

Proposed Rule Changes: Chapter 123:2-15 123:2-16

MBE RULES | Chapter 123:2-15 Rules

- Background on Rules
 - The Ohio General Assembly adopted House Bill 584 in 1980. This law codified Sections 123.151 and 125.081 of the Ohio Revised Code, creating contract set asides for the participation of minority business enterprises (MBE's) in construction contracting and subcontracting, and in the purchase of goods and services. When enacted, H.B. 584 applied to all competitive procurements made by the Ohio Department of Administrative Services (ODAS) for itself or on behalf of other State agencies with regard to goods and services contracts and construction contracts.
 - The constitutionality of Ohio's MBE law was challenged in October 1998. The United States District Court for the Southern District of Ohio found the construction portion of the program to be unconstitutional and ordered an end to the State's set-aside program in the construction contracting category (*see Associated General Contractor of Ohio, Inc. v. the Department of Administrative Services*, Case Number 98-4393). The goods and services procurement contracting category was not affected by this ruling and MBE set-asides are still in effect under Section 125.051 of the Revised Code.
 - Over the past 15 years, the Ohio General Assembly has repealed those portions of the law pertaining to MBE set-aside contracts for construction, including the repeal of the MBE Set-Aside Review Board in 2005.
 - However, the administrative rules associated with the MBE Set-Aside Review Board were not similarly repealed or rescinded. ODAS is now seeking to do so.

Purpose of the Set-Aside Review Board

- Under previous provisions in the Ohio Revised Code, the Set-Aside Review Board had been responsible for conducting hearings to consider waiver or modification applications submitted by contractors who could not meet MBE set-aside goals associated with construction contracts. In October 1998, following the Federal Court decision striking down the construction portion of the MBE program, the Set-Aside Review Board was deactivated.
- The Set-Aside Review Board has not existed since October 1998.

Effect on the MBE Program

- Proposed changes have **no impact** on any current MBE Sections of the Ohio Revised Codes or any other rules in the Administrative Code.
- The purpose behind recent proposed rule changes by ODAS, as referenced in the December 24 public notice, was to notify interested stakeholders of ODAS's intent to rescind the outdated rules pertaining to the operation of the Set-Aside Review Board, which has not existed since October of 1998 so to ensure that administrative rules match existing state law.

EDGE RULES | Chapter 123:2-16 Rules

- Background on Rules
 - Section 123.152 of the Ohio Revised Code governs the Encouraging Diversity, Growth and Equity (EDGE) Program. The Department of Administrative Services promulgated rules to amplify the requirements of the Revised Code. As part of their five-year review of these administrative rules, ODAS updated the rules pertaining to EDGE in order to clarify provisions in the Ohio Revised Code. Much of the newly proposed language was created in response to comments and feedback from business owners.

- Proposed language has been crafted to accomplish the following: provide clear definition of what constitutes a socially disadvantaged business enterprise; minimize the ability of so-called “front” companies to take advantage of the EDGE Program and its certification; and provide ODAS with the flexibility to work more closely with qualified businesses and to increase ODAS’s ability to respond to potential abuses.

Effect on the EDGE Program

- Proposed rule changes will strengthen the EDGE program and ensure that administrative rules amplify existing state law. Some of the improvements are as follows:
 - Define Key Terms
 - In business
 - Economically Disadvantaged Business size limits for program participation
 - Principal office
 - Net worth
 - Owned and controlled
 - Clarifies
 - Certification criteria
 - What constitutes ownership, control and independence
 - What is included in net worth
 - Transfer of assets and ownership limitations
 - Reasons for decertification
 - Defines what is and is not a commercially useful function
 - Strengthens requirements for prime contractors when requesting waivers from contract goals