

123:2-15-02 Bid notifications and specifications concerning minority business enterprises.

(A) In all bid notifications and specifications for any contract authorized under section [123.15](#) of the Revised Code and in any contract covered by division (D) of section [123.15](#) 1 of the Revised Code the following provisions shall be included:

(1) The contractor shall make every effort to ensure that certified minority business subcontractors and materialmen participate in the contract.

(a) In the case of contracts specified in division (A), (B), or (C) of section [153.02](#) of the Revised Code, the total value of subcontracts awarded to and materials and services purchased from minority businesses shall be at least ten per cent of the total value of the contract, wherever possible.

(b) In the case of all other contracts, the total value of subcontracts awarded to minority businesses shall equal at least five per cent of the total value of the contract. The total value of both the subcontracts awarded to and the purchases of materials made from such businesses shall equal at least ten per cent of the total value of the contract, wherever possible.

(2) Except as provided in divisions (C)(3) and (C)(4) of section [123.151](#) of the Revised Code, the department of administrative services will not enter into any contract authorized under section [123.15](#) of the Revised Code, including any contract set aside under division (C)(1) of section [123.151](#) of the Revised Code, unless the contract contains a provision stipulating that the contractor will award subcontracts totaling no less than five per cent of the total value of the contract to minority businesses certified under division (B) of section [123.151](#) of the Revised Code and that the total value of both the material purchased from such minority businesses and of the subcontracts awarded to such minority businesses will equal at least seven per cent of the total value of the contract; except that in the case of contracts specified in division (A), (B), or (C) of section [153.02](#) of the Revised Code, the contractor shall stipulate that the total value of both the subcontracts awarded to and the materials and services purchased from certified minority businesses will equal at least seven per cent of the total value of the contract; but for the purposes of meeting the seven per cent requirement, the value of services shall not be more than five per cent of the total value of the contract.

(3) When a contractor is unable to meet the per cent requirements of division (C)(2) of section [123.151](#) of the Revised Code because, having made a good faith effort, he is unable to locate qualified minority businesses available to accept subcontracts or sell materials or services, he may apply to the set aside review board for a waiver or modification of the requirements. If the board finds that the contractor has made a good faith effort to locate and reach agreement with minority business subcontractors or materialmen or service providers but has been unable to do so due to circumstances beyond the reasonable control of the contractor, it may authorize the contract to include, in lieu of the per cent requirements of division (C)(2) of section [123.151](#) of the Revised Code, a provision stipulating a lesser per cent of the total value of the contract to be designated for minority business subcontractors and materialmen or it may waive such provision entirely, or stipulate a higher percentage of services permissible in contracts specified in division (A), (B), or (C) of section [153.02](#) of the Revised Code.

(4) The successful bidder shall notify the contracting agency, within thirty days after the date on which bids are opened, but at least five business days prior to the award or execution of a contract, of the provisions he has made or reasonably can be expected to make in order to meet the provisions of division (C)(2) of section [123.151](#) of the Revised Code.

Notification shall include a statement of the bidder's present intention concerning which portions of the contract will be awarded to minority business subcontractors and materialmen and the identity of the intended subcontractors or materialmen, if any.

(B) No contract authorized under section [123.15](#) of the Revised Code and no contract covered by division (D) of section [123.151](#) of the Revised Code shall be valid and enforceable unless the selected subcontractors designated to meet the provisions of division (C)(2) of section [123.151](#) of the Revised Code have been duly certified as minority business enterprises pursuant to division (B)(2) of section [123.151](#) of the Revised Code and rule [123:2-15-01](#) of the Administrative Code.

Eff (Amended) 5-14-81; 8-1-81

Rule promulgated under: RC Chapter 119, review dates: 10/20/2001

Rule amplifies: RC [123.151\(C\)\(5\)](#)

123:2-15-03 Minority set aside review board established.

(A) The minority set aside review board is hereby established in the department of administrative services. The board shall consist of the director of administrative services or the director's designee, one member of the house of representatives appointed by the governor with the recommendation of the speaker of the house of representatives and one member of the senate appointed by the governor with the recommendation of the president of the senate.

(1) The director of administrative services or the director's designee shall serve as a member of the minority set aside review board.

(2) Legislative members of the board shall serve four-year terms. Any legislative vacancy on the board shall be filled in the same manner as the original appointment.

(3) Members of the board shall not receive compensation but shall be reimbursed for all necessary expenses incurred in the course of their official duties.

(B) The minority set aside review board shall hear all applications of contractors for waiver or modification of the contract provision required by division (C)(2) of section [123.151](#) of the Revised Code and shall make a decision on each such application within thirty working days of its receipt by the board.

(1) The equal employment opportunity coordinator shall provide the board with necessary personnel to review each application and shall make a written recommendation as to the disposition of each application.

Eff 3-1-82; 5-18-98

Rule promulgated under: RC [119.03](#)

Rule authorized by: RC [123.151](#)

Rule amplifies: RC [123.151](#)

ORC [119.032](#) Review Date: 10/20/01

123:2-15-04 Application to the minority set aside review board.

(A) Whenever a contractor is unable to agree to the provision required by division (C)(2) of section [123.151](#) the Revised Code because, having made a good faith effort, the contractor is

unable to locate qualified minority businesses available to accept subcontracts or sell materials or services, the contractor may apply to the set aside review board for a waiver or modification of the provision.

(B) If the board finds that the contractor has made a good faith effort to locate and reach agreement with minority business subcontractors and materialmen or service providers but has been unable to do so due to circumstances beyond the reasonable control of the contractor, the board may authorize the contract to include, in lieu of the provision required by division (C)(2) of section [123.151](#) of the Revised Code, a provision stipulating a lesser percentage of the total value of the contract to be designated for minority business subcontractors and materialmen or it may waive such provision entirely or stipulate a higher percentage of services permissible in contracts specified in division (A), (B) or (C) of section [153.02](#) of the Revised Code.

(C) In order for the board to find that a contractor has made a good faith effort to locate and reach agreement with minority business subcontractors and materialmen with minority business subcontractors and materialmen or service providers, the contractor must be able to document the steps taken to obtain participation in the contract by a qualified minority business enterprise.

(1) The board in determining a good faith effort to locate a qualified minority business enterprise on the part of the contractor shall consider all relevant factors. The following factors must be supported by satisfactory written evidence, where appropriate:

(a) Contact with the contracting state agency for assistance;

(b) Contact with the office of the equal employment opportunity coordinator prior to submitting a bid to obtain the list of certified minority business enterprises and for assistance in obtaining a wavier or modification after the award of a contract;

(c) Contact with the minority business development division of the department of development for assistance in locating specific minority business enterprise subcontractors to meet particular contract needs prior to the award of a contract;

(d) Contact with the appropriate minority assistance groups for assistance;

(e) Attendance at any pre-bid meeting scheduled to inform minority business enterprises of subcontracting opportunities under a given solicitation;

(f) Written notification to all appropriate certified minority business enterprises in the immediate geographic area that their interest in the contract is requested; and

(g) The location of the construction project and the availability of certified minority business enterprises in the immediate geographic area.

(2) The board in determining a good faith effort to reach agreement with qualified minority business enterprises on the part of the contractor shall consider all relevant factors. The following factors must be supported by satisfactory written evidence, where appropriate:

(a) Efforts to select portions of the work proposed to be performed by minority business enterprises in order to increase the likelihood of achieving the stated goal;

(b) Proven capability of the contractor to perform all or part of the work required by the contract with the contractor's own forces;

(c) Efforts to negotiate with minority business enterprises for specific subbids, including at a minimum:

(i) The names, addresses, and telephone numbers of minority business enterprises that were contacted, the date of contact and the date set for receipt of bids from the minority business enterprise;

(ii) A description of the information provided to minority business enterprises regarding the plans and specifications for portions of the work to be performed;

(iii) A statement from both the contractor and, if available, from the appropriate minority business enterprise as to why an agreement with a minority business enterprise was not reached; and

(iv) A statement of the reasons for requiring a bond of a minority business enterprise subcontractor if such a bond was required; and

(d) Reasons for rejecting as unqualified any minority business enterprise the contractor contacted.

(3) The burden shall be placed upon the contractor to prove to the board that the contractor has made the required good faith effort necessary to receive a waiver or modification of the provision required by division (C)(2) of section [123.151](#) of the Revised Code.

Eff 3-1-82; 5-7-84; 5-18-98

Rule promulgated under: RC [119.03](#)

Rule authorized by: RC [123.151](#)

Rule amplifies: RC [123.151](#)

ORC [119.032](#) Review Date: 10/20/01

123:2-15-05 Minority set aside review board procedures for emergency contracts.

(A) Whenever the Revised Code authorizes any state agency to dispense with normal competitive bidding procedures due to an emergency situation requiring immediate construction, the state agency shall notify the chairperson of the set aside review board, the equal employment opportunity coordinator, and the minority business division of the department of development of the particular type of work that the emergency contract will entail.

(B) Whenever a contractor on an emergency project is unable to locate and reach agreement with certified minority businesses available to accept subcontracts or sell materials or services, the contractor may apply to the set aside review board for a waiver or modification of the requirement of division (C)(2) of section [123.151](#) of the Revised Code pursuant to the procedures in rule [123:2-15-04](#) of the Administrative Code.

(1) If, due to the nature of the emergency, the contractor must begin work before the next scheduled meeting of the set aside review board, the contractor should contact the chairperson of the set aside review board to request a waiver or a modification, provided the chairperson receives assurances that the provisions of rule [123:2-15-04](#) of the Administrative Code. The contractor has complied with rule [123:2-15-04](#) of the Administrative Code. The board may delegate to the chairperson the authority to act on behalf of the entire board. The board may ratify or modify the decision of the chairperson at the next regularly scheduled meeting.

(2) In making a determination of the contractor's good faith effort to locate and reach agreement with qualified minority businesses, the chairperson shall consider the emergency nature of the contract in addition to such other relevant factors as the board may consider.

Eff 3-1-82; 5-18-98

Rule promulgated under: RC [119.03](#)

Rule authorized by: RC [123.151](#)

Rule amplifies: RC [123.151](#)

ORC [119.032](#) Review Date: 10/20/01

123:2-15-06 Minority set aside review board notice of meetings.

(A) Any person may determine the time and place of all regularly scheduled meetings by:

(1) Writing to the following address and supply a self-addressed envelope: Chairperson Set Aside Review Board, 39th floor. 30 East Broad Street, Rhodes State Office Tower, Columbus, Ohio 43215."

(2) Calling the following telephone number during normal business hours: (614) 466-8380.

(3) Consulting the posted schedule of meetings on the bulletin board at "General Services Division, Department of Administrative Services, located at 4200 Surface Road. Columbus, Ohio 43228."

(B) Any representative of the news media may obtain notice of meetings by requesting such notice. A request for such shall be addressed to the set aside review board at the address listed in paragraph (A)(1) of this rule.

Eff 6-29-92; 5-18-98

Rule promulgated under: RC [119.03](#)

Rule authorized by: RC [123.151](#)

Rule amplifies: RC [121.22](#)

ORC [119.032](#) Review Date: 10/20/01