

Enrolled Senate Bill 479

Sponsored by Senator METSGER, Representative BARTON; Senator MORSE, Representatives CAMERON, C EDWARDS (at the request of Dave Huff)

CHAPTER

AN ACT

Relating to opportunities for disabled veterans in public contracting; creating new provisions; amending ORS 279A.100, 279A.105 and 279A.110; and declaring an emergency.

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

SECTION 1. ORS 279A.100 is amended to read:

279A.100. (1) As used in this section[,]:

(a) “Affirmative action” means a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability **or a policy to give a preference in awarding public contracts to disabled veterans.**

(b) “Disabled veteran” has the meaning given that term in ORS 408.225.

(2) The provisions of the Public Contracting Code may not be construed to prohibit a contracting agency from engaging in public contracting practices designed to promote affirmative action goals, policies or programs for disadvantaged or minority groups **or to give a preference in awarding public contracts to disabled veterans.**

(3) In carrying out [*the policy of*] **an affirmative action goal, policy or program,** [*by appropriate ordinance, resolution or rule,*] a contracting agency **by appropriate ordinance, resolution or rule** may limit competition for a public contract for goods and services, or for any other public contract estimated to cost \$50,000 or less, to contracting entities owned or controlled by persons described in subsection (1) of this section.

SECTION 2. ORS 279A.105 is amended to read:

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

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

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

SECTION 3. ORS 279A.110 is amended to read:

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

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

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

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

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

(a) *[Termination of]* **Terminate** the contract; or

(b) *[The contracting agency to]* Exercise any **of the** remedies for breach of contract that are reserved in the contract.

SECTION 4. The amendments to ORS 279A.100, 279A.105 and 279A.110 by sections 1, 2 and 3 of this 2009 Act apply to public contracts first advertised or otherwise solicited or, if not advertised or solicited, first entered into on or after the effective date of this 2009 Act.

SECTION 5. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate March 31, 2009

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Secretary of Senate

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President of Senate

Passed by House May 21, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State