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Hearing Date: 8/26/2020

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Agency: Ohio Department of Administrative Services

Rule Number(s): New rules 123:2-14-01 through 123:2-14-15, rescinded rules 123:2-15-01 and 123:2-16-01 through 123:2-16-16.

If no comments at the hearing, please check the box. ☐

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

1. Tracy Nixon – no specific rule number (comment on payment terms between prime contractors and disadvantaged subcontractors, and written comment on expedited certification rule, 123:2-14-04)
2. Shaune Skinner -no specific rule number (comment on participation goals for WBE)
3. Barry Coutts – the rescission of 123:2-16-03(J) (10 year time limit in EDGE program); 123:2-14-01(G) (definition of small business based on SBA); 123:2-14-04 (expedited certification); the rescission of 123:2-16-03 (provisions re: composition of member/officers); various rules regarding oversight and regulations designed to avoid the certification of pass-through or front companies.
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Hearing Summary Report

Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

One commenter suggested that prime contractors be required to pay disadvantaged business enterprises that are their subcontractors within a set number of days once the prime is paid.

Two commenters commented in favor of Rule 123:2-14-04, the expedited certification rule, but one commenter cautioned the agency to ensure that if it utilizes a third-party certification that the certification is one that is accepted by other governmental entities.

One commenter suggested that goals be created for the program (referring to the Women-owned Business Enterprise program) because if there are no goals, these businesses will not be given an opportunity to participate.

One commenter commented in favor of the rescission of the following provisions: the elimination of the 10-year time limit in EDGE program; the change to the definition of small business to match SBA definitions; and the loosening of the provisions regarding the minority or disadvantaged status of corporate members and officers.

One commenter expressed that oversight and regulations designed to avoid the certification of pass-through or front companies are unnecessary.

Hearing Summary Report

Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

None of the comments resulted in changes to the proposed rules. First, some of the comments were positive feedback, and the agency appreciates those who support the rules as proposed.

The agency declined to address the concern about payment terms between prime and subcontractors in the rule. The rules address the process and requirements for the certification of MBE, EDGE, and WBE businesses. As such, regulating the contract terms between a prime and a subcontractor is outside the scope of these rules.

The agency appreciates the support for the expedited certification rule. We agree with the commenter that consistency across certification programs is important, and will address this issue in the implementation of the rule.

In response to the comment regarding participation goals for the WBE program, participation goals for the MBE and EDGE programs are set by statute. The statute authorizing DAS to create rules for the certification of WBE's, R.C. 123.154, does not give DAS authority to set participation goals for the WBE program.

The agency declines to make changes to the rules to address the comment that oversight and provisions related to pass through and front companies are unnecessary. The agency is committed to operating a program that is fair and consistent for all participants. Companies that attempt to gain benefits by setting up pass through and front companies harm the integrity of the program and the other companies that participate within the established rules. The proposed rules are important to the agency because these changes will help prevent the certification of pass through and front companies.