

TO BE RESCINDED

164-1-32

Minority business enterprises.

(A) For purposes of complying with section 164.07 of the Revised Code, each local subdivision participating in the Ohio public works commission's financial assistance programs for infrastructure development established by Chapter 164. of the Revised Code must submit an affirmative plan of action to be followed by it in securing participation in proposed projects by certified minority business enterprises at the percentage levels set forth in paragraph (G) of this rule. Should the district committee, in accordance with division (A) of section 164.06 of the Revised Code, determine that the adoption of a subdivision's own plan would be neither practical nor likely to produce the required certified minority business enterprise participation objectives, the subdivision shall, individually or together with other subdivisions, participate in such an affirmative plan of action prepared and submitted by the district committee. District plans may include any number of subdivisions up to that of constituting a single district-wide plan. In the event that a subdivision participates in a district plan, rules and regulations regarding the methodology for compliance with section 164.07 of the Revised Code shall be promulgated by the director. All affirmative plans of action shall be submitted along with the district committee's annual filing of project applications with the director of the Ohio public works commission. The acceptability of any such affirmative plan of action submitted pursuant to this paragraph is subject to the approval of the director. Each plan shall include, but not be limited to, the following:

- (1) The identification of the subdivision(s) participating in the plan;
- (2) An explanation of the organizational framework that will be utilized to implement section 164.07 of the Revised Code, including, the persons, offices, or entities that will have responsibility for administering the plan's requirements; and
- (3) An explanation of the strategy or methodology that will be employed toward achieving the required participation levels by certified minority business enterprises as set forth in paragraph (F) of this rule, including, but not limited to:
 - (a) The establishment of a "good faith effort" definition consistent with the requirements of paragraph (B) of this rule;
 - (b) The process and time frames for receiving, evaluating, and responding to contractor requests for waiver or modification of certified minority business enterprise participation requirements. In no event, shall the processing of a waiver-modification request exceed thirty days in

length;

- (c) The process that will be utilized for verification of information submitted in conjunction with requests for waiver or modification of certified minority business enterprise participation requirements; and
 - (d) The establishment of evaluation criteria for use in connection with the waiver-modification review process that are consistent with the requirements of paragraph (C) of this rule.
- (B) Pursuant to paragraph (A) of this rule, and in accordance with paragraph (C) of rule 123:2-15-04 of the Administrative Code, toward achieving certified minority business enterprise participation requirements, a "good faith effort" includes, but is not limited to, performing and documenting all of the following:
- (1) Contacting the equal employment opportunity coordinator within the Ohio department of administrative services, the minority business development division within the Ohio department of development, and any other appropriate minority business assistance organization for the purpose of identifying certified minority business enterprises that have the capacity to meet particular contracting or subcontracting needs or to supply materials and services needed for the performance of the project;
 - (2) Selecting particular portions of the project work to become contracting or subcontracting opportunities for certified minority business enterprises, and selecting particular materials and services to be purchased for the performance of the project to become supplying opportunities for certified minority business enterprises;
 - (3) Attending any pre-bid meeting scheduled to inform certified minority business enterprises of contracting or subcontracting opportunities, or material and services supplying opportunities under the project;
 - (4) Notifying all appropriate certified minority business enterprises in the immediate geographic area that their interest in contracting or subcontracting or supplying materials or services under the project is requested;
 - (5) Assisting those certified minority business enterprises that respond in formulating contracting or subcontracting proposals or proposals for the supply of materials or services that are consistent with project specifications;
 - (6) If such is the case, provide a statement of the reasons for rejecting as

unqualified any certified minority business enterprise that was contacted for purposes of contracting or subcontracting work under the project;

- (7) If such is the case, provide a statement of the reasons why contracting or subcontracting agreements, or purchase of materials or services agreements with certified minority business enterprises were not reached;
 - (8) If such is the case, provide a written statement of the reasons for requiring a bond of a certified minority business enterprise; and
 - (9) Any other criteria as deemed appropriate by the director to carry out the purposes of section 164.07 of the Revised Code.
- (C) For the purpose of reviewing requests for waiver or modification of certified minority business enterprise participation requirements, each subdivision participating in the affirmative plan of action required pursuant to paragraph (A) of this rule shall establish evaluation criteria, including, but not limited to the following:
- (1) The extent to which the requesting contractor, as an integral part of its subcontracting and/or procurement processes, formulated reasonable plans of "good faith effort" to achieve the required certified minority business enterprise participation levels;
 - (2) Substantial proof that the requesting contractor has diligently executed the required "good faith effort";
 - (3) Evidence that within ten days of being notified of contract award in a project, the prime contractor submitted to the subdivision its list of all proposed subcontractors and vendors and the dollar amounts of their respective participation in the project. Such submittal shall clearly demonstrate the resultant level of certified minority business enterprise participation in the project and indicate any need for waiver or modification of the requirements;
 - (4) That the request for waiver or modification, together with the necessary supporting documentation, was submitted in sufficient time for review under the provisions of the waiver-modification process;
 - (5) That the contracting and/or procurement processes failed to produce responses from certified minority business enterprises that were both qualified to perform the project work or supply the materials or services in question and at a cost-competitive price (cost-competitiveness shall be evaluated recognizing that such participation of certified minority business enterprises

is a clear objective of Chapter 164. of the Revised Code); and

- (6) That the requirements of rule 164-1-21 of the Administrative Code have been fulfilled.
- (D) The director, after consultation with the equal employment opportunity coordinator within the Ohio department of administrative services, shall review and approve or disapprove an affirmative plan of action submitted pursuant to paragraph (A) of this rule. Any disapproval action by the director shall be taken at or before the time the director grants formal funding approval to the projects associated with the plan. If no disapproval action is taken, the plan shall be considered approved.
- (E) Upon the granting or denial of a waiver or modification, the subdivision shall promptly submit copies of all materials related to the request, together with a written explanation of its action, to both the director and the equal employment opportunity coordinator within the Ohio department of administrative services.
- (F) In awarding contracts to implement projects that are financially assisted through the programs established under Chapter 164. of the Revised Code, it is required that on a "good faith effort" basis the following participation levels by minority business enterprises certified under division (B) of section 123.151 of the Revised Code be achieved:
- (1) Pursuant to paragraph (A) of this rule, and in accordance with the percentage requirements of division (C)(1) of section 123.151 and of section 125.081 of the Revised Code, subdivision prime contracting and/or procurement activities shall result in the award of no less than five per cent of the total dollar value of construction contracts and no less than fifteen per cent of the total dollar value of contracts for equipment, materials, supplies, insurance, or services to such certified minority business enterprises; and
 - (2) Pursuant to paragraph (A) of this rule, and in accordance with the requirements of division (C)(2) of section 123.151 of the Revised Code, prime contractor subcontracting, to the extent that it engages in subcontracting, shall result in the award of subcontracts to certified minority business enterprises in an aggregate dollar value of no less than five per cent of the prime contract. Prime contractor procurement activities, to the extent that it procures materials and/or services, shall result in the award of procurement contracts to certified minority business enterprises in an aggregate dollar value of no less than two per cent of the prime contract. In total, prime contractor subcontracting and procurement activities, to the extent that it engages in subcontracting and procures materials and/or services, shall result in the award of subcontracts and procurement contracts to certified minority

business enterprises in an aggregate dollar value of no less than seven per cent of the prime contract.

Any prime contractor that is performing primarily in the following branches or classes of work, to the extent that it subcontracts its work and purchases materials and services, shall award subcontracts to and purchase such materials and services from certified minority business enterprises in an aggregate dollar value of no less than seven percent of the prime contract:

- (a) Plumbing and gas fitting;
- (b) Steam and hot-water heating, ventilating apparatus, and steam-power plant;
- (c) Electrical equipment.

To the extent that such a prime contractor subcontracts its work, it shall award subcontracts to certified minority businesses in an aggregate dollar value of no less than two per cent of the prime contract.

- (3) The percentages set forth in paragraph (F)(2) of this rule are subject to waiver or modification by the subdivision pursuant to section 164.07 of the Revised Code and paragraph (C) of this rule.

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CERTIFIED ELECTRONICALLY

Certification

07/08/2013

Date

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