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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" mean 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 person or persons who enter into a contract with the state.
- (D) "Economically Disadvantaged Business" means a for-profit business (including its affiliates) at least fifty -one per cent 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 eligible for EDGE certification the applicant firm must pass two gross receipts tests:
 - (a) First, a business must be a small business as defined by SBA standards. SBA business size standards (found in 23 C.F.R. Part 121) vary according to the type of work the firm seeks to perform. For example, specialty trade contractors have a size standard of \$14 million while engineering and professional services firms generally have a size standard of \$4.5 million. The size standard for heavy construction is as high as \$33.5 million while number of employees, rather than gross receipts, determines the size standard for manufacturers.
 - (i) In determining a business's number of employees, EOD counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing companies. Volunteers (i.e., individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees.
 - (ii) Where the size standard is number of employees, the method for determining a business's size includes the following principles:
 - (a) The average number of employees the business used based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months.
 - (b) Part-time and temporary employees are counted the same as full-time employees.
 - (c) If a business has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.
 - (b) Second, even if the business meets the SBA requirements, a business would not be considered an economically disadvantage business if the business has had average annual gross receipts over the business's previous three fiscal years in excess of \$22.41 million.
- (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:

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(1) The personal financial profile of the persons claiming disadvantaged status, including personal net worth of the person and other factors considered pursuant to paragraph (E) of rule 123:2-16-02 of the Ohio 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 three year period including but not limited to transfers to members of the person's immediate family, to the economically disadvantaged business or other business's, 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 the department of administrative services, equal opportunity division as meeting the criteria established 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 or historically underutilized business zone and the business is owned and controlled by an Economically and Socially Disadvantaged Person(s); and

(3) An economically disadvantaged business whose primary office location is in a qualified census tract or historically underutilized business zone and the business is owned and controlled by an Economically and Socially Disadvantaged Person.

(H) "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; and, equipment necessary to perform scope of work.

(I) "Independent" means the business must be free from the 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.

(J) "One Year" means for at least one year immediately prior to application for certification:

(1) the business is in business and independent;

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(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 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; and,

(K) "Owned and Controlled" means at least fifty-one per cent of the business (stock, units, percentage) is owned by socially and economically disadvantaged individuals. 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.

~~(H)~~ (L) "Owner" means a person or persons who owns 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.

~~(H)~~ (M) "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 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 by more than one hundred forty per cent.

(N) "Resident" means a person lives in Ohio and has established residency in this state for at least one year immediately preceding application into the EDGE business development program or has filed personal State of Ohio tax returns as a full-time resident in the preceding tax year.

(O) "Socially Disadvantaged Business" means a for-profit 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 or HUB Zone and is determined to be an economically disadvantaged business.

~~(H)~~ (P) "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" means all persons having origins in any of the black racial groups of Africa.

(ii) "American Indians" means all persons who maintain membership with a federally recognized Indian tribe.

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(iii) "Hispanics" 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 or HUB Zone as designated by the United States Small Business Administration in 13 C.F.R. part 126 and has its principal office is located in the qualified census tract or HUB Zone.

~~(K)~~ (Q) "State" means the state of Ohio.

~~(L)~~ (R) "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.

~~(M)~~ (S) "Subcontractor" means any person or entity who undertakes to perform any part of the work on a project that is in privity of contract with a contractor.

(T) "Principal Office" means the location where the greatest number of employees at any one location actually perform their work and is located within a 'Historically Underutilized Business Zone' or qualified census tract and at least 35% of its employees (defined as living in a primary residence within that area for at least 180 days) and must reside in a HUB Zone or qualified census tract.

123:2-16-02 Certification criteria.

(A) Unless certified pursuant to rule 123:2-16-04 of the Administrative Code, any business seeking certification in the EDGE business development program, established under section 123.152 of the Revised Code, shall first apply to the equal opportunity division of the department of administrative services for certification as an EDGE business enterprise. The application shall be made on forms provided by the division and made in

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a manner prescribed by the division.

(B) The equal employment opportunity coordinator of the department of administrative services ~~shall~~may certify a business as an EDGE business enterprise, provided the owner or owners of the business demonstrate all of the following:

- (1) The business is a for-profit business entity and in business for at least one year ~~prior~~immediately preceding the date of the business's ~~to~~ application for certification.
- (2) The business is owned and controlled by a citizen or citizens of the United States.
- (3) The business is owned and controlled by a resident or residents of the state.
- (4) Ownership: 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. Owners must demonstrate that they possess the experience, expertise, and knowledge to operate their particular types of business. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the business is insufficient to demonstrate control.
 - (a) Ownership interest obtained through a transfer or gift will be scrutinized to ensure ownership is irrevocable, was obtained for reasons other than obtaining certification into the EDGE program, and that the disadvantaged owner(s) actually controls the management, policy, operations, and direction of the business. De facto (on paper) ownership is not sufficient to qualify for the EDGE program. Even when company documents support the basic criteria, certification can be denied if the business operations do not reflect the ownership shown on paper.
 - (b) Control is comprised of (but not limited) to three parts: operational control, managerial control, and independence. The socially and economically disadvantaged owner(s) must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the business is engaged and the business's overall operations. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the business is insufficient to demonstrate control.
 - (c) the business must be independent; its viability must not depend on its relationship with another business or businesses.
 - (d) to be viewed as controlling a business, a disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the business or prevent the individual from devoting sufficient time and attention to the affairs of the business.
- ~~(4)~~(5) The business is both economically and socially disadvantaged or the business owner(s) ~~is~~are both economically and socially disadvantaged.

(C) To demonstrate that a business applying for EDGE certification meets the criteria set forth in paragraphs (B) (1) to (B)~~(35)~~ of this rule, the fifty-one per cent owner(s) of the business ~~must~~upon request by the Equal Opportunity Division provide the equal opportunity division of the department of administrative services the following information in the form and detail as determined by the division:

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- (1) Business structure information.
 - (2) Previous three years of personal federal and state tax returns including all schedules, W-2s, and/or 1099s.
 - (3) When applicable, previous three years of business federal tax returns to include all schedules.
 - ~~(3)~~(4) corporate Corporate and personnel organizational information.
 - ~~(4)~~(5) Business sales and tax information.
 - ~~(5)~~(6) Personal information indicating citizenship and ~~residence~~residency.
 - ~~(6)~~(7) Notarized statement from the owner certifying that the owner meets the defined criteria for economically and socially disadvantaged, and Documentation providing proof that the owner meets the program's social and economic disadvantage criteria, and
 - ~~(7)~~(8) Any other relevant information the division deems necessary.
- (D) To demonstrate that a business applying for EDGE certification meets the criteria set forth in paragraph (B)~~(4)~~(5) of this rule, the owner of the business ~~must~~ upon request by the Equal Opportunity Division provide the equal opportunity division of the department of administrative services the following information, in the detail and manner ~~determined~~ prescribed by the division:
- (1) Financial records ~~indicating the net worth~~ representing previous three years of gross receipts of the business and personal net worth of the owner.
 - ~~(2) If married, financial records of the owner's spouse.~~ Current personal financial statement indicating net worth of the owner, members, board of directors and executive officers.
 - (3) If applying for a social disadvantage classification based on race, color, ethnic origin, gender, disability, long-term residence in a qualified census tract, ~~or~~ geographic location, or environment isolated from the mainstream of American society, ~~information~~ documentation demonstrating membership in the claimed category.
 - (4) If applying for a social disadvantage classification based on personal disadvantage not common to ~~other similar or same~~ small businesses, ~~information indicating the impediment to be considered and how the impediment has restricted professional acceptance, employment, or access to capital and credit~~ statement and supporting evidentiary documentation proving social disadvantaged as defined in rule 123:2-16-01 of the Administrative Code, and
 - (5) Any other relevant information the division deems necessary.
- (E) The equal employment opportunity coordinator of the department of administrative services ~~shall~~ may consider all of the following to determine whether a business owner applying for EDGE certification meets the personal net worth threshold of paragraph (E)(1) of rule 123:2-16-01 of the Administrative Code:
- (1) The business owner's personal income for the two years prior to application.

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- (2) The fair market value of all the business owner assets, whether encumbered or not.
- (3) Asset transfers within ~~the two-a three years-year period~~ of the application- including transfers to members of the person's immediate family, the economically disadvantaged business, and trust accounts and others as determine by the State EEO Coordinator.
- (4) Assets of the owner's spouse if applicable.
- (5) Similar factors considered by the United States small business administration when making individual determinations of economic and social disadvantage pursuant to federal disadvantage business enterprise programs.

Upon consideration of the above factors, the coordinator finds that the business owner meets the criteria set forth in paragraph (E)(1) of rule 123:2-16-01 of the Administrative Code, the coordinator ~~shall~~may determine that the owner is economically disadvantaged.

- (F) The equal employment opportunity coordinator of the department of administrative services ~~shall~~may compare and consider the following factors to determine whether the business of the owner applying for EDGE certification is economically disadvantaged compare to similar business enterprises, as described in paragraph (D) of rule 123:2-16-01 of the Administrative Code:

- (1) The annual accounts receivable

- (2) Total assets

- (3) Gross receipts for three years immediately preceding the date of the application for certification

- ~~(3)~~(4) Net sales for one year immediately preceding the date of the application for certification

- ~~(4)~~(5) Pre-tax profit

- ~~(5)~~(6) Sales versus working capital ratio

- ~~(6)~~(7) Business net worth and other items determined relevant by the state EEO coordinator.

~~If upon consideration of the above factors, the coordinator finds that the business meets the criteria set forth in this chapter, the coordinator shall determine that the business is economically disadvantaged.~~

- (G) If upon consideration of the above factors paragraphs (F)(1) through (F)(7) of this rule and other factors as determined by the coordinator, the coordinator finds that the business meets the criteria set forth in this chapter, the coordinator shall ~~shall~~may determine that the business is economically disadvantaged.

- ~~(G)~~(H) The equal employment opportunity coordinator of the department of administrative services ~~shall~~may determine that a business owner applying for EDGE certification is socially disadvantaged, if the business owner demonstrates personal disadvantage, as described in paragraph ~~(J)~~(P) of rule 123:2-16-01 of the Administrative Code, and the coordinator determines that the distinguishing feature or demonstrated disadvantage significantly inhibited the business owner's business success.

- ~~(H)~~(I) The equal opportunity division ~~shall~~may administer the certification of the EDGE program in accordance

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to the general "disadvantaged business enterprise" certification guidelines issued by the United States small business administration in Title 13 of the Code of Federal Regulations, unless expressly stated otherwise.

123:2-16-03 Certification of business structure.

(A) The equal opportunity division of the department of administrative services may require the following criteria of a business seeking certification as an EDGE business enterprise:

(1) If the applying business is a corporation:

(a) At least fifty-one per cent of the board of directors and at least fifty-one per cent of the principal executive officers and fifty-one per cent owner(s) are economically and socially disadvantaged as defined in this chapter, and that these persons have ultimate control over the management and day-to-day operations of the business, including but not limited to finances, management decisions, and policies.

(b) Economically and socially disadvantaged owner(s) own at least fifty-one per cent of each class of corporate stock.

(2) If the applying business is a partnership:

(a) The economically and socially disadvantaged owner(s) have ultimate control over the management and day-to-day operations of the business, including but not limited to finances, management decisions, policies, and that such owners have an interest in the capital, assets, profits and losses of the business proportionate to their percentage of ownership.

(b) At least fifty-one per cent of each class of partnership interest is owned by partners who are economically and socially disadvantaged as defined in this chapter. Such ownership must be reflected in the business's partnership agreement.

(c) For a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power to contractually bind the partnership or subject the partnership to contract or tort liability.

(3) If the applying business is a sole proprietorship:

(a) The sole proprietor is an economically and socially disadvantaged person as defined in this chapter.

(b) The sole proprietor has ultimate control over the management and day-to-day operations of the business, including but not limited to finances, management decisions, and policies.

(c) The sole proprietor has one hundred percent interest in the capital, assets, profits and losses of the business.

(4) If the applying business is an association:

(a) The association is organized pursuant to Chapter 1785. of the Revised Code, and,

(b) At least fifty-one per cent of the members of the association are economically and socially disadvantaged as defined in this chapter, and that these persons have ultimate day-to-day control

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over the management including but not limited to finances, management decisions, policies, and that such owners have an interest in the capital, assets, profits and losses of the business proportionate to their percentage of ownership.

(5) If the applying business is a limited liability company:

(a) The company is organized pursuant to Chapter 1705 of the Ohio Revised Code.

(b) At least fifty-one per cent of the members of the limited liability company are economically and socially disadvantaged individuals as defined in this chapter.

(c) At least fifty-one per cent of the contributions of capital to the limited liability company are provided by economically and socially disadvantaged members of the company.

(d) The economically and socially disadvantaged members of the limited liability company have ultimate control over the management and day-to-day operations of the company, including, but not limited to, finances, management decisions, policies, and that such members have an interest in the capital, assets, profits and losses of the business proportionate to their percentage of ownership.

(B) The equal opportunity division of the department of administrative services shall consider the following criteria (but not limited to) in determining control, independence, and ownership of a business applying for EDGE certification:

(1) The economically and socially disadvantaged owner(s) maintains and demonstrates authority to direct the day-to-day management and policies of the business,

(2) The economically and socially disadvantaged owner(s) must hold the highest officer position(s) in the business (e.g., chief executive officer or president).

(3) Differences in remuneration between the socially and economically disadvantaged person, other participants, and the former owner of the business (when the non-disadvantaged individual remains involved with the business).

(4) Where a business was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), or ownership and/or control were transferred to an economically and socially disadvantaged individual, in either case, the non-disadvantaged individual remains involved with the business in any capacity, the economically and socially disadvantaged individual now owning the business must demonstrate, by clear and convincing evidence, that the transfer of ownership and/or control to the economically and socially disadvantaged individual was made for reasons other than obtaining certification as an EDGE business.

(5) The socially and economically disadvantaged owner(s) must possess the power to direct or cause the direction of the management and policies of the business and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(6) Only an independent business may be certified as an EDGE business. An independent business is one that the viability of which does not depend on its relationship with another business.

(7) The economically and socially disadvantaged owner(s) shall have in their name, the requisite licenses associated with the nature of the business.

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- (8) The economically and socially disadvantaged owner(s) have ownership of the securities of the business.
- (9) The socially and economically disadvantaged owner(s) must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the business is engaged and the business's operations. The socially and economically disadvantaged owner(s) are not required to have experience or expertise in every critical area of the business's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the business's activities and to use this information to make independent decisions concerning the business's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the business is insufficient to demonstrate control.
- (10) In order to be viewed as controlling a business, a socially and economically disadvantaged owner(s) cannot engage in outside employment or other business interests that conflicts with the management of the business or prevent the individual from devoting sufficient time and attention to the affairs of the business to control its activities. For example, absentee ownership of a business and part-time work in a full-time business are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it at all times it is operating.
- (11) In determining whether a business is controlled by its socially and economically disadvantaged owner(s), the division will consider whether the business owns equipment necessary to perform its work. However, a business is not controlled by socially and economically disadvantaged owner(s) solely because the business leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a with another party or other party that compromises the independence of the business.
- (12) The socially and economically disadvantaged owner(s) must hold the highest position in the business.
- (13) Businesses acquired as gifts, without sufficient consideration, will be closely examined to assure such transactions meet the requirements of the EDGE business development program.
- (14) Among the factors that shall be considered by the state equal employment opportunity coordinator in evaluating the non-economically and non-socially disadvantaged influence over socially and economically disadvantaged businesses are:

 - (a) Has the non-socially and non-economically disadvantaged owner(s) employed the owner(s) of the applicant for any period of time during the three years prior to the date of application by the applicant for EDGE business enterprise status;
 - (b) Is the non-socially and non-economically disadvantaged owner(s) affiliated with another business in the same or similar type of business as the applicant;
 - (c) Does the non-socially and non-economically disadvantaged owner(s) exercise final authority over any aspect of the day-to-day operations of the applicant;
 - (d) Does the non-socially and non-economically disadvantaged owner(s) control over the applicant directly or indirectly restrict the economic growth of the business;

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(e) The relative compensation received by the non-socially and non-economically disadvantaged owner(s) as compensation for services as a consultant, director, officer or employee rendered to the applicant concern.

(f) Does the non-socially and non-economically disadvantaged owner(s) exercise actual, ultimate control or have the authority to control any aspects of the day-to-day operations, finances, or the management decisions and management policies of the applicant business. The existence of control or the authority to exercise control shall be determined by the facts of each application.

(g) Any other criteria the division deems relevant that demonstrates control, independence, and ownership of the business.

(C) Failure to provide requested information in a timely manner may delay the processing of the certification application.

(D) Except as otherwise required by law, all financial statements and records submitted by an applicant to the equal opportunity division shall not be released to the public unless such documents are determined to be public records pursuant to section 149.43 of the Revised Code.

(E) Upon determining that the economically and socially disadvantaged owner and business have met the criteria for certification in the EDGE program, as outlined in this section, the equal employment opportunity coordinator of the department of administrative services may certify the business.

(F) If the equal opportunity coordinator of the department of administrative services determines that the business or economically and socially disadvantaged business owner does not meet the criteria set forth in this chapter, the division shall notify the applicant of its decision by mail. The notification shall include the applicant's appeal rights as set forth in Chapter 119 of the Revised Code.

~~(F)~~ (G) The equal opportunity division of the department of administrative services shall have the right to conduct on-site inspections at any location of a business seeking certification.

~~(G)~~ (H) The equal opportunity coordinator of the department of administrative services may determine the length of the EDGE certification issued pursuant to this section, however, no certification shall exceed two years from the date of certification, provided that the EDGE business enterprise remains in compliance and is not decertified pursuant to rule 123:2-16-06 of the Ohio Administrative Code.

~~(H)~~ (I) A business removed for non-disciplinary reasons or graduated from the program may re-enter the program after one year, provided that it meets all eligibility requirements.

123:2-16-04 Expedited certification.

(A) Upon application with the equal opportunity division of the department of administrative services, a business certified in any of the following may be certified by the division as an EDGE certified business, provided the business and the business owner meet the social and economic threshold requirements set forth in rule 123:2-16-02 and the business structure requirements set forth in rule 123:2-16-03 of the Administrative Code:

~~(1)~~ (1) State of Ohio historically underutilized businesses

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~~(2)-(1)~~ Disadvantaged business enterprises (49 CFR part 26)

~~(3)-(2)~~ Businesses certified under other public contract assistance programs that the ~~director of administrative services~~ State EEO Coordinator determines are certified in programs that require social and economic disadvantage thresholds equivalent to the EDGE program established pursuant to section 123.152 of the Ohio Revised Code; ~~Code-;~~ business must be owned by United States citizens and residents of Ohio; ~~must own the business~~ and business must be certified with other public contract assistance programs for at least one year prior to application for certification.

(B) A business applying for certification under this section shall initiate and submit a form from the appropriate certification entity demonstrating certification in that program. A business shall provide social and economic threshold information for certification in the particular program, upon request by the equal opportunity division of the department of administrative services.. In addition, the applying business must submit an ~~"expedited certification"~~ application on a form provided by the division and in the manner prescribed by the division.

(C) A business applying for certification under this section shall provide all information requested by the equal opportunity division of the department of administrative services. Failure to provide requested information may lead to disapproval of the application.

(D) The equal opportunity division of the department of administrative services shall have a right to conduct on-site inspections and investigations at any location of a business seeking certification pursuant to rule 123:2-16-03 of the Administrative Code. ~~The division shall give appropriate notice.~~

(E) ~~The EDGE certification issued pursuant to this section shall not exceed two years from the date of certification.~~ The equal opportunity coordinator of the department of administrative services may determine the length of the EDGE certification issued pursuant to this section, however, no certification shall not exceed two years from the date of certification, provided that the EDGE business enterprise remains in compliance and is not decertified pursuant to rule 123:2-16-06 of the Administrative Code.

(F) Upon the expiration of the initial expedited certification, a business certified pursuant to this section shall complete a unified certification application pursuant to rule 123:2-16-03 of the Administrative Code and submit all required supporting documentation.

123:2-16-05 Recertification.

(A) ~~Certification as an EDGE business enterprise expires two years from the date of certification.~~ Except those EDGE certified business enterprises that receive certifications under rule 123:2-16-04 of the Administrative Code, an ~~An~~ EDGE certified business enterprise must apply for recertification in the EDGE program before the ~~time of~~ expiration of its current certification, to ~~maintain~~ continue continuous certification in the EDGE program.

(B) The equal opportunity division of the department of administrative services ~~shall~~ may notify each certified EDGE business of the requirements and procedures for recertification; ~~forty five days~~ prior to ~~its the certification~~ expiration of the EDGE business enterprise's current certification, ~~of the~~

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~~requirements and procedures for recertification. The notification shall be in a form determined by the division.~~ Failure to notify the certified EDGE business is not a sufficient reason for failing to timely apply for recertification.

- (C) All certified EDGE business enterprises shall maintain ~~a~~ current contact information including, telephone numbers, physical business address and e-mail address with the equal opportunity division of the department of administrative services. Failure to do so may be a sufficient reason to deny an application for recertification.
- (D) A certified EDGE business enterprise seeking recertification in the EDGE program must submit the recertification application request on a form provided by the equal opportunity division of the department of administrative services, and in a manner prescribed by the division before the expiration of its current certification. The applicant must demonstrate to the division that the applicant and the business continue to qualify for certification. The division shall use the criteria and procedures set forth in rules 123:2-16-02, 123:2-16-03, and 123:2-16-13 of the Administrative Code to determine whether recertification is warranted.
- (E) All certified EDGE businesses must notify the equal opportunity division in writing of any change in circumstances affecting the ability to meet size, disadvantaged status, ownership, independence or control requirements or any material change in the information provided in its application form, including changes in management responsibility among members of the sole proprietorship, limited liability company, association, partnership, and/or corporation and submitted within thirty days of the occurrence of the change.
- ~~(E)~~ (F) Failure to provide recertification form and required documents before the expiration of its business's current certification will require a new application and supporting documents to be submitted.
- ~~(E)~~ (G) Upon receiving a timely completed application in which the applicant demonstrates continued qualification for certification in the EDGE program, the equal opportunity division of the department of administrative services shall recertify the business. ~~shall use the criteria and procedures set forth in rules 123:2-16-02, 123:2-16-03, and section 123:2-16-13 of the Administrative Code to determine whether recertification is warranted.~~
- ~~(E)~~ (H) If the equal opportunity division of the department of administrative services determines that the business or business owner no longer meet the criteria set forth in this chapter, the equal employment opportunity coordinator of the department of administrative services shall notify the applicant of the decision. The coordinator shall notify the applicant by registered or certified mail, return receipt requested, and the notification shall include information detailing the applicant's appeal rights as set forth in Chapter 119- of the Revised Code.
- ~~(G)~~ (I) The equal opportunity division of the department of administrative services shall have the right to conduct on-site inspections at any location of a business seeking recertification. The division shall have a right to request and access any pertinent personal and business records or information the division deems necessary to evaluate a recertification application.
- ~~(H)~~ (J) History of failure to perform a commercially useful function will be considered during the recertification process, however it may not necessarily be the sole factor.

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~~(H)~~ ~~(H) The maximum amount of time a business or business owner may participate in the EDGE public contracts assistance program as a certified business is ten years.~~

~~(L)~~ (K) The equal opportunity coordinator of the department of administrative services may determine the length of the EDGE certification issued pursuant to this section, however, no certification shall exceed two years from the date of certification, provided that the EDGE business enterprise remains in compliance and is not decertified pursuant to rule 123:2-16-06 of the Administrative Code.

123:2-16-06 Decertification and Revocation.

(A) The ~~director of the department of administrative services~~ equal opportunity coordinator of the department of administrative services ~~shall revoke~~ may revoke or decertify a certification or recertification issued pursuant to this chapter, if the ~~director~~ equal opportunity coordinator of the department of administrative services determines that a certified EDGE business enterprise does not meet the participation criteria set forth in this chapter. The revocation or decertification may be the result of ~~an investigation and~~ a finding by the ~~equal opportunity division of the department~~ equal opportunity coordinator of the department of administrative services of any of the following:

- (1) The owner of the EDGE certified business enterprise intentionally misrepresented material facts in the application or recertification process.
- (2) The owner of the EDGE certified business enterprise no longer is determined by the equal opportunity division to be socially and/or economically disadvantaged.
- (3) The owner of the EDGE certified business enterprise, at the time of certification or thereafter, no longer controls, operates or participates in the business as set forth in this chapter.

(4) The economically and socially disadvantaged fifty-one percent owners of the EDGE certified business enterprise are no longer United States citizens or full-time residence of Ohio.

~~(4)~~ ~~(5) The EDGE certified business enterprise is no longer at least fifty-one per cent owned by a United States citizen residing in Ohio~~ determined to be economically and socially disadvantaged.

~~(5)~~ ~~(6) The EDGE certified business enterprise is no longer a for-profit entity.~~

~~(6)~~ ~~(7) A determination that revocation of certification is in the best interest of the state.~~ Such reasons include, but are not limited to: legal findings of business fraud, business debarment by the federal government, debarment by Ohio or any other state or a determination that an EDGE certified business enterprise inappropriately transferred, assigned, or subcontracted work to a non-EDGE certified business enterprise.

(B) If the actions of the business result in the filing of an indictment, information or other criminal or civil charge against the business or any of its owners, the equal employment opportunity coordinator may temporarily suspend the business's EDGE certification during the pendency of the criminal or civil action or until the equal opportunity coordinator of the department of administrative services determines whether to revoke the certification or to reinstate it for the remainder of the certification period.

~~(B)~~ ~~(C) If upon investigation,~~ the ~~director of the department of administrative services~~ equal opportunity

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coordinator of the department of administrative services determines that an EDGE certification shall be revoked, the ~~director~~ coordinator shall ~~hold an adjudication hearing on the matter~~ issue a notice of intent to revoke the business's certification indicating the grounds for the proposed revocation and the procedure for requesting a hearing on the proposed revocation. The hearing shall be conducted in accordance with Chapter 119 of the Revised Code. If a person does not respond and request a hearing in the manner specified in Chapter 119 of the Revised Code, the director of the department of administrative services shall issue the determination without a hearing and shall notify the person of the determination by certified mail, return receipt requested.

- ~~(C) (C) The director of administrative services shall notify the owner in writing of the decision reached resulting from the adjudication hearing held pursuant to this rule. The notification shall be made within thirty days from the date of the adjudication hearing.~~
- ~~(D) (D) An owner of the business adversely affected by an adjudication order issued pursuant to this rule, shall have a right to appeal pursuant to section 119.12 of the Revised Code.~~

123:2-16-09 Demonstration of good faith effort to include EDGE business participation.

- (A) Each state agency awarding a contract for construction, architecture, and engineering; professional services; goods and services; and information technology services subject to the provisions of section 123.152 of the Revised Code shall specify in each contract the EDGE goal for subcontracts awarded to and materials and services purchased from EDGE certified business enterprises in order to meet the agency's overall EDGE goal. An agency may specify a contract EDGE goal higher or lower than the state agency's overall EDGE goal provided there is a reasonable basis for that decision.
- (B) Any contractor awarded a contract for construction, architecture, and engineering; professional services; goods and services; and information technology services under Chapters 123., 125., and 153. of the Revised Code shall make a good faith effort to comply with the EDGE business enterprise goal established for the contract pursuant to division (B)(2) of section 123.152 of the Revised Code, and of this chapter.
- (C) Whenever a contractor is unable to comply with the EDGE goal established for a contract established pursuant to division (B)(2) of section 123.152 of the Revised Code, and this chapter, for contracting with EDGE business enterprises, having made a good faith effort, the contractor may apply in writing, on a form prescribed by the department of administrative services, to the director of administrative services or to the contract letting state agency for a waiver or modification of the goal.
- (D) The director of administrative services, or for projects within a state agency for which local administration has been approved, the chief officer of that state agency authorized to enter into a contract pursuant to Chapters 123., 125., and 153. of the Revised Code, may determine that a contractor bidding on contracts authorized pursuant to Chapters 123., 125., and 153. of the Revised Code has made a good faith effort to include the appropriate level of EDGE certified business enterprise participation in the contract bid, as required by this chapter. For purposes of such determination, the director or the chief officer of a state agency shall consider whether the contractor has documented the following:
- (1) The bidder or contractor utilized reasonable and available means to solicit all certified EDGE business enterprises that have the capability to perform the work of the contract. To demonstrate reasonable

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solicitation of all certified EDGE business enterprises, the contractor shall provide evidence of such solicitations, including, but not limited to: fax confirmations, website notifications, bid notices, email contact lists, and/ or invitations to bid notices.

- (2) The bidder or contractor selected portions of the contracted work to increase the likelihood of participation by EDGE certified business enterprises. To demonstrate selected portions of the contracted work to increase the likelihood of participation the contractor shall provide a copy of the contract and rationale used to determine the selected portions to be bid to EDGE certified business enterprises.
 - (3) The bidder or contractor provided all appropriate certified EDGE business enterprises with adequate information about the plans, specifications and requirements of the contract. The information about the plans, specifications and requirements of the contract shall be provided in sufficient time for EDGE certified business enterprises to provide a bid ~~on~~ for the project.
 - (4) The bidder or contractor negotiated in good faith with interested certified EDGE business enterprises. To demonstrate good faith negotiations, the contractor shall provide the director with evidence of such negotiations, including but not limited to names, addresses, dates, and telephone numbers of the EDGE certified business enterprises considered, bid requests and/or bid submittals of all bidders.
 - (5) The bidder or contractor properly rejected an interested certified EDGE business enterprise as being unqualified for the work of the contract. A contractor's rejection of an EDGE certified business enterprise based on standing within an appropriate industry or membership or affiliation, in a business, social or political group is not a basis for a proper rejection. To demonstrate a certified EDGE business enterprise was properly rejected, the contractor shall provide a copy of rejection letter with reason for rejection, names, addresses, dates and telephone numbers of the rejected EDGE certified businesses.
 - (6) The ~~bidder or~~ contractor utilized the services of one of more organizations that provide contractor assistance in the identification and recruitment of EDGE certified business enterprises. To demonstrate utilization of one or more organizations providing contractor assistance, the contractor shall provide the names, phone numbers, times and method of contact relating to the contractor assistance organization.
 - (7) The bidder or contractor utilized the list of qualified EDGE certified business enterprises as provided by the equal employment opportunity division of the department of administrative services. To demonstrate a list of qualified EDGE certified business enterprises provided by the equal opportunity division has been utilized, the contractor shall provide a list of times, method of contact and names associated with each EDGE certified business included on the listing.
- (E) To receive a waiver of the EDGE goal, established pursuant to this chapter, the bidder or contractor shall submit evidence acceptable to the director of administrative services or his designee, or the chief officer of the contract-letting state agency, in the form and manner required, demonstrating that ~~the bidder or~~ contractor made the level of good faith effort deemed necessary to justify the granting of a waiver. In granting or denying such waiver, the director of administrative services or his designee, or the chief officer of the contract-letting state agency shall prepare a written report in a form prescribed by the equal opportunity division of the department of administrative services, which report shall include an evaluation of

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the bidder's or contractor's specific efforts to comply with the requirements set forth in paragraphs (D)(1) to (D)(7) of this rule. This report and the decision as to waiver shall be submitted to the equal opportunity division of the department of administrative services within thirty days of the grant or denial of the waiver.

123:2-16-13 EDGE data collection.

- (A) The equal opportunity division of the department of administrative services shall collect the necessary data to assess, determine, and evaluate the development, direction, and continued need for the EDGE program. The equal employment opportunity coordinator of the department of administrative services and the director of the department of administrative services shall use the collected data to help establish agency EDGE procurement goals and to determine the overall effectiveness of the EDGE program.
- (B) In addition to the information required in the quarterly expenditure report, pursuant to rule 123:2-16-11 of the Administrative Code, each agency shall provide data regarding businesses that have sought to acquire or have acquired state contracts with their agency as provided in paragraph (C) of this rule. The equal opportunity division of the department of administrative services shall assemble the data necessary to establish the general capacity, availability, and utilization of EDGE businesses in the relevant marketplace.
- (C) Each state agency shall provide the equal employment division of the department of administrative services the following types of data, if applicable:
- (1) Name of vendor.
 - (2) Certification status and category.
 - (3) Company federal tax identification number.
 - (4) Contract number or project name or number.
 - (5) Contract bid amounts.
 - (6) Names of all bidders.
 - (7) Name of each bidder awarded the contract.
 - (8) Successful bidder or vendor location, address, and geographic region.
 - ~~(9)-(9) Type of work performed as classified by NIC code, or equivalent object code.~~
 - ~~(10)-(9) Type of contract/project by procurement category.~~
 - ~~(11)-(10) Original dollar amount of the contract.~~
 - ~~(12)-(11) Date of contract/project award.~~
 - ~~(13)-(12) Date of contract/project completion.~~
 - ~~(14)-(13) Payment data for contract/project.~~
 - ~~(15)-(15) If a joint venture, the information of the business arrangement.~~
 - ~~(16)-(14) Name of any identified subcontractors, subcontractors, federal tax identification numbers.~~

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~~(17)~~(15) The original value of the subcontracts.

~~(18)~~(16) The type of ~~bid~~contracting method utilized by prime contractor.

~~(19)~~(19) ~~Comparative data with bidders in the general marketplace.~~

(D) To ensure uniform data collection and record keeping standards, the equal opportunity division of the department of administrative services shall develop a format and the forms needed to capture the necessary data from state agencies. Where feasible the division shall collect payment and expenditure data from the office of management and budget, capacity data from the departments of development and transportation, and other certification records. The division shall disaggregate, track, and analyze the data by each certification category to ensure against internal disparity.

123:2-16-14 Joint venture.

(A) The equal opportunity division of the department of administrative services shall require the following criteria of two or more companies seeking certification as an EDGE joint venture business enterprise:

- (1) At least one of two or more businesses partnered or otherwise joined together for obtaining a contract award pursuant to section 123.152 of the Revised Code is certified as an EDGE business enterprise.
- (2) The companies created the joint venture pursuant to a joint venture agreement, as described in paragraph (B)(5) of this rule.
- (3) The business relationship commercially benefits all parties to the joint venture.
- (4) The EDGE certified business owner must control at least fifty-one per cent of the joint venture operations, including the management decisions and policies. The EDGE business owner shall have an interest in the capital, assets, and profits and losses of the joint venture at least proportionate to their capital investment in the venture, but not less than thirty per cent.

(B) The business partners seeking certification as an EDGE joint venture business enterprise shall submit ~~an~~a joint venture application to the equal opportunity division of the department of administrative services on a form and in the manner prescribed by the division. All of the partners must sign the application and provide the following information:

- (1) The name of the individual who has the power of attorney to act for and bind all of the joint venture partners.
- (2) The mailing address and street address of the joint venture.
- (3) The new internal revenue service issued tax identification number of the joint venture.
- (4) Proof of bond or insurance, if required that binds the joint venture and jointly and severally binds all members of the joint venture.
- (5) The joint venture agreement shall contain all of the following:
 - (a) Name of project and contract number, if known,
 - (b) Location of project/contract,

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- (c) Bid date of project/[contract](#),
 - (d) Type of project/[contract](#),
 - (e) Description of ~~job~~-[work](#) to be performed by other joint venture partners,
 - (f) Percentage of the project to be subcontracted, if any, and actual work being done by the subcontractor, or goods and services to be performed or bought,
 - (g) Approximate date contract will start if successful bidder and approximate completion date,
 - (h) Type of equipment to be used on a project, or the goods and services to be supplied and performed.
 - (i) Work composition by expertise or trade of all joint venture partners,
 - (j) Equipment to be used that is owned by the EDGE enterprise applicant,
 - (k) Equipment to be used that is owned by the other company or companies in the joint venture,
 - (l) Name of company from which joint venture will lease equipment,
 - (m) The amount of contribution provided by each joint venture partner,
 - ~~(n)-(n) The name of the individual who has the power of attorney to act for and bind all of the joint-venture partners,~~
 - ~~(o)-(n) Narrative description of the business relationship of each party, including how management, business, and operational decision making will occur, the work composition of each party, the work to be performed by each party, and the source and use of shared resources and business equipment.~~
- (C) Failure to provide requested information in a timely manner may delay the processing of the certification application [or may result in denial of the application](#).
- (D) Except as otherwise required by law, all financial statements and records submitted by the applicants to the equal opportunity division shall be considered confidential and shall not be released to the public unless such documents are used in an administrative hearing, or appeals thereto, or the applicants approve, in writing, to the release of the statements and records.
- (E) Upon determining that the business partners have demonstrated qualification for certification as a joint venture in the EDGE program, as outlined in this rule, the equal employment opportunity coordinator of the department of administrative services ~~shall~~[may](#) certify the business.
- (F) If the equal employment opportunity coordinator of the department of administrative services determines that the joint venture does not meet the criteria set forth in this chapter, the division shall notify the applicants of its decision by mail. The notification shall include the applicant's appeal rights as set forth in Chapter 119. of the Revised Code.
- (G) The equal opportunity division of the department of administrative services shall have the right to conduct on site inspections at any location of the businesses seeking joint venture certification. ~~The division shall give appropriate notice.~~

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- (H) In order to facilitate prompt certification, the joint venture agreement may be submitted and approved prior to the issuance of a state bid or request for proposal. The joint venture shall be a for-profit entity and need not be in business one-year prior to submission of the application.
- (I) The equal employment opportunity coordinator of the department of administrative services ~~shall~~may approve a joint venture application for a particular procurement category. The certification is for up to one year. The certification of the joint venture business shall be project or contract specific and applicable for the current joint venture application. This joint venture certification cannot be used for subsequent projects or contracts.
- (J) If any change occurs that affects the joint venture as originally approved by the equal opportunity coordinator, the joint venture partners must provide the equal opportunity division of the department of administrative services with the information detailing the change in circumstances within three business days of that change, for decision review and approval.

123:2-16-15 Commercially useful function.

- (A) A contractor awarded a contract for construction, architecture, and engineering; professional services; goods and services; and information technology services pursuant to Chapters 123., 125., and 153. of the Revised Code may count toward its EDGE goal only those expenditures to EDGE certified businesses that perform a commercially useful function.
- (B) ~~AN~~An EDGE business ~~will~~may be considered to have performed a commerciallyly useful function based on the following criteria:
- (1) The workers on the EDGE contract/project are regular employees of the contracted EDGE business.
 - (a) Regular employees are employees that would be working for the EDGE business on any other subcontract with any other contractor.
 - (b) An individual is not considered a regular employee if the individual is an employee of the contractor or of a supplier of goods or services to the EDGE business.
 - (2) The equipment used by the EDGE business is owned or controlled by the EDGE business.
 - (a) Equipment is controlled by the EDGE business if:
 - (i) The EDGE business owns, ~~or~~ rents or leases from a traditional rental or leasing source pursuant to a written rental or lease agreement; and
 - (ii) The equipment would be used by the EDGE business on other contracts with other contractors.
 - (b) Equipment is not considered under the control of the EDGE business if the equipment belongs to the contractor awarded the contract or to another contractor working on the project/contract.
 - (3) The EDGE business has the responsibility, with respect to execution of the work of the contract, for actively managing, performing, and supervising the work involved. Examples are (but not limited to):
 - (a) Negotiating the cost of services

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(b) Arranging delivery

(c) Taking ownership & paying for materials & supplies

(d) Preparation of estimates

(e) Determining quantity of material

(f) Determining & ensuring quality of materials

- (4) The EDGE business has the responsibility, with respect to materials and supplies used on the contract, for (but not limited to) negotiating price, determining quality and quantity, ordering, payment, and, where applicable, installation.
- (5) The EDGE business does not purchase any of the required materials for the project from the contractor.
- (6) The relationship between the contractor and the EDGE business remains at arms length throughout the performance of the contract/project.
- (C) An EDGE certified business enterprise shall provide all information requested by the equal opportunity division of the department of administrative services concerning the commercially useful function of the EGDE business on a project. Failure to provide the requested information may lead to ~~decertification~~ revocation of any certification pursuant to ~~paragraph (A)(6) of~~ rule 123:2-16-06 of the Administrative Code.
- (D) The equal opportunity division of the department of administrative services may conduct ~~onsite~~ onsite inspections and investigations at any location of the EDGE business, including locations at which the EDGE business has contracted to provide services, to determine whether an EDGE business is performing a commercially useful function on a project. Failure to cooperate in such ~~onsite~~ onsite inspection may lead to ~~decertification~~ revocation of any certification pursuant to ~~paragraph (A)(6) of~~ rule 123:2-16-06 of the Administrative Code.
- (E) A company does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of EDGE participation. If an EDGE business enterprise does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the EDGE business enterprise subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, then the EDGE business enterprise is not performing a commercially useful function. The Equal Opportunity Division may consider the following (but not limited to) when determining if an EDGE business is performing a commercially useful function:
- (1) EDGE business only purchases materials while performing little or no work;
- (2) the agreement between the prime contractor and EDGE business artificially inflates the EDGE participation or erodes the ownership, control or independence of the firm;
- (3) the volume of work is beyond the capacity of the EDGE firm;
- (4) the EDGE business owner is not aware of the status of the work or the performance of the business;

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(5) materials or supplies, necessary for the EDGE business's performance, billed to or paid by another business; Invoices for materials must be in the name of the EDGE business;

(6) the work to be performed by the EDGE is outside of the EDGE's known experience or capability;

(7) an EDGE business works solely for only one contractor on different projects/contracts;

(8) any portion of the work designated to be performed by an EDGE business is performed by the prime contractor;

(9) amount the EDGE business is paid under the contract is commensurate with the work that is actually being performed to be credited towards the goal;

~~(10)~~ (F) An EDGE business must have a necessary and useful role in the transaction, of a kind for which there is a market outside the context of the program. The firm's role must not be a superfluous step added in an attempt to obtain credit towards the goal.