



## Ohio Administrative Code

### Rule 123:2-14-06 Commercially useful function.

Effective: October 9, 2020

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(A) An MBE, EDGE, or WBE-certified business must have a necessary and useful role in the transaction that is real and required to complete the contract, of a kind for which there is a market outside the context of the certification program(s). A necessary and useful role includes being responsible for the execution of the work of the contract and for carrying out the contract responsibilities by (but not limited to) actively performing, paying, managing, and supervising the work involved.

(B) Agencies may count toward their goals only those expenditures to MBE, EDGE, and/or WBE-certified businesses that perform a commercially useful function.

(C) The Ohio department of administrative services, equal opportunity division (DAS/EOD) will consider but is not limited to the following when determining if a certified business is performing a commercially useful function:

(1) Do the regular employee(s) of the certified business have responsibility with respect to the execution of the work of the contract. Regular employees are certified business employees who would be working for the certified business on any other contract. An individual is not considered a regular certified business employee if the individual is an independent contractor or the employee of a subcontractor to the certified business or any other business;

(2) Are the certified business's employees directed, given work assignments, supervised, and responsible to an appropriate individual employed by the certified business;

(3) Is the final decision for the hiring and terminating of the certified business's employees made by the certified business;

(4) Is the equipment used on a contract by the certified business owned, rented, or leased. If the equipment is rented or leased, is the equipment procured from a traditional rental or leasing source



pursuant to a written rental or lease agreement;

Equipment is not considered under the control of the certified business if the equipment belongs to a business awarded the contract or to another contractor working on the contract;

(5) Does the certified business have the responsibility with respect to the execution of the work of the contract, for actively managing, performing, and supervising the work involved. Examples include (but are not limited to) the following:

(a) Negotiating the price and profit margin of the goods, services, labor, and/or materials;

(b) Arranging delivery of the goods, services, and materials;

(c) Taking ownership of the goods, services, and materials (when appropriate);

(d) preparation of formal estimates and bids (e.g., in writing);

(e) Determining quantity of goods and materials; and

(f) Determining the quality of materials.

(D) DAS/EOD considers, but is not limited to, the following circumstances as evidence that the business is not performing a commercially useful function:

(1) The certified business acts primarily as an agent or intermediary of another company;

(2) The certified business purchases any of the required materials for the contract from the owner of the contract;

(3) The relationship between the contract owner and the certified business does not remain at arms-length throughout the performance of the contract;

(4) The certified business only purchases limited amounts of materials and performs little and/or no



direct work on the contract;

(5) The purchase agreement between the owner and certified business artificially inflates the certified business(es)'s participation or erodes the ownership, control, or independence of the certified business;

(6) The volume of the work is beyond the capacity of the certified business;

(7) The certified business owner does not have a good understanding of its business and/or is not able to answer questions about the business or industry and/or does not have a keen understanding of the business financially or operationally;

(8) The work to be performed by the certified business is outside of its known experience or capability;

(9) The certified business works primarily for only one business;

(10) The amount the certified business is paid for work on the contract is not commensurate with the work that is actually performed;

(11) The role of the certified business is limited to that of an extra participant in a transaction, contract, or purchase through which funds are passed to obtain the appearance of a certified business(es)'s participation;

(12) The certified business 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; and

(13) Materials or supplies that are necessary for the certified business's performance are billed to or paid by another business; invoices for materials are in the name of the certified business.