CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Administrative Services

Regulation/Package Title: Veteran Friendly Business Procurement Program

Rule Number(s): 123:5-1-01, 123:5-1-16

Date: 10-14-16

Rule Type:

- ☒ New
- ☒ Amended
- ☐ 5-Year Review
- ☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.**
   The proposed administrative rules have been drafted in accordance with ORC §9.318, and establish qualifications for those businesses seeking to be certified into the Veteran Friendly Business Procurement Program, application procedures, certification procedures, standards for determining when a business no longer qualifies for certification, and bid and proposal evaluation procedures for applying the preference or

bonus points to each certified Veteran Friendly Business Enterprise that submits a bid or other proposal.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**

   ORC §9.318

3. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
   No.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

   Not applicable.

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

   The first public purpose of these proposed administrative rules is that their promulgation fulfills the Department of Administrative Services' (DAS) statutory duty to prescribe rules for the Veteran Friendly Business Procurement Program. The second public purpose of these proposed administrative rules is to build upon the program's enabling statute and provide clarity and additional detail about how the Veteran Friendly Business Procurement Program will operate.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

   DAS will measure the success of this regulation by tracking the number of veteran-friendly businesses certified as well as the number and estimated value of contracts awarded to veteran-friendly businesses.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
   DAS has been working with the Ohio Department of Transportation (ODOT), the Ohio Department of Veterans Services (DVS), and the veteran business community to craft these proposed administrative rules. This work has taken place via face-to-face meetings as well as phone calls and emails. Initial contact took place via email and phone conversation.

   DAS and ODOT embrace the opportunity to conduct further stakeholder outreach as the rule-making process progresses and additional stakeholders are identified.

8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

   ODOT's input largely focused on eligibility criteria. In the proposed administrative rules, 123:5-1-01 (JJ) focuses on establishing a framework that determines the percentage of employees/owners/board of director members that must be veterans. This content that was influenced by ODOT feedback.

   DVS input focused on acceptable forms of documentation to verify one's status as a veteran. That feedback was also incorporated into the proposed administrative rules, with DAS deferring to DVS' recommendations.

   Feedback from the veteran business community included a recommendation to explore options on how the Veteran Friendly Business Procurement Program could work in concert with similarly-oriented federal programs. Further review of this topic revealed that current ORC language would not permit amendments to the rules that make it easier to qualify for the Veteran Friendly Business Procurement Program.

9. **What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

   None.

10. **What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

    DAS, in partnership with ODOT, worked through multiple iterations of the proposed administrative rules and considered several alternatives.

    One area of the proposed administrative rules in which alternative approaches were considered was the "Veteran employment standard". Given that the enabling statute instructed DAS and ODOT to prescribe a rule that would "Establish criteria, based on the percentage of an applicant's employees who are veterans, that qualifies an applicant for certification as a veteran-friendly business enterprise", the possibilities of using a graduated scale which considered the total number of employees or the business' average annual receipts (in dollars) and prescribed different percentages of employees who must be veterans was explored. Ultimately, DAS and ODOT chose to pursue a simpler structure that subjected all businesses to the same thresholds/standards.

    Another alternative considered was the length of time that a business would be certified, before needing to re-apply. After initially considering a one year timeframe, DAS and ODOT agreed to make certifications good for up to two years in order to match the certification practices utilized by the MBE and EDGE programs.

Finally, DAS and ODOT considered multiple definitions for "employee" in this section of the Administrative Code. To provide more flexibility to veterans and the businesses employing/owned by/controlled by them, the decision was ultimately made to require these individuals to have worked an average of 20 hours a week during the most recent 12 month period. Alternative considerations had called for these individuals to work at least a 20 hour week and specified no timeframe in which that had to occur, making it ambiguous to prospective veteran-friendly businesses seeking certification in the program.

11. **Did the Agency specifically consider a performance-based regulation? Please explain.** ***Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

    A substantial portion of these proposed administrative rules are focused on procedures (i.e. application, certification and de-certification, and bid/proposal evaluation and ranking), as mandated by the enabling statute. However, DAS and ODOT have considered and implemented performance-based regulations to the extent possible. The veteran employment standard describes multiple desirable outcomes that would permit a business to qualify and be certified as a veteran-friendly business, but does not dictate the process those businesses must use to achieve compliance.

12. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

    The proposed administrative rules were brought about by a new section of the Ohio Revised Code, which almost entirely eliminates the potential of these rules being duplicative. However, DAS and ODOT reviewed the Ohio Revised Code and Ohio Administrative Code to ensure that there was no duplication being produced.

13. **Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

    DAS and ODOT have already developed a memorandum of understanding that DAS will conduct certification and de-certification operations on behalf of both agencies. With regards to certification and de-certification practices, DAS has already begun to develop the necessary infrastructure (i.e. databases, forms, etc.) to implement this program. DAS will also update operating procedures and agency-facing guidance once these proposed administrative rules are adopted, to ensure that the veteran's preference is consistently and predictably applied when evaluating bids and proposals.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

c. Quantify the expected adverse impact from the regulation.

These proposed administrative rules will affect those businesses employing/owned by/controlled by veterans that wish to participate in the Veteran Friendly Business Procurement Program, as well as those businesses not qualifying for the Veteran Friendly Business Procurement Program who are competing for opportunities to do business with the State.

One adverse impact of these proposed administrative rules will be that those businesses not qualifying for the Veteran Friendly Business Procurement Program may not win opportunities to do business with the State because a Veteran Friendly Business Enterprise receives preference or bonus points for its bid/proposal that causes it to win the opportunity. There is no way to quantify or estimate this impact at this time.

Another adverse impact is that businesses will have to invest time in order to produce the required documentation for certification into the program. However, the records required by DAS and ODOT are minimal, and should not impose a large burden upon businesses to collect. Consider the documents being required:

a. DAS and ODOT will require "records verifying veteran status" which are files that individual employees who are veterans will easily have access to and it is very common for veterans to have these records readily available.

b. DAS and ODOT will require a record of the business' employees, or documentation listing the owners or board of directors (e.g. articles of incorporation, etc.). These are common files that businesses keep on record already for operating purposes.

Regarding certification, based on similar certification requirements for the State of Ohio's Minority Business Enterprise and Encouraging Diversity, Growth and Equity programs, DAS and ODOT estimate that it will take the average business less than four hours to complete and submit the application, and collect and submit the required supporting documentation.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Given that a business' certification into the program provides access to bonus points on bids or proposals to do business with the State, and to preserve the integrity of the Veteran Friendly Business Procurement Program (i.e. all businesses are treated in a fair,

consistent manner), DAS and ODOT feel that the small burden being placed on those businesses desiring to participate in the program is justified.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No exemptions are provided in these proposed administrative rules, except that only those businesses employing/owned by/controlled by veterans that wish to participate in the Veteran Friendly Business Procurement Program are subject to them.

As discussed above, alternative means of compliance are provided by way of the veteran employment standard (which provides multiple ways in which a business can qualify as veteran friendly business enterprise). Similarly, the proposed administrative rules permit multiple types of records to be submitted for purposes of verifying an employee's veteran status.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

There are no fees, fines, or penalties associated with filing paperwork for the Veteran Friendly Business Procurement Program. Should there be errors in the paperwork submitted, DAS will work with the affected business to correct the errors and resubmit the paperwork.

18. What resources are available to assist small businesses with compliance of the regulation?

DAS and ODOT will implement an outreach program to educate potential participants about the Veteran Friendly Business Procurement Program. Additionally, portions of the DAS website will be updated to provide information and resources on the program, similar to the online resources offered for the MBE and EDGE programs.