



## Ohio Administrative Code

### Rule 122:15-3-10 Demonstration of good faith effort to include EDGE business participation.

Effective: October 9, 2020

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(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).

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