

123:2-16-01 Definitions.

For the purposes of this chapter:

(A) "Bidder" means any person or persons that intends to submit or does submit a bid or a proposal to the state for the purpose of entering into an agreement or contract with the state.

(B) "Contract" mean any agreement or subcontract with the state to provide construction, architecture, engineering, professional services, goods and services or information technology services.

(C) "Contractor" means any person or persons who enter into a contract with the state.

(D) "Economically Disadvantaged Business" means a business at least fifty-one per cent owned and controlled by an economically disadvantaged person or persons and the business net worth does not exceed the average net worth of comparable businesses.

(E) "Economically Disadvantaged Person" means a person whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar businesses that are not socially disadvantaged. Economic disadvantage shall be based on:

(1) The personal financial profile of the persons claiming disadvantaged status, including personal net worth of the person and other factors considered pursuant to paragraph (E) of rule [123:2-16-02](#) of the Administrative Code. The personnel net worth of the person at the time of initial application for certification as an EDGE business enterprise must be less than two hundred fifty thousand dollars, and must not exceed seven hundred fifty thousand dollars during any time of certification as an EDGE business enterprise. For purposes of this section, the personal net worth of a person does not include the value of the person's primary residence and the person's interest in the economically disadvantaged business. Personal net worth does include all asset transfers within a two-year period to all members of the person's immediate family.

(2) Business financial profile of the business seeking disadvantaged status, including a comparison of the business to businesses in the same primary industry classification according to the "North American Industry Classification System" established by the U.S. small business administration.

(F) "EDGE" means the "Encouraging Diversity, Growth, and Equity" business development program created pursuant to section [123.152](#) of the Revised Code.

(G) "EDGE Business Enterprise" means a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture that is certified by the department of administrative services as meeting the criteria established by the equal opportunity division of the department of administrative services, pursuant to section [123.152](#) of the Revised Code and is:

(1) Owned and controlled by a citizen or citizens of the United States of America, residing in Ohio, and are socially and economically disadvantaged; or,

(2) An economically disadvantaged business whose primary business location is in a qualified census tract and the business is owned and controlled by a citizen or citizens of the United States of America, residing in Ohio.

(H) "Owner" means a person or persons who own a business certified in the EDGE business development program, or the person or persons of a business that have applied for certification in the EDGE business development program.

(I) "Qualified Census Tract" means a recognizable geographic region within the state of Ohio such as a historically underutilized business zone or an enterprise zone that meets one of the following:

(1) The average minimum household income in the geographic region is less than eighty percent of the average non-metropolitan income of the state as prescribed by Title 26 of the United States Code Section 42(D).

(2) The unemployment rate of the geographic region exceeds the annual unemployment rate of the state by more than one hundred forty per cent.

(J) "Socially Disadvantaged Person" means a person subjected to ethnic prejudices or cultural bias because of their identification with a particular group without regard to their individual qualities.

(1) A rebuttable presumption of social disadvantage shall be based on at least one of the following objective distinguishing factors that has contributed to social disadvantage.

(a) A business owner's race, color or ethnic origin.

(b) A business owner's gender.

(c) A business owner's chronic, physical or mental disability that has led to discriminatory practices against the person and that has restricted professional acceptance, employment, or access to capital and credit, or

(d) A business owner's long term residence in a qualified census tract.

(2) Social disadvantage shall also be based on the following.

(a) A business owner's demonstration of personal experiences of substantial and chronic disadvantage not common to other business enterprises of similar type and location, and

(b) Evidence of difficulty on entering or succeeding in the business world because of disadvantages such as limited access to education, unequal treatment in employment of promotional opportunities, limited access to credit or capital under commercially favorable circumstances or exclusion from business or professional organizations, or

- (c) A primary business location in a qualified census tract.
- (K) "State" means the state of Ohio.
- (L) "State Agency" has the same meaning as section [1.60](#) of the Revised Code.
- (M) "Subcontractor" means any person or persons that intends to submit or does submit a bid or a proposal to a contractor or a bidder or another subcontractor for the purpose of entering into an agreement or contract with the contractor, bidder or subcontractor.

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123:2-16-02 Certification criteria.

(A) Unless certified pursuant to rule [123:2-16-04](#) of the Administrative Code, any business seeking certification in the EDGE business development program, established under section [123.152](#) of the Revised Code, shall first apply to the equal opportunity division of the department of administrative services for certification as an EDGE business enterprise. The application shall be made on forms provided by the division and made in a manner prescribed by the division.

(B) The equal employment opportunity coordinator of the department of administrative services shall certify a business as an EDGE business enterprise, provided the owner or owners of the business demonstrate all of the following:

- (1) The business is a for-profit business entity and in business for at least one year prior to application for certification.
- (2) The business is owned and controlled by a citizen or citizens of the United States.
- (3) The business is owned and controlled by a resident or residents of the state.
- (4) The business is both economically and socially disadvantaged or the business owner is both economically and socially disadvantaged.

(C) To demonstrate that a business applying for EDGE certification meets the criteria set forth in paragraphs (B) (1) to (B)(3) of this rule, the owner of the business must provide the equal opportunity division of the department of administrative services the following information in the form and detail as determined by the division:

- (1) Business structure information.
- (2) Previous three years of federal and state tax returns.

- (3) corporate and personnel organizational information.
- (4) Business sales and tax information.
- (5) Personal information indicating citizenship and residence.
- (6) Notarized statement from the owner certifying that the owner meets the defined criteria for economically and socially disadvantaged, and
- (7) Any other relevant information the division deems necessary.

(D) To demonstrate that a business applying for EDGE certification meets the criteria set forth in paragraph (B)(4) of this rule, the owner of the business must provide the equal opportunity division of the department of administrative services the following information, in the detail and manner determined by the division;

- (1) Financial records indicating the net worth of the business and personal net worth of the owner.
- (2) If married, financial records of the owner's spouse.
- (3) If applying for a social disadvantage classification based on race, color, ethnic origin, gender, disability, long-term residence in a qualified census tract or geographic location, information demonstrating membership in the claimed category.
- (4) If applying for a social disadvantage classification based on personal disadvantage not common to other small businesses, information indicating the impediment to be considered and how the impediment has restricted professional acceptance, employment, or access to capital and credit, and
- (5) Any other relevant information the division deems necessary.

(E) The equal employment opportunity coordinator of the department of administrative services shall consider all of the following to determine whether a business owner applying for EDGE certification meets the personal net worth threshold of paragraph (E)(1) of rule [123:2-16-01](#) of the Administrative Code:

- (1) The business owner's personal income for the two years prior to application.
- (2) The fair market value of all the business owner assets, whether encumbered or not.
- (3) Asset transfers within the two years of application.
- (4) Assets of the owner's spouse if applicable.
- (5) Similar factors considered by the United States small business administration when making individual determinations of economic and social disadvantage pursuant to federal disadvantage business enterprise programs. Upon consideration of the above factors, the coordinator finds that

the business owner meets the criteria set forth in paragraph (E)(1) of rule [123:2-16-01](#) of the Administrative Code, the coordinator shall determine that the owner is economically disadvantaged.

(F) The equal employment opportunity coordinator of the department of administrative services shall compare and consider the following factors to determine whether the business of the owner applying for EDGE certification is economically disadvantaged compare to similar business enterprises, as described in paragraph (D) of rule [123:2-16-01](#) of the Administrative Code:

- (1) The annual accounts receivable
- (2) Total assets
- (3) Net sales
- (4) Pre-tax profit
- (5) Sales versus working capital ratio

(6) Business net worth If upon consideration of the above factors, the coordinator finds that the business meets the criteria set forth in this chapter, the coordinator shall determine that the business is economically disadvantaged.

(G) The equal employment opportunity coordinator of the department of administrative services shall determine that a business owner applying for EDGE certification is socially disadvantaged, if the business owner demonstrates personal disadvantage, as described in paragraph (J) of rule [123:2-16-01](#) of the Administrative Code, and the coordinator determines that the distinguishing feature or demonstrated disadvantage significantly inhibited the business owner's business success.

(H) The equal opportunity division shall administer the certification of the EDGE program in accordance to the general "disadvantaged business enterprise" certification guidelines issued by the United States small business administration in Title 13 of the Code of Federal Regulations, unless expressly stated otherwise.

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123:2-16-03 Certification of business structure.

(A) The equal opportunity division of the department of administrative services shall require the following criteria of a business seeking certification as an EDGE business enterprise:

- (1) If the applying business is a corporation:

(a) At least fifty-one per cent of the board of directors and at least fifty-one per cent of the principal executive officers are economically and socially disadvantaged as defined in this chapter, and that these persons have ultimate control over the management and day-to-day operations of the business, including but not limited to finances, management decisions and policies.

(b) Economically and socially disadvantaged persons own at least fifty-one per cent of each class of corporate stock.

(2) If the applying business is a partnership:

(a) The economically and socially disadvantaged owners have ultimate control over the management and day-to-day operations of the business, including but not limited to finances, management decisions and policies.

(b) At least fifty-one per cent of each class of partnership interest is owned by partners who are economically and socially disadvantaged as defined in this chapter.

(3) If the applying business is a sole proprietorship:

(a) The sole proprietor is an economically and socially disadvantaged person as defined in this chapter.

(b) The sole proprietor has ultimate control over the management and day-to-day operations of the business, including but not limited to finances, management decisions, and policies.

(c) The sole proprietor has the entire interest in the capital, assets, profits and losses of the business, not including mortgages and other types of financial arrangements secured by assets or bonds secured by revenues.

(4) If the applying business is an association:

(a) The association is organized pursuant to Chapter 1785. of the Revised Code, and,

(b) At least fifty-one per cent of the members of the association are economically and socially disadvantaged as defined in this chapter, and that these persons have ultimate day-to-day control over the management including but not limited to finances, management decisions and policies.

(5) If the applying business is a limited liability company:

(a) The company is organized pursuant to Chapter 1705. of the Revised Code.

(b) At least fifty-one percent of the members of the limited liability company are economically disadvantaged individuals as defined in this Chapter.

(c) At least fifty-one percent of the contributions of capital to the limited liability company are provided by economically and socially disadvantaged members of the company.

(d) The economically and socially disadvantaged members of the limited liability company have ultimate control over the management and day-to-day operations of the company, including, but not limited to, finances, management decisions and policies.

(B) The equal opportunity division of the department of administrative services shall consider the following criteria in determining control and ownership of a business applying for EDGE certification:

(1) The owner maintains and demonstrates authority to direct the management and policies of the business,

(2) The owner controls the daily decisions of the business,

(3) The owner is responsible for the employment decisions of the business,

(4) The owner holds possession of the requisite licenses associated with the nature of the business,

(5) The owner has ownership of the securities of the business,

(6) Any other criteria the division deems relevant that demonstrates control and ownership of the business.

(C) Failure to provide requested information in a timely manner may delay the processing of the certificate application.

(D) Except as otherwise required by law, all financial statements and records submitted by an applicant to the equal opportunity division shall not be released to the public unless such documents are determined to be public records pursuant to section [149.43](#) of the Revised Code.

(E) Upon determining that the owner and business have demonstrated qualification for certification in the EDGE program, as outlined in this section, the equal employment opportunity coordinator of the department of administrative services shall certify the business.

(F) If the equal opportunity coordinator of the department of administrative services determines that the business or business owner does not meet the criteria set forth in this chapter, the division shall notify the applicant of its decision by mail. The notification shall include the applicant's appeal rights as set forth in Chapter 119. of the Revised Code.

(G) The equal opportunity division of the department of administrative services shall have the right to conduct on-site inspections at any location of a business seeking certification. The divisions shall give appropriate notice.

(H) The EDGE certification issued pursuant to this section shall be in effect for a period not to exceed two years from the date of certification provided that the EDGE business enterprise is not decertified pursuant to rule [123:2-16-06](#) of the Administrative Code. The maximum amount of time a business may participate in the EDGE program is ten years.

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123:2-16-04 Expedited certification.

(A) Upon application with the equal opportunity division of the department of administrative services, a business certified in any of the following may be certified by the division as an EDGE certified business, provided the business and the business owner meet the social and economic threshold requirements set forth in rule [123:2-16-02](#) of the Administrative Code:

(1) State of Ohio historically underutilized businesses

(2) Disadvantaged business enterprises (49CFR part 26)

(3) Businesses certified under other public contract assistance programs that the director of administrative services determines are certified in programs that require social and economic disadvantage thresholds equivalent to the EDGE program established pursuant to section [123.152](#) of the Revised Code . United States citizens and residents of Ohio must own the business.

(B) A business applying for certification under this section shall initiate and submit a form from the appropriate certification entity demonstrating certification in that program. A business shall provide social and economic threshold information for certification in the particular program, upon request by the equal opportunity division of the department of administrative services.. In addition, the applying business must submit an "expedited certification" application on a form provided by the division and in the manner prescribed by the division.

(C) A business applying for certification under this section shall provide all information requested by the equal opportunity division of the department of administrative services. Failure to provide requested information may lead to disapproval of the application.

(D) The equal opportunity division of the department of administrative services shall have a right to conduct on-site inspections and investigations at any location of a business seeking certification pursuant to rule [123:2-16-03](#) of the Administrative Code. The division shall give appropriate notice.

(E) The EDGE certification issued pursuant to this section shall not exceed two years from the date of certification.

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123:2-16-05 Recertification.

(A) Certification as an EDGE business enterprise expires two years from the date of certification. An EDGE certified business enterprise must apply for recertification in the EDGE program before the time of expiration, to continue in the EDGE program.

(B) The equal opportunity division of the department of administrative services shall notify each certified EDGE business, forty-five days prior to its certification expiration, of the requirements and procedures for recertification. The notification shall be in a form determined by the division.

(C) All certified EDGE business enterprises shall maintain a current business address and e-mail address with the equal opportunity division of the department of administrative services.

(D) A certified EDGE business enterprise seeking recertification in the EDGE program must submit the recertification application request on a form provided by the equal opportunity division of the department of administrative services, and in a manner prescribed by the division. The applicant must demonstrate to the division that the applicant and the business continue to qualify for certification. The division shall use the criteria and procedures set forth in rules [123:2-16-02](#), [123:2-16-03](#), and section [123:2-16-13](#) of the Administrative Code to determine whether recertification is warranted.

(E) Upon receiving a timely completed application in which the applicant demonstrates continued qualification for certification in the EDGE program, the equal opportunity division of the department of administrative services shall recertify the business.

(F) If the equal opportunity division of the department of administrative services determines that the business or business owner no longer meet the criteria set forth in this chapter, the equal employment opportunity coordinator of the department of administrative services shall notify the applicant of the decision. The coordinator shall notify the applicant by registered mail, return receipt requested, and the notification shall include information detailing the applicant's appeal rights as set forth in Chapter 119. of the Revised Code.

(G) The equal opportunity division of the department of administrative services shall have the right to conduct on-site inspections at any location of a business seeking recertification. The division shall have a right to access any business records or information the division deems necessary to evaluate a recertification application.

(H) The maximum amount of time a business or business owner may participate in the EDGE public contracts assistance program as a certified business is ten years.

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123:2-16-06 Decertification.

(A) The director of the department of administrative services shall revoke a certification or recertification issued pursuant to this chapter, if the director determines that a certified EDGE business enterprise does not meet the participation criteria set forth in this chapter. The revocation may be the result of an investigation and finding by the equal opportunity division of the department of any of the following:

(1) The owner of the EDGE certified business enterprise intentionally misrepresented material facts in the application or recertification process.

(2) The owner of the EDGE certified business enterprise no longer is socially or economically disadvantaged.

(3) The owner of the EDGE certified business enterprise, at the time of certification or thereafter, no longer controls, operates or participates in the business as set forth in this chapter.

(4) The EDGE certified business enterprise is no longer at least fifty-one per cent owned by a United States citizen residing in Ohio determined to be economically and socially disadvantaged.

(5) The EDGE certified business enterprise is no longer a for-profit entity.

(6) A determination that revocation of certification is in the best interest of the state, Such reasons include, but are not limited to, legal findings of business fraud, business debarment by the federal government, debarment by Ohio or any other state or a determination that an EDGE certified business enterprise inappropriately transferred, assigned, or subcontracted work to a non-EDGE certified business enterprise.

(B) If upon investigation, the director of the department of administrative services determines that an EDGE certification shall be revoked, the director shall hold an adjudication hearing on the matter.

(C) The director of administrative services shall notify the owner in writing of the decision reached resulting from the adjudication hearing held pursuant to this rule. The notification shall be made within thirty days from the date of the adjudication hearing.

(D) An owner of the business adversely affected by an adjudication order issued pursuant to this rule, shall have a right to appeal pursuant to section [119.12](#) of the Revised Code.

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123:2-16-07 Adjudication hearings.

The director of the department of administrative services shall determine the need for adjudication hearings in accordance with sections [119.06](#) to [119.13](#) of the Revised Code.

(A) Prior to a revocation of a certification or upon denial of certification issued pursuant to section [123.152](#) of the Revised Code and of this chapter, the director of the department of administrative services shall notify the owner of the affected business of the owner's right to request a hearing on the decision. The notice shall be in writing and sent by registered mail, return receipt requested, to the applicant's last address provided to the equal employment opportunity division of the department of administrative services.

(B) The notice shall include:

(1) The reasons for the proposed action.

(2) The applicable laws or rules directly involved.

(3) A statement informing the owner that:

(a) The owner is entitled to a hearing if requested within thirty days of the mailing date of the notice.

(b) The owner may appear in person or be represented by an attorney.

(c) The owner may chose to present the owner's position in writing.

(d) The owner may present evidence and examine witnesses at the hearing.

(C) Upon receiving a written request for hearing from the owner, the director shall set the date, time and location of the hearing. The date set for the hearing shall be within seven and fifteen days of receiving the request for hearing, unless otherwise agreed to by the parties.

(D) The director of the department of administrative services may continue the date of the adjudication hearing on the director's own accord.

(E) All adjudication hearings shall be conducted in accordance with the procedures described in section [119.09](#) of the Revised Code.

(F) Following an adjudication hearing in which an order not to certify or an order to revoke certification is rendered, the director of administrative services shall serve upon the affected owner the order of the director. The order shall include notification to the affected owner of the right to appeal the decision the decision of the director to the court of common please as provided in section [119.12](#) of the Revised Code. The notice of the order shall be served by certified mail, return receipt requested.

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123:2-16-08 Edge participation goals.

(A) The director of the department of administrative services shall establish yearly contract dollar percentage procurement goals for each state agency for contracting with EDGE business enterprises, certified pursuant to section [123.152](#) of the Revised Code, in the award of contracts under chapters 123., 125., and 153. of the Revised Code for the following procurement categories:

(1) Goods and services

(2) Information technology services

(3) Construction

(4) Architecture and engineering

(5) Professional services The director shall provide the yearly contract dollar percentage procurement goals to each state agency by May fifteenth of each year to be effective for the following fiscal year.

(B) The director of the department of administrative services shall establish the yearly contract dollar percentage procurement goals required by paragraph (A) of this rule by means of the following two-step process:

(1) Step one of the goal setting process is to measure the availability of firms that are ready, willing and able to compete statewide or in a particular geographic region.

The director shall first determine the percentage of EDGE certified firms to all firms that are ready, willing and able to compete for work in the procurement categories listed in paragraph (A) of this rule. The director shall determine this percentage by dividing the number of EDGE firms ready, willing and able to bid for the types of work the state will fund for the fiscal year , by the total number of firms ready, willing, and able to bid for the types of work the state will fund for the fiscal year. To accurately calculate the above percentage, the EDGE certified firms considered in order to be considered ready, willing, and able to perform, the owner of the firm must possess all licenses required by the state to perform the appropriate type of the contemplated work and shall be as similar in nature as possible to the non-EDGE firms considered.

In addition, when calculating the above percentage, the director shall, based on the most refined data available, exclude businesses that, notwithstanding their standard industrial code or equivalent code classification, are not relevant to percentage analysis. The director shall not include firms in the statewide or regional percentage calculations, if the director determines that those firms do not perform that type of work in a particular geographic regions of the state, even if those firms appear on considered bidder or certification lists.

(2) Step two of the goal setting process. The director shall determine whether an adjustment to the step one base percentage is necessary. Step two shall be used, when necessary, to adjust the step one base percentage to make it as precise as possible. The director shall consider all available, relevant, and reliable evidence to determine whether an adjustment is warranted. Relevant and available data may include:

(a) Past participation data, including the volume of work performed by EDGE firms in recent years, or other measurements of demonstrated capacity.

(b) Evidence provided in disparity studies including relevant studies commissioned by contracting agencies and state political subdivisions.

(c) Statistical disparities found in the ability of EDGE firms to obtaining business financing, bonding, and insurance.

(d) Any other data, the director deems relevant.

If the available data does not suggest an adjustment is necessary, no adjustment should be made. If the percentage of EDGE firms derived from step one is similar to the percentage level of past EDGE participation, no adjustment is needed.

If the director determines that the data suggest that an adjustment is warranted, the director shall make the adjustment. The director shall ensure that there is a rational relationship between the data used to make the adjustment and the actual numerical adjustment made. If an adjustment is made based on past participation data, the director shall make the adjustment by taking the average of the figure obtained in step one and the figure that represents median past participation.

(C) The director of the department of administrative services may consult with each state agency in establishing the yearly procurement goals.

(D) The director of the department of administrative services may adopt additional policies, guidelines and directives to further implement and clarify the requirements of this chapter.

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123:2-16-09 Demonstration of good faith effort to include EDGE business participation.

(A) Each state agency awarding a contract subject to the provisions of section [123.152](#) of the Revised Code shall specify in each contract the EDGE goal for subcontracts awarded to and materials and services purchased from EDGE certified business enterprises in order to meet the agency's overall EDGE goal.³

(B) Any contractor awarded a contract under Chapters 123., 125., and 153. of the Revised Code shall make a good faith effort to comply with the EDGE business enterprise goal established for the contract pursuant to division (B)(2) of section [123.152](#) of the Revised Code, and of this chapter.

(C) Whenever a contractor is unable to comply with the EDGE goal for a contract established pursuant to division (B)(2) of section [123.152](#) of the Revised Code, and this chapter, for contracting with EDGE business enterprises, having made a good faith effort, the contractor may apply in writing, on a form prescribed by the department of administrative services, to the director of administrative services or to the contract letting state agency for a waiver or modification of the goal.

(D) The director of administrative services, or for projects within a state agency for which local administration has been approved, the chief officer of that state agency authorized to enter into a contract pursuant to Chapters 123., 125., and 153. of the Revised Code, may determine that a contractor bidding on contracts authorized pursuant to Chapters 123., 125., and 153. of the Revised Code has made a good faith effort to include the appropriate level of EDGE certified business enterprise participation in the contract bid, as required by this chapter. For purposes of such determination, the director or the chief officer of a state agency shall consider whether the contractor has documented the following:

(1) The bidder or contractor utilized reasonable and available means to solicit all certified EDGE business enterprises that have the capability to perform the work of the contract.

(2) The bidder or contractor selected portions of the contracted work to increase the likelihood of participation by EDGE certified business enterprises.

(3) The bidder or contractor provided all appropriate certified EDGE business enterprises with adequate information about the plans, specifications and requirements of the contract. The information about the plans, specifications and requirements of the contract shall be provided in time for EDGE certified business enterprises to bid on the project.

(4) The bidder or contractor negotiated in good faith with interested certified EDGE business enterprises. To demonstrate good faith negotiations, the contractor shall provide the director with evidence of such negotiations, including but not limited to names, addresses, dates, and telephone numbers of the EDGE certified business enterprises considered.

(5) The bidder or contractor properly rejected an interested certified EDGE business enterprise as being unqualified for the work of the contract. A contractor's rejection of an EDGE certified business enterprise based on standing within an appropriate industry or membership or affiliation, in a business, social or political group is not a basis for a proper rejection.

(6) The bidder or contractor utilized the services of one of more organizations that provide contractor assistance in the identification and recruitment of EDGE certified business enterprises.

(7) The bidder or contractor utilized the list of qualified EDGE certified business enterprises as provided by the equal employment opportunity division of the department of administrative services.

(E) To receive a waiver of the EDGE goal, established pursuant to this chapter, the bidder or contractor shall submit evidence acceptable to the director of administrative services or his designee, or the chief officer of the contract-letting state agency, in the form and manner required, demonstrating that the bidder or contractor made the level of good faith effort deemed necessary to justify the granting of a waiver. In granting or denying such waiver, the director of administrative services or his designee, or the chief officer of the contract-letting state agency shall prepare a written report in a form prescribed by the equal opportunity division of the department of administrative services, which report shall include an evaluation of the bidder's or contractor's specific efforts to comply with the requirements set forth in paragraphs (D)(1) to (D)(7) of this rule. This report and the decision as to waiver shall be submitted to the equal opportunity division of the department of administrative services within thirty days of the grant or denial of the waiver.

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123:2-16-10 Annual expenditure projection report.

(A) Each state agency shall file an annual report with the state equal employment opportunity coordinator of the department of administrative services by June thirtieth of each year, detailing the agency's projected expenditure goals for the following fiscal year with EDGE certified enterprises pursuant to section [123.152](#) of the Revised Code. Each agency shall provide the annual projected expenditure goals report on a form and in the manner prescribed by the coordinator, and shall include the following:

- (1) An overview of the agency's overall purchasing process.
- (2) An analysis of the agency's purchasing process in regard to meeting the goals established pursuant to section [123.152](#) of the Revised Code, including business outreach and education programs, and a designation of agency personnel responsible for implementing, monitoring and meeting those goals.
- (3) A projected expenditure budget for the following fiscal year, including the projected expenditures to EDGE certified business enterprises, for the following procurement categories:
 - (a) Goods and services
 - (b) Information technology services
 - (c) Construction
 - (d) Architecture and engineering

(e) Professional services

(4) Any other information the equal employment opportunity coordinator of the department of administrative services deems necessary.

(B) The equal employment opportunity coordinator of the department of administrative services shall notify the director of administrative services and the governor in writing when a state agency fails to comply with the provisions of this rule.

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123:2-16-11 Quarterly expenditure report.

(A) Each state agency shall file a quarterly report with the equal opportunity division of the department of administrative services by October 15, January 15, April 15 and July 15 of each year, summarizing the agency's procurement activity with EDGE certified enterprises for the prior quarter. Each agency shall provide the quarterly summary reports on a form and in the manner prescribed by the division, and shall include the following:

(1) The name of the business certified pursuant to section [123.152](#) of the Revised Code that the agency entered into a contract with or expended funds with to provide any of the following during the ninety days preceding the quarterly report filing date:

(a) Goods and services

(b) Information technology services

(c) Construction

(d) Architecture and engineering

(e) Professional services

(2) The total value of the contract amount or purchase amount with each business certified pursuant to section [123.152](#) of the Revised Code during the reporting period. The agency shall identify the contract or purchase amounts according to those categories provided in paragraphs (A)(1)(a) to (A)(1)(e) of this rule.

(3) Any other information the equal opportunity division of the department of administrative services deems necessary.

(B) The equal employment opportunity coordinator of the department of administrative services shall notify each state agency that has not submitted a quarterly report as required pursuant to

paragraph (A) of this rule, that the state agency has thirty days to submit the report. The coordinator shall provide notification in writing.

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Rule authorized by: RC [123.152](#)

Rule amplifies: RC [123.152](#)

R.C. [119.032](#) review dates: 11/26/2009

123:2-16-12 Proposals.

(A) For professional services and information technology:

(1) For every competitive sealed proposal and for every request for proposal issued by the director of administrative services or any other contract-letting agency, the respective state agency shall determine whether EDGE participation is feasible for the procurement based on EDGE availability.

(2) When an EDGE participation goal is included in the competitive sealed proposal or request for proposal, the goal shall be established in accordance with the goal setting process established in rule [123:2-16-08](#) of the Administrative Code. The proposal evaluation process shall include evaluation of EDGE participation.

(B) For construction; architect; engineer and related professional services

(1) The director of the department of administrative services or in the case of a construction contract or project authorized pursuant to Chapters 123., 125., and 153. of the Revised Code to be administered by another state agency, or a state agency approved to locally administer the specific project (hereinafter "contracting authority") shall determine, or cause to be determined the reasonable and applicable edge participation goal for each contract anticipated to be awarded. Awards shall be by competitive bid in the case of construction contract awards and by means of a proposal process for contract awards for architect, engineering and professional services.

The contracting authority shall complete the goal determination prior to advertising the contract for bidding or prior to the issuance of a request for proposal and shall publish the EDGE participation goals for the contract in the advertisement for bidding or in the request for proposal solicitation.

(2) The contracting authority shall determine the EDGE participation goal by following the goal setting process described in rule [123:2-16-08](#) of the Administrative Code and through an analysis of pertinent factors, including, but not limited to, an evaluation of the following:

(a) The type and scope of services anticipated.

(b) The number of known EDGE certified firms providing the anticipated services and relevant supporting services.

(c) The total number of known firms providing the anticipated services and relevant supporting services.

(d) The goal shall be stated as percentage of the total dollars expended.

(3) Every contract awarded pursuant to this rule shall included the same EDGE participation goal as established and published in the advertisement for bidding or proposal solicitation for the particular contract, unless otherwise waived or modified.

(4) The contracting authority using a process that includes an evaluation to measure the proposed and actual participation by certified EDGE business enterprises shall evaluate every proposal and contract awarded under rule 123:2-16-12 of the Administrative Code.

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123:2-16-13 EDGE data collection.

(A) The equal opportunity division of the department of administrative services shall collect the necessary data to assess, determine, and evaluate the development, direction, and continued need for the EDGE program. The equal employment opportunity coordinator of the department of administrative services and the director of the department of administrative services shall use the collected data to help establish agency EDGE procurement goals and to determine the overall effectiveness of the EDGE program.

(B) In addition to the information required in the quarterly expenditure report, pursuant to rule [123:2-16-11](#) of the Administrative Code, each agency shall provide data regarding businesses that have sought to acquire or have acquired state contracts with their agency as provided in paragraph (C) of this rule. The equal opportunity division of the department of administrative services shall assemble the data necessary to establish the general capacity, availability, and utilization of EDGE businesses in the relevant marketplace.

(C) Each state agency shall provide the equal employment division of the department of administrative services the following types of data, if applicable:

- (1) Name of vendor
- (2) Certification status and category
- (3) Company federal tax identification number.
- (4) Contract number or project name or number.
- (5) Contract bid amounts.

- (6) Names of all bidders.
- (7) Name of each bidder awarded the contract.
- (8) Successful bidder or vendor location, address, and geographic region.
- (9) Type of work performed as classified by NIC code, or equivalent object code.
- (10) Type of contract by procurement category.
- (11) Original dollar amount of the contract.
- (12) Date of contract award
- (13) Date of contract completion.
- (14) Payment data.
- (15) If a joint venture, the information of the business arrangement.
- (16) Name of any identified subcontractors, subcontractors, federal tax identification numbers.
- (17) The original value of the subcontracts.
- (18) The type of bid method utilized.
- (19) Comparative data with bidders in the general marketplace.

(D) To ensure uniform data collection and record keeping standards, the equal opportunity division of the department of administrative services shall develop a format and the forms needed to capture the necessary data from state agencies. Where feasible the division shall collect payment and expenditure data from the office of management and budget, capacity data from the departments of development and transportation, and other certification records. The division shall disaggregate, track, and analyze the data by each certification category to ensure against internal disparity.

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123:2-16-14 Joint venture.

(A) The equal opportunity division of the department of administrative services shall require the following criteria of two or more companies seeking certification as an EDGE joint venture business enterprise:

(1) At least one of two or more businesses partnered or otherwise joined together for obtaining a contract award pursuant to section [123.152](#) of the Revised Code is certified as an EDGE business enterprise.

(2) The companies created the joint venture pursuant to a joint venture agreement, as described in paragraph (B) (5) of this rule.

(3) The business relationship commercially benefits all parties to the joint venture.

(4) The EDGE certified business owner must control at least fifty-one per cent of the joint venture operations, including the management decisions and policies. The EDGE business owner shall have an interest in the capital, assets, and profits and losses of the joint venture at least proportionate to their capital investment in the venture, but not less than thirty per cent.

(B) The business partners seeking certification as an EDGE joint venture business enterprise shall submit an application to equal opportunity division of the department of administrative services on a form and in the manner prescribed by the division. All of the partners must sign the application and provide the following information:

(1) The name of the individual who has the power of attorney to act for and bind all of the joint venture partners.

(2) The mailing address and street address of the joint venture.

(3) The new internal revenue service issued tax identification number of the joint venture.

(4) Proof of bond or insurance, if required that binds the joint venture and jointly and severally binds all members of the joint venture.

(5) The joint venture agreement shall contain all of the following:

(a) Name of project and contract number, if known,

(b) Location of project,

(c) Bid date of project,

(d) Type of project,

(e) Description of job to be performed by other joint venture partners,

(f) Percentage of the project to be subcontracted, if any, and actual work being done by the subcontractor, or goods and services to be performed or bought,

(g) Approximate date contract will start if successful bidder and approximate completion date,

(h) Type of equipment to be used on a project, or the goods and services to be supplied and performed.

- (i) Work composition by expertise or trade of all joint venture partners,
 - (j) Equipment to be used that is owned by the EDGE enterprise applicant,
 - (k) Equipment to be used that is owned by the other company or companies in the joint venture,
 - (l) Name of company from which joint venture will lease equipment,
 - (m) The amount of contribution provided by each joint venture partner,
 - (n) The name of the individual who has the power of attorney to act for and bind all of the joint venture partners,
 - (o) Narrative description of the business relationship of each party, including how management, business, and operational decision making will occur, the work composition of each party, the work to be performed by each party, and the source and use of shared resources and business equipment.
- (C) Failure to provide requested information in a timely manner may delay the processing of the certification application.
- (D) Except as otherwise required by law, all financial statements and records submitted by the applicants to the equal opportunity division shall be considered confidential and shall not be released to the public unless such documents are used in an administrative hearing, or appeals thereto, or the applicants approve, in writing, to the release of the statements and records.
- (E) Upon determining that the business partners have demonstrated qualification for certification as a joint venture in the EDGE program, as outlined in this rule, the equal employment opportunity coordinator of the department of administrative services shall certify the business.
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- (F) If the equal employment opportunity coordinator of the department of administrative services determines that the joint venture does not meet the criteria set forth in this chapter, the division shall notify the applicants of its decision by mail. The notification shall include the applicant's appeal rights as set forth in Chapter 119. of the Revised Code.
- (G) The equal opportunity division of the department of administrative services shall have the right to conduct on site inspections at any location of the businesses seeking joint venture certification. The division shall give appropriate notice.
- (H) In order to facilitate prompt certification, the joint venture agreement may be submitted and approved prior to the issuance of a state bid or request for proposal. The joint venture shall be a for-profit entity and need not be in business one-year prior to submission of the application.
- (I) The equal employment opportunity coordinator of the department of administrative services shall approve a joint venture application for a particular procurement category. The certification is for up to one year.

(J) If any change occurs that affects the joint venture as originally approved by the equal opportunity coordinator, the joint venture partners must provide the equal opportunity division of the department of administrative services with the information detailing the change in circumstances within three business days of that change, for decision review and approval.

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123:2-16-15 Commercially useful function.

(A) A contractor awarded a contract pursuant to Chapters 123., 125., and 153. of the Revised Code may count toward its EDGE goal only those expenditures to EDGE certified businesses that perform a commercially useful function.

(B) AN EDGE business will be considered to have performed a commercial useful function based on the following criteria:

(1) The workers on the EDGE contract are regular employees of the contracted EDGE business.

(a) Regular employees are employees that would be working for the EDGE business on any other subcontract with any other contractor.

(b) An individual is not considered a regular employee if the individual is an employee of the contractor or of a supplier of goods or services to the EDGE business.

(2) The equipment used by the EDGE business is owned or controlled by the EDGE business.

(a) Equipment is controlled by the EDGE business if:

(i) The EDGE business owns or rents or leases from a traditional rental or leasing source pursuant to a written rental or lease agreement; and

(ii) The equipment would be used by the EDGE business on other contracts with other contractors.

(b) Equipment is not considered under the control of the EDGE business if the equipment belongs to the contractor awarded the contract or to another contractor working on the project.

(3) The EDGE business has the responsibility, with respect to execution of the work of the contract, for actively managing, performing, and supervising the work involved.

(4) The EDGE business has the responsibility, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering, payment, and, where applicable, installation.

(5) The EDGE business does not purchase any of the required materials for the project from the contractor.

(6) The relationship between the contractor and the EDGE business remains at arms length throughout the performance of the contract.

(C) An EDGE certified business enterprise shall provide all information requested by the equal opportunity division of the department of administrative services concerning the commercially useful function of the EGDE business on a project. Failure to provide the requested information may lead to decertification pursuant to paragraph (A)(6) of rule [123:2-16-06](#) of the Administrative Code.

(D) The equal opportunity division of the department of administrative services may conduct onsite inspections and investigations at any location of the EDGE business, including locations at which the EDGE business has contracted to provide services, to determine whether an EDGE business is performing a commercially useful function on a project. Failure to cooperate in such onsite inspection may lead to decertification pursuant to paragraph (A)(6) of rule [123:2-16-06](#) of the Administrative Code.

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123:2-16-16 Monitoring waiver compliance.

(A) The equal employment opportunity officer of an agency shall provide a compliance report upon the request of the director of the department of administrative services or his designee. The report shall include a description of the agency's procedures for evaluating and granting waiver requests pursuant to rule [123:2-16-09](#) of the Administrative Code, all other EDGE procedures, and any other information that the director or his designee has requested.

(B) The equal opportunity division of the department of administrative services shall review the compliance report submitted by the equal employment opportunity officer and make recommendations to the agency. If the agency fails to provide a compliance report within the time designated in the request by the director or his designee or if the director or his designee determines that the submitted documentation is insufficient to demonstrate that the agency is in compliance with the requirements set forth in section [123.152](#) of the Revised Code and in this chapter, then the equal opportunity division may conduct a compliance review and issue a compliance report.

(C) The director of the department of administrative services or his designee may consider an agency's non-compliance with the requirements set forth in section [123.152](#) of the Revised Code and in this chapter, as evidenced by the compliance report, or the equal opportunity division recommendations in the director's evaluation of whether to grant a release and permit to purchase goods and services to the requesting agency, pursuant to section [125.06](#) of the Revised Code.

(D) The state architect may consider an agency's non-compliance with the requirements set forth in section [123.152](#) of the Revised Code and in this chapter, as evidenced by the compliance report, or the equal opportunity division recommendations in the state architect's evaluation of whether to grant the agency's request to locally administer a construction project.

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