



Ohio Revised Code Section 122.89 Executing bonds as surety.

Effective: September 30, 2021

Legislation: House Bill 110

(A) The director of development may execute bonds as surety for minority businesses as principals, on contracts with the state, any political subdivision or instrumentality thereof, or any person as the obligee. The director as surety may exercise all the rights and powers of a company authorized by the department of insurance to execute bonds as surety but shall not be subject to any requirements of a surety company under Title XXXIX of the Revised Code nor to any rules of the department of insurance.

(B) The director, with the advice of the minority development financing advisory board, shall adopt rules under Chapter 119. of the Revised Code establishing procedures for application for surety bonds by minority businesses and for review and approval of applications. The board shall review each application in accordance with the rules and, based on the bond worthiness of each applicant, shall refer all qualified applicants to the director. Based on the recommendation of the board, the director shall determine whether or not the applicant shall receive bonding.

(C) The rules of the board shall require the minority business to pay a premium in advance for the bond to be established by the director, with the advice of the board after the director receives advice from the superintendent of insurance regarding the standard market rates for premiums for similar bonds. All premiums paid by minority businesses shall be paid into the minority business bonding program administrative and loss reserve fund.

(D) The rules of the board shall provide for a retainage of money paid to the minority business or EDGE business enterprise of fifteen per cent for a contract valued at more than fifty thousand dollars and for a retainage of twelve per cent for a contract valued at fifty thousand dollars or less.

(E) The penal sum amounts of all outstanding bonds issued by the director shall not exceed the amount of moneys in the minority business bonding fund and available to the fund under division (B) of section 169.05 of the Revised Code.



(F) The superintendent of insurance shall provide such technical and professional assistance as is considered necessary by the director, including providing advice regarding the standard market rates for bond premiums as described under division (C) of this section.

(G) Notwithstanding any provision of the Revised Code to the contrary, a minority business or EDGE business enterprise may bid or enter into a contract with the state or with any instrumentality of the state without being required to provide a bond as follows:

(1) For the first contract that a minority business or EDGE business enterprise enters into with the state or with any particular instrumentality of the state, the minority business or EDGE business enterprise may bid or enter into a contract valued at twenty-five thousand dollars or less without being required to provide a bond, but only if the minority business or EDGE business enterprise is participating in a qualified contractor assistance program or has successfully completed a qualified contractor assistance program after October 16, 2009;

(2) After the state or any particular instrumentality of the state has accepted the first contract as completed and all subcontractors and suppliers on the contract have been paid, the minority business or EDGE business enterprise may bid or enter into a second contract with the state or with that particular instrumentality of the state valued at fifty thousand dollars or less without being required to provide a bond, but only if the minority business or EDGE business enterprise is participating in a qualified contractor assistance program or has successfully completed a qualified contractor assistance program after October 16, 2009;

(3) After the state or any particular instrumentality of the state has accepted the second contract as completed and all subcontractors and suppliers on the contract have been paid, the minority business or EDGE business enterprise may bid or enter into a third contract with the state or with that particular instrumentality of the state valued at one hundred thousand dollars or less without being required to provide a bond, but only if the minority business or EDGE business enterprise has successfully completed a qualified contractor assistance program after October 16, 2009;

(4) After the state or any particular instrumentality of the state has accepted the third contract as completed and all subcontractors and suppliers on the contract have been paid, the minority business or EDGE business enterprise may bid or enter into a fourth contract with the state or with that



particular instrumentality of the state valued at three hundred thousand dollars or less without being required to provide a bond, but only if the minority business or EDGE business enterprise has successfully completed a qualified contractor assistance program after October 16, 2009;

(5) After the state or any instrumentality of the state has accepted the fourth contract as completed and all subcontractors and suppliers on the contract have been paid, upon a showing that with respect to a contract valued at four hundred thousand dollars or less with the state or with any particular instrumentality of the state, that the minority business or EDGE business enterprise either has been denied a bond by two surety companies or that the minority business or EDGE business enterprise has applied to two surety companies for a bond and, at the expiration of sixty days after making the application, has neither received nor been denied a bond, the minority business or EDGE business enterprise may repeat its participation in the unbonded state contractor program. Under no circumstances shall a minority business or EDGE business enterprise be permitted to participate in the unbonded state contractor program more than twice.

(H) Notwithstanding any provision of the Revised Code to the contrary, a minority business or EDGE business enterprise may bid or enter into a contract with any political subdivision of the state or with any instrumentality of a political subdivision without being required to provide a bond as follows:

(1) For the first contract that the minority business or EDGE business enterprise enters into with any particular political subdivision of the state or with any particular instrumentality of a political subdivision, the minority business or EDGE business enterprise may bid or enter into a contract valued at twenty-five thousand dollars or less without being required to provide a bond, but only if the minority business or EDGE business enterprise is participating in a qualified contractor assistance program or has successfully completed a qualified contractor assistance program after October 16, 2009;

(2) After any political subdivision of the state or any instrumentality of a political subdivision has accepted the first contract as completed and all subcontractors and suppliers on the contract have been paid, the minority business or EDGE business enterprise may bid or enter into a second contract with that particular political subdivision of the state or with that particular instrumentality of a political subdivision valued at fifty thousand dollars or less without being required to provide a bond,



but only if the minority business or EDGE business enterprise is participating in a qualified contractor assistance program or has successfully completed a qualified contractor assistance program after October 16, 2009;

(3) After any political subdivision of the state or any instrumentality of a political subdivision has accepted the second contract as completed and all subcontractors and suppliers on the contract have been paid, the minority business or EDGE business enterprise may bid or enter into a third contract with that particular political subdivision of the state or with that particular instrumentality of a political subdivision valued at one hundred thousand dollars or less without being required to provide a bond, but only if the minority business or EDGE business enterprise has successfully completed a qualified contractor assistance program after October 16, 2009;

(4) After any political subdivision of the state or any instrumentality of a political subdivision has accepted the third contract as completed and all subcontractors and suppliers on the contract have been paid, the minority business or EDGE business enterprise may bid or enter into a fourth contract with that particular political subdivision of the state or with that particular instrumentality of a political subdivision valued at two hundred thousand dollars or less without being required to provide a bond, but only if the minority business or EDGE business enterprise has successfully completed a qualified contractor assistance program after October 16, 2009;

(5) After any political subdivision of the state or any instrumentality of a political subdivision has accepted the fourth contract as completed and all subcontractors and suppliers on the contract have been paid, upon a showing that with respect to a contract valued at three hundred thousand dollars or less with any political subdivision of the state or any instrumentality of a political subdivision, that the minority business or EDGE business enterprise either has been denied a bond by two surety companies or that the minority business or EDGE business enterprise has applied to two surety companies for a bond and, at the expiration of sixty days after making the application, has neither received nor been denied a bond, the minority business or EDGE business enterprise may repeat its participation in the unbonded political subdivision contractor program. Under no circumstances shall a minority business or EDGE business enterprise be permitted to participate in the unbonded political subdivision contractor program more than twice.

(I) Notwithstanding any provision of the Revised Code to the contrary, if a minority business or



EDGE business enterprise has entered into two or more contracts with the state or with any instrumentality of the state, the minority business or EDGE business enterprise may bid or enter into a contract with a political subdivision of the state or with any instrumentality of a political subdivision valued at the level at which the minority business or EDGE business enterprise would qualify if entering into an additional contract with the state.

(J) The director of development shall coordinate and oversee the unbonded state contractor program described in division (G) of this section, the unbonded political subdivision contractor program described in division (H) of this section, and the approval of a qualified contractor assistance program. The director shall prepare an annual report and submit it to the governor and the general assembly on or before the first day of August that includes the following: information on the director's activities for the preceding calendar year regarding the unbonded state contractor program, the unbonded political subdivision contractor program, and the qualified contractor assistance program; a summary and description of the operations and activities of these programs; an assessment of the achievements of these programs; and a recommendation as to whether these programs need to continue.

(K) As used in this section:

(1) "EDGE business enterprise" means an EDGE business enterprise certified under section 122.922 of the Revised Code.

(2) "Qualified contractor assistance program" means an educational program or technical assistance program for business development that is designed to assist a minority business or EDGE business enterprise in becoming eligible for bonding and has been approved by the director of development for use as required under this section.

(3) "Successfully completed a qualified contractor assistance program" means the minority business or EDGE business enterprise completed such a program on or after October 16, 2009.

(4) "Unbonded state contractor program" means the program described in division (G) of this section.



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(5) "Unbonded political subdivision contractor program" means the program described in division (H) of this section.