Ohio | Department of Administrative Services

Mike DeWine, Governor
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Proposed
Ohio Administrative Code 123:2-14

Minority Business Enterprise (MBE);

Encouraging Diversity, Growth, and Equity (EDGE); and

Women-owned Business Enterprise (WBE) Programs

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The State of Ohio is an equal opportunity employer.

123:2-14-01 **Definitions.**

The following definitions apply to this chapter.

(A) "Association" means an association organized pursuant to Chapter 1785. of the Revised Code.

(B) "Bidder" means any individual(s) that intend to submit or does submit a bid or a proposal to the state of Ohio for the purpose of entering into an agreement or contract.

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

(D) "Contractor" means any entity including a sole proprietorship, partnership, corporation, limited liability company, or joint venture that enters into a contract with the state of Ohio.

(E) "Control" means the at least fifty-one percent eligible owner(s) possess the authority to control (but not limited to) management and policy decisions, day-to-day operations, personnel, major decisions, and the direction of the business.

(1) Control is comprised of (but not limited to) three parts: operational control, managerial control, and independence. The at least fifty-one percent eligible owner(s) are to have technical competence, managerial ability, and knowledge directly related to the type of business in which the business is engaged.

(2) The at least fifty-one percent eligible owner(s) 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 only office management, administration, or bookkeeping functions unrelated to the principal business activities of the business is insufficient to demonstrate control.

(3) The at least fifty-one percent eligible owner(s) cannot engage in other business interests that conflict with the management of the business or prevent the individual(s) 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.

(4) The applicant business or certified business is to be independent; its viability cannot depend on its relationship with an individual(s) or another business(es).

(F) “Coordinator” means the State Equal Employment Opportunity Coordinator.

(G) "Economically Disadvantaged Business" means a business (including its affiliates) is at least fifty-one percent owned and controlled by a socially and economically disadvantaged individual(s) and the size of the business does not exceed the definition of a "small business" as defined by the United States Small Business Administration (SBA) in 13 C.F.R 121.201 (2020) and calculated in accordance with 13 C.F.R 121.101 through 121.107 (2020);

(1) To be a “small business” as defined by the SBA standards, only one main North American Industry Classification System (NAICS) code is used to determine the company's size standard. The main NAICS code (the code in which the majority of the company's gross receipts are generated) as identified by the Ohio Department of Administrative Services, Equal Opportunity Division (DAS/EOD) at the time of certification or recertification is the only NAICS code used to determine a business's size standard.

(H) "Economically Disadvantaged Individual" means an individual(s) 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 business(es) that are not economically disadvantaged. Economic disadvantage is based on 13 C.F.R. 124.104 (2020).

(I) "EDGE" means the Encouraging Diversity, Growth, and Equity Business Assistance Program created pursuant to section 123.152 of the Revised Code.

(J) "EDGE Business Enterprise" means a sole proprietorship, association, partnership, corporation, limited liability company, or joint venture certified by DAS/EOD as meeting the criteria established by DAS/EOD pursuant to section 123.152 of the Revised Code; and

(1) owned and controlled by a citizen(s) of the United States of America, who is a full-time resident(s) of the state of Ohio, and is socially and economically disadvantaged; or

(2) an economically disadvantaged business whose primary office is in a qualified HUBZone and the business is owned and controlled by an economically disadvantaged individual(s).

(3) For purposes of the EDGE program, "Socially Disadvantaged Individual(s)" means an individual(s) subjected to ethnic prejudices or cultural bias because

of their identification with a particular group without regard to their individual qualities. A rebuttable presumption of social disadvantage is 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 individual(s) having origins in any of the black racial groups of Africa;

(ii) "American Indians" means all individual(s) 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 individual(s) of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean islands, regardless of race; and

(iv) "Asians" means all individual(s) having origins in any of the original people of the Far East, including China, Japan, Southeast Asia, India, or Pakistan.

(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 individual(s) 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.

(e) Social disadvantage may also be based on the following:

(i) a business owner's demonstration of personal experiences of substantial and chronic disadvantage not common to other individual(s) or business(es) enterprises of the similar type and location;

(ii) 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

(iii) a primary office that is located in a HUBZone.

(K) "Eligible Owner" means an individual who meets all of the ownership criteria for the program(s) for which the business is applying or is certified into, the MBE program, the EDGE program, and/or the WBE program, as set by sections 122.71(E)(1), 123.151, 123.152, and 123.154 of the Revised Code and this chapter of the Administrative Code.

(L) "HUBZone" means a Historically Underutilized Business Zone as defined by the SBA in 13 C.F.R. 126.103 (2020).

(M) "In Business" means the business is operational as evidenced by the totality of the following circumstances: 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; lines of credit; equipment necessary to perform the scope of work; and any other items the DAS/EOD determines suitable for consideration.

(N) "Independent" means the business and the at least fifty-one percent eligible owner(s) are free from the undue control, influence, support, or the like of another individual(s); business(es); and its viability is not dependent on its relationship with another individual(s), business(es) (e.g., dependent, co-dependent and/or interdependent).

(O) "Material Change" means any change in the business structure including (but not limited to): limited liability company changes to corporation; change from for profit to non-profit; state residency changes of the at least fifty-one percent eligible owner(s); change in contributions of capital; change in control or ownership; change in articles, by-laws, partnership agreement; or change in the Joint Venture Agreement.

(P) "MBE" means the Minority Business Enterprise program created pursuant to section 123.151 of the Revised Code.

(Q) "MBE Business Enterprise" means a sole proprietorship, partnership, corporation, limited liability company, or joint venture certified by DAS/EOD as meeting the criteria established pursuant to section 123.151 of the Revised Code and that is owned and controlled by a citizen(s) of the United States of America who is a full-time resident(s) of the state of Ohio and is a socially disadvantaged individual.

(1) For purposes of the MBE program, "Socially Disadvantaged Individual" means an individual(s) subjected to racial prejudices because of their identification with a group without regard to their individual qualities:

(a) A rebuttable presumption of social disadvantage exists based on the business owner's membership in one or more of the following groups:

(i) "African American" or "Black" means individual(s) having origins in any of the black racial groups of Africa;

(ii) "American Indian" means individual(s) 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) "Hispanic" or "Latino" means individual(s) of Spanish or Portuguese culture with origins in Mexico, South or Central America, or Caribbean Islands regardless of race; and

(iv) "Asian" means individual(s) having origins in any of the original people of the Far East, including China, Japan, Southeast Asia, India, and Pakistan.

(R) "Noneligible Owner" means an individual who does not meet the individual ownership criteria for the program(s) for which the business is applying, the MBE program, the EDGE program, and/or the WBE program, as set by sections 122.71(E)(1), 123.151, 123.152, and 123.154 of the Revised Code and this chapter of the Administrative Code. For example, a man for the WBE program, a non-socially and economically disadvantaged individual for the EDGE program, or a non-socially disadvantaged individual for the MBE program.

(S) "One Year" means the business is "in business," "independent," "owned," and "controlled" by the same fifty-one percent eligible owner(s) who are full-time resident(s) of the state of Ohio or a reciprocal state (if certified pursuant to section 123.154(D) of the Revised Code) and United States citizen(s) for at least twelve months immediately prior to application for certification.

(T) "Owner, Owned, or Own" means at least fifty-one percent of each class of stock, membership units, or percentage of ownership is owned by an eligible owner.

(1) The contributions of capital used to acquire ownership are "real and substantial," going beyond pro forma ownership and derived from individually and independently owned resources and in the form of tangible assets (i.e., cash or equipment). Examples of insufficient contributions include (but are not limited

to) a promise to contribute capital, an unsecured note payable to the business or an eligible owner, or participation in a business's activities as an employee.

(2) Further, the at least fifty-one percent eligible owner(s) must have an interest in the capital, assets, and profits and losses of the business proportional to the percentage of ownership.

(3) If the business is a corporation:

(a) ownership means that at least fifty-one percent of each class of corporate stock is owned by at least fifty-one percent eligible individual(s) as reflected on the business's Stock Certificates and Stock Journal; and

(b) The Board of Directors (BOD) and the Principal Executive Officers (PEO) reflect ownership and control by the at least fifty-one percent eligible owner(s) because a majority of the BOD and PEO are appointed by the at least fifty-one percent eligible owner(s).

(4) If the business is a partnership, at least fifty-one percent of the business interest is owned by eligible owner(s) as reflected in the Partnership Agreement.

(5) If the business is a limited liability company, at least fifty-one percent of the total membership units or percentage of ownership of the business is owned by eligible owner(s) as reflected in the business's Unit/Percentage Certificates and Unit/Percentage Journal.

(U) "Primary Office" means the location where the greatest number of employees at any one location actually perform their work and at least thirty-five percent of the business(es)'s employees reside (defined as living in a primary residence within that area for at least one hundred eighty days).

(V) "Proportional Interest" means the contributions of capital or assets by the at least fifty-one percent eligible owner(s) is at least equal the ownership interest.

(W) "Receipts" means all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. Generally, receipts are considered "total income" (or in the case of a sole proprietorship "gross income") as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships).

(X) "Resident" means an individual(s) who lives and has established residency in the state of Ohio or a reciprocal state (if certified pursuant to section 123.154(D) of the Revised Code) for at least one year immediately preceding application for certification and has filed personal state tax returns as a full-time resident for the preceding tax year or provides a notarized Affidavit of Residency provided by DAS/EOD.

(Y) "Reciprocal State" means a state that has entered into a reciprocal agreement with the state of Ohio pursuant to section 123.154(D) of the Revised Code.

(Z) "Socially Disadvantaged Business" means a business at least fifty-one percent owned and controlled by socially and economically disadvantaged individual(s) or the business is located in a HUBZone.

(AA) "State" means the state of Ohio.

(BB) "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.

(CC) "State University" means a state university as defined in section 3345.011 of the Revised Code.

(DD) "WBE" means the Women-owned Business Enterprise program created pursuant to section 123.154 of the Revised Code.

(EE) "WBE Business Enterprise" means a sole proprietorship, partnership, corporation, limited liability company, or joint venture certified by the DAS/EOD as meeting the criteria established by DAS/EOD pursuant to section 123.154 of the Revised Code that is at least fifty-one percent owned and controlled by United States of America citizen(s), who are full-time resident(s) of the state of Ohio or a Reciprocal State (if certified pursuant to section 123.154(D) of the Revised Code), and who is a woman.

(FF) "Woman" means an individual of the female gender.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	R.C. 123.151, 123.152, 123.154
Rule Amplifies:	R.C. 122.71(E), R.C. 123.151, 123.152, 123.154

123:2-14-02 **Certification criteria.**

(A) All applications for certification, expedited certification, or re-certification into the Minority Business Enterprise (MBE); Encouraging Diversity, Growth, and Equity (EDGE); or Women-owned Business Enterprise (WBE) programs are filed with the Ohio Department of Administrative Services, Equal Opportunity Division (DAS/EOD) on forms provided by DAS/EOD and in the manner specified by DAS/EOD.

(B) DAS/EOD may conduct on-site interviews and on-site inspections at any location(s) of a MBE, EDGE, or WBE-certified or an applicant business requesting certification, expedited certification, or re-certification. The preferred location of interviews is at the location of the business. If the Coordinator determines that the business location is unsuitable for an interview or for any other reason, the interview may be conducted by phone or at an alternative location.

(C) DAS/EOD reserves the right to request and access any pertinent personal and business records or information that DAS/EOD considers necessary to evaluate an application.

(D) Failure to produce any information or documents required by law, rule, the application form, or at the request of DAS/EOD may be cause for the administrative closure, denial, or revocation of an application or certification.

(E) DAS/EOD may request at any time during certification that a certified business submit a new application, all required supporting documentation, and submit to an interview.

(F) An applicant or MBE, EDGE, or WBE-certified business may withdraw its application or surrender its certification with the approval of the Coordinator.

(G) Upon completion of the application process for certification, expedited certification, or re-certification of an MBE, EDGE, or WBE-certified business, the Coordinator reviews the application and supporting documents to determine if the business and its at least fifty-one percent eligible owner(s) meet the eligibility requirements for the applicable program.

(1) If the Coordinator determines that the business and its at least fifty-one percent eligible owner(s) meet the applicable criteria set forth in this chapter, the Coordinator will certify the business under the applicable program.

(2) The Coordinator may determine the length of an MBE, EDGE, or WBE certification, which may be for up to two years from the date of certification. In the case of expedited certifications, the certification period will not exceed the currently issued certification from the equivalent program, plus thirty days.

(H) If the Coordinator determines that the business or its at least fifty-one percent eligible owner(s) do not meet the criteria set forth in this chapter, the request for certification, expedited certification, or re-certification will be denied.

(1) When an Adjudication Order is issued denying an applicant business's request for certification, expedited certification, or re-certification, the business and the owner(s) of the business are not eligible for that certification(s) for one year from the date of the Adjudication Order. The Coordinator has the right to adjust the waiting period at any time and for any reason.

(I) All MBE, EDGE, or WBE-certified businesses shall notify DAS/EOD in writing (letter or email) within thirty days of any change in circumstances affecting the business or the at least fifty-one percent eligible owner(s); including but not limited to current contact information, changes in ownership, business structure, independence, control requirements, or any material change in the information provided in its application, including changes in management responsibility among owner(s) of the certified business. A material change will require the at least fifty-one percent eligible owner(s) to submit a new application, supporting documentation, and may require an interview to determine if the business and at least fifty-one percent eligible owner(s) continue to meet certification criteria. Failure to maintain applicable certification criteria as stated in this chapter is cause for revocation of the certified business's certification(s).

(J) Business and personal financial information and trade secrets submitted by MBE, EDGE, or WBE-certified businesses or program applicants are not public records for purposes of section 149.43 of the Revised Code, unless the financial information or trade secrets are presented at a public hearing or public proceeding regarding the applicant's eligibility to participate in the program(s).

(K) If a business or any owner(s) of a business is currently debarred by the federal government, state of Ohio, local government, political subdivision, or any other governmental entity, the applicant business and owner(s) are not eligible for MBE, EDGE, or WBE certification, expedited certification, or re-certification, and the debarment is grounds for revocation.

(L) To be certified as an MBE, EDGE, or WBE-certified business, a business must be a for- profit business entity that has been "in business" with the same owner(s) and ownership percentages for at least twelve months immediately prior to requesting certification. If a business 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 is satisfied if the ownership and control of the business has remained the same. The requirement that the business has been in operation for one year does not apply to joint venture applicants.

(M) An applicant business is prohibited from conducting "business" with any member of the applicant business or their businesses that holds an equity interest in the business (except for the at least fifty-one percent eligible owner(s) who may conduct business with the business(es) owned by the at least fifty-one percent eligible owner(s)).

(N) A member or owner of the business holding an equity interest in the business (except for the at least fifty-one percent eligible owner(s)) may not provide a loan (monetary or otherwise) to the business, unless the at least fifty-one percent eligible owner(s) hold assets separate from the ownership in the business that can satisfy the outstanding amount of the loan.

(O) A business requesting certification into the MBE, EDGE, or WBE program must disclose to DAS/EOD all financial arrangements (public and private) that the at least fifty-one percent eligible owner(s) or business has entered into with any individual(s), business(es), or entity that affects the business or the at least fifty-one percent eligible owner(s).

(P) The Coordinator may certify a business as an MBE, EDGE, or WBE-certified business, or a joint venture as an MBE, EDGE, or WBE-certified joint venture, provided the at least fifty-one percent eligible owner(s) of the business demonstrate the following:

(1) the business is at least fifty-one percent owned by eligible owner(s) who are resident(s) of the state of Ohio or a reciprocal state (if certified pursuant to section 123.154(D) of the Revised Code) and citizen(s) of the United States of America;

(2) the at least fifty-one percent eligible owner(s) control the business;

(3) the business is a for-profit entity and has been in business for at least one year immediately preceding the date of application for certification;

(4) the at least fifty-one percent eligible owner(s)'s contributions of capital used to acquire ownership in the business must be "real and substantial" going beyond pro forma ownership and derived from individually and independently owned resources;

(5) the at least fifty-one percent eligible owner(s) must have the experience, expertise, and knowledge to operate the particular type of business requesting certification;

(a) Ownership interest obtained through a transfer or gift will be scrutinized to ensure sufficient consideration was provided, the ownership is unconditional, and the ownership was obtained for reasons other than obtaining certification into the program(s). De facto ownership is not

sufficient to qualify for the program(s). Even when business documents support the basic criteria, certification may be denied if the business's operations do not reflect the ownership shown on submitted documents; and

(Q) DAS/EOD may consider the following criteria to determine control, independence, and ownership of a business applying for certification:

(1) do the at least fifty-one percent eligible owner(s) maintain and demonstrate the authority to direct the day-to-day management and policies of the business;

(2) do the at least fifty-one percent eligible owner(s) hold the highest officer and managerial position(s) in the business (e.g., chief executive officer or president);

(3) the differences in remuneration between the at least fifty-one percent eligible owner(s), other participants, or former owner(s) of the business when the former owner(s) remain involved directly or indirectly with the business;

(4) where a business was formerly owned and/or controlled by non-eligible individual(s), and/or ownership and/or control was transferred to the eligible owner(s) and the former non-eligible owner(s) remain involved with the business in any capacity, the at least fifty-one percent eligible owner(s) now owning the business must demonstrate by clear and convincing evidence that the transfer of ownership and/or control was made for reasons other than obtaining certification as an MBE, EDGE, or WBE-certified business;

(5) do the at least fifty-one percent eligible owner(s) have the final authority 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) do only the at least fifty-one percent eligible owner(s) have the authority to contractually bind the business;

(7) is the business independent. An independent business is one where the viability of the business does not depend solely on its relationship with another business(es) or individual(s);

(8) when state or local law requires that the at least fifty-one percent eligible owner(s) of the business hold a license or credential to own or control the business, then the at least fifty-one percent eligible owner(s) must possess the required license or credential:

(9) when state or local law does not require that the at least fifty-one percent eligible owner(s) hold a license or credential to own or control a business, but the license or credential is required to perform at least some of the work that the business engages in, DAS/EOD will consider whether the control of the business is undermined based on the circumstances surrounding licensure or credentialing, such as if holding the license or credential provides any one employee or other owner(s) with de facto control over the business;

(10) does the business own the equipment necessary to perform its work. A business may be controlled by the at least fifty-one percent eligible owner(s) if 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; and

(11) any other criteria DAS/EOD considers necessary.

(R) Among the factors that may be considered by DAS/EOD when evaluating a non-eligible individual(s)'s or business(es)'s influence over the at least fifty-one percent eligible owner(s) or business are the following:

(1) was the business's ownership transferred, gifted, or purchased within the last two years from a non-eligible owner(s);

(2) did the non-eligible individual(s) employ any of the at least fifty-one percent eligible owner(s) for any period during the three years prior to the date of application by the business;

(3) is or has the business or the at least fifty-one percent eligible owner(s) of the business been affiliated with another business in the same or similar type of business as the applicant business;

(4) do non-eligible individual(s) or business(es) exercise final authority over any aspect of the operations of the business;

(5) do non-eligible individual(s) or business(es) control the business directly and/or indirectly restrict the economic growth of the business;

(6) do non-eligible individual(s) or business(es) receive compensation from at least fifty-one percent eligible owner(s) or business for services (e.g., consultant, director, officer) or provide employee(s) to the business;

(7) do non-eligible individual(s) or business(es) exercise actual control or have the authority to control any aspects of the following (but not limited to) day-to-

day operations, finances, or management decisions and management policies of the business;

(8) do non-eligible individual(s) or business(es) hold a financial interest greater than forty-nine percent of the value of the company or has supplied the financing or loan(s) to purchase the business in amounts greater than the at least fifty-one percent eligible owner(s); and

(9) any other criteria DAS/EOD considers necessary.

(S) To demonstrate that a business applying for MBE, EDGE, or WBE certification meets the program criteria, the fifty-one percent eligible owner(s) upon request shall provide DAS/EOD the following information in the detail and manner prescribed by DAS/EOD:

(1) business structure information;

(2) previous three years of personal federal and the most recent state of Ohio tax returns including all schedules, W-2s, and/or 1099s;

(3) previous three years of the business's federal tax returns to include all schedules. If the business is in operation for less than three years; submission of federal tax returns to include all schedules for the years in business;

(4) business and personnel organizational information;

(5) business sales and tax information;

(6) personal information indicating citizenship and residence;

(7) documentation providing proof that the at least fifty-one percent eligible owner(s) meet the criteria of the program(s);

(8) If applying for EDGE certification, documentation demonstrating that the business is a "small business" as defined by the United States Small Business Administration in 13 C.F.R 121.201 (2020) and calculated in accordance with 13 C.F.R 121.101 through 121.107 (2020);

(9) if applying for a social disadvantage classification for EDGE based on race, color, ethnic origin, gender, physical disability, long-term residence in an environment isolated from the mainstream of American society, or a business location in a HUBZone, documentation demonstrating membership in the claimed category;

(10) if applying for a social disadvantage classification for EDGE based on personal disadvantage not common to same or similar small business(es) or individual(s), a detailed statement and supporting evidentiary documentation proving social disadvantage;

(11) if applying for minority-owned classification for MBE, documentation demonstrating membership in the claimed category;

(12) if applying for women-owned classification for WBE, documentation demonstrating membership in the claimed category; and

(13) any other information or documents DAS/EOD considers necessary.

(T) The Coordinator will consider all of the following when determining whether an at least fifty-one percent socially and economically disadvantaged owner(s) applying for EDGE certification exceeds the net worth threshold set by 13 C.F.R 124.104 (2020):

(1) personal net worth of the at least fifty-one percent socially and economically disadvantaged owner(s) at the time of application for EDGE certification;

(2) three-year average of the at least fifty-one percent socially and economically disadvantaged owner(s)'s personal adjusted gross income;

(3) fair market value of all of the at least fifty-one percent socially and economically disadvantaged owner(s)'s total assets;

(4) asset transfers within the last two years prior to application including the following (but not limited to) transfers to members of the at least fifty-one percent socially and economically disadvantaged owner(s)'s immediate family, the economically disadvantaged business, trust accounts, and others as determined by the Coordinator;

(5) assets and net worth of the at least fifty-one percent socially and economically disadvantaged owner(s)'s spouse;

(6) similar factors considered by the United States Small Business Administration (SBA) when making individual determinations of economic and social disadvantage; and

(7) any other relevant information DAS/EOD considers necessary.

(U) The Coordinator may consider the following documents and/or factors to determine whether the business applying for EDGE certification exceeds the business size standards pursuant to rule 123:2-14-01(G) of the Administrative Code:

(1) annual accounts receivable;

(2) total business assets;

(3) business gross receipts for three or five years immediately prior to the date of the application for certification as necessary to make the calculation of annual receipts set forth in 13 C.F.R 121.104(c) (2020); and

(4) any other information DAS/EOD considers necessary.

(V) All MBE-certified businesses, except joint ventures, shall request classification code(s) which are consistent with current industry code(s) as determined by the Coordinator. No MBE-certified business may bid or be awarded a set-aside procurement opportunity without having been issued the appropriate classification code(s) for the products, supplies, or services specified in the procurement solicitation. All MBE-certified businesses shall possess:

(1) all licenses, permits, and authorities required by law, to perform the scope of work for each classification code(s) requested; and

(2) demonstrate proof of performance within each classification code(s) requested during sometime in the last twelve months immediately prior to requesting the classification code(s). The Coordinator will determine if the proof presented meets the requirements of DAS/EOD for issuing the business the requested classification code(s).

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	R.C. 123.151, 123.152, 123.154
Rule Amplifies:	R.C. 122.71(E), R.C. 123.151, 123.152, 123.154

123:2-14-03 **Recertification.**

(A) All MBE, EDGE, or WBE-certified businesses must apply for re-certification prior to their certification's expiration date. The at least fifty-one percent eligible owner(s) must demonstrate to the Ohio Department of Administrative Services, Equal Opportunity Division (DAS/EOD) that the certified business and its at least fifty-one percent eligible owner(s) continue to qualify for the business's certification(s). DAS/EOD may request that the at least fifty-one percent eligible owner(s) submit the following documents:

(1) current annual balance sheet;

(2) current annual income statement;

(3) current annual cash flow statement;

(4) current annual profit and loss statement;

(5) last three years of the at least fifty-one percent eligible business owner(s)'s personal taxes;

(6) last three years of business taxes; and

(7) any other documents DAS/EOD considers necessary.

(B) DAS/EOD will notify each MBE, EDGE, or WBE-certified business of the requirements and procedures for re-certification. If a certified business does not request re-certification prior to the current certification expiration date, the certified business may be required to submit a new application, all required supporting documentation, and an interview to be considered for certification into the program.

(1) If a certified business does not request re-certification prior to the its certification's expiration date, DAS/EOD may grant the certified business a grace period (a maximum of three months from the certified business's last certification date) upon request (in writing) by the at least fifty-one percent eligible owner(s). DAS/EOD may consider mitigating circumstances that delayed the timely request for re-certification by the certified business in determining whether to grant a grace period. In all cases, DAS/EOD is the final arbiter as to whether to grant or not to grant a grace period. Failure of DAS/EOD to notify the certified business of its re-certification requirements is not a sufficient reason for failing to apply for re-certification in a timely manner.

(C) Upon the completion of six cumulative years in the MBE, EDGE, or WBE program(s), a business seeking re-certification is required to complete a new application, submit all required supporting documentation, and have an interview conducted to determine

that the business and its least fifty-one percent eligible owner(s) continue to meet all the requirements of the relevant program(s).

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	R.C. 123.151, 123.152, 123.154
Rule Amplifies:	R.C. 122.71(E), R.C. 123.151, 123.152, 123.154

123:2-14-04 **Expedited certification.**

(A) A business meeting the requirements of this chapter through its current valid certification in another entity's MBE, EDGE, or WBE Program that is substantially the same or similar to Ohio's program(s) (the "Equivalent Program) (including another State's WBE program if Ohio has entered into a reciprocal agreement for the WBE program with that State) may be eligible for expedited certification processing, provided that the following requirements are met:

(1) the Ohio Department of Administrative Services, Equal Opportunity Division (DAS/EOD) has determined the Equivalent Program meets or exceeds the requirements of this chapter and/or sections 122.71(E)(1), 123.151, 123.152, and 123.54 of the Revised Code, as applicable; and

(2) the business applying for certification under this rule shall submit a current valid certification from the Equivalent Program demonstrating certification in that program and any other documents DAS/EOD considers necessary.

(B) In the case of expedited certifications, the certification period will not exceed the currently issued certification from the Equivalent Program, plus thirty days.

(C) Failure to maintain the certification used to apply for expedited certification for the entire length of time of the certification, or revocation of certification by any other jurisdiction, is cause for denial of re-certification or revocation of the certification issued under this rule. If a certified business does not maintain the certification by the Equivalent Program, or that certification is revoked, the certified business shall submit that information to DAS/EOD within three days.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	R.C. 123.151, 123.152, 123.154
Rule Amplifies:	R.C. 122.71(E), R.C. 123.151, 123.152, 123.154

123:2-14-05 **Joint venture.**

(A) Two or more businesses may request certification as an MBE, EDGE, or WBE-certified joint venture (JV):

(1) one of the businesses must be an Ohio-certified business partnering or otherwise agreeing to join with another business or businesses for the purpose of seeking a contract award;

(2) the business relationship must benefit all parties to the JV;

(3) the eligible owner(s) of the Ohio-certified business must control the JV's day-to-day operations, management decisions, policies, and have ultimate control over the management and operations of the JV including (but not limited to) finances. Generally, performance limited to only office management, administration, or bookkeeping functions unrelated to the principal business activities of the business is insufficient to demonstrate control;

(4) the Ohio-certified business must have an interest in the capital, assets, and profits and losses of the JV at least proportionate to its capital investment in the JV, but not less than fifty-one percent for an MBE or WBE-certified JV (not less than thirty percent for an EDGE-certified JV). The contributions of capital used to acquire ownership shall be "real and substantial" going beyond pro forma ownership and derived from individually and independently owned resources;

(5) the JV is a for-profit entity and is not required to be in business for one year prior to submission of the Joint Venture Agreement; and

(6) the JV must have its own separate federal tax identification number and do business under a name that includes the letters "JV" at the end of the name.

(B) All JV members must sign a Joint Venture Agreement prior to review by DAS/EOD, which includes the following:

(1) name of the individual(s) who have the power of attorney to act for and bind all of the JV members;

(2) mailing address and street address of the JV;

(3) Internal Revenue Service issued tax identification number for the JV;

(4) proof of bond or insurance, (if required) that binds the JV members jointly and severally;

(5) name of project and contract number, if known;

(6) location of contract or project, if known;

(7) bid date of contract or project, if known;

(8) type of contract or project, if known;

(9) description of work to be performed by each member of the JV;

(10) percentage of the contract or project to be subcontracted, if any, and actual work being done by subcontractor(s) or goods and services to be performed or bought;

(11) approximate date contract will begin if successful bidder and approximate completion date;

(12) type of equipment to be used or the goods and services to be supplied and/or performed by each JV member;

(13) work composition by expertise or trade of each JV member;

(14) equipment to be used that is owned or leased by the Ohio-certified business;

(15) equipment to be used that is owned or leased by the other business(es) in the JV;

(16) name of business(es) from which JV will lease equipment;

(17) amount of contribution provided by each JV member;

(18) narrative description of the business relationship of each member of the JV, including how management, business and operational decision making will occur, the work composition of each member, the work to be performed by each member, and the source and use of shared resources and business equipment; and

(19) any other items Ohio Department of Administrative Services, Equal Opportunity Division (DAS/EOD) considers necessary.

(C) 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 Coordinator can delay the activation date of the JV certification until a contract has been awarded.

(1) The JV certification is only for one year.

(2) If the JV is awarded a contract based on the approved Joint Venture Agreement and the contract will exceed one-year duration, the JV must submit its Joint Venture Agreement to DAS/EOD each year for re-certification.

(3) If a JV certification is approved and the JV is not awarded a contract, the Joint Venture Agreement can be revised and submitted for reapproval to meet a new contracting opportunity.

(D) If any material change occurs that affects the Joint Venture Agreement as originally approved by the Coordinator, then the JV members will provide DAS/EOD with the information detailing the material change within thirty business days of the change for DAS/EOD's review, decision, and approval or disapproval. Failure to provide the change(s) to the Joint Venture Agreement to DAS/EOD may be cause to revoke the certification.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	R.C. 123.151, 123.152, 123.154
Rule Amplifies:	R.C. 122.71(E), R.C. 123.151, 123.152, 123.154

123:2-14-06 **Commercially useful function.**

(A) An MBE, EDGE, or WBE-certified business must have a necessary and useful role in the transaction that is real and required to complete the contract, of a kind for which there is a market outside the context of the certification program(s). A necessary and useful role includes being responsible for the execution of the work of the contract and for carrying out the contract responsibilities by (but not limited to) actively performing, paying, managing, and supervising the work involved.

(B) Agencies may count toward their goals only those expenditures to MBE, EDGE, and/or WBE-certified businesses that perform a commercially useful function.

(C) The Ohio Department of Administrative Services, Equal Opportunity Division (DAS/EOD) will consider but is not limited to the following when determining if a certified business is performing a commercially useful function:

(1) do the regular employee(s) of the certified business have responsibility with respect to the execution of the work of the contract. Regular employees are certified business employees who would be working for the certified business on any other contract. An individual is not considered a regular certified business employee if the individual is an independent contractor or the employee of a subcontractor to the certified business or any other business;

(2) are the certified business's employees directed, given work assignments, supervised, and responsible to an appropriate individual employed by the certified business;

(3) is the final decision for the hiring and terminating of the certified business's employees made by the certified business;

(4) is the equipment used on a contract by the certified business owned, rented, or leased. If the equipment is rented or leased, is the equipment procured from a traditional rental or leasing source pursuant to a written rental or lease agreement;

(a) equipment is not considered under the control of the certified business if the equipment belongs to a business awarded the contract or to another contractor working on the contract;

(5) does the certified business have the responsibility with respect to the execution of the work of the contract, for actively managing, performing, and supervising the work involved. Examples include (but are not limited to) the following:

(a) negotiating the price and profit margin of the goods, services, labor, and/or materials;

(b) arranging delivery of the goods, services, and materials;

(c) taking ownership of the goods, services, and materials (when appropriate);

(d) preparation of formal estimates and bids (e.g., in writing);

(e) determining quantity of goods and materials; and

(f) determining the quality of materials.

(D) DAS/EOD considers, but is not limited to, the following circumstances as evidence that the business is not performing a commercially useful function:

(1) the certified business acts primarily as an agent or intermediary of another company;

(2) the certified business purchases any of the required materials for the contract from the owner of the contract;

(3) the relationship between the contract owner and the certified business does not remain at arms-length throughout the performance of the contract;

(4) the certified business only purchases limited amounts of materials and performs little and/or no direct work on the contract;

(5) the purchase agreement between the owner and certified business artificially inflates the certified business(es)'s participation or erodes the ownership, control, or independence of the certified business;

(6) the volume of the work is beyond the capacity of the certified business;

(7) the certified business owner does not have a good understanding of its business and/or is not able to answer questions about the business or industry and/or does not have a keen understanding of the business financially or operationally;

(8) the work to be performed by the certified business is outside of its known experience or capability;

(9) the certified business works primarily for only one business;

(10) the amount the certified business is paid for work on the contract is not commensurate with the work that is actually performed;

(11) the role of the certified business is limited to that of an extra participant in a transaction, contract, or purchase through which funds are passed to obtain the appearance of a certified business(es)'s participation;

(12) the certified business 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; and

(13) materials or supplies that are necessary for the certified business's performance are billed to or paid by another business; invoices for materials are in the name of the certified business.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	R.C. 123.151, 123.152, 123.154
Rule Amplifies:	R.C. 122.71(E), R.C. 123.151, 123.152, 123.154

123:2-14-07 **Revocation.**

(A) The Coordinator may revoke an MBE, EDGE, or WBE certification if the Coordinator determines that a certified business and/or its at least fifty-one percent eligible owner(s) do not meet the criteria set forth in this chapter. The revocation may be the result of a finding by the Coordinator that includes, but is not limited to, any of the following:

(1) the at least fifty-one percent eligible owner(s) of the certified business intentionally misrepresented or omitted material facts on its application including documents and interview statements;

(2) the certified business is determined by the Coordinator to no longer be owned by individual(s) meeting program eligibility requirements;

(3) the at least fifty-one percent eligible owner(s) of the certified business no longer control, operate, or participate in the certified business;

(4) the at least fifty-one percent eligible owner(s) of the certified business is no longer a United States of America citizen(s), or full-time resident(s) of the state of Ohio or the reciprocal state for the WBE program only;

(5) the certified business is no longer a for-profit entity;

(6) continued certification of the certified business is not in the best interest of the state of Ohio. Such reasons include (but are not limited to) the following:

(a) debarment of the certified business and/or owner(s) by the federal government, state of Ohio, local government, political subdivision, or any other governmental entity;

(b) a determination that the certified business inappropriately transferred, assigned, or subcontracted work to a non-certified business; or

(c) the actions of the certified business or any of its owner(s) results in a judgement against the business or any of its owner(s).

(7) the Coordinator determines that the at least fifty-one percent eligible owner(s) or the certified business does not perform a commercially useful function;

(8) the certified business and/or owner(s) do not remain in compliance with all criteria set forth in this chapter during the entire certification period;

(9) the EDGE Business Enterprise or its fifty-one percent eligible owner(s) is determined to no longer be economically and/or socially disadvantaged;

(10) the at least fifty-one percent eligible owner(s) of the certified business did not notify the Ohio Department of Administrative Services, Equal Opportunity Division (DAS/EOD) in writing (letter or email) of a change in the circumstances affecting the at least fifty-one percent eligible owner(s) or the certified business's ability to meet ownership, independence, control, or economic size (for an EDGE-certified business) requirements, or a change in the information provided in its application for certification into the program;

(11) the at least fifty-one percent eligible owner(s) of the certified business did not notify DAS/EOD in writing (letter or email) when a material change occurs in the business structure. Examples include the following (but not limited to) limited liability company changes to corporation; change from for profit to non-profit; state residency changes of the at least fifty-one percent eligible business owner(s); change in contributions of capital; change in control or ownership; change in articles, by-laws, partnership agreement; or change in Joint Venture Agreement; or

(12) the at least fifty-one percent eligible owner(s) of the certified business did not produce information or documents required by laws, rules, regulations, or documents or information requested by DAS/EOD.

(B) When an MBE, EDGE, or WBE-certified business's certification is revoked, the business and the owner(s) are not eligible to apply for certification for a period of up to two years, the actual term of which will be determined by the Coordinator and will take effect as of the date of the Adjudication Order. A certified business that has been both revoked and debarred is not eligible to apply for certification until the completion of the period of debarment.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	R.C. 123.151, 123.152, 123.154
Rule Amplifies:	R.C. 122.71(E), R.C. 123.151, 123.152, 123.154

123:2-14-08 **Adjudication hearings.**

The Director of the Department of Administrative Services provides adjudication hearings in accordance with sections 119.06 to 119.13 of the Revised Code, and conducts adjudication hearings in accordance with those provisions. If an applicant business or certified business fails to request a hearing upon the receipt of a notice of intent to deny or revoke certification, the Director may issue an adjudication order without holding a hearing.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

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Statutory Authority:	R.C. 123.151, 123.152, 123.154
Rule Amplifies:	R.C. 122.71(E), R.C. 123.151, 123.152, 123.154

123:2-14-09 **EDGE procurement goals.**

(A) Pursuant to section 123.152 of the Revised Code, the Director of the Ohio Department of Administrative Services (Director) shall establish annual procurement percentage goal(s) for each state agency for contracting with EDGE-certified business(es), in the awarding of contracts under Chapters 123, 125, and 153 of the Revised Code applied at the contract level, relative to an overall dollar goal for each state agency, for the following procurement categories:

(1) goods;

(2) information technology services;

(3) construction;

(4) architecture and engineering; and

(5) professional services.

(B) The annual procurement percentage goal(s) are based on the availability of eligible program participants by region or geographic area, as determined by the Director, and by standard industrial code or equivalent code classification.

(C) The Director will provide the annual procurement percentage goal(s) to each state agency by June fifth of each year to be effective for the following fiscal year.

(D) The Director may consult with each state agency and state university in establishing the annual procurement percentage goal(s).

(E) The Director may adopt additional policies, guidelines, and directives to further implement and clarify the requirements of this chapter.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	R.C. 123.152
Rule Amplifies:	R.C. 123.152

123:2-14-10 Demonstration of good faith effort to include EDGE business participation.

(A) Each state agency or state university ("the contracting agency") awarding a contract for goods, information technology services, construction, architecture, engineering, or professional services, subject to section 123.152 of the Revised Code, shall specify in each contract the EDGE goal for subcontracts awarded for labor, materials, and services to be purchased from EDGE-certified business(es) to meet the contracting agency's overall EDGE goal, if the contract has a participation goal above zero.

(B) Any contractor awarded a contract for goods, information technology services, construction, architecture, engineering, or professional services under Chapters 123., 125., and 153. of the Revised Code shall make a good faith effort to comply with any EDGE goal established for the contract.

(C) Whenever a contractor is unable to comply with the EDGE goal established for a contract and having made a good faith effort to meet the established EDGE goal, the contractor may apply in writing, on a form prescribed by DAS/EOD, to the contracting agency for a full or partial waiver of the established contract EDGE goal.

(D) The contracting agency may modify the established EDGE goal for a contract after determining that the contractor made good faith efforts to meet the established contract EDGE goal. For purposes of such determination, the contracting agency shall consider whether the contractor has documented all of the following:

(1) the contractor utilized reasonable and available means to solicit EDGE-certified business(es) 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, the following: fax confirmations, website notifications, bid notices, email contact lists, and invitations to bid notices;

(2) the contractor identified portions of the contracted work that would provide the most opportunity for participation by EDGE-certified business(es). To demonstrate identified 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 which portions of the contract were bid to EDGE-certified business(es) and why other portions were not selected for bidding by EDGE-certified business(es);

(3) the contractor provided all appropriate EDGE-certified business(es) 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-certified business(es) to

review and provide a bid for the contract. "Sufficient time" means at least twenty-one days prior to the required bid submission date provided by the contractor;

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

(5) the contractor properly rejected interested EDGE-certified business(es) as being unqualified for the work of the contract. A contractor's rejection of an EDGE-certified business(es) based on standing within an appropriate industry, membership, or affiliation in a business social, or political group is not a basis for a proper rejection. To demonstrate EDGE-certified business(es) were properly rejected, the contractor shall provide a copy of each rejection letter sent to EDGE-certified business(es) with the reason(s) for rejection, the EDGE-certified business's name, address, date, and proof of mailing;

(6) the contractor used the services of one or more organizations that provide business assistance in the identification and recruitment of EDGE-certified business(es). To demonstrate utilization of one or more organizations providing business assistance, the contractor shall provide the name(s), phone number(s), date(s), and method of contact relating to the business assistance organization; and

(7) the contractor used a list of EDGE-certified business(es) as provided by the Ohio Department of Administrative Services, Equal Opportunity Division (DAS/EOD). To demonstrate a list of EDGE-certified business(es) provided by DAS/EOD was used, the contractor shall provide the list, method of contact, and names associated with each EDGE-certified business(es) included on the list.

(E) To grant a waiver of the established contract EDGE goal, the contractor shall submit evidence acceptable to the contracting agency, in the form and manner defined by DAS/EOD, demonstrating that the contractor made the level of good faith effort deemed necessary by the contracting agency to justify the granting of a waiver. When granting or denying a waiver, the contracting agency shall prepare a written report on a form and in a manner defined by DAS/EOD. The report shall include an evaluation of the contractor 's specific good faith efforts to comply with the requirements set forth in paragraphs (D)(1) to (D)(7) of this rule. The report and the decision as to grant or deny the contractor's waiver request shall be submitted to DAS/EOD by the contracting agency within thirty days of the date the waiver was granted, modified, or denied.

(F) When a contracting agency considers an EDGE waiver request from a contractor, the contracting agency shall make all reasonable efforts to ensure that the contractor exhausted all possible opportunities to contract with EDGE-certified business(es).

(1) The contracting agency acknowledges a duty to verify the awarded contractor's documentation of good faith efforts for waivers.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	R.C. 123.152
Rule Amplifies:	R.C. 123.152

123:2-14-11 **Annual expenditure projection report.**

(A) Each state agency shall file an Annual Expenditure Projection Report (Report) with the Coordinator by June fifteen of each fiscal year, detailing the state agency's projected expenditure goals for the following fiscal year with MBE-certified businesses pursuant to section 123.151 of the Revised Code and EDGE-certified businesses pursuant to section 123.152 of the Revised Code. Each state agency shall provide the Report on a form and in a manner designated by the Ohio Department of Administrative Services, Equal Opportunity Division (DAS/EOD) and shall include the following:

(1) listing of the state agency's designated personnel responsible for implementing, monitoring, and meeting the MBE and EDGE expenditure goals;

(2) the state agency's projected expenditure budget for the following fiscal year, including the projected expenditures to MBE-certified businesses and EDGE-certified businesses for the procurement categories as defined by DAS/EOD; and

(3) any other information DAS/EOD considers necessary.

(B) A state agency's failure to submit a Report in a timely manner may trigger a notification from the Coordinator to the Director of the Ohio Department of Administrative Services and the Governor.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	R.C. 123.151, 123.152
Rule Amplifies:	R.C. 122.71(E), R.C. 123.151, 123.152

123:2-14-12 **Quarterly expenditure report.**

(A) Each state agency will file a Quarterly Expenditure Report (Report) with the Ohio Department of Administrative Services, Equal Opportunity Division (DAS/EOD) or DAS/EOD will acquire a report where possible through existing state accounting systems by October fifteenth, January fifteenth, April fifteenth, and July fifteenth of each fiscal year, summarizing the state agency's procurement activities with MBE, EDGE, and/or WBE-certified businesses for the prior quarter, on a form and in the manner designated by DAS/EOD, including the following:

(1) the name of the MBE, EDGE, and/or WBE-certified businesses that the state agency entered into a contract with or expended funds with during the last ninety days and by the procurement categories designated by DAS/EOD.

(B) The Coordinator will notify each state agency that has not submitted a Report pursuant to paragraph (A) of this rule.

(1) After notification, the state agency has thirty days to submit the Report to DAS/EOD.

(2) A state agency's failure to submit a Report in a timely manner may trigger a notification from the Coordinator to the Director of the Ohio Department of Administrative Services and the Governor.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

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Statutory Authority:	R.C. 123.151, 123.152, 123.154
Rule Amplifies:	R.C. 122.71(E), R.C. 123.151, 123.152, 123.154

123:2-14-13 **EDGE participation goals in solicitations and contracts.**

(A) For every procurement opportunity issued by the Ohio Department of Administrative Services or by any other state agency or state university (the "contracting agency"), the respective contracting agency shall determine whether an EDGE participation goal is feasible for the procurement based on EDGE availability.

(1) The contracting agency shall complete the EDGE participation goal determination prior to advertising the solicitation and shall publish the EDGE participation goal for the contract in the solicitation when a goal above zero percent is determined.

(2) The EDGE participation goal may be determined by the contracting agency. The EDGE participation goal shall be specified in the resulting contract award.

(B) The contracting agency may establish evaluation criteria to award points to responses to a procurement opportunity submitted by an EDGE-certified business or non-EDGE-certified business (when the proposal includes an allowable plan to subcontract a portion of the work with an EDGE-certified business) based upon EDGE participation.

(1) The contracting agency may require an embedded EDGE participation goal in any contract awarded.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	R.C. 123.152
Rule Amplifies:	R.C. 123.152

123:2-14-14 **EDGE data collection.**

(A) The Ohio Department of Administrative Service, Equal Opportunity Division (DAS/EOD) shall collect the necessary data to assess, determine, and evaluate the development, and direction of the EDGE program. The Coordinator shall use the collected data to assist in the establishment of the EDGE procurement percentage goal 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 123:2-14-12 of the Administrative Code, each state agency shall provide data regarding businesses that have sought to acquire or have acquired state contracts with their respective agency as provided in paragraph (C) of this rule. DAS/EOD shall assemble the data provided to assist in establishing the general capacity, availability, and utilization of EDGE-certified business(es) in the relevant marketplace.

(C) Each state agency shall provide DAS/EOD the following data, if applicable:

(1) name of vendor;

(2) certification status (MBE, EDGE, WBE, Veteran-Friendly Business Enterprise) and procurement category;

(3) company federal tax identification number;

(4) contract name and number or project name and number;

(5) contract bid amounts;

(6) names of all bidders;

(7) name of each bidder awarded the contract;

(8) successful bidder and location, address, and geographic region;

(9) type of contract or project by designated industry classification code;

(10) original dollar amount of the contract;

(11) date of contract or project award;

(12) completion date of contract or project;

(13) payment data for contract or project;

(14) name of any identified subcontractors and federal tax identification numbers;

(15) original value of any subcontracts; and

(16) type of contracting method utilized by a contractor;

(D) For uniform data collection and record keeping standards, DAS/EOD shall develop a format and the forms needed to capture the necessary data from state agencies. Where feasible DAS/EOD shall collect expenditure data from the Office of Budget and Management, and capacity data from the Ohio Development Services Agency and the Ohio Department of Transportation. DAS/EOD shall track and analyze the data by each certification category.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	R.C. 123.152
Rule Amplifies:	R.C. 123.152

123:2-14-15 **Monitoring waiver compliance.**

(A) The state agency or state university's (the "contracting agency's") Equal Employment Opportunity Officer (Officer) shall provide a Waiver Compliance Report (Report) upon request by the Coordinator. The Report shall include a description of the contracting agency's procedures for evaluating and granting an EDGE waiver pursuant to rule 123:2-14-10 of the Administrative Code. The Report will be made on forms provided by the Ohio Department of Administrative Services, Equal Opportunity Division (DAS/EOD) and made in a manner designated by DAS/EOD.

(B) DAS/EOD shall review the Report submitted by the Officer and make recommendations to the contracting agency. If the contracting agency fails to provide a Report within the time designated in the request by the Coordinator or if the Coordinator determines that the submitted documentation is insufficient to demonstrate that the contracting agency is in compliance with the requirements set forth in section 123.152 of the Revised Code, then the Coordinator may conduct a compliance review and issue an Agency Compliance Report.

(C) The Director of the Ohio Department of Administrative Services (Director) may consider non-compliance with the requirements set forth in section 123.152 of the Revised Code, as evidenced by the Agency Compliance Report, or DAS/EOD's recommendations in the Agency Compliance Report, in the Director's evaluation of whether to grant a release and permit to purchase goods and services to the requesting Agency.

(D) The Ohio Facilities Construction Commission (OFCC) may consider a contracting agency's non-compliance with the requirements set forth in section 123.152 of the Revised Code as evidenced by the Agency Compliance Report or DAS/EOD's recommendations, in OFCC's evaluation of whether to grant a request to locally administer a construction project.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	R.C. 123.152
Rule Amplifies:	R.C. 123.152