

Chapter 200

1987 REPLACEMENT PART

Disadvantaged, Minority and Women Business Enterprises

200.005	Definitions	200.055	Certification of disadvantaged, minority or women business enterprises
200.015	Legislative findings	200.065	Fraudulent conduct prohibited; sanctions
200.025	Advocate for Minority and Women Business; duties	200.075	Prohibited conduct; suspension of certificate
200.035	When state agency to notify advocate of solicitations	200.085	Title
200.045	Standards for good faith efforts to meet goals		

MISCELLANEOUS MATTERS

200.005 Definitions. As used in ORS 200.005 to 200.085 and 279.059:

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

(2) "Minority or women business enterprise" means a business concern which is at least 51 percent owned by one or more minorities or women, as the case may be, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of the minority or women stockholders.

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

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

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

(c) An Asian or Pacific American or a person whose origin is from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the United States Trust Territories of the Pacific or Northern Marianas;

(d) A native American or a person who is American Indian, Eskimo, Aleut or Native Hawaiian; or

(e) Asian-Indian American or person whose origin is from India, Pakistan or Bangladesh.

(4) "Socially and economically disadvantaged individuals" are individuals who are minority individuals. [1987 c.893 §2]

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

(2) The Legislative Assembly finds:

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

(b) Greater economic opportunity for minorities and women must be encouraged;

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

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

(e) In cooperation with the private sector, the affected populations, interested groups and appropriate governmental entities, a program of review should be established to recommend remedies for the unfortunate effects of social, political and economic inequity that still exist. [1987 c.893 §3]

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

(2) The Advocate for Minority and Women Business shall:

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

(b) Provide assistance and information to minority and women businesses;

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

(d) Make recommendations to the Governor on the research, development and implementation of the plan for the involvement of disadvantaged and minority groups in the regional strategies and identification of job training and employment practices to benefit the economically disadvantaged including, but not limited to, affirmative action goals under the Oregon Comeback Act of 1987 (ORS 284.010 to 284.045 and 284.060);

(e) Maintain, in cooperation with the Executive Department, 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 Departments of Transportation and General Services and other entities;

(f) Monitor the certification and compliance program for disadvantaged, minority and women businesses under ORS 279.059;

(g) Investigate, in cooperation with the Executive Department, complaints and possible abuses of the certification program;

(h) Assist in the promotion and coordination of plans, programs and operations of state government that strengthen minority and women participation in the economic life of this state;

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

(j) Carry out other duties that may be assigned by the Governor. [1987 c.893 §4]

200.035 When state agency to notify advocate of solicitations. All state agencies shall provide timely notice of all contract and bid request solicitations in excess of \$1,000 to the Advocate for Minority and Women Business and the Executive Department for the Oregon Opportunity Register and Clearinghouse. [1987 c 893 §5]

200.045 Standards for good faith efforts to meet goals. (1) To determine whether a bidder that has failed to meet disadvantaged, minority or women business enterprise contract goals as described in ORS 279.059 may be awarded the contract, the public contracting agency must decide whether the bidder's efforts to obtain participation by disadvantaged, minority or women business enterprises were good faith efforts to meet the goals. Efforts that are merely superficial are not good faith efforts to meet the goals.

(2) Performing all of the following actions by a bidder constitute a rebuttable presumption that the bidder has made a good faith effort to satisfy the subcontracting requirement described in subsection (1) of this section:

(a) The bidder attended any presolicitation or prebid meetings that were scheduled by the contracting agency to inform disadvantaged, 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 disadvantaged, 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 disadvantaged, minority or women business enterprises, identified from a list of certified disadvantaged, minority or women business enterprises provided or maintained by the Executive 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 disadvantaged, 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 the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any disadvantaged, minority or women business enterprises;

(h) Where applicable, the bidder advised and made efforts to assist interested disadvantaged, 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 disadvantaged, minority or women business enterprise participation were reasonably expected to produce a level of participation sufficient to meet the goals or requirement of the public contracting agency; and

(j) The bidder used the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Advocate for Minority and Women Business that provide assistance in the recruitment and placement of disadvantaged, minority or women business enterprises. [1987 c.893 §7]

200.055 Certification of disadvantaged, minority or women business enterprises. (1) Any disadvantaged, minority or women business enterprise is entitled to be certified as such upon application to the Executive Department. If the application is approved by the department, the department shall certify the applicant as a disadvantaged, minority or women

business enterprise. The enterprise shall be considered so certified by any public contracting agency.

(2) In consultation with the State Board of Higher Education, the Departments of General Services and Transportation, and with the approval of the Advocate for Minority and Women Business, the Executive 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 or women business enterprise. The Executive Department shall compile and make available upon request a list of certified disadvantaged, minority or women business enterprises.

(3) Any business enterprise that is refused certification as a disadvantaged, minority or women business enterprise or has its certification revoked may request a contested case hearing as provided in ORS 183.310 to 183.550.

(4) On or after January 1, 1988, the Executive Department shall be the sole agency authorized to certify enterprises as disadvantaged, minority or women business enterprises eligible to perform on public contracts in this state.

(5) The Executive Department by rule may establish a fee not to exceed \$100 for a copy of the list of certified disadvantaged, minority and women business enterprises and may assess state agencies for services under ORS 200.005 to 200.085 and 279.059.

(6) The Department of Transportation may collect a fee, not to exceed \$100, from a bidder upon bidder prequalifications to cover the costs of the Executive Department in administering ORS 200.005 to 200.085 and 279.059. The Department of Transportation shall transfer such fees to the credit of the account established under subsection (7) of this section.

(7) The Executive Department shall establish a special account in which to deposit fees and assessments. The special account is continuously appropriated to the Executive Department to meet its expenses in administering ORS 200.005 to 200.085 and 279.059. [1987 c.893 §8]

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

(2) It shall be unlawful knowingly to make a false claim that any person is qualified for cer-

tification or is certified under ORS 200.055 for the purpose of gaining a contract or subcontract or other benefit.

(3) The public contracting agency may withhold payment, suspend or terminate the contract and subject the contractor to a civil penalty not to exceed 10 percent of the contract or subcontract price or \$5,000, whichever is less, for each violation of subsection (1) or (2) of this section. The penalty shall be paid to the general fund of the agency.

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

(5) Any person found to have violated subsection (1) or (2) of this section or who admits to such violation in writing or under oath during the course of an investigation by a public contract agency affected by the fraudulent certification or by the Executive Department may be disqualified from bidding or participating in any public contract by any public contracting agency which has notice of the finding of the fraudulent certification and shall be disqualified by the Executive Department as to bidding on state agency contracts for a period of time specified by the department not to exceed three years. [1987 c.893 §9]

200.075 Prohibited conduct; suspension of certificate. (1) Any bidder or contractor or subcontractor on a public contract that commits any of the following acts shall after notice and opportunity for hearing under ORS 279.043 have its right to bid on or participate in any public contract suspended for up to 90 days for a first violation and up to one year for a subsequent violation:

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

(b) Exercises management and decision making control over the internal operations of any

certified disadvantaged, minority or woman business enterprise. As used in this paragraph, "internal operations" does not include normal scheduling, coordination, execution or performance as a subcontractor on a public contract.

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

(2) Any disadvantaged, minority or women business enterprise certified under ORS 200.055 that allows or commits any of the following acts shall have its certification suspended for up to 90 days for the first violation or up to one year for a subsequent violation:

(a) Use of the firm's name to meet a disadvantaged, minority or women business enterprise goal on a public contract when the firm does not in fact intend to or does not actually perform the work under the subcontract or purchase and supply material to the project under a material supply contract.

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

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

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

200.085 Title. ORS 200.005 to 200.085 and 279.059 may be cited as the "Minority and Women Business Assistance Act." [1987 c.893 §1]