

TO BE RESCINDED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 percent 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 percent.
- (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: 10/9/2020

Five Year Review (FYR) Dates: 7/23/2020

CERTIFIED ELECTRONICALLY

Certification

09/29/2020

Date

Promulgated Under: 119.03
Statutory Authority: R.C. 123.152
Rule Amplifies: R.C. 123.152
Prior Effective Dates: 11/26/2004, 02/01/2016