

House Bill 395

By: Representative Yates of the 73rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated,
2 relating to state purchasing, so as to provide for a specified preference for qualified business
3 enterprises owned and controlled by disabled veterans in awarding certain types of state
4 contracts; to define certain terms; to provide for determination of such preference; to provide
5 for terms and conditions; to provide for qualification and certification of such business
6 enterprises; to provide for certain offenses and punishments; to provide for rules and
7 regulations; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated, relating to state
11 purchasing, is amended by adding a new part to read as follows:

12 "Part 6

13 50-5-138.1.

14 As used in this part, the term:

15 (1) 'Department' means the Department of Corrections.

16 (2) 'Disabled veteran means a disabled veteran who is a permanent Georgia resident with
17 a service-connected disability of 10 percent or greater as determined by the United States
18 Department of Veterans Affairs or who has been terminated from military service by
19 reason of disability by the United States Department of Defense

20 (3) 'Qualified business enterprise' means an independently owned and operated business
21 that:

22 (A) Is at least 51 percent owned by one or more disabled veterans;

23 (B) The management and daily business operations of which are controlled by one or
 24 more disabled veterans or, for a disabled veteran with a permanent and total disability,
 25 by the spouse or permanent caregiver of the disabled veteran;

26 (C) Is organized to engage in commercial transactions;

27 (D) Is domiciled in this state;

28 (E) Employs 200 or fewer permanent full-time employees; and

29 (F) Together with its affiliates has a net worth of \$5 million or less or, if a sole
 30 proprietorship, has a net worth of \$5 million or less including both personal and
 31 business investments.

32 (4) 'Service-connected disability' means a disability incurred or aggravated in the line of
 33 duty in the active military, naval, or air service.

34 (5) 'Veteran' means a person who served in the active military, naval, or air service of the
 35 United States and who was discharged or released from his or her service under
 36 conditions other than dishonorable.

37 50-5-138.2.

38 (a) The department shall give a preference to any qualified bidder that is a qualified
 39 business enterprise in awarding contracts for the provision of the following types of goods
 40 and services:

41 (1) Operation of commissaries for state operated correction facilities;

42 (2) Inmate telephone companies; and

43 (3) State correctional officer uniforms and accessories.

44 Such preference shall be given in accordance with subsection (b) of this Code section.

45 (b) For the purpose of evaluating and determining qualified business enterprise responsive
 46 bids, 25 percent of the lowest responsive bid, the bid that would otherwise receive the
 47 contract award if the preference were not being considered, shall be deducted from all
 48 qualified business enterprise bids. If a responsive qualified business enterprise bid, less the
 49 25 percent preference, is less than the lowest responsive bid, then the qualified business
 50 enterprise bidder shall be declared the official lowest responsive bidder. The original
 51 qualified business enterprise bid amount shall be the basis of the contract award.

52 (c) If during the term of the contract the contractor no longer qualifies for the preference
 53 under this Code section, or if the contract is assigned to a business entity that does not
 54 qualify for such preference, the contractor shall be required to discount its contract price
 55 by the amount of the preference it received.

56 (d) The request to have the preference applied to a bid and the documentation required
 57 under subsection (e) of this Code section showing eligibility for certification as a qualified

58 business enterprise shall be submitted as part of the bid; otherwise, the preference shall not
 59 be applied.

60 (e) To be certified as a qualified business enterprise, the business shall:

61 (1) Be a qualified business enterprise;

62 (2) Submit an affidavit of an owner or officer of the enterprise stating that the enterprise
 63 is a qualified business enterprise;

64 (3) Submit such other proof as required by the department to adequately support the
 65 claim of qualification as a qualified business enterprise, including but not limited to
 66 official government agency documentation of the disability and discharge status of the
 67 disabled veteran and proof of requisite ownership and control of the enterprise;

68 (4) Submit any other information required by the department as reasonable and necessary
 69 proof or assurance of the applicant's claim of qualification as a qualified business
 70 enterprise for purposes of this part; and

71 (5) Be qualified to bid pursuant to the provisions of the department and other state
 72 agencies.

73 50-5-138.3.

74 (a) It shall be unlawful for a person to:

75 (1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain
 76 or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or
 77 retain certification as a qualified business enterprise for the purposes of this part;

78 (2) Knowingly and willfully make a false statement with the intent to defraud, whether
 79 by affidavit, report, or other representation, to a state official or employee for the purpose
 80 of influencing the certification or denial of any certification of any entity as a qualified
 81 business enterprise;

82 (3) Knowingly and willfully obstruct, impede, or attempt to obstruct or impede any state
 83 official or employee who is investigating the qualifications of a business entity which has
 84 requested certification as a qualified business enterprise;

85 (4) Knowingly and willfully with intent to defraud, fraudulently obtain, attempt to
 86 obtain, or aid another person in fraudulently obtaining or attempting to obtain public
 87 moneys to which the person is not entitled under this part; or

88 (5) Knowingly and willfully assign any contract awarded pursuant to this part to any
 89 other business enterprise without prior written approval of the department.

90 (b) Any person convicted of violating any provision of this Code section shall be guilty
 91 of a felony, punishable by imprisonment for not more than five years, a fine of not more
 92 than \$10,000.00, or both such imprisonment and fine.

93 (c) If a contractor, subcontractor, supplier, subsidiary, principal, or affiliate thereof has
94 been found to have violated this Code section and that violation occurred within three years
95 of another violation of this Code section, the department shall prohibit that contractor,
96 subcontractor, supplier, subsidiary, or affiliate thereof from entering into a state project or
97 state contract; from further bidding to a state entity; from being a subcontractor to a
98 contractor for a state entity; and from being a supplier to a state entity.

99 50-5-138.4.

100 The department shall adopt such rules and regulations as are reasonable and necessary to
101 implement this part."

102 **SECTION 2.**

103 All laws and parts of laws in conflict with this Act are repealed.