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123:2-1-01 Compliance officers.

- (A) The head of each contracting ~~agency~~ authority 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~~ state equal employment opportunity coordinator ~~shall~~ may issue ~~further~~ guidelines to the compliance officers of the contracting ~~agencies~~ authorities. Such guidelines ~~shall~~ may 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.~~
- (B) "Contracting authority" means any state agency or other state instrumentality that is authorized to award a state contract, including any institution supported in whole or in part by the state, the Ohio facilities construction commission, or any other state officer or state agency authorized by law to administer a project, including an educational institution listed in section 3345.50 of the Revised Code.

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123:2-3-01 **Definitions.**

The following definitions shall apply to Chapters 123:2-1 through 123:2-9 of the Administrative Code:

- (A) "Affirmative action program" means a set of specific and result oriented procedures to which a contractor and/or subcontractor shall apply every good faith effort. It should include efforts required to remedy all effects of present and past discriminatory patterns and practices. The objective of these procedures and efforts is to assure equal employment opportunity for all people.
- (B) "American Indian-Alaskan Native" means a person with origins in any of the original peoples of North America who maintains cultural identification through tribal affiliation or has community recognition as an American Indian or Alaskan Native.
- (C) "Applicant Flow Log" means a chronological compilation of applicants for employment or promotion, showing the persons categorized by race, sex and ethnic group, who applied for each job title (or group of job titles requiring similar qualifications) during a specific period.
- (D) "Asian-Pacific Islander" means a person with origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Republic and Samoa; and, on the Indian Subcontinent, includes India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim and Bhutan.
- (E) "Bid response" means all documents, whether attached or incorporated by reference, supplied by the bidder in response to an invitation to bid.
- (F) "Black" means an individual, not of Hispanic origin, with origins in any of the Black racial groups of Africa.
- (G) "Contract" means, unless otherwise indicated, any contract awarded by a contract agency for the construction, engineering, alteration or repair of any public building, public highway or other public work.
- (H) "Contractor" means any person with whom a contracting authority has entered into a state contract to provide labor for a public building, public highway, or other public improvement and includes a construction manager at risk, a design-build firm or general contracting firm.
- (I) "Employees" means any persons on the contractor's or subcontractor's payroll for any payroll period.
- (J) "Good Faith Efforts" means a contractor's efforts to make all aspects of its affirmative action plan work. The basic components of good faith efforts are (1) outreach and recruitment measures to broaden candidate pools from which selection decisions are made to include minorities and women and (2) systematic efforts to assure that selections thereafter are made without regard to race, sex, or other prohibited factors.
- (K) "Hispanic" means a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race. This does not include persons of Portuguese descent or persons from Central or South America who are not of Spanish origin or culture.
- (L) "Invitation to bid" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (M) "Minority" means the following economically disadvantaged groups: Blacks, Hispanics, Asians-Pacific Islanders, and American Indians.

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(N) "Pacific Islander" - See "Asian-Pacific Islander."

(O) "Recall" means the process or action by which workers are returned to active employment from layoff.

(P) "Responsible contractor" means a contractor whose financial condition, experience, conduct and performance on previous contracts, facilities and management skills support the contractor's ability to execute the contract properly.

(Q) "Responsive contractor" means a contractor whose proposal responds to the bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise provide the contractor with a competitive advantage.

(R) "Subcontractor" means any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig or drill any part of any public improvement under a contract with any person other than the public authority.

(S) "State equal employment opportunity coordinator" means the state equal employment opportunity coordinator of the Department of Administrative Services, Equal Opportunity Division.

(T) "Underutilization" means employment of fewer minorities and/or women in a particular trade than reasonably expected given the availability of minorities and women.

(U) "Utilization work hours" means the percentage of work hours performed by minorities or women in proportion to the contractor's total work hours for the contractor's total workforce.

(V) "Total workforce" means all work hours performed by employees within the state of Ohio on state funded and non-state funded construction projects.

(W) "Work hour utilization report" or "Input Form 29" means a report filed by contractors and subcontractors monthly with the Equal Opportunity Division of the Department of Administrative Services. 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 state or state assisted contract. The report details by job category the sex and race composition of the contractor's and subcontractor's workforce on public and non-public construction projects.

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123:2-3-02 **Establishment of affirmative action programs.**

(A) The following must establish an affirmative action program:

- (1) Contractors and subcontractors with fifty or more employees and a state contract of fifty thousand dollars or more; or
- (2) Contractors and subcontractors with a state contract of \$500,000 or more regardless of the number of employees.

(B) 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:

- (1) 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 funded construction projects, during the performance of the state contract. The minority work hour goals are provided by 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. The following are the state percentage goals for minority utilization work hours:

<u>YOUNGSTOWN - WARREN, OH</u>	
<u>Counties: Mahoning, Trumbull</u>	<u>9.4%</u>
<u>County: Columbiana</u>	<u>6.7%</u>

<u>AKRON, OH</u>	
<u>Counties: Portage, Summit</u>	<u>7.8%</u>

<u>CANTON, OH</u>	
<u>Counties: Carroll, Stark</u>	<u>6.1%</u>

<u>CLEVELAND, OH</u>	
<u>Counties: Cuyahoga, Geauga, Lake, Medina</u>	<u>16.1%</u>

<u>LORAIN-ELYRIA, OH</u>	
<u>County: Lorain</u>	<u>9.3%</u>

<u>MANSFIELD, OH</u>	
<u>Counties: Richland, Ashland, Ashtabula,</u>	<u>6.3%</u>

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<u>Coshocton, Crawford, Eries, Holmes, Huron, Tuscarawas, Wayne</u>	
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<u>COLUMBUS, OH</u>	
<u>Counties: Delaware, Fairfield, Franklin, Madison, Pickaway</u>	<u>10.6%</u>
<u>Counties: Athens, Fayette, Guernsey, Hocking, Jackson, Knox, Licking, Marion, Meigs, Morgan, Morrow, Muskingum, Noble, Perry, Pike, Ross, Scioto, Union, Vinton</u>	<u>7.3%</u>

<u>CINCINNATI, OH</u>	
<u>Counties: Clermont, Hamilton, Warren</u>	<u>11%</u>

<u>HAMILTON-MIDDLETOWN, OH</u>	
<u>County: Butler</u>	<u>5.0%</u>
<u>Counties: Adams, Brown, Clinton, Highland</u>	<u>9.2%</u>

<u>DAYTON, OH</u>	
<u>Counties: Greene, Miami, Montgomery, Preble</u>	<u>11.5%</u>

<u>SPRINGFIELD, OH</u>	
<u>Counties: Champaign, Clark</u>	<u>7.8%</u>
<u>Counties: Darke, Logan, Shelby</u>	<u>9.9%</u>

<u>LIMA, OH</u>	
<u>Counties: Allen, Auglaize, Putnam, Van Wert</u>	<u>4.4%</u>
<u>Counties: Hardin, Mercer</u>	<u>3.5%</u>

<u>TOLEDO, OH</u>	
<u>Counties: Fulton, Lucas, Ottawa, Wood</u>	<u>8.8%</u>
<u>Counties: Hancock, Henry, Sandusky, Seneca, Wyandot</u>	<u>7.3%</u>

(a) 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.

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- (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.

(2) Contractors and subcontractors may submit for approval by state equal employment opportunity coordinator the contractor's or subcontractor's own affirmative action program developed in conformity with rule 123:2-3-04 of the Administrative Code, prior to submission of a proposal for a construction manager at risk or a design-build contract, or for prequalification of bidders under rule 153:1-7-01 of the Administrative Code or prior to the submission of bids under a general contracting project. 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. Contractors and subcontractors may obtain an acceptable affirmative action program in accordance with paragraph (A) of this rule.

~~(B)~~ (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) When the contract site is within a designated geographic area, contractors and subcontractors shall inform lower tier subcontractors with fifty or more employees and a contract of fifty thousand dollars or more, or a contract of \$500,000 or more regardless of the number of employees of the requirement to comply with the rules 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 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.

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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~~[state equal employment opportunity coordinator](#).
- (D) Contractors and subcontractors are prohibited from using an affirmative action program to discriminate against any person on account of race, color, [creed](#), religion, sex or national origin, [ancestry, disability, age, veteran's status or military status as defined in section 4112.01 of the Revised Code](#).
- (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.
- (H) [Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor or subcontractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under this rule.](#)

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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:
- (1) 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:
 - (a) The minority population of the labor area surrounding contractor or subcontractor job sites.
 - (b) The minority employment rate in the labor area surrounding contractor or subcontractor job sites.
 - (c) The percentage of the minority workforce in the immediate labor area.
 - (d) The general availability of minorities in the immediate labor area.
 - (e) The availability of minorities in an area from which the contractor or subcontractor can reasonably recruit.
 - (f) The availability of promotable minorities within the contractor's or subcontractor's workforce.
 - (g) The anticipated expansion, reduction and turnover of the contractor's or subcontractor's workforce.
 - (h) The existence and proximity of qualified training institutions.
 - (i) The degree of training the contractor or subcontractor is reasonably able to provide to make all job classes available to minorities.
 - (2) 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~~[state equal employment opportunity coordinator](#). The affirmative action program may be submitted to the ~~contracting agency~~[state equal employment opportunity coordinator](#) ~~either with the contractor's bid or prior to the submission of bids~~[bidsprior to submission of a proposal for a construction manager at risk or a design-build contract, or for prequalification of bidders under rule 153:1-7-01 of the Administrative Code or prior to the submission of bids under a general contracting project.](#)
- (D) Contractors and subcontractors must maintain all data applicable to the development of the contractor's or subcontractor's affirmative action program.

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- (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.

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

(A) Each contractors and subcontractors shall include in its affirmative action program a female utilization goal. The utilization of women shall be, at a minimum, 6.9 per cent and shall remain at 6.9 per cent unless further amended. This requirement shall be met by a determination of work hours utilized in the same manner as minority utilization hours are calculated.

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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, creed, religion, sex, ~~or~~ national origin, ancestry, disability, age, veteran's status or military status as defined in section 4112.01 of the Revised Code. 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.

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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~~ Where the contractor or subcontractor fails to adopt the state's affirmative action program or fails to submit an acceptable affirmative action program, the state equal employment opportunity coordinator may deny the issuance of a certificate of compliance pursuant to rule 123:2-11-01 of the Administrative Code. ~~Notice of the compliance officer's determination must be forwarded to the contractor or subcontractor and the contracting agency's contract award office.~~

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123:2-5-01 **Compliance review.**

- (A) The contracting authority shall be responsible for performing or causing the performance of a compliance review of each qualifying contractor or subcontractor on a state contract to 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. The state equal employment opportunity coordinator may also perform compliance reviews of a qualifying contractor or subcontractor on a state contract at the coordinator's discretion.
- (B) A compliance review must 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. A compliance review must include evaluation of the contractor's or subcontractor's employment and affirmative action records and existing state and non-state project sites. Upon request, the contractor or subcontractor shall provide to the contracting authority or the state equal employment opportunity coordinator all records and support data pertaining to the contractor's or subcontractor's employment and affirmative action practices. The compliance officer of the contracting authority or state equal employment opportunity coordinator may request additional information from the contractor or subcontractor. On-site evaluations must be scheduled at a time agreeable to the contracting authority, the state equal employment opportunity coordinator, and the contractor or subcontractor.
- (C) 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 request from the contracting authority or the state equal employment opportunity coordinator. Contractors and/or subcontractors may be found to be not responsive for failing to respond to the request for records.
- (D) The contracting authority or the state equal employment opportunity coordinator shall provide the contractor or subcontractor notice in writing at least ten business days before commencement of a compliance review.

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123:2-5-03 **Post**Compliance-review report.

~~Within ten business days of the compliance review~~When a compliance review is performed by a contracting authority, the compliance officer of the contracting ~~agency authority~~ shall submit to the ~~director of administrative services a post-review~~state equal employment opportunity coordinator the compliance review report of ~~the deficiencies, if any, found in~~ the contractor's or subcontractor's employment and affirmative action practices within thirty days of completion of the report.

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

- (A) Upon completion of the compliance review, the contracting authority or state equal employment opportunity coordinator, whichever performed the review, must schedule a meeting with the contractor or subcontractor to review the findings of any compliance review and may initiate any necessary conciliation efforts.
- (B) Where a compliance review indicates that a contractor or subcontractor may have deficiencies in its affirmative action program, the contractor or subcontractor and the state equal employment opportunity coordinator or the contracting authority, whichever performed the compliance review, may enter into a conciliation agreement that may 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. 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.
- (C) The contracting authority or the state equal employment opportunity coordinator, whichever performed the original compliance review, may perform a follow-up review to determine a contractor's or subcontractor's compliance with the terms and target dates of a conciliation agreement. The contracting authority must provide a copy of any follow-up review to the state equal employment opportunity coordinator. The state equal employment opportunity coordinator may consider the results of the review to determine whether a contractor or subcontractor's failure to comply with a conciliation agreement should result in a denial of a certificate of compliance under rule 123:2-11-01 of the Administrative Code and/or the imposition of sanctions under rule 123:2-7-01 of the Administrative Code.
- (D) Where a conciliation agreement cannot be reached, the contracting authority and/or the state equal employment opportunity coordinator may recommend the director of administrative services impose sanctions upon the contractor or subcontractor in accordance with Rule 123:2-7-01 of the Administrative Code.

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

- (A) If a conciliation agreement cannot be reached or the follow-up review demonstrates a contractor's or subcontractor's non-compliance with the terms and target dates of a conciliation agreement, the contracting authority may request that the state equal employment opportunity coordinator, or the coordinator may upon his or her own initiative, issue a notice of intent to impose sanctions upon the contractor or subcontractor. Notice of intent to impose sanctions shall be sent to the last known address of the contractor or subcontractor. The notice shall contain a concise statement of the issues surrounding the compliance review and any conciliation efforts, a short and plain statement of the matters furnishing a basis for the imposition of sanctions, and an enumeration of the sanctions to be imposed.
- (B) The contractor or subcontractor shall have thirty days from receipt of the notice of intent to request an adjudication hearing from the state equal employment opportunity coordinator. If the contractor does not respond and request a hearing in the manner specified in Chapter 119. of the Revised Code, state equal employment opportunity coordinator shall issue an order imposing sanctions without a hearing and shall notify the contractor of the determination by certified mail, return receipt requested.
- (C) If a hearing is requested within the requisite time, the state equal employment opportunity coordinator may convene a hearing to determine if the proposed sanctions shall be invoked against the contractor or subcontractor. Hearings may be held before a hearing officer designated by the state equal employment opportunity coordinator. 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.
- (D) Proposed sanctions may include:
- (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 authority or to the state equal employment opportunity coordinator.
 - (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 of a contract, in whole or in part, for material failure to comply with the rules 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.

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

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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~~ [state equal employment opportunity coordinator](#). 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 [state](#) contract. [The state equal employment opportunity coordinator may consider Aa contractor's or subcontractor's failure to submit a monthly utilization work hour report in determining whether a contractor or subcontractor should be denied a certificate of compliance under rule 123:2-11-01 of the Administrative Code and/or shall may](#) be a basis for invoking any of the sanctions set forth in rule 123:2-7-01 of the Administrative Code.

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123:2-11-01 **Certificates of compliance.**

- (A) Any contractor or subcontractor desiring to bid on or enter into a negotiated state contract awarded by a contracting authority may make application for a certificate of compliance with affirmative action programs. Application shall be made to the state equal employment opportunity coordinator. Application forms can be accessed through the Equal Opportunity Division's web page: www.das.ohio.gov/eod or submitted directly on the Ohio Business Gateway web page: <http://business.ohio.gov/efiling>.
- (B) The state equal employment opportunity coordinator shall promptly confirm that the contractor has an approved affirmative action program and has exerted every good faith effort to accomplish the goals of their affirmative action program. The state equal employment opportunity coordinator may also confirm whether the person has complied with all any applicable federal and state affirmative action programs to which the contractor or subcontractor is subject.
- (C) Where the state equal employment opportunity coordinator confirms the contractor or subcontractor is in compliance with their affirmative action program, has exerted every good faith effort to accomplish the goals of their affirmative action program, and has not committed any violation of any affirmative action programs during the five years immediately preceding the date of determination, the state equal employment opportunity coordinator may issue a certificate of compliance with affirmative action programs. Such certificate may be valid for any length of time, not exceeding one hundred eighty days. The state equal employment opportunity coordinator may issue a conditional certificate of compliance setting forth the requirements terms and conditions of the certificate.
- (D) Where the state equal employment opportunity coordinator determines that a contractor or subcontractor is not in compliance with an affirmative action program, has not exerted every good faith effort to accomplish the goals of their affirmative action program, or has committed any violation of any affirmative action programs during the five years immediately preceding the date of determination, the state equal employment opportunity coordinator shall send the contractor or subcontractor a notice of denial indicating the grounds for the denial and the procedure for requesting a hearing before the director of administrative services pursuant to section 9.47 of the Revised Code. If a contractor or subcontractor does not respond and/or request a hearing, the state equal employment opportunity coordinator shall issue the denial and shall notify the contractor or subcontractor by certified mail, return receipt requested.
- (E) The denial of a certificate of compliance of affirmative action programs may include specific sanctions and other terms for compliance or issuance of a conditional certificate. The state equal employment opportunity coordinator may withdraw the denial at any time upon notification to the contractor or subcontractor. A contractor or subcontractor is not eligible to bid for or participate in any state contract if the contractor or subcontractor does not hold a valid certificate of compliance.
- (F) The state equal employment opportunity coordinator may rescind the issuance of a certificate of compliance if a contractor or subcontractor is found to have falsified its application for a certificate of compliance or omitted information requested in the application for certificate of compliance.

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

Where ~~an owner referred to section 153.01 of the Revised Code~~ a contracting authority is authorized to dispense with ~~normal competitive bidding~~ statutory contracting procedures due to an emergency situation requiring immediate redress, the ~~owner shall notify the~~ appropriate state official shall notify the state equal employment opportunity coordinator of the contractor and subcontractors chosen to complete the emergency work. The ~~owner~~ contracting authority shall also notify the contractor and subcontractors of ~~its~~ their 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 and subcontractors to begin work before the state equal employment opportunity coordinator has completed review of the contractor's or subcontractor's application, the contractor or subcontractor 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 or subcontractor was required to comply during the previous five years. The state equal employment opportunity coordinator may determine the contractor or subcontractor 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 or subcontractors knowingly falsified or omitted information requested by the state equal opportunity coordinator for adequate assurance of compliance during an emergency, the state equal opportunity coordinator may modify ~~his or her~~ their determination of compliance with affirmative action programs and may rescind the certificate of compliance. The state equal employment opportunity coordinator may use such information to deny future certificates of compliance to the contractor ~~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.~~