labor and Industries for an hour's work in the same trade or occupation in the locality where such labor is performed. Claims or disputes arising under this subsection shall be decided by the Commissioner of the Bureau of Labor and Industries.

(c) The board shall adopt policies and procedures that achieve results equal to or better than the standards existing on July 17, 1995, regarding affirmative action, pay equity for comparable work, recycling, the provision of workers' compensation insurance to workers on contract and the participation of *[emerging small businesses and businesses owned by minorities and women]* **minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses, as those terms are defined in ORS 200.005.**

(3) The board may, for each public university listed in ORS 351.011:

(a) Appoint and employ a president and the requisite number of employees and prescribe their compensation and tenure of office or employment.

(b) Demand and receive all sums due and accruing for admission and tuition, and apply the same, or so much thereof as is necessary, to the payment of the compensation referred to in paragraph (a) of this subsection and the other current expenses.

(c) Confer, consistent with the mission and programs of each public university and on the recommendation of the faculty of the public university, such degrees as usually are conferred by public universities, or as the faculty deems appropriate.

(d) Prescribe the qualifications for admission.

(4) Subject to such delegation as the board may decide to make to the public universities and offices, departments and activities under its control, the board, for each public university, office, department or activity under its control:

(a) Shall supervise the general course of instruction therein, and the research, extension, educational and other activities thereof.

(b) Shall develop and adopt standards and bylaws for the government thereof, including the faculty, teachers, students and employees therein.

(c) Shall maintain cultural and physical development services and facilities therefor and, in connection therewith, may cooperate and enter into

agreements with any person or governmental agency.

(d) May contract to provide health services at student health centers.

(e) Shall provide health services at student health centers to students.

(f) May provide health services at student health centers to any of the following:

(A) Dependents of students.

(B) Staff.

(C) Faculty.

(g) Shall prescribe and collect charges.

(h) Shall adopt standards relating to the creation, use, custody and disclosure, including access, of student education records that are consistent with the requirements of applicable state and federal law. Whenever a student has attained 18 years of age or is attending a public university listed in ORS 351.011, the permission or consent required of and the rights accorded to a parent of the student regarding education records shall thereafter be required of and accorded to only the student.

(5) For each public university listed in ORS 351.011, the board shall provide opportunities for part-time students to obtain complete undergraduate degrees at unconventional times, which include but are not limited to early morning and noon hours, evenings and weekends. In administering these degree programs, the public university may use any educational facility available for the use of the public university.

(6) For all public universities under the board's control, the board shall, to the extent feasible and cost beneficial, develop and implement a common admissions process that permits applicants to be considered for admission to more than one public university.

**SECTION 21.** ORS 353.130 is amended to read:

353.130. The Oregon Health and Science University subscribes to the policy set forth under ORS 279A.015 regarding public contracting, and shall develop contract policies that support openness, impartiality and competition in the awarding of contracts in accordance with that provision. The university subscribes to the intent of the social policies of ORS 279.835 to 279.855 and ORS chapters 279A, 279B and 279C and shall develop contract policies that are appropriate to the university and are designed to encourage affirmative action, recycling, inclusion of art in public buildings, the purchase of services and goods from individuals with disabilities, the protection of workers through the payment of prevailing wages as determined by the Bureau of Labor and Industries, the provision of workers' compensation insurance to workers on contracts and the participation of *[emerging small businesses and businesses owned by women and minorities]* **minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses, as those terms are defined in ORS 200.005.**

**SECTION 22.** Section 18, chapter 4, Oregon Laws 2013, is amended to read:

**Sec. 18.** (1) As used in this section, "Interstate 5 bridge replacement project" means the project described in section 2 *[of this 2013 Act]*, **chapter 4, Oregon Laws 2013.**

(2)(a) The Department of Transportation shall require, in accordance with 23 C.F.R. 635.410, that in each public contract that the department awards to a contractor in connection with the Interstate 5 bridge replacement project that steel, iron, coatings for steel and iron and manufactured products that the contractor purchases for the Interstate 5 bridge replacement project and that become part of a permanent structure must be produced in the United States.

(b)(A) The requirement set forth in paragraph (a) of this subsection does not apply if the Secretary of the United States Department of Transportation, or the secretary's designee, finds that:

(i) The requirement is inconsistent with the public interest;

(ii) Steel, iron, coatings for steel and iron and manufactured products required for the Interstate 5 bridge replacement project are not produced in the United States in sufficient and reasonably available quantities and with satisfactory quality; or

(iii) The requirement set forth in paragraph (a) of this subsection will increase the construction and related costs of the Interstate 5 bridge replacement project, exclusive of labor costs involved in final assembly for manufactured products, by 25 percent or more.

(B) At the earliest practicable time, the department shall give notice of any waiver that the Secretary of the United States Department of Transportation grants. The department shall give the notice by means of the same methods the department used to advertise procurements for the Interstate 5 bridge replacement project, or by other means reasonably suited to notifying contractors and subcontractors of the waiver.

(c)(A) Notwithstanding a finding from the Secretary of the United States Department of Transportation under paragraph (b)(A) of this subsection, a contractor shall spend at least 75 percent of the total amount the contractor spends in connection with the Interstate 5 bridge replacement project on steel, iron, coatings for steel and iron and manufactured products that become part of a permanent structure to purchase steel, iron, coatings for steel and iron and manufactured products that are produced in the United States.

(B) The Director of Transportation may waive the requirement set forth in subparagraph (A) of this paragraph if the director finds that the requirement will increase the cost of a contract the department awards in connection with the Interstate 5 bridge replacement project by 25 percent or more, that steel, iron, coatings for steel and iron or manufactured products are not produced in the United States in sufficient and reasonable quantities and with satisfactory quality to meet the requirement or that the

requirement violates regulations promulgated by the Federal Highway Administration of the United States Department of Transportation.

(d) The requirements set forth in this subsection are subject to applicable state and federal trade agreements.

(3)(a) The department, in awarding public contracts in connection with the Interstate 5 bridge replacement project, shall seek to the extent permissible under law, and in compliance with the provisions of 49 C.F.R. part 26, as in effect on *[the effective date of this 2013 Act]* **March 12, 2013**, to:

(A) Ensure nondiscrimination in awarding public contracts;

(B) Remove barriers that prevent disadvantaged business enterprises from obtaining public contracts;

(C) Create conditions under which disadvantaged business enterprises may compete fairly for public contracts; and

(D) Otherwise seek to implement the policies set forth in ORS 279A.100, 279A.105 and 279A.110.

(b)(A) The Director of Transportation, in consultation with the *[Advocate for Minority, Women and Emerging Small Business, with disadvantaged, minority, women or emerging small business enterprises]* **Governor's Policy Advisor for Economic and Business Equity, with disadvantaged business enterprises, minority-owned businesses, woman-owned businesses or emerging small businesses** certified under ORS 200.055, with contractors and with other knowledgeable persons, shall prepare a plan for complying with the requirements described in paragraph (a) of this subsection and shall deliver the plan not later than January 1, 2014, to an interim committee of the Legislative Assembly with oversight over transportation issues. The plan must include a process for:

(i) Identifying opportunities for *[disadvantaged, minority, women or emerging small business enterprises]* **disadvantaged business enterprises, minority-owned businesses, woman-owned businesses and emerging small businesses** certified under ORS 200.055 to competitively bid for subcontracts and for *[disadvantaged, minority, women or emerging small business enterprises]* **disadvantaged business enterprises, minority-owned businesses, woman-owned businesses or emerging small businesses** to build the capacity necessary to bid for larger contracts; and

(ii) Identifying opportunities to create and foster mentoring relationships between contractors and subcontractors with extensive experience in performing public contracts and *[disadvantaged, minority, women]* **disadvantaged business enterprises, minority-owned businesses, woman-owned businesses or emerging small businesses** that are certified under ORS 200.055.

(B) The director, in accordance with ORS chapter 183, shall adopt rules that incorporate the plan and that have an effective date that is not earlier than July 1, 2014.

(4)(a) As used in this subsection:

(A) "Apprentice" has the meaning given that term in ORS 660.010.

(B) "Local joint committee" has the meaning given that term in ORS 660.010.

(C) "Program" has the meaning given that term in ORS 660.010.

(b) The department shall provide in each public contract that the department awards to a contractor in connection with the Interstate 5 bridge replacement project that apprentices employed in a program that a local joint committee has approved under ORS 660.002 to 660.210 and that has existed for at least two years must perform at least 10 percent of all work hours performed under the public contract. The department shall also require contractors to provide in each of the contractor's subcontracts that apprentices with the qualifications specified in this paragraph must perform at least 10 percent of the work hours performed under the subcontract.

(c) Paragraph (b) of this subsection does not apply to a contract or subcontract with a contract price that is less than \$250,000.

(5) The department shall provide in public contracts that the department awards to a contractor in connection with the Interstate 5 bridge replacement project that:

(a) Each contractor is subject to the same standards and restrictions set forth in federal law or the laws of this state that apply to the entire Interstate 5 bridge replacement project; and

(b) Each contractor's own contracts with subcontractors must provide that each subcontractor is subject to the same standards and restrictions set forth in federal law or the laws of this state that apply to the entire Interstate 5 bridge replacement project.

(6) The department shall develop goals for specifying types of work and contract prices for contracts that are awarded in connection with the Interstate 5 bridge replacement project so as to maximize economic development opportunities for small businesses. The department shall deliver a plan to achieve the goals not later than January 1, 2014, to an interim committee of the Legislative Assembly with oversight over transportation issues.

(7) The department by rule shall establish a procedure that the department will follow to resolve disputes between the States of Oregon and Washington with respect to the Interstate 5 bridge replacement project.

**SECTION 23.** ORS 470.560 is amended to read:

470.560. (1) The State Department of Energy shall adopt rules establishing certification standards for primary contractors participating in the construction of small scale local energy projects financed through the energy efficiency and sustainable technology loan program. The department shall design the standards to ensure that the project work performed by a primary contractor holding the certification and all the primary contractor's subcontractors is of high quality and will result in a high degree of customer satisfaction.

(2) The certification standards established by the department must, at a minimum, require that the primary contractor:

(a) Prove that the primary contractor and the primary contractor's subcontractors have sufficient skill to successfully install energy efficiency, renewable energy or weatherization projects.

(b) Not be a contractor listed by the Commissioner of the Bureau of Labor and Industries under ORS 279C.860 as ineligible to receive a contract or subcontract for public works.

(c) Be an equal opportunity employer or small business or be a [*minority or women business enterprise or*] **disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business**, as those terms are defined in ORS 200.005.

(d) Demonstrate a history of compliance with the rules and other requirements of the Construction Contractors Board and of the Workers' Compensation Division and the Occupational Safety and Health Division of the Department of Consumer and Business Services.

(e) Employ at least 80 percent of employees used for energy efficiency and sustainable technology loan program projects from the local work force, if a sufficient supply of skilled workers is available locally.

(f) Demonstrate a history of compliance with federal and state wage and hour laws.

(g) Pay wages to employees used for energy efficiency and sustainable technology loan program projects at a rate equal to at least 180 percent of the state minimum wage.

(3) The State Department of Energy shall consult with the Public Purpose Fund Administrator and utilities when developing certification standards for primary contractors.

(4) The Construction Contractors Board may issue a qualifying primary contractor a certification authorizing the primary contractor to participate in the construction of small scale local energy projects financed through the energy efficiency and sustainable technology loan program. A primary contractor seeking certification shall apply to the board as provided under ORS 701.119.

(5) The State Department of Energy shall identify certified primary contractors that provide employees with health insurance benefits as preferred service providers and may take other actions as practicable to encourage certified primary contractors to provide employees with health insurance benefits.

**SECTION 24. ORS 200.100 is repealed.**

**SECTION 25. If House Bill 2716 becomes law, sections 3 (amending ORS 200.065), 6 (amending ORS 200.065), 7, 8, 9 and 10, chapter 325, Oregon Laws 2015 (Enrolled House Bill 2716), are repealed.**

**SECTION 26.** If House Bill 2716 becomes law, section 2, chapter 325, Oregon Laws 2015 (Enrolled House Bill 2716), is amended to read:

**Sec. 2.** (1) A contracting agency that under ORS 279A.105 awards a public contract to a responsible bidder, as defined in ORS 200.005, that has made good faith efforts, as described in ORS 200.045 (3), or that awards a public contract in the course of carrying out an affirmative action goal, policy or program under ORS 279A.100 shall:

(a) Provide as a material condition of the public contract that a contractor remain certified as a [*disadvantaged, minority, women*] **disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns** or emerging small business [*enterprise*] under ORS 200.055 for the entire term of the public contract, if the contracting agency awarded the public contract, in whole or in part, on the basis of the contractor's certification.

(b) Require a contractor to provide in the contractor's subcontracts that a subcontractor remain certified as a [*disadvantaged, minority, women*] **disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns** or emerging small business [*enterprise*] under ORS 200.055 for the entire term of the subcontract, if the contractor awards the subcontract, in whole or in part, on the basis of the subcontractor's certification.

(c) Verify the contractor's or subcontractor's compliance with the requirements set forth in paragraphs (a) and (b) of this subsection.

(d) Verify that a contractor is paying a subcontractor that is certified under ORS 200.055 promptly as provided in ORS 279B.220 or 279C.570, as appropriate.

(2)(a) If a contracting agency determines at any time during the term of a public contract that a contractor to which the contracting agency awarded the public contract on the basis described in subsection (1) of this section, or a subcontractor to which the contractor awarded a subcontract in connection with the public contract on the basis described in subsection (1) of this section, is no longer certified, the contracting agency may:

(A) Terminate the public contract;

(B) Require the contractor to terminate the subcontract; or

(C) Exercise any of the remedies for breach of contract that are reserved in the public contract.

(b) The actions a contracting agency may take under paragraph (a) of this subsection are in addition to and not in lieu of any other action the Oregon Business Development Department may take with respect to the contractor or subcontractor under ORS 200.065.

(c) Paragraph (a) of this subsection does not apply to an emerging small business as defined in ORS 200.005 that, because of growth in the number of full-time equivalent employees or average annual gross receipts that occurs during the term of the

public contract, no longer qualifies as a tier one firm or tier two firm, as those terms are defined in ORS 200.005, or for which a certification under ORS 200.055 expires during the term of the public contract.

**SECTION 27.** (1) The amendments to ORS 200.025 by section 2 of this 2015 Act are intended to change the name of the “Advocate for Minority, Women and Emerging Small Business” to the “Governor’s Policy Advisor for Economic and Business Equity.”

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the “Advocate for Minority, Women and Emerging Small Business,” wherever they occur in statutory law, other words designating the “Governor’s Policy Advisor for Economic and Business Equity.”

**SECTION 28.** (1) The amendments to ORS 200.025 by section 2 of this 2015 Act are intended to change the name of the “Office for Minority, Women and Emerging Small Business” to the “Certification Office for Business Inclusion and Diversity.”

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the “Office for Minority, Women and Emerging Small Business,” wherever they occur in statutory law, other words designating the “Certification Office for Business Inclusion and Diversity.”

**SECTION 29.** The amendments to ORS 184.404, 200.005, 200.025, 200.035, 200.045, 200.055, 200.065, 200.075, 200.090, 200.110, 200.120, 279A.105, 279A.110, 279A.142, 279C.110, 279C.836, 285B.740, 286A.615, 293.796, 351.070, 353.130 and 470.560 and section 18, chapter 4, Oregon Laws 2013, by sections 1 to 23 of this 2015 Act and the repeal of ORS 200.100 by section 24 of this 2015 Act apply to:

(1) Public contracts that a contracting agency advertises or otherwise solicits or, if the contracting agency does not advertise or solicit the public contract, to public contracts into which the contracting agency enters on or after the operative date specified in section 30 of this 2015 Act;

(2) Decisions that the Oregon Business Development Department makes on and after the operative date specified in section 30 of this 2015 Act to approve, deny, revoke or refuse to renew a certification as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business;

(3) Investigations that the department or a contracting agency conducts on or after the op-

erative date specified in section 30 of this 2015 Act; and

(4) A contracting agency’s decision on or after the operative date specified in section 30 of this 2015 Act to suspend an enterprise’s or business’s right to submit a bid or proposal for a public contract.

**SECTION 30.** (1) The amendments to ORS 184.404, 200.005, 200.025, 200.035, 200.045, 200.055, 200.065, 200.075, 200.090, 200.110, 200.120, 279A.105, 279A.110, 279A.142, 279C.110, 279C.836, 285B.740, 286A.615, 293.796, 351.070, 353.130 and 470.560 and section 18, chapter 4, Oregon Laws 2013, by sections 1 to 23 of this 2015 Act and the repeal of ORS 200.100 by section 24 of this 2015 Act become operative on January 1, 2016.

(2) The Attorney General, the Director of the Oregon Department of Administrative Services, the Director of Transportation, the Director of the Oregon Business Development Department and a contracting agency that adopts rules under ORS 279A.065 may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the Attorney General, the director or the contracting agency to exercise, on or after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the Attorney General, the director or the contracting agency by the amendments to ORS 184.404, 200.005, 200.025, 200.035, 200.045, 200.055, 200.065, 200.075, 200.090, 200.110, 200.120, 279A.105, 279A.110, 279A.142, 279C.110, 279C.836, 285B.740, 286A.615, 293.796, 351.070, 353.130 and 470.560 and section 18, chapter 4, Oregon Laws 2013, by sections 1 to 23 of this 2015 Act.

**SECTION 31.** If House Bill 2716 becomes law, section 4, chapter 325, Oregon Laws 2015 (Enrolled House Bill 2716), is amended to read:

**Sec. 4.** Section 2 [of this 2015 Act and the amendments to ORS 200.065 by section 3 of this 2015 Act apply], **chapter 325, Oregon Laws 2015 (Enrolled House Bill 2716)**, applies to public contracts that a contracting agency advertises or otherwise solicits or, if the contracting agency does not advertise or otherwise solicit the public contract, to public contracts into which the [public] contracting agency enters on or after the operative date specified in section 5 [of this 2015 Act], **chapter 325, Oregon Laws 2015 (Enrolled House Bill 2716)**.

**SECTION 32.** If House Bill 2716 becomes law, section 5, chapter 325, Oregon Laws 2015 (Enrolled House Bill 2716), is amended to read:

**Sec. 5.** (1) Section 2 [of this 2015 Act and the amendments to ORS 200.065 by section 3 of this 2015 Act become], **chapter 325, Oregon Laws 2015 (Enrolled House Bill 2716)**, becomes operative on January 1, 2016.

(2) The Director of the Oregon Business Development Department, the Director of the Oregon Department of Administrative Services, the Director of Transportation, the Attorney General and a contracting agency that adopts rules under ORS 279A.065 may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the director, the Attorney General or the contracting agency to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the director, the Attorney General or the contracting agency by section 2 [of this

*2015 Act and the amendments to ORS 200.065 by section 3 of this 2015 Act], chapter 325, Oregon Laws 2015 (Enrolled House Bill 2716).*

**SECTION 33. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.**

Approved by the Governor June 25, 2015  
Filed in the office of Secretary of State June 29, 2015  
Effective date June 25, 2015

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