

House Bill 2499

Sponsored by Representative WILDE; Representatives FAHEY, GOMBERG, HERNANDEZ, HOLVEY, NOSSE, PILUSO, POWER, SANCHEZ (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Adds businesses that individuals who identify as lesbian, gay, bisexual or transgender own to list of businesses eligible for certification by Certification Office for Business Inclusion and Diversity as necessary participants in certain public contracts.

Becomes operative January 1, 2020.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to including certain businesses as necessary participants in public contracts; creating new
3 provisions; amending ORS 184.404, 200.005, 200.025, 200.045, 200.055, 200.065, 200.075, 200.090,
4 200.110, 200.120, 279A.107, 279A.110, 279C.110, 279C.836, 285B.740, 286A.615, 293.796, 353.130 and
5 470.560; and prescribing an effective date.

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

7 **SECTION 1.** ORS 184.404 is amended to read:

8 184.404. (1) The Director of the Oregon Department of Administrative Services, with the ap-
9 proval of the State Treasurer, may enter into one or more agreements on behalf of the State of
10 Oregon to grant the incremental baseball tax revenues for a period of not more than 30 years. The
11 grant agreements must:

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

14 (b) Provide that:

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

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

22 (c) Terminate when:

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

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

27 (d) Require the Director of the Department of Revenue to estimate incremental baseball tax re-
28 venues, specify the methodology for estimating incremental baseball tax revenues and notify the
29 Director of the Oregon Department of Administrative Services of the estimated incremental baseball

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 tax revenues;

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

3 (f) Require the Director of the Oregon Department of Administrative Services to request that
4 the Legislative Assembly appropriate an amount equal to the estimated incremental baseball tax
5 revenues from the General Fund to the Major League Stadium Grant Fund established in ORS
6 184.408 so that those moneys may be disbursed under the grant agreements authorized by this sec-
7 tion;

8 (g) Require the Director of the Department of Revenue to determine the actual incremental
9 baseball tax revenues and, if the actual incremental baseball tax revenues exceed the estimated in-
10 cremental baseball tax revenues, notify the Director of the Oregon Department of Administrative
11 Services of the excess;

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

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

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

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

24 (L) Provide assurances of full and fair participation in the construction, furnishing and operation
25 of the major league stadium by [*minority-owned businesses, woman-owned businesses, businesses that*
26 *service-disabled veterans own*] **inclusion and diversity contractors** and emerging small businesses,
27 **as those terms are defined in ORS 200.005;**

28 (m) Provide for the maximization of economic benefits for Oregon workers in the construction,
29 furnishing and operation of the major league stadium to the greatest extent permitted by law; and

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

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

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

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

38 (2) The obligation of the State of Oregon, under ORS 184.400 to 184.408 and the grant agree-
39 ments authorized by this section, to transfer estimated or actual incremental baseball tax revenues
40 to the Major League Stadium Grant Fund is subject to an appropriation being made for that purpose
41 by the Legislative Assembly. The State of Oregon is not liable to any party for any reason if the
42 Legislative Assembly fails to appropriate all or a portion of the amounts requested under subsection
43 (1)(f) and (h) of this section to the Major League Stadium Grant Fund. However, if the Legislative
44 Assembly does appropriate amounts for deposit in the Major League Stadium Grant Fund and those
45 amounts are deposited in the Major League Stadium Grant Fund pursuant to the grant agreements

1 authorized by this section, the obligation of the State of Oregon to disburse the amounts in the
 2 Major League Stadium Grant Fund is unconditional. The grant agreements authorized by this sec-
 3 tion are not a pledge of the full faith and credit or the taxing power of the State of Oregon, and the
 4 State of Oregon does not pledge its full faith and credit or taxing power. The grant agreements do
 5 not create an indebtedness of the State of Oregon in violation of Article XI, section 7, of the Oregon
 6 Constitution. If a provision of a grant agreement is construed to have the effect of creating a debt
 7 in violation of Article XI, section 7, of the Oregon Constitution, the provision is void.

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

15 (4) Before commencing negotiations on a grant agreement authorized by this section, the Oregon
 16 Department of Administrative Services shall obtain one or more agreements from benefited parties
 17 to pay the state's costs associated with negotiating and executing the grant agreement.

18 **SECTION 2.** ORS 200.005 is amended to read:

19 200.005. As used in ORS 200.005 to 200.075, 200.110, 200.120, 200.160 to 200.200 and 279A.105:

20 (1) "Contracting agency" has the meaning given that term in ORS 279A.010.

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

26 (3) "Disadvantaged business enterprise" means a small business concern:

27 (a) At least 51 percent of which one or more socially and economically disadvantaged individuals
 28 own; or

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

32 (4) "Economically disadvantaged individual" means a socially disadvantaged individual for whom
 33 diminished capital and credit opportunities have impaired the individual's ability to compete in the
 34 free enterprise system as compared to other individuals in the same business area who are not so-
 35 cially disadvantaged individuals.

36 (5) "Emerging small business" means an independent business concern that:

37 (a) Has a principal place of business located in this state;

38 (b) Qualifies as a tier one firm or a tier two firm;

39 (c) Is properly licensed and legally registered in this state; and

40 (d) Is not a subsidiary or parent company that belongs to a group of firms that the same indi-
 41 viduals own or control if, in the aggregate, the group of firms does not qualify as a tier one firm
 42 or a tier two firm.

43 (6) "Inclusion and diversity contractor" means a small business concern:

44 (a) At least 51 percent of which one or more qualified individuals own or control; or

45 (b) At least 51 percent of the stock of which, if the small business concern is a corpo-

1 **ration, one or more qualified individuals own or control and the daily business operations of**
 2 **which the qualified individual or individuals control or manage.**

3 [(6)] (7) “Minority individual” means an individual who is a citizen or lawful permanent resident
 4 of the United States and is:

5 (a) African American, having origins in any of the original peoples of Africa;

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

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

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

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

14 (f) Any other individual or member of another group that the Certification Office for Business
 15 Inclusion and Diversity determines is socially and economically disadvantaged.

16 [(7) “*Minority-owned business,*” “*woman-owned business*” or “*business that a service-disabled vet-*
 17 *eran owns*” means, as appropriate, a small business concern.]

18 [(a) *At least 51 percent of which one or more minority individuals, women or service-disabled vet-*
 19 *erans own and control; or]*

20 [(b) *At least 51 percent of the stock of which, if the small business concern is a corporation, is*
 21 *owned by one or more minority individuals, women or service-disabled veterans who also control and*
 22 *manage the daily business operations of the small business concern.]*

23 **(8) “Qualified individual” means:**

24 **(a) A minority individual;**

25 **(b) A woman;**

26 **(c) A service-disabled veteran; or**

27 **(d) A socially disadvantaged or economically disadvantaged individual who identifies as:**

28 **(A) Lesbian;**

29 **(B) Gay;**

30 **(C) Bisexual;**

31 **(D) Transgender; or**

32 **(E) Having a gender or sexual orientation other than male, female or heterosexual.**

33 [(8)] (9) “Responsible bidder or proposer” means a bidder or proposer that the Governor’s Policy
 34 Advisor for Economic and Business Equity determines has undertaken both a policy and practice
 35 of actively pursuing participation by [*minority-owned businesses, woman-owned businesses, businesses*
 36 *that service-disabled veterans own*] **inclusion and diversity contractors** or emerging small busi-
 37 nesses in all of the bidder’s or proposer’s bids or proposals, both public and private.

38 [(9)] (10) “Service-disabled veteran” means a veteran who has a United States Department of
 39 Veterans Affairs disability rating of at least zero percent as a result of an injury or illness that the
 40 veteran incurred, or that was aggravated, during active military service and who received a dis-
 41 charge or release under other than dishonorable conditions.

42 [(10)] (11) “Small business concern” means a small business, as defined by the United States
 43 Small Business Administration in 13 C.F.R. part 121, as in effect on January 1, 2016.

44 [(11)] (12) “Socially disadvantaged individual” means an individual who has been subjected to
 45 racial or ethnic prejudice or cultural bias, without regard to individual qualities, because of the

1 individual’s identity as a member of a group.

2 [(12)] (13) “State contracting agency” has the meaning given that term in ORS 279A.010.

3 [(13)] (14) “Subcontractor” means a contractor that does not have a direct contractual re-
4 lationship with a contracting agency.

5 [(14)] (15) “Tier one firm” means a business that employs not more than 19 full-time equivalent
6 employees and has average annual gross receipts for the last three years that do not exceed an
7 amount that the Oregon Business Development Department specifies by rule.

8 [(15)] (16) “Tier two firm” means a business that employs not more than 29 full-time equivalent
9 employees and has average annual gross receipts for the last three years that do not exceed an
10 amount that the Oregon Business Development Department specifies by rule.

11 [(16)] (17) “Woman” means a person of the female gender who is a citizen or lawful permanent
12 resident of the United States.

13 **SECTION 3.** ORS 200.025 is amended to read:

14 200.025. (1) The Governor shall appoint a Governor’s Policy Advisor for Economic and Business
15 Equity within the office of the Governor.

16 (2) The Certification Office for Business Inclusion and Diversity is created within the Oregon
17 Business Development Department, and the Director of the Oregon Business Development Depart-
18 ment shall appoint the employees of the office.

19 (3) The Governor’s Policy Advisor for Economic and Business Equity shall:

20 (a) Advise the Governor and the director on activities and initiatives that may promote the
21 economic integration of [*minorities, women, service-disabled veterans*] **qualified individuals** and
22 emerging small businesses into the business sector;

23 (b) Prepare an annual report to the Governor, director and Legislative Assembly on disadvan-
24 tagged business enterprises, [*minority-owned businesses, woman-owned businesses, businesses that*
25 *service-disabled veterans own*] **inclusion and diversity contractors** and emerging small businesses
26 that examines:

27 (A) The status of the enterprises, **inclusion and diversity contractors** and businesses in the
28 marketplace;

29 (B) Accomplishments and resolutions that have occurred with respect to issues that concern the
30 enterprises, **inclusion and diversity contractors** and businesses; and

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

32 (c) Carry out other duties that the Governor may assign.

33 (4) The Certification Office for Business Inclusion and Diversity shall:

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

36 (b) Assist in developing and implementing an aggressive strategy for this state, based on re-
37 search and monitoring, that encourages [*minorities, women, service-disabled veterans*] **qualified in-**
38 **dividuals, inclusion and diversity contractors** and emerging small businesses to participate in the
39 state’s economy;

40 (c) Recommend to the director methods for researching, developing and implementing a plan to
41 involve [*minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans*
42 *own*] **inclusion and diversity contractors** and emerging small businesses in all state programs;

43 (d) Maintain, in consultation with the Department of Transportation, public universities listed
44 in ORS 352.002 and other entities, an Oregon Opportunity Register and Clearinghouse for informa-
45 tion about contracting agency solicitations and other opportunities to submit bids or proposals to

1 contracting agencies to provide goods, supplies and services, including professional services;

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

3 (A) Disadvantaged business enterprises;

4 (B) *[Minority-owned businesses, woman-owned businesses and businesses that service-disabled veterans own]* **Inclusion and diversity contractors**; and

5 (C) Emerging small businesses;

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

7 (g) Assist in promoting and coordinating plans, programs and operations of state government
8 that help *[minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own]* **inclusion and diversity contractors** and emerging small businesses to participate in the
9 economic life of this state.
10

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

12 200.045. *[(1) As used in this section, "required participant" means:]*

13 *[(a) A disadvantaged business enterprise;]*

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

16 *[(c) An emerging small business.]*

17 *[(2)]* **(1)** If a public contract requires participation from a *[required participant]* **disadvantaged
18 business enterprise, inclusion and diversity contractor or emerging small business** and a bid-
19 der or proposer for the public contract is not a *[required participant]* **disadvantaged business en-
20 terprise, inclusion and diversity contractor or emerging small business**, a contracting agency
21 may award the public contract to the bidder or proposer only if the bidder or proposer:
22

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

24 (b) Has made good faith efforts to encourage *[required participants]* **disadvantaged business
25 enterprises, inclusion and diversity contractors and emerging small businesses** to participate
26 in the public contract.

27 *[(3)]* **(2)** A contracting agency may rebuttably presume that for the purposes of this section a
28 bidder or proposer is responsible and has made good faith efforts to encourage *[required
29 participants]* **disadvantaged business enterprises, inclusion and diversity contractors and
30 emerging small businesses** to participate in the public contract if the bidder or proposer takes all
31 of these actions:

32 (a) Attends presolicitation or prebid meetings that the contracting agency scheduled to inform
33 disadvantaged business enterprises, *[minority-owned businesses, woman-owned businesses, businesses
34 that service-disabled veterans own]* **inclusion and diversity contractors** and emerging small busi-
35 nesses of contracting and subcontracting or material supply opportunities available in connection
36 with a public contract;

37 (b) Identifies and selects specific economically feasible units of the public contract that disad-
38 vantaged business enterprises, *[minority-owned businesses, woman-owned businesses, businesses that
39 service-disabled veterans own]* **inclusion and diversity contractors** and emerging small businesses
40 may perform in order to increase the likelihood that *[required participants]* **disadvantaged business
41 enterprises, inclusion and diversity contractors and emerging small businesses** will participate
42 in the public contract;

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

1 *businesses*] **qualified individuals**;

2 (d) Provides written notice of the opportunities described in paragraphs (a) and (b) of this sub-
3 section to a reasonable number of specific disadvantaged business enterprises, [*minority-owned*
4 *businesses, woman-owned businesses, businesses that service-disabled veterans own*] **inclusion and**
5 **diversity contractors** and emerging small businesses that the bidder or proposer identified from a
6 list of enterprises, **inclusion and diversity contractors** or businesses that the Certification Office
7 for Business Inclusion and Diversity certified under ORS 200.055, in sufficient time to allow the
8 enterprises, **inclusion and diversity contractors** or businesses to participate effectively;

9 (e) Follows up on the bidder's or proposer's initial solicitations of interest by contacting the
10 enterprises, **inclusion and diversity contractors** or businesses to which the bidder or proposer
11 provided notice under paragraph (d) of this subsection to determine with certainty whether the en-
12 terprises, **diversity and inclusion contractors** or businesses are interested in the opportunities
13 described in paragraphs (a) and (b) of this subsection;

14 (f) Provides interested disadvantaged business enterprises, [*minority-owned businesses, woman-*
15 *owned businesses, businesses that service-disabled veterans own*] **diversity and inclusion contrac-**
16 **tors** and emerging small businesses with adequate information about plans, specifications and
17 requirements for subcontracting or material supply work in connection with the public contract;

18 (g) Negotiates in good faith with interested disadvantaged business enterprises, [*minority-owned*
19 *businesses, woman-owned businesses, businesses that service-disabled veterans own*] **inclusion and**
20 **diversity contractors** and emerging small businesses, and did not without justifiable reason reject
21 as unsatisfactory bids or proposals that the enterprises, **inclusion and diversity contractors** or
22 businesses prepared;

23 (h) Advises and assists interested disadvantaged business enterprises, [*minority-owned businesses,*
24 *woman-owned businesses, businesses that service-disabled veterans own*] **inclusion and diversity**
25 **contractors** and emerging small businesses to obtain, when necessary, bonding, lines of credit or
26 insurance that the contracting agency or contractor requires;

27 (i) Makes efforts to encourage disadvantaged business enterprises, [*minority-owned businesses,*
28 *woman-owned businesses, businesses that service-disabled veterans own*] **inclusion and diversity**
29 **contractors** and emerging small businesses to participate in the public contract that the contract-
30 ing agency may reasonably expect will produce a level of participation that meets the contracting
31 agency's goals or requirements; and

32 (j) Uses the services of minority community organizations, minority contractor groups, local,
33 state and federal minority business assistance offices and other organizations that the Governor's
34 Policy Advisor for Economic and Business Equity identifies as providing assistance in recruiting
35 disadvantaged business enterprises, [*minority-owned businesses, woman-owned businesses, businesses*
36 *that service-disabled veterans own*] **inclusion and diversity contractors** and emerging small busi-
37 nesses for participation in public contracts.

38 [(4)] (3) A contracting agency may rebuttably presume that for the purposes of this section a
39 bidder or proposer is not responsible and has not made good faith efforts to encourage [*required*
40 *participants*] **disadvantaged business enterprises, inclusion and diversity contractors and**
41 **emerging small businesses** to participate in a public contract if the bidder or proposer does not
42 take all of the actions required under subsection [(3)] (2) of this section. Superficial or pro forma
43 efforts do not demonstrate responsibility or constitute adequate good faith efforts under this section.

44 **SECTION 5.** ORS 200.055 is amended to read:

45 200.055. (1)(a) An enterprise or business may apply to the Certification Office for Business

1 Inclusion and Diversity for certification as:

2 (A) A disadvantaged business enterprise;

3 (B) A [*minority-owned*] business **that a minority individual owns**;

4 (C) A [*woman-owned*] business **that a woman owns**;

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

6 **(E) A business owned by a socially or economically disadvantaged individual who identi-**
 7 **fies as lesbian, gay, bisexual or transgender or as having a gender or sexual orientation that**
 8 **is not male, female or heterosexual; or**

9 [*E*] (F) An emerging small business.

10 (b) An enterprise or business shall submit a separate application for each category of certifica-
 11 tion the enterprise or business seeks under paragraph (a) of this subsection.

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

15 (d) For purposes of awarding a public contract, a contracting agency shall recognize an enter-
 16 prise or business with a certification from the office as the category of enterprise or business de-
 17 scribed in the certification and as having met the requirements set forth in ORS 200.005 to 200.075.
 18 For purposes of awarding a subcontract in connection with a public contract, a contractor may
 19 recognize a subcontractor with a certification from the office as the category of enterprise or busi-
 20 ness described in the certification and as having met the requirements set forth in ORS 200.005 to
 21 200.075.

22 (2) In consultation with public universities listed in ORS 352.002 and the Department of Trans-
 23 portation, and with the approval of the Governor's Policy Advisor for Economic and Business Eq-
 24 uity, the Oregon Business Development Department by rule shall adopt a uniform standard form and
 25 procedure to provide complete documentation of an enterprise's or a business' status as a disad-
 26 vantaged business enterprise, [*a minority-owned business, a woman-owned business, a business that*
 27 *a service-disabled veteran owns*] **an inclusion and diversity contractor** or an emerging small busi-
 28 ness. The department shall compile and make available a list of enterprises, **inclusion and diversity**
 29 **contractors** and businesses that the Certification Office for Business Inclusion and Diversity certi-
 30 fies under this section.

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

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

38 (5) The Oregon Business Development Department, through the Certification Office for Business
 39 Inclusion and Diversity, is the sole agency that may certify enterprises and businesses as disadvan-
 40 tagged business enterprises, [*minority-owned businesses, woman-owned businesses, businesses that*
 41 *service-disabled veterans own*] **inclusion and diversity contractors** and emerging small businesses
 42 that are eligible to perform public contracts in this state.

43 (6) The Oregon Business Development Department by rule may establish a fee not to exceed
 44 \$100 for a copy of the list described in subsection (2) of this section and may assess contracting
 45 agencies for services under ORS 200.005 to 200.075.

1 (7) The Department of Transportation may collect a fee, not to exceed \$200, from a bidder or
 2 proposer at the time the bidder or proposer prequalifies to perform public contracts to cover the
 3 costs of the Oregon Business Development Department in administering ORS 200.005 to 200.075. The
 4 Department of Transportation shall transfer fees that the Department of Transportation collects
 5 under this subsection to the credit of the account established under subsection (8) of this section.

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

10 **SECTION 6.** ORS 200.065 is amended to read:

11 200.065. (1) A person may not fraudulently obtain or retain, attempt to fraudulently obtain or
 12 retain or aid another person in fraudulently obtaining or retaining or attempting to fraudulently
 13 obtain or retain certification as a disadvantaged business enterprise, [*a minority-owned business, a*
 14 *woman-owned business, a business that a service-disabled veteran owns*] **an inclusion and diversity**
 15 **contractor** or an emerging small business.

16 (2) A person may not knowingly make a false claim that any person is qualified for certification
 17 or is certified under ORS 200.055 for the purpose of obtaining a public contract or subcontract or
 18 other benefit.

19 (3) An affected contracting agency may withhold payment, may suspend or terminate a public
 20 contract and may impose on any person a civil penalty that does not exceed 10 percent of the con-
 21 tract or subcontract price or \$5,000, whichever is less, for each violation of subsection (1) or (2) of
 22 this section. The person shall pay the penalty to the affected contracting agency. If the affected
 23 contracting agency does not impose a civil penalty on the person under this subsection, the Oregon
 24 Business Development Department may independently impose a civil penalty that does not exceed
 25 \$5,000 for each violation of subsection (1) or (2) of this section. The person shall pay a penalty that
 26 the department imposes to the Certification Office for Business Inclusion and Diversity.

27 (4) The department or an affected contracting agency shall investigate violations of subsection
 28 (1) or (2) of this section. In investigating a violation, the department or an affected contracting
 29 agency may require any additional information, administer oaths, take depositions and issue
 30 subpoenas to compel witnesses to attend and compel the production of books, papers, records,
 31 memoranda or other information necessary to carry out the department's or the affected contracting
 32 agency's duties. If a person fails to comply with any subpoena that the department or the affected
 33 contracting agency issued under this subsection or refuses to testify on any matter on which a
 34 person may lawfully be interrogated, the department or the affected contracting agency shall follow
 35 the procedure provided in ORS 183.440 to compel compliance.

36 (5) The department or an affected contracting agency may disqualify from submitting a bid or
 37 proposal or receiving an award of a public contract, for a period of not more than three years, any
 38 person that under oath during the course of an investigation admits to violating subsection (1) or
 39 (2) of this section or that the department or the affected contracting agency finds to have violated
 40 subsection (1) or (2) of this section. Any contracting agency that has notice of the finding of the
 41 fraudulent certification may also disqualify the person from bidding on or participating in any public
 42 contract.

43 **SECTION 7.** ORS 200.075 is amended to read:

44 200.075. (1) An affected contracting agency shall suspend any bidder's, proposer's, contractor's
 45 or subcontractor's right to submit a bid or proposal for, or receive an award of, a public contract

1 in the future if the bidder, proposer, contractor or subcontractor knowingly commits any of the acts
 2 listed in this subsection. The affected contracting agency shall suspend the right only after providing
 3 notice and opportunity for hearing in a manner that the affected contracting agency provides by
 4 rule. The affected contracting agency shall specify a time for the suspension that is up to one year
 5 for a first violation, up to three years for a second violation and up to five years for a third vio-
 6 lation. Each violation must remain on record for five years. After five years the affected contracting
 7 agency may not consider the violation in reviewing future violations. A bidder, proposer, contractor
 8 or subcontractor may not:

9 (a) Enter into any agreement to represent that a disadvantaged business enterprise, [*a*
 10 *minority-owned business, a woman-owned business, a business that a service-disabled veteran owns*]
 11 **an inclusion and diversity contractor** or an emerging small business certified under ORS 200.055
 12 will perform work or supply materials under a public contract without the knowledge and consent
 13 of the disadvantaged business enterprise, [*minority-owned business, woman-owned business, business*
 14 *that a service-disabled veteran owns*] **inclusion and diversity contractor** or emerging small busi-
 15 ness.

16 (b) Exercise or permit another bidder, proposer, contractor or subcontractor to exercise man-
 17 agement and decision making control over the internal operations of a disadvantaged business en-
 18 terprise, [*a minority-owned business, a woman-owned business, a business that a service-disabled*
 19 *veteran owns*] **an inclusion and diversity contractor** or an emerging small business, other than the
 20 bidder's, proposer's, contractor's or subcontractor's own enterprise, **inclusion and diversity con-**
 21 **tractor** or business. As used in this paragraph, "internal operations" does not include normal
 22 scheduling, coordination, execution or performance as a subcontractor on a public contract.

23 (c) Use a disadvantaged business enterprise, [*a minority-owned business, a woman-owned busi-*
 24 *ness, a business that a service-disabled veteran owns*] **an inclusion and diversity contractor** or an
 25 emerging small business to perform a public contract or subcontract or to supply material under a
 26 public contract to meet an established goal or requirement if the disadvantaged business enterprise,
 27 [*minority-owned business, woman-owned business, business that a service-disabled veteran owns*]
 28 **inclusion and diversity contractor** or emerging small business does not perform a commercially
 29 useful function in carrying out responsibilities and obligations under the public contract.

30 (d) Fail to perform a commercially useful function in performing a public contract or subcontract
 31 or in supplying material to a contractor or subcontractor that is performing a public contract or
 32 subcontract if the bidder, proposer, contractor or subcontractor is presented as a certified disad-
 33 vantaged business enterprise, [*minority-owned business, woman-owned business, business that a*
 34 *service-disabled veteran owns*] **inclusion and diversity contractor** or emerging small business to
 35 meet an established goal or requirement.

36 (2) The Certification Office for Business Inclusion and Diversity shall revoke an enterprise's or
 37 a business's certification under ORS 200.055 as a disadvantaged business enterprise, [*a minority-*
 38 *owned business, a woman-owned business, a business that a service-disabled veteran owns*] **an inclu-**
 39 **sion and diversity contractor** or an emerging small business if, after conducting an investigation
 40 in a manner similar to the manner provided in ORS 200.065 (4) for investigating a violation of ORS
 41 200.065 (1) or (2), the Oregon Business Development Department finds that the enterprise or business
 42 allows or commits any of the acts listed in this subsection. A disadvantaged business enterprise, [*a*
 43 *minority-owned business, a woman-owned business, a business that a service-disabled veteran owns*]
 44 **an inclusion and diversity contractor** or an emerging small business may not:

45 (a) Use the enterprise's or business's name to meet a goal or requirement for disadvantaged

1 business enterprises, [*minority-owned businesses, woman-owned businesses, businesses that service-*
 2 *disabled veterans own*] **inclusion and diversity contractors** or emerging small businesses to par-
 3 ticipate in a public contract or subcontract if the enterprise or business does not in fact intend to
 4 or does not actually perform work under the public contract or subcontract or does not intend to
 5 or does not purchase and supply material under a public contract or subcontract to supply material.

6 (b) Use personnel of an uncertified enterprise or business to operate, manage or otherwise con-
 7 trol the disadvantaged business enterprise, [*minority-owned business, woman-owned business, business*
 8 *that a service-disabled veteran owns*] **inclusion and diversity contractor** or emerging small busi-
 9 ness.

10 (c) Exhibit a pattern of failing to perform a commercially useful function in performing a public
 11 contract or subcontract or supplying material to a contractor or subcontractor on a public contract
 12 if the enterprise or business is represented as a disadvantaged business enterprise, [*a minority-owned*
 13 *business, a woman-owned business, a business that a service-disabled veteran owns*] **an inclusion and**
 14 **diversity contractor** or an emerging small business certified under ORS 200.055 for the purpose of
 15 meeting an established goal or requirement.

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

20 (b) The department may conduct an independent investigation of a disadvantaged business en-
 21 terprise, [*a minority-owned business, a woman-owned business, a business that a service-disabled vet-*
 22 *eran owns*] **an inclusion and diversity contractor** or an emerging small business for exhibiting a
 23 pattern of failing to perform a commercially useful function in response to notifications from one
 24 or more affected contracting agencies under paragraph (a) of this subsection.

25 (4) As used in this section, “commercially useful function”:

26 (a) Means a function or service:

27 (A) That the enterprise, **inclusion and diversity contractor** or business actually performs;

28 (B) For which a demand exists in the marketplace; and

29 (C) For which the enterprise, **inclusion and diversity contractor** or business receives payment
 30 that is proportionate to the work that the enterprise, **inclusion and diversity contractor** or busi-
 31 ness performs or that conforms with industry standards.

32 (b) Does not include acting as a broker to provide for others to perform work.

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

34 200.090. Contracting agencies shall aggressively pursue a policy of providing opportunities for
 35 disadvantaged business enterprises, [*minority-owned businesses, woman-owned businesses, businesses*
 36 *that service-disabled veterans own*] **inclusion and diversity contractors** and emerging small busi-
 37 nesses and shall cooperate with the Governor’s Policy Advisor for Economic and Business Equity
 38 to determine the best means by which to make such opportunities available.

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

40 200.110. (1) The Oregon Business Development Department may recognize a mentor relationship
 41 between contractors and disadvantaged business enterprises, [*minority-owned businesses, woman-*
 42 *owned businesses, businesses that service-disabled veterans own*] **inclusion and diversity contrac-**
 43 **tors** and emerging small businesses that are certified under ORS 200.055. In order to qualify for the
 44 department’s recognition, the mentor relationship must offer the opportunity for the contractor to
 45 foster and encourage disadvantaged business enterprises, [*minority-owned businesses, woman-owned*

1 *businesses, businesses that service-disabled veterans own*] **inclusion and diversity contractors** and
 2 emerging small businesses to expand the capacity of existing enterprises, **inclusion and diversity**
 3 **contractors** and businesses and to offer the opportunity for less experienced enterprises, **inclusion**
 4 **and diversity contractors** and businesses to gain training and assistance.

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

9 (a) Meeting the certification requirements of the U.S. Department of Transportation or ORS
 10 200.055. The Certification Office for Business Inclusion and Diversity may approve an application for
 11 certification under ORS 200.055 at the same time the department approves a mentor arrangement.

12 (b) Remaining independent from the contractor and maintaining a [*minority individual's, woman's*
 13 *or service-disabled veteran's*] **qualified individual's** actual ownership of the enterprise, **inclusion**
 14 **and diversity contractor** or business. A [*minority individual, woman or service-disabled veteran*]
 15 **qualified individual** who owns the enterprise or business may have other employment and business
 16 interests if the employment or business interests do not conflict with the [*minority individual's,*
 17 *woman's or service-disabled veteran's*] **qualified individual's** power to direct the management and
 18 policies of the disadvantaged business enterprise, [*minority-owned business, woman-owned business,*
 19 *business that a service-disabled veteran owns*] **inclusion and diversity contractor** or emerging small
 20 business and to make day-to-day and major decisions on matters of management, policy and oper-
 21 ations. A contractor may provide facilities to the enterprise, **inclusion and diversity contractor**
 22 or business if the contractor and the enterprise, **inclusion and diversity contractor** or business
 23 maintain a separate lease agreement.

24 (c) Complying with 49 C.F.R. 26 as to an individual's or entity's part ownership in a disadvan-
 25 taged business enterprise, [*a minority-owned business, a woman-owned business, a business that a*
 26 *service-disabled veteran owns*] **an inclusion and diversity contractor** or an emerging small business
 27 if the individual or entity is not certified under ORS 200.055. The enterprise, **inclusion and diver-**
 28 **sity contractor** or business shall report any property, equipment, supplies or other services that the
 29 enterprise, **inclusion and diversity contractor** or business buys, rents or receives as a donation
 30 and any investment that an individual or entity makes in the enterprise, **inclusion and diversity**
 31 **contractor** or business if the individual or entity is not certified under ORS 200.055. The report
 32 must include bills of sale, lease agreements or similar documents.

33 (3) A mentor relationship may include an arrangement with an independent third party, such
 34 as a bank or accountant, to act as an agent. A third party may receive progress payments for work
 35 that a disadvantaged business enterprise, [*a minority-owned business, a woman-owned business, a*
 36 *business that a service-disabled veteran owns*] **an inclusion and diversity contractor** or an emerging
 37 small business accomplishes, made out jointly to the third party and the enterprise, **inclusion and**
 38 **diversity contractor** or business, and may make payments on behalf of the enterprise, **inclusion**
 39 **and diversity contractor** or business to material suppliers or for federal and state payroll taxes.

40 (4) Types of assistance that a contractor may provide in a mentor relationship to a disadvan-
 41 taged business enterprise, [*a minority-owned business, a woman-owned business, a business that a*
 42 *service-disabled veteran owns*] **an inclusion and diversity contractor** or an emerging small business
 43 include:

44 (a) Financial assistance;

45 (b) Technical and management assistance;

1 (c) Equipment rental and use of personnel; and

2 (d) Bonding assistance.

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

4 200.120. (1) The Oregon Business Development Department, in consultation with the Oregon
5 Association of Minority Entrepreneurs, may approve a written development plan as part of a mentor
6 relationship. The development plan must:

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

8 (b) Be for a specified length of time;

9 (c) Determine measurable goals that the disadvantaged business enterprise, [*minority-owned*
10 *business, woman-owned business, business that a service-disabled veteran owns*] **inclusion and di-**
11 **versity contractor** or emerging small business must reach; and

12 (d) Provide that if a disadvantaged business enterprise, [*a minority-owned business, a woman-*
13 *owned business, a business that a service-disabled veteran owns*] **an inclusion and diversity con-**
14 **tractor** or an emerging small business uses a mentor's resources in performing contracts or
15 subcontracts for the mentor or for another contractor, the enterprise, **inclusion and diversity**
16 **contractor** or business shall separately identify, account for and directly compensate the mentor for
17 the resources. The department may closely monitor a development plan that provides that the en-
18 terprise, **inclusion and diversity contractor** or business will use the mentor's resources exten-
19 sively.

20 (2) The development plan may also provide for the mentor to train the disadvantaged business
21 enterprise, [*minority-owned business, woman-owned business, business that a service-disabled veteran*
22 *owns,*] **inclusion and diversity contractor** or emerging small business. Training may include:

23 (a) Business planning;

24 (b) Record keeping;

25 (c) Technical training;

26 (d) Capital formation;

27 (e) Loan packaging;

28 (f) Financial counseling;

29 (g) Bonding; and

30 (h) Equipment utilization.

31 (3) The Oregon Business Development Department and the Oregon Association of Minority En-
32 trepreneurs may review the development plan annually to monitor progress.

33 (4) The development plan must provide that the mentor relationship may be terminated by mu-
34 tual consent or if:

35 (a) An enterprise or a business no longer qualifies for certification under ORS 200.055 as a dis-
36 advantaged business enterprise, [*a minority-owned business, a woman-owned business, a business that*
37 *a service-disabled veteran owns*] **an inclusion and diversity contractor** or an emerging small busi-
38 ness;

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

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

44 (d) The disadvantaged business enterprise, [*minority-owned business, woman-owned business,*
45 *business that a service-disabled veteran owns*] **inclusion and diversity contractor** or emerging small

1 business has reached a satisfactory level of self-sufficiency to compete without resorting to special
 2 treatment provided in the development plan; or

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

5 (5) The parties to the development plan, the Oregon Business Development Department and the
 6 Oregon Association of Minority Entrepreneurs shall retain copies of the plan.

7 (6) The development plan may provide that either party may dissolve the plan for any reason
 8 by notifying the Oregon Business Development Department and the Oregon Association of Minority
 9 Entrepreneurs.

10 **SECTION 11.** ORS 279A.107 is amended to read:

11 279A.107. (1) A contracting agency that under ORS 279A.105 awards a public contract to a re-
 12 sponsible bidder, as defined in ORS 200.005, that has made good faith efforts, as described in ORS
 13 200.045 [(3)] (2), or that awards a public contract in the course of carrying out an affirmative action
 14 goal, policy or program under ORS 279A.100 shall:

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

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

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

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

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

- 34 (A) Terminate the public contract;
- 35 (B) Require the contractor to terminate the subcontract; or
- 36 (C) Exercise any of the remedies for breach of contract that are reserved in the public contract.

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

40 (c) Paragraph (a) of this subsection does not apply to an emerging small business as defined in
 41 ORS 200.005 that, because of growth in the number of full-time equivalent employees or average
 42 annual gross receipts that occurs during the term of the public contract, no longer qualifies as a tier
 43 one firm or tier two firm, as those terms are defined in ORS 200.005, or for which a certification
 44 under ORS 200.055 expires during the term of the public contract.

45 **SECTION 12.** ORS 279A.110 is amended to read:

1 279A.110. (1) A bidder or proposer that competes for or is awarded a public contract may not
 2 discriminate against a subcontractor in awarding a subcontract because the subcontractor is a dis-
 3 advantaged business enterprise, [*a minority-owned business, a woman-owned business, a business that*
 4 *a service-disabled veteran owns*] **an inclusion and diversity contractor** or an emerging small busi-
 5 ness that is certified under ORS 200.055.

6 (2) A contracting agency may debar or disqualify, under ORS 279B.130 or 279C.440, as appro-
 7 priate, a bidder or proposer if the contracting agency finds that the bidder or proposer has violated
 8 subsection (1) of this section in awarding a subcontract in connection with a contract the con-
 9 tracting agency advertised or otherwise solicited or a contract between the contracting agency and
 10 the bidder or proposer. A debarred or disqualified bidder or proposer may appeal the debarment or
 11 disqualification under ORS 279B.425 or ORS 279C.445 and 279C.450, as appropriate.

12 (3) A contracting agency may not allege an occurrence of discrimination in subcontracting as
 13 a basis for debarring or disqualifying a bidder or proposer under subsection (2) of this section more
 14 than three years after the alleged discriminatory conduct occurred or more than three years after
 15 the contracting agency, in the exercise of reasonable diligence, should have discovered the conduct,
 16 whichever is later.

17 (4) A bidder or proposer shall certify in the bid or proposal that the bidder or proposer has not
 18 discriminated and will not discriminate, in violation of subsection (1) of this section, against a dis-
 19 advantaged business enterprise, [*a minority-owned business, a woman-owned business, a business that*
 20 *a service-disabled veteran owns*] **an inclusion and diversity contractor** or an emerging small busi-
 21 ness, **as those terms are defined in ORS 200.005**, in awarding a subcontract.

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

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

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

28 279C.110. (1) A contracting agency shall select consultants to provide architectural, engineering,
 29 photogrammetric mapping, transportation planning or land surveying services on the basis of the
 30 consultant's qualifications for the type of professional service required. A contracting agency may
 31 solicit or use pricing policies and proposals or other pricing information, including the number of
 32 hours proposed for the service required, expenses, hourly rates and overhead, to determine consult-
 33 ant compensation only after the contracting agency has selected a candidate pursuant to subsection
 34 (2) of this section.

35 (2) Subject to the requirements of subsection (1) of this section, the procedures that a con-
 36 tracting agency creates to screen and select consultants and to select a candidate under this section
 37 are at the contracting agency's sole discretion. The contracting agency may adjust the procedures
 38 to accommodate the contracting agency's scope, schedule or objectives for a particular project if the
 39 estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning
 40 or land surveying services for the project does not exceed \$250,000.

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

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

1 ments;

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

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

7 (d) Ownership status and employment practices regarding disadvantaged business enterprises,
8 [*minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own,*]
9 **inclusion and diversity contractors or** emerging small businesses, **as those terms are defined**
10 **in ORS 200.005**, or historically underutilized businesses;

11 (e) Availability to the project locale;

12 (f) Familiarity with the project locale; and

13 (g) Proposed project management techniques.

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

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

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

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

40 (8) Notwithstanding the provisions of subsection (1) of this section, a contracting agency may
41 directly appoint a consultant if the estimated cost of the architectural, engineering, photogrammet-
42 ric mapping, transportation planning or land surveying services for the project does not exceed
43 \$100,000.

44 (9) Notwithstanding the provisions of subsections (1) and (8) of this section, a contracting agency
45 may directly appoint a consultant for architectural, engineering, photogrammetric mapping, trans-

1 portation planning or land surveying services in an emergency.

2 **SECTION 14.** ORS 279C.836 is amended to read:

3 279C.836. (1) Except as provided in subsection (4), (7), (8) or (9) of this section, before starting
 4 work on a contract or subcontract for a public works project, a contractor or subcontractor shall
 5 file with the Construction Contractors Board a public works bond with a corporate surety author-
 6 ized to do business in this state in the amount of \$30,000. The bond must provide that the contractor
 7 or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers per-
 8 forming labor upon public works projects. The bond must be a continuing obligation, and the
 9 surety's liability for the aggregate of claims that may be payable from the bond may not exceed the
 10 penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid
 11 under this section, unless the surety sooner cancels the bond. The surety may cancel the bond by
 12 giving 30 days' written notice to the contractor or subcontractor, to the board and to the Bureau
 13 of Labor and Industries. Canceling the bond relieves the surety of further liability for work per-
 14 formed on contracts entered into after the cancellation. The cancellation does not limit the surety's
 15 liability for work performed on contracts entered into before the cancellation.

16 (2) Before permitting a subcontractor to start work on a public works project, the contractor
 17 shall verify that the subcontractor has filed a public works bond as required under this section, has
 18 elected not to file a public works bond under subsection (7) or (8) of this section or is exempt under
 19 subsection (4) or (9) of this section.

20 (3) This section does not require a contractor or subcontractor to file a separate public works
 21 bond for each public works project for which the contractor or subcontractor has a contract.

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

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

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

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

40 (b) Notwithstanding paragraph (a) of this subsection, if the Commissioner of the Bureau of Labor
 41 and Industries finds that an enterprise, **an inclusion and diversity contractor** or a business has
 42 violated a provision of ORS 279C.800 to 279C.870 or an administrative rule adopted under ORS
 43 279C.800 to 279C.870, the enterprise, **inclusion and diversity contractor** or business must file a
 44 public works bond in accordance with subsection (1) of this section.

45 (c) An enterprise, **an inclusion and diversity contractor** or a business that elects not to file

1 a public works bond under this subsection shall notify the public agency for whose benefit the con-
 2 tract was awarded or, if the enterprise, **inclusion and diversity contractor** or business is a sub-
 3 contractor, the contractor of the election before starting work on a public works project. If an
 4 enterprise, **an inclusion and diversity contractor** or a business elects not to file a public works
 5 bond under this subsection, a claim for unpaid wages may be made against the payment bond of the
 6 enterprise, **inclusion and diversity contractor** or business or, if the enterprise, **inclusion and di-**
 7 **versity contractor** or business is a subcontractor, the payment bond of the contractor.

8 (d) An election not to file a public works bond expires four years after the date the enterprise,
 9 **inclusion and diversity contractor** or business is certified. After an election has expired and be-
 10 fore starting or continuing work on a contract or subcontract for a public works project, the en-
 11 terprise, **inclusion and diversity contractor** or business shall file a public works bond with the
 12 board in accordance with subsection (1) of this section.

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

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

20 (10) The board shall make available on a searchable public website information concerning
 21 public works bonds filed with the board, claims made on those bonds, elections made by certified
 22 [*business*] **businesses, inclusion and diversity contractors or** enterprises not to file those bonds
 23 and the expiration date of each election. The board may adopt rules necessary to perform the duties
 24 required of the board by this section.

25 (11) The commissioner, with approval of the board, shall adopt rules that establish language for
 26 public works bonds.

27 **SECTION 15.** ORS 285B.740 is amended to read:

28 285B.740. It is the intent of the Legislative Assembly that in the administration of ORS 285B.740
 29 to 285B.758, the Oregon Business Development Department work closely with regional economic
 30 development organizations, community development corporations, small business development cen-
 31 ters and organizations that promote and assist [*minority-owned businesses, woman-owned businesses,*
 32 *businesses that service-disabled veterans own*] **inclusion and diversity contractors** and emerging
 33 small businesses, as those terms are defined in ORS 200.005, and utilize policies, priorities and
 34 practices that further entrepreneurial and small business development in rural communities. The
 35 department, to the maximum extent feasible and consistent with prudent financial controls, may
 36 delegate the administration and operation of the loan program created by ORS 285B.740 to 285B.758
 37 to local and community-based entities. To carry out the policy described in this section:

38 (1) The department may contract with any nonprofit corporation or agency with experience and
 39 expertise in business finance to administer all or any part of the loan program created by ORS
 40 285B.740 to 285B.758.

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

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

5 **SECTION 16.** ORS 286A.615 is amended to read:

6 286A.615. (1) The Private Activity Bond Committee is established[. *It shall consist*] **and consists**
 7 of the State Treasurer or the designee of the State Treasurer, one representative from the Oregon
 8 Department of Administrative Services and one public representative appointed to serve at the
 9 pleasure of the Governor.

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

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

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

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

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

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

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

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

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

25 (E) Support development of the state's small businesses, especially [*minority-owned businesses,*
 26 *woman-owned businesses, businesses that service-disabled veterans own*] **inclusion and diversity**
 27 **contractors** and emerging small businesses, as those terms are defined in ORS 200.005.

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

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

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

36 (b) Any amounts provided for in the authorization adopted by the Legislative Assembly under
 37 ORS 286A.035 that are unused [*shall*] **must** be carried forward for use as provided by rules adopted
 38 under subsection (3) of this section.

39 (c) The rules adopted by the committee [*shall*] **must** limit the period of time for which an allo-
 40 cation of private activity bonding authority is effective. The rules [*shall*] **must** ensure that allo-
 41 cations made during a calendar year are used during that calendar year or that the unused amount
 42 of the allocation is reallocated or carried forward.

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

44 **SECTION 17.** ORS 293.796 is amended to read:

45 293.796. (1) The Legislative Assembly finds that:

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

3 (b) *[There exists]* An estimated gap of between \$100 million and \$200 million **exists** between
 4 available venture capital resources and the need of Oregon businesses for such resources.

5 (c) Investments in start-up and expanding businesses, in *[minority-owned businesses, woman-*
 6 *owned businesses and businesses that service-disabled veterans own]* **inclusion and diversity con-**
 7 **tractors** and in emerging growth businesses can produce substantial positive returns for long-term
 8 investors.

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

13 (2) As used in this section:

14 (a) “Emerging growth business” means an individual or group of individuals or a new or small
 15 company, including but not limited to any new or small partnership, limited liability company, cor-
 16 poration, firm, association or other business entity, that has the capacity, upon obtaining appropri-
 17 ate capital, to generate significant high-skill, high-wage employment.

18 (b) *["Minority-owned business," "woman-owned business" and "business that a service-disabled*
 19 *veteran owns" have the meanings given those terms]* **“Inclusion and diversity contractor” has the**
 20 **meaning given that term** in ORS 200.005.

21 **SECTION 18.** ORS 353.130 is amended to read:

22 353.130. The Oregon Health and Science University subscribes to the policy set forth under ORS
 23 279A.015 regarding public contracting, and shall develop contract policies that support openness,
 24 impartiality and competition in the awarding of contracts in accordance with that provision. The
 25 university subscribes to the intent of the social policies of ORS 279.835 to 279.855 and ORS chapters
 26 279A, 279B and 279C and shall develop contract policies that are appropriate to the university and
 27 are designed to encourage affirmative action, recycling, inclusion of art in public buildings, the
 28 purchase of services and goods from individuals with disabilities, the protection of workers through
 29 the payment of prevailing wages as determined by the Bureau of Labor and Industries, the provision
 30 of workers’ compensation insurance to workers on contracts and the participation of *[minority-owned*
 31 *businesses, woman-owned businesses, businesses that service-disabled veterans own]* **inclusion and**
 32 **diversity contractors** and emerging small businesses, as those terms are defined in ORS 200.005.

33 **SECTION 19.** ORS 470.560 is amended to read:

34 470.560. (1) The State Department of Energy shall adopt rules establishing certification stan-
 35 dards for primary contractors participating in the construction of small scale local energy projects
 36 financed through the energy efficiency and sustainable technology loan program. The department
 37 shall design the standards to ensure that the project work performed by a primary contractor
 38 holding the certification and all the primary contractor’s subcontractors is of high quality and will
 39 result in a high degree of customer satisfaction.

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

42 (a) Prove that the primary contractor and the primary contractor’s subcontractors have suffi-
 43 cient skill to successfully install energy efficiency, renewable energy or weatherization projects.

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

1 (c) Be an equal opportunity employer or small business or be a disadvantaged business enter-
 2 prise, [*a minority-owned business, a woman-owned business, a business that a service-disabled veteran*
 3 *owns*] **an inclusion and diversity contractor** or an emerging small business, as those terms are
 4 defined in ORS 200.005.

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

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

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

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

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

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

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

24 **SECTION 20. The amendments to ORS 184.404, 200.005, 200.025, 200.045, 200.055, 200.065,**
 25 **200.075, 200.090, 200.110, 200.120, 279A.107, 279A.110, 279C.110, 279C.836, 285B.740, 286A.615,**
 26 **293.796, 353.130 and 470.560 by sections 1 to 19 of this 2019 Act apply to procurements that a**
 27 **contracting agency advertises or solicits or, if the contracting agency does not advertise or**
 28 **solicit the procurement, to public contracts into which the contracting agency enters on or**
 29 **after the operative date specified in section 21 of this 2019 Act.**

30 **SECTION 21. (1) The amendments to ORS 184.404, 200.005, 200.025, 200.045, 200.055,**
 31 **200.065, 200.075, 200.090, 200.110, 200.120, 279A.107, 279A.110, 279C.110, 279C.836, 285B.740,**
 32 **286A.615, 293.796, 353.130 and 470.560 by sections 1 to 19 of this 2019 Act become operative on**
 33 **January 1, 2020.**

34 (2) The Attorney General, the Director of the Business Development Department, the
 35 Director of the Oregon Department of Administrative Services, the Director of Transporta-
 36 tion and a contracting agency that adopts rules under ORS 279A.065 or 279A.070 may adopt
 37 rules and take any other action that is necessary to enable the Attorney General, the di-
 38 rectors or the contracting agency to exercise, on and after the operative date specified in
 39 subsection (1) of this section, all of the duties, functions and powers conferred on the At-
 40 torney General, the directors or the contracting agency by the amendments to ORS 184.404,
 41 200.005, 200.025, 200.045, 200.055, 200.065, 200.075, 200.090, 200.110, 200.120, 279A.107, 279A.110,
 42 279C.110, 279C.836, 285B.740, 286A.615, 293.796, 353.130 and 470.560 by sections 1 to 19 of this
 43 2019 Act.

44 **SECTION 22. This 2019 Act takes effect on the 91st day after the date on which the 2019**
 45 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

