Ohio | Department of Administrative Services

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# Rescissions: Ohio Administrative Code 123:2-15-01, 123:2-16-01 through 123:2-16-16

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The State of Ohio is an equal opportunity employer.

## To Be Rescinded

## ~~123:2-15-01 Application for certification as a minority business enterprise.~~

~~(A) "Minority business enterprise" means an individual, partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, residents of Ohio, who are and have held themselves out as members of the following economically disadvantaged groups: Blacks, American Indians, Hispanics, and Asians.~~

~~(1) "Owned and controlled" means that:~~

~~(a) If the minority business enterprise is a corporation, at least fifty-one per cent of each class of corporate stock is owned by persons who belong to one or more of the groups set forth in paragraphs (A)(6) to (A)(9) of this rule, that at least fifty-one per cent of the members of the board of directors and fifty-one per cent of the principal executive officers of the corporation are persons who belong to one or more of the groups set forth in paragraphs (A)(6) to (A)(9) of this rule, and that the rights of any stock class to ultimate control of the management and day-to-day operations of the business and the interest of any stock class in the capital, assets, profits and losses of the business are proportionate to the stock ownership of that class;~~

~~(b) If the minority business enterprise is a partnership, at least fifty-one per cent of each class of partnership interest is owned by persons who belong to one or more of the groups set forth in paragraphs (A)(6) to (A)(9) of this rule, that such owners have ultimate control of the management and day-to-day operations of the business, and that such owners have an interest in the capital, assets, profits and losses of the business proportionate to their percentage of ownership;~~

~~(c) If the minority business enterprise is a sole proprietorship, one hundred per cent of the business is owned by a person who belongs to one of the groups set forth in paragraphs (A)(6) to (A)(9) of this rule, that such owner has ultimate control over the management and day-to-day operations of the business, and that such owner 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;~~

~~(d) If the minority business enterprise is a joint venture, at least fifty-one per cent of the joint venture is controlled by persons who have been previously certified as a minority business enterprise by the equal employment opportunity coordinator, that such persons have ultimate control over the management and day-to-day operations of the joint venture, and that such persons have an interest in the capital, assets, profits and losses of the joint venture proportionate to their percentage of control.~~

~~(2) Part ownership in an applicant concern by non-minority persons is permitted and may be necessary to ensure adequate capital and management for the concern's development. However, any property, equipment, supplies, services, and/or financial assistance or assistance which are sold, rented, or donated to the minority business enterprise must be reported to the state equal employment opportunity coordinator on an annual basis.~~

~~(3) Persons who are members of one or more of the groups identified in paragraphs (A)(6) to (A)(9) of this rule must have actual control of the day-to-day operations of the minority business~~

~~enterprise. Among the factors that shall be considered by the state equal employment opportunity coordinator in evaluating the non-minority influence are:~~

~~(a) Has the non-minority person(s) employed the owner of the applicant concern for any period of time during the three years prior to the date of application by the applicant for minority business enterprise status;~~

~~(b) Is the non-minority person(s) affiliated with another business in the same or similar type of business as the applicant concern;~~

~~(c) Does the non-minority person(s) exercise final authority over any aspect of the day-to-day operations of the applicant concern;~~

~~(d) Does the non-minority person(s) control over the applicant concern directly or indirectly restrict the economic growth of the company;~~

~~(e) The relative compensation received by the non-minority person(s) as compensation for services as a consultant, director, officer or employee rendered to the applicant concern.~~

~~(4) The requirements of paragraph (A)(3) of this rule shall not apply to joint venture applicants.~~

~~(5) Control and management~~

~~An applicant concern's management and daily business operations must be controlled by an owner(s) of the applicant concern who has (have) been determined to be a member of the groups listed in paragraphs (A)(6) to (A)(9) of this rule, and such owner(s) must own a greater percentage of the business entity than any other owner, or in the case of a corporation, more voting stock than any other stockholder.~~

~~(a) Individuals who are not members of a group listed in paragraphs (A)(6) to (A)(9) of this rule who are stockholders, officers, directors or employees of an applicant for admission to the program shall not exercise actual, ultimate control or have the authority to control any aspects of the day-to-day operations, finances, or the management decisions and management policies of the applicant business concern. The existence of control or the authority to exercise control shall be determined by the facts of each case.~~

~~(b) Person(s) who are member(s) of one or more of the groups listed in paragraphs (A)(6) to (A)(9) of this rule, must be the principal manager(s) of the applicant concern. Such person(s) must possess the requisite management capabilities to exercise control of the applicant. This precludes outside employment or other business interests by the individual which conflict with the management of the firm or prevent it from achieving the objectives of its business development plan. This requirement does not preclude employment of persons who are not members of one of the groups listed in paragraphs (A)(6) to (A)(9) of this rule in the management of the applicant concern.~~

~~(c) The requirement of this paragraph shall not apply to joint venture applicants.~~

~~(6) "Blacks" means all persons having origins in any of the black racial groups of Africa.~~

~~(7) "American Indians" means all persons who maintain membership with a federally recognized Indian tribe.~~

~~(8) "Hispanics" means all persons of Spanish or Portuguese culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race.~~

~~(9) "Asians" means all persons having origins in any of the original people of the Far East, including China, Japan and Southeast Asia.~~

~~(B) Any minority business enterprise that desires to bid on a contract under division (C)(1) or (D)(1) of section 123.151 of the Revised Code or under division (A) or (B) of section 125.081 of the Revised Code or to be a minority business subcontractor or materialman under division (C)(2) or (D)(2) of section 123.151 of the Revised Code shall first apply with the equal employment opportunity coordinator of the department of administrative services for certification as a minority business enterprise.~~

~~(1) The equal employment opportunity coordinator may require the minority business enterprise to submit the application form at least thirty calendar days prior to a bid opening for which the minority business enterprise intends to submit a bid.~~

~~(2) All applicants except joint ventures shall request certification for business classifications which are consistent with current industry standards. The applicant shall possess:~~

~~(a) All licenses, permits, and authorities required by law, to perform the scope of work within each classification requested; and~~

~~(b) Demonstrated capability and/or experience within those classifications for a period of one year prior to the approval of that classification.~~

~~(3) Any contractor awarded a contract authorized by section 123.15 or 123.151 of the Revised Code shall be responsible for the timely application for certification as a minority business enterprise of all subcontractors or materialmen that will participate in the contract.~~

~~(4) Application shall be made on forms supplied by the office of the equal employment opportunity coordinator of the department of administrative services.~~

~~(5) Minority business enterprises may do business as a corporation, a partnership, a sole proprietorship, or a joint venture. The application shall include, but not be limited to, a certification by the applicant that:~~

~~(a) If the minority business enterprise is a corporation:~~

~~(i) At least fifty-one per cent of the board of directors and at least fifty-one per cent of the principal executive officers are members of a group as set forth in paragraphs (A)(6) to (A)(9) of this rule, and that these persons have ultimate control over the management and day-to-day operations of the business, and~~

~~(ii) At least fifty-one per cent of each class of corporate stock is owned by persons who belong to one or more of the groups set forth in paragraphs (A)(6) to (A)(9) of this rule;~~

~~(b) If the minority business enterprise is a partnership:~~

~~(i) At least fifty-one per cent of each class of partnership interest is owned by partners who belong to a group as set forth in paragraphs (A)(6) to (A)(9) of this rule;~~

~~(ii) That such owners have ultimate control over the management and day-to-day operations of the business;~~

~~(c) If the minority business enterprise is a sole proprietorship:~~

~~(i) The sole proprietor is a member of a group as set forth in paragraphs (A)(6) to (A)(9) of this rule, and~~

~~(ii) The sole proprietor has ultimate control over the management and day-to-day operations of the business, and~~

~~(iii) 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.~~

~~(6) The applicant shall also certify that the following documents are available for inspection if requested by the equal employment opportunity coordinator:~~

~~(a) If the minority business enterprise is a corporation, a copy of the articles of incorporation, including the number of shares issued, a list of all stockholders, code of regulations, bylaws, minutes of all corporate meetings, and the corporation's financial statements reviewed by a certified public accountant or a public accountant for the past two fiscal years of the corporation, requested financial records and other documents;~~

~~(b) If the minority business enterprise is a partnership, a copy of the partnership agreement, and the partnership's financial statement reviewed by a certified public accountant or a public accountant for the immediate past two years, requested financial records and other documents;~~

~~(c) If the minority business enterprise is a sole proprietorship, relevant financial statements reviewed by a certified public accountant or a public accountant for the immediate past two years, requested financial records and other documents;~~

~~(d) If the minority business enterprise is a joint venture, a copy of the joint venture agreement. Such agreement must contain all of the following:~~

~~(i) Name of project and number of contract,~~

~~(ii) Location of project,~~

~~(iii) Bid date of project,~~

~~(iv) Type of project (highway, building construction, goods and services),~~

~~(v) Description of job to be performed by minority business enterprise applicant,~~

~~(vi) Description of job to be performed by other joint venturers,~~

~~(vii) 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,~~

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

~~(ix) Type of equipment to be used on project, or goods and services to be supplied or performed,~~

~~(x) Work composition of both companies,~~

~~(xi) Equipment used that is owned by minority business enterprise applicant,~~

~~(xii) Equipment to be used that is owned by the other company in the joint venture and/or other joint venturers,~~

~~(xiii) Equipment that is to be leased by joint venture,~~

~~(xiv) Name of company from which joint venture will lease equipment,~~

~~(xv) Amount of contribution by each joint venturer.~~

~~(e) Any change that affects the joint venture as originally approved by the equal employment opportunity coordinator makes the agreement voidable. The equal employment opportunity coordinator must be notified within three business days of that change for new approval.~~

~~(f) Failure to produce any information required by laws, rules, regulations or the application form will be cause for disapproval of an application.~~

~~(g) All financial statements and records submitted by the applicant to the equal employment opportunity coordinator shall be considered confidential and shall not be released to the public unless such documents are:~~

~~(i) Used in an administrative hearing, or appeals thereto, regarding the certification or decertification of the applicant;~~

~~(ii) Ordered to be released by a court of competent jurisdiction;~~

~~(iii) Approved by the applicant for release to the public.~~

~~(7) Failure to certify to any of the necessary information may be cause for disapproval of an application. If a minority business enterprise fails to have its financial statements reviewed by a certified public accountant or a public accountant as required by this rule, a financial review may be conducted by the equal employment opportunity coordinator in lieu of the required review.~~

~~(8) An applicant must have been in business for at least one year prior to being eligible for certification as a minority business enterprise. This requirement shall not apply to joint venture applicants.~~

~~(9) If a minority business enterprise has been in business for less than one year, but it is the direct successor to a business that has operated for more than one year, the one-year requirement will be satisfied if the ownership and control of the business has remained substantially in the same persons.~~

~~(10) If a minority business enterprise has been in business more than one year, but less than two years, the certification of documents required by this rule need only to be given for the time period that the business has been in operation.~~

~~(11) In addition to the requirements of this rule, any applicant desiring to bid on a contract awarded by any agency other than the department of administrative services must meet any pre-qualification requirements of that agency.~~

~~(12) No person who is acting as an agent or intermediary in making contracts under section 123.151 of the Revised Code will be certified as a minority business enterprise.~~

~~(13) Upon receipt of an application containing all proper certifications, the coordinator shall review the application form to determine the applicant's eligibility as a minority business enterprise. If verification of any item is necessary, the equal employment opportunity coordinator may schedule an interview with the applicant to review documents certified to by the applicant and all other relevant information. Interviews may take place at the location of the business if the equal employment opportunity coordinator so determines.~~

~~(C) If the application is approved by the equal employment opportunity coordinator, the applicant shall be notified verifying status as a minority business enterprise. Status as a minority business enterprise is subject to the continuing compliance of the business with this rule and to review, at any time, by the equal employment opportunity coordinator.~~

~~(1) Certification shall be granted by the equal employment opportunity coordinator for a period not to exceed two years.~~

~~(2) The applicant shall be required to revise the application and information provided to the equal employment opportunity coordinator biennially. Such revisions shall also contain a yearly financial statement, all pertinent financial records and other financial documents as requested.~~

~~(3) If the applicant timely files the biennial revisions, then the applicant's present certification status shall remain in effect until such time as the equal employment opportunity coordinator determines whether certification should be continued or not.~~

~~(4) Any change in the business structure of the enterprise, the ownership and control of the enterprise or the type of business conducted by a certified minority business enterprise, shall require a reapplication for certification and a review by the coordinator.~~

~~(D) The equal employment opportunity coordinator shall prepare and maintain a list of certified minority business enterprises. The coordinator will provide the list to all contracting authorities.~~

~~(1) The list shall be composed of at least two categories: contractors and subcontractors, and vendors of goods and services.~~

~~(2) A minority business enterprise shall be included within each category in which they qualify, as indicated on their application for certification and determined by the equal employment opportunity coordinator.~~

~~(E) If an application for certification as a minority business enterprise is not approved by the equal employment opportunity coordinator, the applicant shall be notified by mail and shall have recourse to all of the available remedies contained in Chapter 119. of the Revised Code.~~

~~(F) If a certified minority business enterprise is decertified by the equal employment opportunity coordinator, the decertified enterprise shall be notified by mail and shall have recourse to all of the available remedies contained in Chapter 119. of the Revised Code.~~

~~(G) Any person who intentionally misrepresents himself as owning, controlling, operating, or participating in a minority business enterprise for the purpose of obtaining contracts, subcontracts, or any other benefits under sections 123.151 and 125.081 of the Revised Code shall be guilty of theft by deception as provided in section 2913.02 of the Revised Code and such other provisions as may apply.~~

~~(H) The Ohio residency requirement of this rule shall not apply to a minority business enterprise desiring to bid on a construction contract in any case where the federal government or any of its agencies furnishes by loan or grant all or part of the funds used in said construction contracts, provided the federal government or any of its agencies prescribes predetermined requirements for qualification as a minority business enterprise.~~

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~~Promulgated Under: 119.03~~
~~Statutory Authority: 123.151~~
~~Rule Amplifies: RC 122.71(E), 123.151 , 125.081~~
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## To Be Rescinded

## ~~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" means 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 entity representing a sole proprietorship, association, partnership, corporation, limited liability company, or joint venture who enters into a contract with the state.~~

~~(D) "Economically Disadvantaged Business" means a business (including its affiliates) at least fifty-one per cent owned and controlled by an economically disadvantaged person or persons and the size of the business does not exceed the definition of a "small business" as defined by the United States small business administration .~~

~~(1) To be a small business as defined by the United States small business administration standards (found in 13 C.F.R. Part 121) only one main North American industry classification system code is used to determine the company's size standard. The main North American industry classification system code (the code in which the majority of the company's gross sales are generated within) as identified by EOD at the time of certification or recertification is the only code used to determine a company's size standard as identified in 13 C.F.R. Part 121.~~

~~(a) Where the size standard is number of employees, the method for determining a business's size includes the following principles:~~

~~(i) The average number of employees the business used based upon numbers of employees for each of the pay periods for the preceding completed twelve calendar months.~~

~~(ii) Part-time and temporary employees are counted the same as full-time employees.~~

~~(iii) If a business has not had employees for twelve months, the average number of employees is used for each of the pay periods during which it has been in business.~~

~~(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 person or persons claiming disadvantaged status, including personal net worth of the person or persons and other factors considered pursuant to paragraph (E) of rule 123:2-16-02 of the Administrative Code. The personal 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 rule, the personal net worth of a person does not include the value equity of the person's primary residence and the person's equity/interest in the economically disadvantaged business applying for certification. .~~

~~(2) Personal net worth includes:~~

~~(a) All asset transfers within a two-year period including but not limited to transfers to members of the person's immediate family, to the economically disadvantaged business or any other business, and trust accounts;~~

~~(b) The person's interest in any other business;~~

~~(c) If married, half of all assets and liabilities, including but not limited to: bank accounts, insurance policies, retirement accounts, property and stocks and bonds.~~

~~(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 company , or joint venture certified by EOD as meeting the criteria established by EOD 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, who are full-time residents of 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 an economically and socially disadvantaged person(s) .~~

~~(H) "EOD" means the equal opportunity division of the Ohio department of administrative services.~~

~~(I) "In Business" means the business is operational as evidenced by but not limited to the performance of contracts; generation of revenue; having related expenses; purchase orders; invoices; payments to suppliers and/or subcontractors; payments from clients or customers; distributorship/supplier agreements; pertinent permits and authorities; vendor licenses; professional licenses; technical expertise; lines of credit; equipment necessary to perform scope of work; and any other items EOD determines suitable for consideration.~~

~~(J) "Independent" means the business must be free from the undue control, influence, support, or the like of another individual, business or businesses; its viability must not depend on its relationship with another individual, business or businesses.~~

~~(K) "One Year" means for at least one year immediately prior to application for certification:~~

~~(1) The business is in business and independent;~~

~~(2) The business is substantially owned by and controlled by the same socially and economically disadvantaged individuals;~~

~~(3) The fifty-one per cent owner(s) are full-time residents of the State of Ohio;~~

~~(4) The fifty-one per cent owner(s) are United States citizens;~~

~~(5) The socially and economically disadvantaged individuals serving as the business's directors and the executive officers have remained the same.~~

~~(L) "Owned and Controlled" means at least fifty-one per cent of the business (stock, units, percentage) is owned by socially and economically disadvantaged person(s). The contributions of capital or expertise used to acquire ownership must be "real and substantial," going beyond pro forma ownership, and derived from individually and independently owned resources.~~

~~(M) "Owner" means a person or persons who own a business certified in the EDGE business development program, or the person or persons in control of a business that has applied for certification in the EDGE business development program and can demonstrate that they possess the experience, expertise, and knowledge to operate their particular types of business.~~

~~(N) "Qualified Census Tract" means a recognizable geographic region within the state of Ohio such as a historically underutilized business zone as designated by the United States small business administration in 13 C.F.R Part 126 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 of Ohio by more than one hundred forty per cent.~~

~~(O) "Resident" means a person who lives and has established residency in the state of Ohio for at least one year immediately preceding application into the EDGE business development program and has filed personal state of Ohio tax returns as a full-time resident for the preceding tax year.~~

~~(P) "Socially Disadvantaged Business" means a business at least fifty-one per cent owned and controlled by socially and economically disadvantaged person(s) or, the business is located in a qualified census tract and is determined to be an economically disadvantaged business.~~

~~(Q) "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, which includes the following groups:.~~

~~(i) "Blacks" or "African Americans" means all persons having origins in any of the black racial groups of Africa.~~

~~(ii) "American Indians" means all persons maintaining culture and having origins in a federally recognized Indian tribe as listed in the current "Federal Register Notice of Indian Entities Recognized and Eligible to Receive Services" from the United States bureau of Indian affairs.~~

~~(iii) "Hispanics" or "Latinos" means all persons of Spanish or Portuguese culture with origins in Mexico, South or Central America or the Caribbean islands, regardless of race.~~

~~(iv) "Asians" means all persons having origins in any of the original people of the Far East, including China, Japan and Southeast Asia.~~

~~(b) A business owner's female 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, as compared to others in the same or similar businesses, or~~

~~(d) A business owner's long term residence in an environment isolated from the mainstream of American society .~~

~~(2) Social disadvantage may 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, limited access to credit or capital under commercially favorable circumstances or exclusion from business or professional organizations as compared to others in the same or similar businesses, or~~

~~(c) A primary business location in a qualified census tract that has its principal office is located in the qualified census tract.~~

~~(R) "State" means the state of Ohio.~~

~~(S) "State Agency" means any organized body, office, or agency established by the laws of this state for the exercise of any function of state government; or any institution of higher education as defined in section 3345.011 of the Revised Code .~~

~~(T) "Subcontractor" means any person or entity who undertakes to perform any part of the work and is in privity of contract with a contractor .~~

~~(U) "Principal Office" means the location where the greatest number of employees at any one location actually perform their work and is located within a qualified census tract and at least thirty-five per cent of its employees (defined as living in a primary residence within that area for at least one hundred eighty days) must reside in a qualified census tract.~~

~~Effective: 2/1/2016~~
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~~Promulgated Under: 119.03~~

~~Statutory Authority: R.C. 123.152~~
~~Rule Amplifies: R.C. 123.152~~
~~Prior Effective Dates: 11/26/2004~~

## To Be Rescinded

## ~~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 EOD for certification as an EDGE business enterprise. The application shall be made on forms provided by EOD and made in a manner prescribed by EOD .~~

~~(B) The state equal employment opportunity coordinator of the department of administrative services may certify a business as an EDGE business enterprise, provided that at least fifty-one per cent of the owner or owners of the business demonstrate (but not limited to) the following:~~

~~(1) The business is a for-profit business entity and in business for at least one year immediately preceding the date of the business's application for certification.~~

~~(2) The business is at least fifty-one per cent owned and controlled by a citizen or citizens of the United States;~~

~~(3) The business is at least fifty-one per cent owned and controlled by a resident or residents of the state;~~

~~(4) The contributions of capital or expertise used to acquire ownership must be real and substantial, going beyond pro forma ownership, and derived from individually and independently owned resources. Owners must demonstrate that they possess the experience, expertise, and knowledge to operate their particular types of business .~~

~~(a) Ownership interest obtained through a transfer or gift will be scrutinized to ensure ownership is irrevocable, was obtained for reasons other than obtaining certification into the EDGE program. De facto (on paper) ownership is not sufficient to qualify for the EDGE program. Even when company documents support the basic criteria, certification can be denied if the business operations do not reflect the ownership shown on submitted documents;~~

~~(b) Control is comprised of (but not limited to) three parts: operational control, managerial control, and independence. The socially and economically disadvantaged owner or owners must have managerial and technical competence and experience directly related to the type of business in which the business is engaged and the business's overall operations. The fifty-one per cent owner or owners must demonstrate that they actually control (but not limited to) the management and policy decisions, day-to-day operations, and direction of the business. Expertise limited to office management, administration, sales, or bookkeeping functions unrelated to the principal business activities of the business is insufficient to demonstrate control;~~

~~(c) To be viewed as controlling a business, the fifty-one per cent owner or owners cannot engage in other business interests that conflict with the management of the certified business day-to-day operations, and prevent the owner or owners from devoting sufficient time and attention to the affairs of the business;~~

~~(d) The business must be independent; its viability cannot solely depend on its relationship with another business or businesses;~~

~~(5) The business's fifty-one per cent owner or owners are both economically and socially disadvantaged.~~

~~(C) To demonstrate that a business applying for EDGE certification meets the criteria set forth in paragraphs (B)(5) of this rule, the fifty-one per cent owner or owners of the business upon request shall provide EOD the following information, in the detail and manner prescribed by EOD :~~

~~(1) Business structure information;~~

~~(2) Previous two years of personal federal and state tax returns including all schedules, W-2s, and/or 1099s;~~

~~(3) When applicable, previous two years of business federal tax returns to include all schedules;~~

~~(4) Corporate and personnel organizational information;~~

~~(5) Business sales and tax information;~~

~~(6) Personal information indicating citizenship and residence.~~

~~(7) Documentation providing proof that the owner meets the program's social and economic disadvantage criteria , and~~

~~(8) Any other relevant information EOD deems necessary.~~

~~(D) To demonstrate that a business applying for EDGE certification meets the criteria set forth in paragraph (B)(5) of this rule, the fifty-one per cent owner or owners of the business upon request shall provide EOD the following information, in the detail and manner prescribed by EOD ;~~

~~(1) Financial records representing prior three years of gross receipts of the business and personal net worth of the fifty-one per cent owner or owners. If business is in operation for less than three years; submission of financial records for the period in business;~~

~~(2) If applying for a social disadvantage classification based on race, color, ethnic origin, gender, physical disability, long-term residence in an environment isolated from the mainstream of American society, business location in an area of high unemployment, or business location in a qualified census tract , documentation demonstrating membership in the claimed category.~~

~~(3) If applying for a social disadvantage classification based on personal disadvantage not common to same or similar small businesses, statement and supporting evidentiary documentation proving social disadvantaged as defined in rule 123:2-16-01 of the Administrative Code; and~~

~~(4) Any other relevant information EOD deems necessary.~~

~~(E) The coordinator will consider all of the following (but not limited to) 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 fifty-one per cent owner or owners personal income for the two years prior to application;.~~

~~(2) The fair market value of all the fifty-one per cent owner or owners assets, whether encumbered or not;~~

~~(3) Asset transfers within the two years prior to application including (but not limited to) transfers to members of the owner or owners immediate family, the economically disadvantaged business, trust accounts, and others as determine by the coordinator;~~

~~(4) Assets of the owner or owner's spouse;~~

~~(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.~~

~~(6) Any other relevant information EOD deems necessary.~~

~~(F) The coordinator may compare and consider the following factors to determine whether the business of the owner or owners applying for EDGE certification is economically disadvantaged compared to similar business enterprises, as described in paragraph (D) of rule 123:2-16-01 of the Administrative Code:~~

~~(1) Annual accounts receivable;~~

~~(2) Total assets;~~

~~(3) Gross receipts for three years immediately prior to the date of the application for certification;~~

~~(4) Net sales for three years immediately prior to the date of the application for certification;~~

~~(5) Pre-tax profit;~~

~~(6) Sales versus working capital ratio;~~

~~(7) Any other relevant information EOD deems necessary.~~

~~(G) If upon consideration of this rule and other factors as determined by the coordinator, the coordinator finds that the business meets the criteria set forth in this chapter, the coordinator may determine that the business is economically disadvantaged.~~

~~(H) The coordinator shall determine that the fifty-one per cent owner or owners applying for EDGE certification is socially disadvantaged, if the business owner demonstrates personal disadvantage, as described in paragraph (P) of rule 123:2-16-01 of the Administrative Code, and the coordinator determines that the distinguishing feature or demonstrated disadvantage~~

~~significantly inhibited the fifty-one per cent owner or owners business success, the coordinator may determine that the fifty-one per cent owner or owners is a socially disadvantaged person.~~

~~(I) The coordinator may 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.~~

~~(J) The coordinator may determine the length of the EDGE certification issued pursuant to this chapter, however, no certification shall exceed two-years from the date of certification, provided that the EDGE business enterprise remains in compliance and is not decertified pursuant to rule 123:2-16-06 of the Administrative Code.~~

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## To Be Rescinded

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

~~(A) EOD may 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 and the fifty-one per cent owner(s) 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 owner(s) own at least fifty-one per cent of each class of corporate stock.~~

~~(2) If the applying business is a partnership:~~

~~(a) The fifty-one per cent 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, policies, and that such owners have an interest in the capital, assets, profits and losses of the business proportionate to their percentage of ownership.~~

~~(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. Such ownership must be reflected in the business's partnership agreement.~~

~~(c) For a partnership to be controlled by socially and economically disadvantaged person(s), any non-disadvantaged partners must not have the power to contractually bind the partnership or subject the partnership to contract or tort liability.~~

~~(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 one hundred per cent interest in the capital, assets, profits and losses of the business .~~

~~(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, and that such owners have an interest in the capital, assets, profits and losses of the business proportionate to their percentage of ownership.~~

~~(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 per cent of the members of the limited liability company are economically and socially disadvantaged individuals as defined in this chapter.~~

~~(c) At least fifty-one per cent 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, policies, and that such members have an interest in the capital, assets, profits and losses of the business proportionate to their percentage of ownership.~~

~~(B) EOD shall consider the following criteria (but not limited to) in determining control, independence, and ownership of a business applying for EDGE certification:~~

~~(1) The economically and socially disadvantaged owner(s) maintains and demonstrates authority to direct the day-to-day management and policies of the business.~~

~~(2) The economically and socially disadvantaged owner(s) holds the highest officer position(s) in the business (e.g., chief executive officer or president).~~

~~(3) Differences in remuneration between the socially and economically disadvantaged person, other participants, and the former owner of the business (when the non-disadvantaged individual remains involved with the business).~~

~~(4) Where a business was formerly owned and/or controlled by a non-disadvantaged person (whether or not an immediate family member), or ownership and/or control were transferred to an economically and socially disadvantaged person, in either case, the non-disadvantaged person remains involved with the business in any capacity, the economically and socially disadvantaged person now owning the business must demonstrate, by clear and convincing evidence, that the transfer of ownership and/or control to the economically and socially disadvantaged person was made for reasons other than obtaining certification as an EDGE business.~~

~~(5) The socially and economically disadvantaged owner(s) must possess the power to direct or cause the direction of the management and policies of the business and to make day-to-day as well as long-term decisions on matters of management, policy and operations.~~

~~(6) Only an independent business may be certified as an EDGE business. An independent business is one that the viability of which does not depend on its sole relationship with another business.~~

~~(7) The economically and socially disadvantaged owner(s) shall have in their name, the requisite licenses associated with the nature of the business or have required licenses officially assigned to the business.~~

~~(8) The economically and socially disadvantaged owner(s) have ownership of the securities of the business.~~

~~(9) The socially and economically disadvantaged owner(s) must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the business is engaged and the business's operations. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the business's activities and to use this information to make independent decisions concerning the business's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the business is insufficient to demonstrate control.~~

~~(10) To be viewed as controlling a business, a socially and economically disadvantaged owner(s) cannot engage in other business interests that conflict with the management of the business or prevent the individual from devoting sufficient time and attention to the affairs of the business to control its activities. For example, absentee ownership of a business and part-time work in a full-time business are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it at all times it is operating.~~

~~(11) In determining whether a business is controlled by its socially and economically disadvantaged owner(s), EOD will consider whether the business owns equipment necessary to perform its work. However, a business is not controlled by socially and economically disadvantaged owner(s) solely because the business leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with another party that compromises the independence of the business.~~

~~(12) Businesses acquired as gifts, without sufficient consideration, will be closely examined to assure such transactions meet the requirements of the EDGE business development program.~~

~~(13) Among the factors that shall be considered by the state equal employment opportunity coordinator in evaluating a non-economically and non-socially disadvantaged person's or business's influence over socially and economically disadvantaged owners or businesses are:~~

~~(a) Has the non-socially and non-economically disadvantaged person(s) employed the owner(s) of the applicant for any period of time during the three years prior to the date of application by the applicant for EDGE business enterprise status;~~

~~(b) Is the non-socially and non-economically disadvantaged person(s) affiliated with another business in the same or similar type of business as the applicant;~~

~~(c) Does the non-socially and non-economically disadvantaged person or business exercise final authority over any aspect of the day-to-day operations of the applicant;~~

~~(d) Does the non-socially and non-economically disadvantaged person or business control the applicant directly, or indirectly restrict the economic growth of the business;~~

~~(e) Does the non-socially and non-economically disadvantaged person or business receive compensation from the economically and socially disadvantaged owner or business for services as a consultant, director, officer or employee rendered to the applicant and the relative value of such compensation.~~

~~(f) Does the non-socially and non-economically disadvantaged person or business exercise actual ultimate control or have the authority to control any aspects of the day-to-day operations, finances, or the management decisions and management policies of the applicant business. The existence of control or the authority to exercise control shall be determined by the facts of each application.~~

~~(g) Does the non-socially and non-economically disadvantaged person or business hold a financial interest greater than forty-nine per cent of the value of the company or has supplied the financing or loan(s) to purchase the business in amounts greater than the socially and economically disadvantaged owner(s).~~

~~(h) Any other criteria EOD deems relevant that demonstrates control, independence, and ownership of the business.~~

~~(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 an applicant to EOD 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 economically and socially disadvantaged owner and business have met the criteria for certification in the EDGE program, as outlined in this section, the equal employment opportunity coordinator of the department of administrative services may certify the business.~~

~~(F) If the state equal employment opportunity coordinator of the department of administrative services determines that the business or economically and socially disadvantaged business owner does not meet the criteria set forth in this chapter, EOD 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) EOD shall have the right to conduct on-site inspections at any location of a business seeking certification. EOD shall give appropriate and adequate notice before an on-site inspection.~~

~~(H) The state equal employment opportunity coordinator of the department of administrative services may determine the length of the EDGE certification issued pursuant to this chapter; however, no certification shall exceed two years from the date of certification, provided that the EDGE business enterprise remains in compliance and is not decertified pursuant to rule 123:2-16-06 of the Administrative Code.~~

~~(I) A business removed for non-disciplinary reasons or graduated from the program may re-enter the program after one year, provided that it meets all eligibility requirements.~~

~~(J) 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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## To Be Rescinded

## ~~123:2-16-04 Expedited certification.~~

~~(A) Upon application with EOD , a business certified in any of the following may be certified by EOD in the EDGE business development program, as an EDGE business enterprise provided the business and the fifty-one per cent owner or owners meet the social and economic threshold requirements set forth in rule 123:2-16-02 and the business structure requirements set forth in rule 123:2-16-03 of the Administrative Code:~~

~~(1) Businesses certified under other public contract assistance programs that EOD determines meet or exceed the social and economic disadvantage thresholds of the EDGE program established pursuant to section 123.152 of the Revised Code and the business is at least fifty-one per cent owned and controlled by a United States citizen or citizens that are full-time resident or residents of Ohio; and have been certified with other public contract assistance programs for at least one year prior to application for EDGE certification.~~

~~(B) Businesses applying for certification under this section shall submit a current valid certification 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 EOD. In addition, the applying business must submit an unified application as provided by EOD and in the manner prescribed by EOD .~~

~~(C) A business applying for certification under this section shall provide all information requested by EOD . Failure to provide requested information may result in disapproval of the application.~~

~~(D) EOD shall have the right to conduct on-site inspections and investigations at any location or locations of a business seeking certification pursuant to rule 123:2-16-03 of the Administrative Code. EOD shall give appropriate notice.~~

~~(E) The state equal employment opportunity coordinator may determine the length of the EDGE certification issued pursuant to this section, however, no certification shall exceed two years from the date of certification, provided that the EDGE business enterprise remains in compliance with all EDGE program rules and is not decertified pursuant to rule 123:2-16-06 of the Administrative Code.~~

~~(F) Upon the expiration of the initial expedited certification, a business certified pursuant to this section shall complete a unified application pursuant to rule 123:2-16-02 and 123:2-16-03 of the Administrative Code and shall submit all required supporting documentation and meet all requirements of certification for continued certification.~~

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## To Be Rescinded

## ~~123:2-16-05 Recertification.~~

~~(A) Except those EDGE business enterprises that received certification under rule 123:2-16-04 of the Administrative Code, an EDGE business enterprise must apply for recertification in the EDGE business development program before the expiration of the EDGE business enterprise's current certification expiration date to maintain continuous certification in the EDGE program.~~

~~(B) EOD shall notify each EDGE business enterprise of the requirements and procedures for recertification. The notification shall be made at sixty and thirty-days prior to the business's current certification expiration date . If an EDGE business enterprise does not request recertification prior to the EDGE business enterprise's current certification expiration date, the EDGE business enterprise will be required to submit a new unified application along with all current required supporting documentation to be considered for certification into the EDGE program.~~

~~If an EDGE business enterprise does not request recertification prior to the EDGE business enterprise's current certification's expiration date, EOD may grant the EDGE business enterprise a grace period (maximum of six months from the EDGE business enterprise's last certification date and upon request by the EDGE business enterprise's fifty-one per cent owner or owners) to request recertification without requiring submission of a new unified application and all new required supporting documentation. Failure of EOD to notify the EDGE business enterprise of its recertification expiration date in advance is not a sufficient reason for failing to apply in a timely manner for recertification.~~

~~(C) All EDGE business enterprises shall maintain current contact information including (e.g. telephone numbers, physical business address, and e-mail address) with EOD .~~

~~(D) All EDGE business enterprises shall notify EOD in writing (letter or email) of any change in circumstances affecting the business or the fifty-one per cent owner or owners ability to meet size and disadvantage status, ownership, independence or control requirements or any material change in the information provided in its application form, including changes in management responsibility among members of the EDGE business enterprise . The EDGE business enterprise shall submit changes to EOD within thirty days of the occurrence of the change. Failure to maintain certification criteria as stated in rules 123:2-16-01, 123:2-16-02, 123:2-16-03, and 123:2-16-14 of the Administrative Code shall be cause for decertification or revocation of the EDGE business enterprise's certification .~~

~~(E) An EDGE business enterprise seeking recertification in the EDGE program must submit the recertification request on a form provided by EOD, and in a manner prescribed by EOD. The applicant must demonstrate to EOD that the fifty-one per cent owner or owners and the business continue to qualify for certification. EOD shall use the criteria set forth in rules 123:2-16-01, 123:2-16-02, 123:2-16-03, and 123:2-16-14 of the Administrative Code and this chapter to determine whether recertification is warranted.~~

~~(F) If EOD determines that the EDGE business enterprise or the fifty-one per cent owner or owners no longer meet the criteria set forth in this chapter, EOD shall notify the applicant of the decision. EOD shall notify the applicant by certified 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) EOD shall have the right to conduct on-site inspections at any location of an EDGE business enterprise seeking recertification. EOD shall have a right to request and access any pertinent personal and business records or information EOD deems necessary to evaluate a recertification application. EOD shall provide appropriate notice.~~

~~(H) History of failure to perform a commercially useful function will be considered during the recertification process; however, it may not necessarily be the sole factor.~~

~~(I) The maximum amount of time a business or business owner may participate in the EDGE program as a certified business is ten years.~~

~~(J) The state equal employment opportunity coordinator may determine the length of the EDGE certification issued pursuant to this rule, however, no certification shall exceed two-years from the date of certification, provided that the EDGE business enterprise remains in compliance and is not decertified pursuant to rule 123:2-16-06 of the Administrative Code.~~

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## ~~To Be Rescinded~~

## ~~123:2-16-06 Decertification and revocation.~~

~~(A) The state equal employment opportunity coordinator may decertify or revoke a certification or recertification issued pursuant to this chapter, if the coordinator determines that a certified EDGE business enterprise does not meet the participation criteria set forth in this chapter. The decertification or revocation may be the result of a finding by the coordinator for any of the following reasons, including:~~

~~(1) The owner or owners of the EDGE business enterprise intentionally misrepresented material facts in the application or recertification process;~~

~~(2) The fifty-one per cent owner or owners of the EDGE business enterprise no longer determined by the coordinator to be socially and/or economically disadvantaged;~~

~~(3) The fifty-one per cent owner or owners of the EDGE 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 economically and socially disadvantaged fifty-one per cent owner or owners of the EDGE business enterprise is no longer a United States citizen or citzens or full-time resident or residents of the state of Ohio;~~

~~(5) The EDGE business enterprise is no longer determined to be economically and or socially disadvantaged;~~

~~(6) The EDGE business enterprise is no longer a for-profit entity;~~

~~(7) Determination that decertification or revocation of EDGE business enterprise's 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 the state of Ohio, any of its political subdivisions or any other state, or a determination that an EDGE business enterprise inappropriately transferred, assigned, or subcontracted work to a non-EDGE certified business enterprise;~~

~~(8) If the actions of the EDGE business enterprise or its business owner or owners result in a criminal conviction of the business or any of its owners, the coordinator may decertify or revoke the certification of the EDGE business enterprise.~~

~~(B) If the coordinator determines that an EDGE business enterprises' certification shall be revoked, the coordinator shall issue a notice of intent to revoke the business's certification indicating the grounds for the proposed revocation and the procedure for requesting a hearing on the proposed revocation . The hearing shall be conducted in accordance with Chapter 119. of the Revised Code.~~

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## To Be Rescinded

## ~~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 to119.13 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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## To Be Rescinded

## ~~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~~

~~(B) 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. 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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## To Be Rescinded

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

~~(A) Each state agency awarding a contract for goods and services, information technology services, construction, architecture and engineering, and professional services, 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 business enterprises in order to meet the agency's overall EDGE goal.~~

~~(B) Any contractor awarded a contract for goods and services, information technology services, construction, architecture and engineering, and professional services 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 established for a contract 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 EOD, 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 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. To demonstrate reasonable solicitation, the contractor shall provide evidence of such solicitations, including, but not limited to: fax confirmations, website notifications, bid notices, email contact lists, and invitations to bid notices.~~

~~(2) The bidder or contractor selected portions of the contracted work to increase the likelihood of participation by EDGE business enterprises. To demonstrate selected portions of the contracted work were selected to increase the likelihood of EDGE participation, the contractor shall provide documentation outlining the rationale used to determine the selected portions bid to EDGE business enterprises, and why other portions were not selected for bidding to EDGE business enterprises.~~

~~(3) The bidder or contractor provided all appropriate 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 were provided in sufficient time for EDGE business enterprises to provide a bid for the contract or project. "Sufficient time" means~~

~~at least twenty-one days prior to the required bid submission date provided by the prime contractor.~~

~~(4) The bidder or contractor negotiated in good faith with interested EDGE business enterprises. To demonstrate good faith negotiations, the contractor shall provide evidence of such negotiations, including but not limited to names, addresses, dates, and telephone numbers of the EDGE business enterprises considered. The bidder or contractor shall submit bid requests and/or bid submittals of all bidders, and any correspondence related to the negotiations. A bidder or contractor using good business judgment will consider a number of factors in negotiating with EDGE business enterprises and would take an EDGE business enterprises's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using EDGE business enterprises is not in itself sufficient reason for a contractor's or bidder's failure to meet the contract EDGE goal. In addition, the ability or desire of a contractor or bidder to perform the work with its own organization does not relieve the contractor or bidder of the responsibility to make good faith efforts.~~

~~(5) The bidder or contractor properly rejected interested EDGE business enterprise as being unqualified for the work of the contract. A contractor's rejection of an EDGE 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. To demonstrate an EDGE business enterprise was properly rejected, the contractor shall provide a copy of rejection letter with reason for rejection, names, addresses, dates, and telephone numbers of the rejected EDGE business enterprises.~~

~~(6) The bidder or contractor utilized the services of one of more organizations that provide contractor assistance in the identification and recruitment of EDGE business enterprises. To demonstrate utilization of one or more organizations providing contractor assistance, the contractor shall provide the names, phone numbers, times and method of contact relating to the contractor assistance organization.~~

~~(7) The bidder or contractor utilized the list of qualified EDGE business enterprises as provided by EOD . To demonstrate a list of qualified EDGE business enterprises provided by EOD has been utilized, the contractor shall provide a list of times, method of contact and names associated with each EDGE business enterprise included on the listing.~~

~~(E) To be granted 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 a 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 EOD , 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 EOD within thirty days of the grant or denial of the waiver.~~

~~(F) When a contracting agency considers an EDGE waiver request from a bidder or contractor, the agency shall make all reasonable effort to ensure that the bidder or contractor exhausted all possible opportunities to contract with an EDGE business enterprise.~~

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## To Be Rescinded

## ~~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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~~Rule Amplifies: R.C. 123.152~~
~~Prior Effective Dates: 11/26/2004)~~

## To Be Rescinded

## ~~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 fifteenth, January fifteenth, April fifteenth and July fifteenth 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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## To Be Rescinded

## ~~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.~~

~~(2) 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.~~

~~(3) 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 business enterprises 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.~~

~~(4) Every contract awarded pursuant to this rule shall include 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.~~

~~(5) The contracting authority using a process that includes an evaluation to measure the proposed and actual participation by EDGE business enterprises shall evaluate every proposal and contract awarded under rule 123:2-16-12 of the Administrative Code.~~

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## To Be Rescinded

## ~~123:2-16-13 EDGE data collection.~~

~~(A) EOD shall collect the necessary data to assess, determine, and evaluate the development, direction, and continued need for the EDGE program. The state 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. EOD 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 EOD 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 NAIC code, or equivalent object code.~~

~~(10) Type of contract or project by procurement category.~~

~~(11) Original dollar amount of the contract.~~

~~(12) Date of contract or project award~~

~~(13) Date of contract or project completion.~~

~~(14) Payment data for contract or project.~~

~~(15) Name of any identified subcontractors and federal tax identification numbers.~~

~~(16) The original value of the subcontracts.~~

~~(17) The type contracting method utilized by a contractor.~~

~~(D) To ensure uniform data collection and record keeping standards, EOD shall develop a format and the forms needed to capture the necessary data from state agencies. Where feasible EOD 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. EOD shall disaggregate, track, and analyze the data by each certification category to ensure against internal disparity.~~

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## To Be Rescinded

## ~~123:2-16-14 Joint venture.~~

~~(A) EOD 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.~~

~~(5) The joint venture business must obtain a separate federal tax identification number and the joint venture's business name must include the letters JV at the end of the name.~~

~~(B) The business partners seeking certification as an EDGE joint venture business enterprise shall submit a joint venture application to EOD services on a form and in the manner prescribed by EOD . 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 contract or project,~~

~~(c) Bid date of contract or project,~~

~~(d) Type of contract or 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 , 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 or leased by the EDGE business enterprise applicant,~~

~~(k) Equipment to be used that is owned or leased 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 or may result in denial of the application.~~

~~(D) Except as otherwise required by law, all financial statements and records submitted by the applicants to EOD 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 state equal employment opportunity coordinator of the department of administrative services may certify the business.~~

~~(F) If the state 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, EOD 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) EOD shall have the right to conduct on-site inspections at any location of the businesses seeking joint venture certification. EOD shall give appropriate notice and adequate notice before an on-site inspection.~~

~~(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 state equal employment opportunity coordinator of the department of administrative services may approve a joint venture application for a particular procurement category. The certification is for up to one year. The certification of the joint venture business shall be project or contract specific and applicable for the current joint venture application. This joint venture certification cannot be used for subsequent projects or contracts.~~

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

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## To Be Rescinded

## ~~123:2-16-15 Commercially useful function.~~

~~(A) A contractor awarded a contract for goods and services, information technology services, construction, architecture and engineering, and professional services pursuant to Chapters 123., 125., and 153. of the Revised Code may count toward its EDGE goal only those expenditures to EDGE business enterprises that perform a commercially useful function.~~

~~(B) EOD will consider the following (but not limited to) when determining if an EDGE business enterprise is performing a commercially useful function :~~

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

~~(a) Regular employees are employees that would be working for the EDGE business enterprise 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 enterprise.~~

~~(2) The equipment used by the EDGE business enterprise is owned, leased, or controlled by the EDGE business enterprise.~~

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

~~(i) The EDGE business enterprise 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 enterprise 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 contract or project.~~

~~(3) The EDGE business enterprise has the responsibility, with respect to execution of the work of the contract, for actively managing, performing, and supervising the work involved. Examples are (but not limited to):~~

~~(a) Negotiating the cost of services~~

~~(b) Arranging delivery~~

~~(c) Taking ownership and paying for materials and supplies~~

~~(d) Preparation of estimates~~

~~(e) Determining quantity of material~~

~~(f) Determining and ensuring quality of materials~~

~~(4) The EDGE business enterprise has the responsibility, with respect to materials and supplies used on the contract, for (but not limited to) 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 contract or project from the contractor.~~

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

~~(7) EDGE business enterprise only purchases materials and performs little or no direct work on the contract or project.~~

~~(8) The agreement between the contractor and EDGE business enterprise artificially inflates the EDGE participation or erodes the ownership, control or independence of the EDGE business enterprise.~~

~~(9) Volume of work is beyond the capacity of the EDGE business enterprise.~~

~~(10) EDGE business owner has a good understanding of the business and is able to answer questions about the business and industry and has a keen understanding of the business financially and operationally.~~

~~(11) Work to be performed by the EDGE business enterprise is outside of the its known experience or capability.~~

~~(12) EDGE business enterprise works solely for only one contractor on different contracts or projects.~~

~~(13) Amount the EDGE business enterprise is paid under the contract is commensurate with the work that is actually being performed to be credited towards the goal.~~

~~(C) An EDGE business enterprise does not perform a commercially useful function if:~~

~~(1) Its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of EDGE participation.~~

~~(2) EDGE business enterprise subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.~~

~~(3) Materials or supplies that are necessary for the EDGE business enterprise's performance are billed to or paid by another business; invoices for materials must be in the name of the EDGE business enterprise.~~

~~(4) Any portion of the work designated to be performed by an EDGE business enterprise is performed by the prime contractor.~~

~~(D) An EDGE business enterprise must have a necessary and useful role in the transaction, of a kind for which there is a market outside the context of the program. The business's role must not be a superfluous step added in an attempt to obtain EDGE credit towards the goal. The EDGE business enterprise's role must be real and required to complete the transaction.~~

~~(E) If the EDGE business is used only to gain EDGE credit towards the goal, then the EDGE business enterprise will be found to not be performing a commercially useful function.~~

~~(F) An EDGE business enterprise shall provide all information requested by EOD concerning the commercially useful function of the EDGE business on a contract or project. Failure to provide the requested information may lead to revocation of any certification pursuant to rule 123:2-16-06 of the Administrative Code.~~

~~(G) EOD may conduct on-site inspections and investigations at any location of the EDGE business enterprise, including locations at which the EDGE business enterprise has contracted to provide services, to determine whether an EDGE business enterprise is performing a commercially useful function on a contract or project. Failure to cooperate in such on-site inspection may lead to revocation of any certification pursuant to rule 123:2-16-06 of the Administrative Code.~~

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## To Be Rescinded

## ~~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 the director's 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 the director's designee has requested.~~

~~(B) EOD 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 the director's designee or if the director or the director's 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 EOD may conduct a compliance review and issue a compliance report.~~

~~(C) The director of the department of administrative services or the director's 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 EOD's 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 section125.06 of the Revised Code.~~

~~(D) The Ohio facilities construction commission 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 EOD's recommendations in the Ohio facilities construction commission's evaluation of whether to grant the agency's request to locally administer a construction project.~~

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