

## Ohio Administrative Code

### 123:2-1-01 Compliance officers

(A) The head of each contracting agency shall designate a compliance officer to monitor and secure contractors' and subcontractors' compliance pursuant to the rules and regulations as set forth in Chapters 123: 2-3 through 123:2-9 of the Administrative Code. The Director of administrative services shall issue further guidelines to the compliance officers of the contracting agencies. Such guidelines shall include instructions regarding compliance officers' use of conference, conciliation, mediation, and persuasion to aid contractors and subcontractors in accomplishing the objectives of the rules and regulations set forth in Chapters 123: 2-3 through 123:2-9 of the Administrative Code. The Director may also, upon request or at the Director's discretion, issue procedural guidelines to contractors, subcontractors, and state agencies.

### 123:2-3-02 Establishment of Affirmative Action Programs

(A) Contractors and subcontractors with fifty or more employees and a contract of fifty thousand dollars or more must establish an affirmative action program. Contractors and subcontractors are required to exert every good faith effort to accomplish the goals of an affirmative action program. Contractors and subcontractors may obtain an acceptable affirmative action program by either of the following methods:

- Contractors and subcontractors may adopt the following state percentage goals for minority utilization work hours. The goals are listed as the proportion of minority work hours to the contractor's or subcontractor's total workforce hours, for all state and non-state construction projects, during the performance of the state contract. The minority work hours are provided by trade and designated geographic area. Where the project is not in one of the designated geographic areas, the contractor or subcontractor may adopt the minority utilization goals of the nearest designated geographic area. The goals are project specific based upon the location of the project site. Contractor's and subcontractor's good faith efforts shall not be determined solely by the contractor's or subcontractor's accomplishment of the utilization work hour goals.

a)

Akron		Cincinnati	
Asbestos workers	10.0%	Asbestos workers	9.0%
Boilermakers	10.0%	Boilermakers	9.0%
Bricklayers	10.0%	Carpenters	10.0%
Elevator constructors	10.0%	Elevator constructors	11.0%
Glaziers	10.0%	Floor layers	10.0%
Ironworkers	10.0%	Glaziers	10.0%
Lathers	10.0%	Lathers	10.0%
Operating engineers	10.0%	Marble, tile & terrazzo workers & helpers	8.0%
Painters	10.0%	Millwrights	10.0%
Plasterers	10.0%	Operating engineers	11.0%
Plumbers	10.0%	Painters	11.0%
Roofers	10.0%	Pipe fitters	11.0%

Sheet metal workers	10.0%	Plasterers	10.0%
Other trades	10.0%	Plumbers	11.0%
		Sheet metal workers	11.0%
		Other trades	11.0%

<b>Columbus</b>		<b>Cleveland</b>	
Asbestos workers	10.0%	Asbestos workers	17.0%
Boilermakers	10.0%	Boilermakers	10.0%
Bricklayers	10.0%	Carpenters	16.0%
Carpenters	10.0%	Electricians	20.0%
Cement masons	10.0%	Elevator constructors	11.0%
Electricians	10.0%	Glaziers	17.0%
Elevator constructors	10.0%	Ironworkers	13.0%
Glaziers	10.0%	Operating engineers	10.0%
Ironworkers	10.0%	Painters	17.0%
Lathers	10.0%	Pipe fitters	17.0%
Operating engineers	10.0%	Plasterers	20.0%
Painters	10.0%	Plumbers	17.0%
Plasterers	10.0%	Roofers	17.0%
Plumbers pipe fitters	10.0%	Other trades	17.0%
Roofers	10.0%		
Sheet metal workers	10.0%		
Other trades	10.0%		

<b>Dayton</b>		<b>Youngstown-Warren</b>	
Asbestos workers	11.0%	Asbestos workers	9.0%
Boilermakers	11.0%	Bricklayer	9.0%
Carpenters	11.0%	Carpenters	9.0%
Electricians	11.0%	Electrical workers	9.0%
Elevator constructors	11.0%	Elevator constructors	9.0%
Ironworkers	11.0%	Floor mechanics	9.0%
Lathers	11.0%	Glaziers	9.0%
Operating engineers	11.0%	Lathers	9.0%
Ironworkers	11.0%	Operating engineers	9.0%
Painters	11.0%	Painters & decorators	9.0%
Plumbers	11.0%	Plumbers & pipe fitters and steam fitters	9.0%

Sheet metal workers	11.0%	Other trades	9.0%
Millwrights	11.0%	Teamsters & chauffeurs	9.0%
Other trades	11.0%	Ironworkers	9.0%
		Marble, tile & terrazzo workers & helpers	9.0%

<b>Toledo</b>	
Asbestos workers	9.0%
Boilermakers	9.0%
Carpenters	9.0%
Electricians	9.0%
Elevator constructors	9.0%
Glaziers	9.0%
Ironworkers	9.0%
Lathers	9.0%
Operating engineers	9.0%
Painters	9.0%
Plumbers	9.0%
Sheet metal workers	9.0%
Other trades	9.0%

(b) Contractors and subcontractors that do not meet the state utilization work hour goals must implement and demonstrate a good faith effort to make the following state specific affirmative action steps work toward the accomplishment of the state's utilization work hour goals.

(i) Maintenance of a file of minority and women job applicants and the action taken regarding each applicant, including the reasons therefore.

(ii) Notification to the contracting agency of any labor union practice that impedes the equal employment of minorities and women, including the union's failure to refer minority and women applicants back to the contractor or subcontractor after the contractor's or subcontractor's referral of the applicant to the union.

(iii) Publication and implementation of an equal employment opportunity policy within the contractor's organization.

(iv) Evaluation of contractor's or subcontractor's employment practices, including job classifications, promotions, recruitment and seniority designations, for discriminatory impact.

(v) Maintenance of records detailing contractor or subcontractor efforts to recruit minorities and women.

(vi) Participation in community training programs designed for minorities and women.

(vii) Solicitation of subcontracts with minority and women contractors and/or subcontractors, including contracts for supply purchases.

- Contractors and subcontractors may submit for approval by the contracting agency the contractor's or subcontractor's own affirmative action program developed in conformity with rule 123:2-3-04 of the Administrative Code, either with the contractor's bid or prior to the submission of bids. Contractor's and subcontractor's good faith efforts shall not be determined solely by the contractor's or subcontractor's accomplishment of the utilization work hour goals.

(B) Where a contractor's or subcontractor's contract for a state public works contract exceeds an estimated total cost of five hundred thousand dollars and the contract site is within a designated geographic area, the contractor or subcontractor, regardless of the number employees employed by the contractor or subcontractor, is subject to the rules and regulations set forth in Chapter 123:2-3 to 123:2-9 of the Administrative Code for all state and non-state construction projects within the designated geographic area.

(1) Contractors and subcontractors may obtain an acceptable affirmative action program in accordance with paragraph (A) of this rule.

(2) Where the provisions of this subsection apply, notice shall be provided in the invitation to bid.

(C) All affirmative action programs, whether the contractor or subcontractor adopts the state affirmative action program or develops the contractor's or subcontractor's own affirmative action program, must include the separate utilization work hour goal for women contained in rule 123:2-3-05 of the Administrative Code.

(D) Contractors and subcontractors shall inform subcontractors with fifty or more employees and a contract of fifty thousand dollars or more or a contract that exceeds an estimated total cost of five hundred thousand dollars and the contract site is within a designated geographic area of the requirement to comply with the rules and regulations set forth in Chapters 123:2-3 to 123:2-9 of the Administrative Code. Contractors and subcontractors shall not contract with any subcontractor that has been found to be not responsible for state contracts pursuant to rule 123:2-07-01 [123:2-7-01] of the Administrative Code. A contractor's or subcontractor's failure to comply with this requirement shall provide a basis to invoke any of the sanctions set forth in rule 123:2-7-01 of the Administrative Code against the contractor or subcontractor.

### **123:2-3-03 Implementation of affirmative action programs**

(A) Contractors' and subcontractors' ratio of utilization work hours shall remain substantially uniform for all jobs and trades, during the performance of the state contract.

(B) Contractors and subcontractors are prohibited from transferring minority and/or women employees from contractor to contractor for the sole purpose of meeting the contractor's or the subcontractor's utilization work hour goals.

(C) Contractors and subcontractors must keep all records and file all reports, including minority and women utilization work hour reports, as required by the director of administrative services.

(D) Contractors and subcontractors are prohibited from using an affirmative action program to discriminate against any person on account of race, color, religion, sex or national origin.

(E) A contractor's or subcontractor's failure to adopt the state's affirmative action program or submit an acceptable affirmative action program shall result in the contractor or subcontractor being found to be not responsive.

(F) A contractor's or subcontractor's failure to submit monthly utilization work hour reports shall be a basis for invoking any of the sanctions set forth in rule 123:2-7-01 of the Administrative Code.

(G) This rule is applicable to the implementation of all affirmative action programs.

### **123 : 2-3-04 Development and accomplishment of affirmative action programs**

(A) A contractor or subcontractor may develop an acceptable affirmative action program by either of the following methods:

- Contractors or subcontractors may develop their own affirmative action programs including the contractor's or subcontractor's own minority utilization work hour goals. The development of the utilization work hour goals shall include an analysis of all trades employed by the contractor and/or subcontractor within the last year, an explanation of problem areas inherent in minority employment and an evaluation of minority underutilization in all trades. To determine where minorities are underutilized in any trade, the contractor or subcontractor shall consider the following factors:
  - The minority population of the labor area surrounding contractor or subcontractor job sites.
  - The minority employment rate in the labor area surrounding contractor or subcontractor job sites.
  - The percentage of the minority workforce in the immediate labor area.
  - The general availability of minorities in the immediate labor area.
  - The availability of minorities in an area from which the contractor or subcontractor can reasonably recruit
  - The availability of promotable minorities within the contractor's or subcontractor's workforce.
  - The anticipated expansion, reduction and turnover of the contractor's or subcontractor's workforce.
  - The existence and proximity of qualified training institutions.
  - The degree of training the contractor or subcontractor is reasonably able to provide to make all job classes available to minorities.
- Contractors or subcontractors may adopt the state minority utilization work hour goals, set forth in rule 123:2-3-02. Contractors and subcontractors may supplement the state minority utilization work hour goals with specific affirmative action steps that are developed by the contractor or subcontractor. The specific affirmative action steps may be unique to each contractor and subcontractor.

(B) The contractor's and subcontractor's affirmative action program must include the separate utilization work hour goal for women contained in rule 123:2-3-05 of the Administrative Code.

(C) Contractors and subcontractors must submit for approval, contractor and/or subcontractor developed affirmative action programs to the contracting agency. The affirmative action program may be submitted to the contracting agency either with the contractor's bid or prior to the submission of bids.

(D) Contractors and subcontractors must maintain all data applicable to the development of the contractor's or subcontractor's affirmative action program.

(E) A contractor or subcontractor will have met the goals of the applicable affirmative action program, either the state's affirmative action program or a contractor or subcontractor developed and state approved affirmative action program, if the contractor or subcontractor can establish one of the following:

(1) The contractor's or subcontractor's utilization work hours for minorities and women meet or exceed the goals of the affirmative action program for the total of all the contractor's or subcontractor's projects within the designated geographic areas.

(2) The contractor or subcontractor is a member of a contractor association or other employer organization which has as one of its purposes expanded utilization work hours for minorities and women and the total utilization work hours of minorities and women, by all member contractors and subcontractors of the association or organization on all projects in which they are involved within the designated area, meet the utilization work hour goals for the designated geographic area.

(3) The contractor or subcontractor has a collective bargaining agreement with a labor union that supplies the contractor or subcontractor with over 80 percent of the contractor's or subcontractor's needed workforce and the total utilization work hours in the crafts the labor union has referred on all projects within the designated area meet the utilization work hour goals for the designated geographic area.

(4) The contractor, subcontractor or the employer association to which the contractor or subcontractor belongs has a collective bargaining agreement with a labor organization that supplies the contractor or subcontractor with over 80 percent of the contractor's or subcontractor's needed workforce in a particular trade. Such labor organization is subject to a court order or a consent decree containing an affirmative actions program and the labor organization meets the requirements of the affirmative action program.

(F) Where the contractor or subcontractor has denied any person equal employment opportunity, the contractor or subcontractor will not have met the goals of the contractor's or subcontractor's affirmative action program.

#### **123:2-3-05 Required utilization analysis and goals**

(A) Each state-involved contractor shall include in his/her affirmative action program the information and analysis required pursuant to part IV 401-C of appendix A of rule 123:2-1-01 of the Administrative Code, in addition to female utilization requirements pursuant to the governor's "Executive Order 84-9" and this rule.

(B) As required by the governor's "Executive Order 84-9," the utilization of women shall be, at a minimum, that currently in use by the federal government as of February 15, 1984. This requirement stated at 41 C.F.R. part 60-4 is 6.9 per cent utilization of women. This requirement shall remain at 6.9 per cent unless further amended by the governor in a subsequent order. This requirement shall be met by a determination of work hours utilized in the same manner as minority utilization hours are calculated.

#### **123:2-3-06 Certification of labor union employment policies and practices**

Contractors and subcontractors shall submit with their affirmative action programs a certification, from an authorized agent of all labor unions with which the contractor or subcontractor exchanges referrals for job applicants, stating that the union's employment policies and practices do not discriminate based upon race, color, religion, sex, or national origin. Where the contractor or subcontractor is unable to provide such certification, the contractor or subcontractor shall certify that fact and set forth what efforts were made to secure a statement and the reasons given by the labor union for failing to provide the statement.

### **123:2-3-07 Review of affirmative action programs**

(A) The contracting agency's compliance officer shall determine a contractor or subcontractor to be not responsive, where the contractor or subcontractor fails to adopt the state's affirmative action program or submit an acceptable affirmative action program. Notice of the compliance officer's determination must be forwarded to the contractor or subcontractor and the contracting agency's contract award office.

### **123 : 2-5-01 Pre-award compliance review**

(A) The purpose of a pre-award compliance review is determine if a contractor or subcontractor maintains nondiscriminatory employment practices, maintains an affirmative action program and is exerting good faith efforts to accomplish the goals of the affirmative action program. It shall consist of a comprehensive analysis of the contractor's or subcontractor's employment policies and practices, including but not limited to, hiring, placement, training and promotion.

(B) The contracting agency may conduct a pre-award compliance review when authorized by the director of administrative services. Notice of a pre-award compliance review shall be included in the invitation to bid. Where the contract is negotiated, notice of the pre-award compliance review must be provided at the beginning of negotiations.

(C) A pre-award compliance review may include an abbreviated review of the contractor's or subcontractor's employment and affirmative action records and an immediate on-site review, when time constraints for contract award mandate. Notwithstanding the foregoing, a pre-award compliance review must be conducted in conformity with the requirements of a post-award compliance review.

(D) Contractors or subcontractors must submit the information required for review of the contractor's or subcontractor's employment and affirmative action practices no later than ten business days after receipt of the contracting agency's request. Contractors and/or subcontractors may be found to be not responsive for failing to respond to the request for records.

### **123:2-5-02 Post-award compliance review**

(A) The purpose of a post-award compliance review is to determine if a contractor or subcontractor maintains nondiscriminatory employment practices and is exerting good faith efforts to accomplish the goals of an affirmative action program. It shall consist of a comprehensive analysis of the contractor's or subcontractor's employment policies and practices, including but not limited to, hiring, placement, training and promotion.

(B) When authorized by the director of administrative services, the contracting agency may conduct a post-award compliance review of the contractor or subcontractor. Post-award compliance reviews shall include evaluation of the contractor's or subcontractor's employment and affirmative action records and existing state and non-state project sites. The contractor or subcontractor shall provide at the agency's request all records and support data pertaining to the

contractor's or subcontractor's employment and affirmative action practices. The compliance officer of the contracting agency may request additional information from the contractor or subcontractor. On-site evaluations must be scheduled at a time agreeable to both the contracting agency and the contractor or subcontractor.

(C) Notice of a post-award compliance review shall be provided in writing at least ten business days before such review.

(D) Corrective action programs shall remain the sole property of the contractor or subcontractor.

### **123:2-5-03 Post-review report**

Within ten business days of the compliance review, the compliance officer of the contracting agency shall submit to the director of administrative services a post-review report of the deficiencies, if any, found in the contractor's or subcontractor's employment and affirmative action practices.

### **123:2-5-04 Conciliation agreement**

(A) Upon completion of the compliance review, a meeting shall be scheduled with the contractor or subcontractor to review the findings of the compliance review and to initiate any necessary conciliation efforts. A written account of the discussion and any conciliation agreement shall be provided to the contractor or subcontractor.

(B) Where the contractor or subcontractor disagrees with the findings of the compliance review or is unable to comply with the conciliation agreement, further meetings shall be scheduled at the request of the contractor or subcontractor. The contracting agency shall notify the director of administrative services of all attempts for conciliation, including scheduled meetings.

(C) A conciliation agreement shall include the contractor's or subcontractor's specific commitment, in writing, to correct any deficiencies found during the compliance review. The commitment must include the action to be taken and the target dates for accomplishment. The time allotted shall be no longer than the minimum period necessary to correct such deficiencies. Upon approval of the director of administrative services, the contractor or subcontractor may be considered responsive and responsible to the requirements of Chapters 123:2-3 through 123:2-9 of the Administrative Code, on condition that the contractor or subcontractor implements and enforces the commitments of the conciliation agreement.

(D) Where a compliance review indicates that a contractor or subcontractor may not be exerting good faith efforts to accomplish the goals of an affirmative action program and a conciliation agreement can not be reached, the director of administrative services shall provide the contractor or subcontractor with an opportunity for an adjudication hearing, in conformity with Chapter 119. of the Revised Code.

### **123 : 2-7-01 Adjudication hearings**

(A) The Director of Administrative Services may convene adjudication hearings to determine if any of the following sanctions shall be invoked against any contractor or subcontractor.

(1) A recommendation that the Ohio Attorney General initiate the appropriate proceedings against a contractor

or subcontractor for material violations of the of the rules and regulations set forth in Chapters 123:2-3

through 123:2-9 of the Administrative Code.

(2) A recommendation that the Ohio Attorney General initiate criminal proceedings against a contractor or subcontractor for furnishing false information to the contracting agency or to the Department of Administrative Services.

(3) A recommendation to the Ohio Civil Rights Commission, the Ohio Attorney General, the U.S. Equal Employment Opportunity Commission or the U.S. Department of Justice that appropriate proceedings be instituted against a contractor or subcontractor.

(4) Cancellation, suspension or termination, in whole or in part, for material failure to comply with the rules and regulations of Chapters 123:2-3 through 123:2-9 of the Administrative Code. The resumption or continuance of a contract may be conditioned upon the contractor's or subcontractor's compliance to Chapters 123:2-3 through 123:2-9 of the Administrative Code.

(5) A determination that the contractor or subcontractor is ineligible for future contracts or extensions or modifications of existing contracts until the contractor or subcontractor implements and maintains an affirmative action program pursuant to the rules and regulations set forth in Chapters 123:2-3 through 123:2-9 of the Administrative Code.

(B) Hearings shall be held before a hearing officer designated by the Director of Administrative Services. The hearing and all related matters shall be conducted in conformity with Chapter 119. of the Revised Code. Where an adjudication hearing is based in whole or in part on matters subject to a collective bargaining agreement and the contractor's or subcontractor's compliance may necessitate a revision of such agreement, any labor organization that is a signatory to such an agreement shall have the right to participate as a party.

(C) Existing contracts may not be cancelled, suspended or terminated unless the contractor or subcontractor is provided the opportunity for an adjudication hearing.

#### **123:2-7-02 Notice of proposed sanction**

(A) Where the Director of Administrative Services seeks to find a contractor or subcontractor ineligible for future contract awards or extensions or modifications of existing contracts, or seeks to cancel, suspend, or terminate a contract in whole or in part, notice of the proposed sanction, signed by the Director shall be sent to the last known address of the contractor or subcontractor. The notice shall contain a concise jurisdictional statement, a short and plain statement of the matters furnishing a basis for the imposition of sanction, an enumeration of the sanctions being requested, and a citation of the provision of law pursuant to which the requested action may be taken.

(B) The contractor or subcontractor shall be provided at least thirty days from receipt of the notice of proposed sanction to file an answer and a request for an adjudication hearing. The answer shall admit or deny specifically the matters set forth in each allegation of the notice unless the contractor or subcontractor is without knowledge, in which case the answer shall so state, and the statement shall be deemed a denial. Affirmative defenses shall be specifically stated and numbered.

(C) Where the contractor or subcontractor fails to answer the notice of proposed sanction or the contractor or subcontractor acquiesces to the charges contained in the notice, the Director of

Administrative Services may determine the contractor or subcontractor ineligible for future contract awards or extensions or modifications to existing contracts or may cancel, suspend, or terminate any one or more contracts until the contractor or subcontractor has provided satisfactory evidence that the contractor or subcontractor has established and will carry out an affirmative action program, pursuant to the rules and regulations set forth in Chapters 123:2-3 through 123:2-9 of the Administrative Code.

(D) Where the contractor or subcontractor fails to answer the notice of proposed sanction or the contractor or subcontractor acquiesces to the charges contained in the notice, the Director of Administrative Services or the Director of the contracting agency may withhold any pending or future payments on the contract for the project cited for deficiencies pursuant to a compliance review.

### **123 : 2-9-01 Monthly utilization work hour reports**

Contractors and subcontractors shall provide monthly utilization work hour reports for the contractor's or subcontractor's total workforce within the State of Ohio to the compliance officer of the contracting agency. The report must be filed by the tenth day of each month, beginning with the contract award and continuing until the contractor or subcontractor completes performance of the contract. A contractor's or subcontractor's failure to submit a monthly utilization work hour report shall be a basis for invoking any of the sanctions set forth in rule 123:2-7-01 of the Administrative Code.

### **123 : 2-11-01 Certificates of Compliance**

Bidders to contracts awarded pursuant to Chapter 153. of the Revised Code by an owner referred to section 153.01 of the Revised Code or awarded by the director of transportation pursuant to Chapter 5525. of the Revised Code must apply for a certificate of compliance to the state equal employment opportunity coordinator. Application shall be made on the form and according to the instructions established by the state equal employment opportunity coordinator.

Where the state equal employment opportunity coordinator determines that a bidder has not committed any violation of any affirmative action program with which the bidder was required to comply during the previous five years, the coordinator shall issue a dated certificate of compliance that is valid for one hundred eighty days.

The bidder is solely responsible for the completeness and the accuracy of its application for certificate of compliance. The state equal employment opportunity coordinator may determine a bidder to have violated an affirmative action program it was required to comply with, if the coordinator determines the bidder knowingly falsified its application for a certificate of compliance or knowingly omitted information requested by the application for certificate of compliance.

### **123 : 2-11-02 Certificates of compliance procedures for emergency contracts**

Where an owner referred to section 153.01 of the Revised Code is authorized to dispense with normal competitive bidding procedures due to an emergency situation requiring immediate redress, the owner shall notify the state equal employment opportunity coordinator of the contractor chosen to complete the emergency work. The owner shall also notify the contractor of its obligation to submit an application for a certificate of compliance with affirmative action programs to the state equal employment opportunity coordinator as soon as possible.

Where the nature of the emergency requires the contractor to begin work before the state equal employment opportunity coordinator has completed review of the contractor's application, the contractor must contact the state equal employment opportunity coordinator and provide

adequate assurance that it has not committed any violation of any affirmative action program with which the contractor was required to comply during the previous five years. The state equal employment opportunity coordinator may determine the contractor to be in compliance with affirmative action programs based upon the contractor's assurances.

Where after completing review of the contractor's application, the state equal employment opportunity coordinator determines that the contractor knowingly falsified or omitted information requested by the coordinator for adequate assurance of compliance during an emergency, the coordinator may modify his or her determination of compliance with affirmative action programs. The state equal employment opportunity coordinator may determine a bidder to have violated an affirmative action program it was required to comply with, if the coordinator determines the bidder knowingly falsified its application for a certificate of compliance or knowingly omitted information requested by the application for certificate of compliance.