

Financial Services
Richard H. Hinds, Chief Financial Officer

**SUBJECT: PROPOSED AMENDMENT OF BOARD POLICY: FINAL
READING POLICY 6320.02, *MINORITY/WOMEN ENTERPRISE*
*CERTIFICATION PROCEDURES***

**PROPOSED REPEAL OF SCHOOL BOARD POLICY: FINAL
READING POLICY 6460.01, *BUSINESS DEVELOPMENT AND*
*ASSISTANCE PROGRAM***

COMMITTEE: INNOVATION, EFFICIENCY & GOVERNMENTAL RELATIONS

**LINK TO STRATEGIC
FRAMEWORK: FINANCIAL EFFICIENCY/STABILITY**

The School Board of Miami-Dade County, Florida, announced on October 10, 2012 its intention to amend Board Policy 6320.02, Minority/Women Enterprise Certification Procedures, and repeal Board Policy 6460.01, Business Development and Assistance Program, at its meeting of November 21, 2012.

The combination of these policies will enable the District to implement these programs to establish a comprehensive contract reporting and monitoring system. In addition, it will allow the maximum legally permissible opportunities for small and minority/women business enterprises to participate in the award and performance of Board contracts. It will also provide the community information concerning contracting opportunities for small and minority/women businesses.

The Notice of Intended Action was published in the *Miami Daily Business Review* on October 15, 2012, posted in various places for public information, and mailed to various organizations representing persons affected by the amended and repealed policies and to individuals requesting information.

The time to request a hearing or protest the adoption of these policies has elapsed.

In accordance with provision of the Administrative Procedure Act, this amended and repealed policy are presented to The School Board of Miami-Dade County, Florida, for adoption and authorization to file the policies in the official records of The School Board of Miami-Dade County, Florida.

Attached are the Notice of Intended Action and the proposed amendments. Changes from the current Policy are indicated by underscoring words to be added and ~~striking~~ through words to be deleted.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, adopt amended Board Policy 6320.02, Minority/Women Business Enterprise Certification Procedures and repeal Board Policy 6460.01, Business Development and Assistance Program, and authorize the Superintendent to file the policy with The School Board of Miami-Dade County, Florida, to be effective November 21, 2012.

RHH:cr1

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on October 10, 2012, its intention to amend Board Policy 6320.02, Minority/Business Enterprise Certification Procedures, at its meeting of November 21, 2012.

PURPOSE AND EFFECT: It is recommended that Board Policy 6460.01 be repealed in order to incorporate language from this policy into proposed amended policy 6320.02. In addition, a title change of amended policy 6320.02, is recommended to reflect the proposed new language. The combination of these policies will enable the District to implement these programs to establish a comprehensive contract reporting and monitoring system. In addition, it will allow the maximum legally permissible opportunities for small and minority/women business enterprises to participate in the award and performance of Board contracts. It will also provide the community information concerning contracting opportunities for small and minority/women businesses.

SUMMARY: This amended policy will create greater opportunities for small and minority/women business participation in the awarding of Request for Proposals, Professional Goods and Services, Construction, Architecture/Engineering Services, Bids and other applicable procurement contracts. All procurement services shall comply with laws, rules, regulations and Board policies.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(2); 1013.46(1)(b); 287.093 F.S.

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: 1001.32(2), 1001.41(1), (2), F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING OF November 21, 2012, which begins at 1:00 p.m., in the School Board Auditorium, 1450 N.E. Second Avenue, Miami, Florida 33132. Persons requesting such a hearing or who wish to provide a proposal for a lower cost regulatory alternative as provided by Section 541(1), F.S. must do so in writing by November 5, 2012, to the Superintendent, Room 912, at the same address.

ANY PERSON WHO DECIDES TO APPEAL THE DECISION made by The School Board of Miami-Dade County, Florida, with respect to this action, will need to ensure the preparation of a verbatim record of the proceedings, including the testimony and evidence upon which the appeal is to be based (Section 286.0105, Florida Statutes).

A COPY OF THE PROPOSED AMENDED POLICY is available at cost to the public for inspection and copying in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

Originator: Mr. Barry S. Meltz
Supervisor: Dr. Richard H. Hinds
Date: September 28, 2012

1 SMALL/MICRO BUSINESS ENTERPRISE PROGRAM AND
2 MINORITY/WOMEN BUSINESS ENTERPRISE CERTIFICATION
3 PROCEDURES

The Small/Micro Business Enterprise Program is established to provide expanded and equitable participation by small and micro businesses in School Board procurement of goods and services, construction, and professional services.

Office of Economic Opportunity (OEO)

The OEO shall administer and implement the Small/Micro Business Enterprise Program and M/WBE Certification and:

- 4 A. enforce the Board's anti-discrimination policy in the award of
5 contracts for construction projects, procurement of goods and
6 services, and professional services;
- 7 B. provide maximum legally permissible opportunities for small and
8 minority/women business enterprises to participate in the award
9 and performance of Board contracts;
- 10 C. monitor, track and certify small businesses and minority/women
11 business enterprises,
- 12 D. enforce compliance with policy;
- 13 D E. develop and implement necessary administrative procedures to fully
14 implement these programs;
- 15 E F. establish insurance requirements which, although providing
16 appropriate protection, are not more restrictive than necessary to
17 protect the public's interest;
- 18 F. G. establish economic incentives that encourage the waiver of bonds,
19 and enhance the bonding technical assistance program;
- 20 G. H. establish administrative procedures to expeditiously resolve
21 monetary disputes and motivate prime contractors to make timely
22 payments;
23
24

- 1 H. I. establish a comprehensive contract reporting and monitoring system
2 to evaluate the effectiveness of these programs in increasing
3 contracting opportunities for small and minority/women businesses,
- 4 I. J. serve as chair of the Goal-Setting Committee and staff liaison to the
5 Small Business Enterprise Advisory Committee,
- 6
- 7 J. K. monitor, coordinate, and provide support for any disparity study
8 that may be conducted regarding minority/women business
9 participation in School Board procurement; and
- 10
- 11 K. L. develop and coordinate any recommendations as a result of any
12 such disparity study findings; and
- 13
- 14 L. M. maintain, distribute, and publish a directory of certified SBE, MBE,
15 and M/WBE firms; and
- 16
- 17 N. quarterly report through the Superintendent to the School Board
18 regarding the effectiveness of these programs.
- 19

20 **Small Business Enterprise Advisory Committee**

21

22 The Small Business Enterprise Advisory Committee (SBEAC) shall be established to

- 23
- 24 (1) provide guidance on the implementation of the SBE/MBE Program and to
25 promote the participation and use of SBE/MBEs and MWBEs in the
26 procurement activities of the School Board,
- 27 (2) identify and evaluate issues related to economic opportunities within the
28 School Board for small, micro and minority/women owned businesses,
- 29 (3) provide recommendations to the School Board to improve the SBE/MBE
30 program,
- 31 (4) annually evaluate and report to the School Board on the effectiveness of
32 the SBE/MBE program in increasing minority and women owned
33 business participation in the School Board's procurement process,
- 34 (5) monitor any disparity study that may be conducted by the School Board
35 and make recommendations based on the results of any such study.
- 36

37 The School Board and Superintendent shall each appoint a community member who
38 is not employed by the School Board and does not have any direct or indirect
39 business relationship with the School Board. The committee shall have
40 representation from local small, micro, minority, women, and majority business
41 interest organizations, community based organizations and local government entities
42 which may include professional, construction and trade, business, and socio-
43 economic organizations. The School Board and Superintendent shall approve a list

1 of representative organizations and the Superintendent shall appoint a member
2 nominated by each recommended organization from their membership. The term of
3 each Board appointee shall be coterminous with the appointing Board member and
4 the term of the Superintendent's appointees shall be at the will and discretion of the
5 Superintendent. In no event shall any Board member serve more than four (4)
6 consecutive years. All appointments must comply with Policy 9140, *Citizen Advisory*
7 *Committees*. The Committee shall annually elect a Chair and Vice-Chair, meet at
8 least six (6) times per year, and be governed by the latest edition of *Robert's Rules of*
9 *Order*. The committee may adopt bylaws, to be recommended by the Superintendent
10 to the School Board for approval, to facilitate the operation of the committee.
11

Small/Micro Business Enterprise Program

12 The Small/Micro Business Enterprise (SBE/MBE) Program is a race and gender-
13 neutral process to provide greater SBE/MBE availability, capacity development and
14 contract participation in School Board contracts, to advance the School Board's
15 compelling interest in ensuring that it is neither an active nor passive participant in
16 private sector marketplace discrimination, and to promote equal opportunity for all
17 segments of the contracting community to participate in School Board contracts.
18

A. Terms and Definitions

19
20
21 **Affirmative Procurement Initiatives** - any procurement tool to enhance
22 contracting opportunities for SBE/MBE firms including: bonding waivers, bid
23 incentives, sheltered market, mandatory subcontracting, competitive business
24 development demonstration projects, and SBE/MBE evaluation preference points in
25 the scoring of proposal evaluations.
26

27 **Available or Availability** - to have, prior to bid submission, the ability to provide
28 goods or services under a contract by having (a) reasonably estimated, uncommitted
29 capacity, (b) all necessary licenses, permits, registrations and certification, including
30 SBE/MBE certification to provide the type of goods or services being purchased
31 under the contract; (c) ability to obtain reasonably required financing/insurance
32 that is consistent with normal industry practice, and (d) ability to otherwise meet bid
33 specifications.
34

35 **Award** - final selection of a bidder or offeror for a specified contract.
36

37 **Award Amount** -the dollar value of the contract when awarded.
38

39 **Bid** - quotation, proposal, letter of interest or offer by any bidder in response to any
40 kind of invitation, solicitation, request or public announcement to submit such
41 quotation, proposal, letter of interest or offer for a contract.
42

1 **Bidder** – any person, partnership, corporation or other business entity that submits
2 a bid or proposal.

3
4 **Certification** – process by which the Office of Economic Opportunity (“OEO”)
5 determines that a business meets the criteria for classification as a small/micro
6 business enterprise.

7
8 **Commercially Useful Function** – an SBE/MBE performs a commercially useful
9 function when it is responsible for execution of the work of the contract and is
10 carrying out its responsibilities by actually performing, managing, and supervising
11 the work involved. To perform a commercially useful function, the SBE/MBE must
12 also be responsible for negotiating the price of contract materials and supplies,
13 determining the quantity and quality of materials, ordering and installing materials
14 if applicable, and paying for the materials. To determine whether an SBE/MBE is
15 performing a commercially useful function, an evaluation must be performed of the
16 amount of work subcontracted, normal industry practices, whether the amount the
17 SBE/MBE is to be paid under the contract is commensurate with the work it is
18 actually performing and the SBE/MBE credit claimed for its performance of the
19 work, and other relevant factors. Specifically, an SBE/MBE does not perform a
20 commercially useful function if its role is limited to that of an extra participant in a
21 transaction, contract, or project through which funds are passed in order to obtain
22 the appearance of meaningful and useful SBE/MBE participation, when in similar
23 transactions in which SBE/MBE firms do not participate, there is no such role
24 performed.

25
26 **Contract** – an agreement for purchase of goods or services, including professional
27 services and construction. It does not include agreements to purchase, lease, or rent
28 real property, or a grant, license, permit, franchise or concession.

29
30 **Goal** – a non-mandatory annual aspirational percentage goal for SBE/MBE contract
31 participation established each year for professional architectural, engineering,
32 landscape, surveying, and mapping services, construction, goods & services and
33 other professional services. Mandatory percentage goals for SBE/MBE subcontract
34 participation may be established on a contract-by-contract basis.

35
36 **Goal Setting Committee** – committee established by the Superintendent that is
37 chaired by the OEO and is responsible for establishing SBE/MBE Program goals
38 and selecting appropriate Affirmative Procurement Initiatives for application to
39 specific School Board contracts based upon industry categories, vendor availability,
40 and project-specific characteristics.

41
42 **Good Faith Efforts** – documentation of the Bidder’s intent to comply with
43 SBE/MBE Program goals and procedures, including, but not limited to the following:
44 (1) documentation within a bid submission or proposal reflecting the Bidder’s

1 commitment to comply with SBE/MBE Program goals as established by the Goal
2 Setting Committee for a particular contract; or (2) documentation of efforts made
3 towards achieving the SBE/MBE Program goals, including but not limited to, timely
4 posting of SBE/MBE subcontract opportunities on the School Board web site;
5 solicitations of bids from all qualified SBE firms listed in OEO's SBE/MBE Directory
6 of certified SBE/MBE firms; correspondence from qualified SBE/MBE firms
7 documenting their unavailability to perform SBE/MBE contracts; documentation of
8 efforts to subdivide work into smaller quantities for subcontracting purposes to SBE
9 firms; documentation of efforts to assist SBE/MBE firms with obtaining financing,
10 bonding, or insurance required by the bidder; and documentation of consultations
11 with trade associations and consultants that represent the interests of small and
12 local businesses in order to identify qualified and available SBE/MBE
13 subcontractors.

14
15 **Gross Revenue** - all revenue in whatever form received or accrued from whatever
16 source, including sales of products or services, interest, dividends, rents, royalties,
17 fees or commissions, reduced by returns and allowances. Gross revenue does not
18 include proceeds from sales of capital assets, and investments, proceeds from
19 transaction between a firm and its domestic and foreign affiliates.

20
21 **Independently Owned, Managed, and Operated** - ownership of an SBE/MBE firm
22 must be direct, independent, and by individuals only. Business firms that are
23 owned by other businesses or by the principals or owners of other businesses that
24 cannot themselves qualify under the eligibility requirements shall not be eligible to
25 participate in the program. The day-to-day management of the firm must also be
26 direct and independent of the influence of any other businesses that cannot
27 themselves qualify under the eligibility requirements.

28
29 **Industry Categories** - procurement groupings of School Board contracts for
30 administering the Affirmative Procurement Initiatives that shall include
31 construction, professional services, and goods & services procurement. Industry
32 categories may also be referred to as "business categories."

33
34 **Joint Venture** - an association of two or more persons or businesses under a
35 contract conducting a single business enterprise in which they combine capital,
36 efforts, skills, knowledge and/or property and share profits and losses equally. A
37 joint venture composed of qualified business organizations is itself a separate and
38 distinct organization that must be qualified according to Board policies and Section
39 489.119(2)(c), F.S.

40
41 **Micro-Business Enterprise** - any contractor, subcontractor, manufacturer or
42 service company (a) that has been doing business under the same ownership or
43 management and has maintained its principal place of business in Miami-Dade
44 County, Florida, for a period of at least one year immediately prior to the date of

1 application for certification under this section, (b) that had annual gross revenues
2 not exceeding the thresholds for a Micro-Business Enterprise as identified in this
3 policy for each industry, and (c) at least fifty-one per cent of the ownership of which
4 is held by a person or persons who exercise operational authority over the daily
5 affairs of the business and have the power to direct the management and policies
6 and receive the beneficial interests of the company. Representations regarding
7 average gross revenue and payroll are subject to audit. If a business has not existed
8 for 3 years, the employment and gross revenue limits shall be applied based upon
9 the annual averages over the course of the existence of the business.

10
11 **Points** – the quantitative assignment of value for specific evaluation criteria in the
12 vendor or consultant selection process.

13
14 **Prime Contractor** – the vendor or contractor to whom a purchase order or contract
15 is awarded by the School Board for purposes of providing goods or services to the
16 School Board.

17
18 **Principal Place of Business** – the location where a firm maintains a physical office
19 and through which it obtains no less than fifty percent of its overall customers or
20 sales dollars, or through which no less than twenty-five percent of its employees are
21 located and domiciled within the service area of Miami-Dade County.

22
23 **Responsible** – means that a firm is capable in all respects of fully performing the
24 contract requirements and has the integrity and reliability to assure good faith
25 performance.

26
27 **Responsive** – description of a firm's bid or proposal that conforms in all material
28 respects to the invitation to bid or request for proposal and shall include compliance
29 with SBE Program requirements.

30
31 **School Board** – The School Board of Miami-Dade County, Florida, which is the legal
32 entity with authority to enter contracts on behalf of the District school system under
33 Fla. Stat. § 1001.41(4).

34
35 **Service Disabled Veteran** - a person that was injured while serving in the United
36 States Armed Forces.

37
38 **Sheltered Market** – An Affirmative Procurement Initiative designed to set aside a
39 School Board contract bid for bidding or selection exclusively among SBE/MBE
40 firms.

41
42 **Significant Employee Presence** – no less than twenty-five percent of a firm's total
43 number of employees are domiciled in Miami-Dade County, Florida.

1
2 **SBE/MBE Plan Execution Certification (SBE/MBE Form – C)** - form certifying the
3 general contractor's intent to use a SBE/MBE subcontractor and verifying that an
4 agreement has been executed between the prime and the SBE/MBE.

5
6 **SBE/MBE Directory** - listing of certified SBE/MBEs.

7
8 **SBE/MBE Certification/Re-certification Application (SBE/MBE Form – R)** – form
9 that a company must complete when applying for and/or recertifying SBE/MBE
10 status for participation in the SBE/MBE Program. This form shall be completed
11 every two years by certified SBE/MBEs by the anniversary date of their original
12 certification.

13
14 **SBE/MBE Schedule for Subcontractor Participation (SBE/MBE Form – S)** – form
15 that must be completed by all non-SBE/MBE firms that subcontract to SBE/MBE
16 firms, must be submitted for each SBE/MBE subcontractor, and must be reviewed
17 and approved by the OEO Manager before contract award.

18
19 **SBE/MBE Unavailability Certification (SBE Form – U)** - form demonstrating a
20 bidder's unsuccessful good faith effort to meet the small business local participation
21 requirements of the contract which shall only be considered after proper completion
22 of the outreach and compliance efforts and methods used to notify and inform
23 SBE/MBE firms of contracting opportunities have been fully exhausted.

24
25 **Small Business Enterprise (SBE)** - any contractor, subcontractor, manufacturer or
26 service company (a) that has been doing business under the same ownership or
27 management and has maintained its principal place of business in Miami-Dade
28 County, Florida, for a period of at least one year immediately prior to the date of
29 application for certification under this section, (b) that had annual gross revenues
30 not exceeding the thresholds identified in this policy for each industry, and (c) at
31 least fifty-one per cent of the ownership of which is held by a person or persons who
32 exercise operational authority over the daily affairs of the business and have the
33 power to direct the management and policies and receive the beneficial interests of
34 the company. Representations regarding average gross revenue and payroll are
35 subject to audit. If a business has not existed for 3 years, the employment and gross
36 revenue limits shall be applied based upon the annual averages over the course of
37 the existence of the business.

38
39 **Spend Dollars** – dollars actually paid to prime and/or subcontractors and vendors
40 for School Board contracted goods and/or services.

41
42 **Subcontractor** – any vendor or contractor that is providing goods or services to a
43 Prime Contractor in furtherance of the Prime Contractor's performance under a
44 contract or purchase order with the School Board.

1
2 **Subcontractor Goal** – a proportion of a total contract value stated as a percentage
3 to be subcontracted to SBE/MBEs to perform a commercially useful function.

4
5 **Suspension** – the temporary stoppage of an SBE/MBE firm’s participation in the
6 School Board’s contracting process for a finite period of time.

7
8 **B. Application**

9
10 This program applies to School Board contracts funded in whole or in part by School
11 Board funds except where federal or state laws or regulations prohibit its
12 application. The Superintendent has the discretion to identify classes of contracts or
13 parts of contracts that are subject to this program. The Superintendent shall also
14 prepare necessary procedures, bid and contract documents to implement the
15 program.

16
17 **C. Subcontractor Goals**

18
19 Subcontractor goals may be applied to a contract based on estimates made prior to
20 bid advertisement of the quality, quantity and type of subcontracting opportunities
21 provided by the contract and the availability of SBE/MBEs to perform the work.

22
23 **D. Goal Setting Committee**

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25 The Superintendent shall create and staff a Goal Setting Committee (GSC) to
26 establish SBE/MBE Program goals and select appropriate incentives to apply to
27 specific contracts based upon industry categories, vendor availability and project-
28 specific characteristics. The Superintendent shall determine the size of the GSC
29 that is to be chaired by the OEO who shall serve as a voting member. The
30 Superintendent shall also appoint the remaining members of the GSC from the
31 School Board’s procurement personnel and other School Board departments affected
32 by this Program. The GSC shall meet as often as it determines necessary, but not
33 less than twice annually, to develop the SBE/MBE goal setting methodology to be
34 implemented by the OEO on a contract-by-contract basis, and monitor and support
35 the implementation of this policy.

36
37 **E. SBE/MBE Eligibility and Certification**

- 38
39 1. The OEO shall certify a company or other business entity as a SBE or
40 MBE upon its submission of a completed District required certification
41 form , supporting documentation, and a signed affidavit stating that it
42 meets all of the following criteria:
43

- 1 a) Is an independently owned and operated business that is not dominant
2 in its field of operation and is performing a commercially useful
3 function; and
4
5 b) The business has its principal place of business in Miami-Dade County
6 for at least a year preceding the application; and
7
8 c) The business has been established for at least one year or the
9 principals of the business have at least three years of relevant
10 experience prior to forming or joining the business; and
11
12 d) The business has an occupational license and all required professional
13 licenses and/or contractor qualifier licenses.
14
15 e) The owner of the business must have the required professional
16 license(s) and contractor qualification license.
17
18 2. Additionally, the requirements for SBE/MBE Program eligibility based on
19 industry are:

20
21 **Micro Business Enterprise**

- 22
23 a) **Professional Services:** The annual gross revenue averaged over the
24 previous three years shall not exceed \$300,000.
25 b) **Goods and Services (Procurement Program):** The annual gross
26 revenue averaged over the previous three year period shall not exceed
27 \$500,000.
28 c) **Construction:** The annual gross revenue averaged over the previous
29 three years shall not exceed \$750,000.
30 d) **Specialty Trade:** The annual gross revenue average over the previous
31 three years shall not exceed \$300,000.
32

33 **Small Business Enterprise**

- 34
35 e) **Professional Services:** The annual gross revenue averaged over the
36 previous three years shall not exceed \$600,000.
37 f) **Goods and Services (Procurement Program):** The annual gross
38 revenue averaged over the previous three year period shall not exceed
39 \$1,000,000.
40 g) **Construction:** The annual gross revenue averaged over the previous
41 three years shall not exceed \$3,000,000.
42 h) **Specialty Trade:** The annual gross revenue average over the previous
43 three years shall not exceed \$750,000.
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3. Upon receipt of a certification or re-certification application, the OEO shall review all enclosed forms, affidavits and documentation and determine whether the applicant satisfies the eligibility requirements. The OEO shall send a letter to ineligible applicants stating the basis for the denial of eligibility. Applicants determined ineligible shall not be eligible to submit a new application for at least one year after the date of the notice of denial of eligibility.
 4. Applicants determined eligible to participate in the program shall submit a completed re-certification form (SBE/MBE-R) every two years to the OEO for review and continued certification. However, upon application for re-certification, an SBE/MBE firm must be an independently owned and operated business concern, and maintain its principal place of business or have a significant employment presence in Miami-Dade County in accordance with this policy. To qualify for recertification, the firm's average gross revenue for the three fiscal years immediately preceding the application for recertification shall not exceed \$7 million for Construction, \$5 million for Goods & Services, \$1.8 million for Specialty Trade, or \$1.5 million for Professional Services. The eligibility criteria regarding years of existence shall only apply for the initial certification.
 5. In considering certification or re-certification status of any firm, the OEO shall periodically conduct audits and inspect the office, job site, records, and documents of the firm, and shall interview the firm's employees, subcontractors, and vendors as reasonably necessary to ensure that all eligibility standards are satisfied and that the integrity of this program is maintained.

30 **F. G. Graduation and Suspension**

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32 A bidder may not count towards its SBE/MBE participation the amount
33 subcontracted to an SBE firm that has graduated or been suspended from the
34 program as follows:

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1. An SBE shall be permanently graduated after its three fiscal year average gross revenue exceeds \$7 million for Construction, or \$5 million for Goods & Services, \$1.8 million for Specialty Trade, and \$1.5 million for Professional Services.
 - 1.2. When an MBE exceeds the eligibility certification thresholds, it automatically graduates and is subject to the Small Business criteria and restrictions.

1 | 2.3. If an SBE exceeds the size standards for the Small Business Program
2 | during any fiscal year, it shall be allowed to complete any pending
3 | contractual obligation(s), and its participation can be counted in the goals.

4 |
5 | 3.4. The OEO may permanently revoke SBE/MBE eligibility if it fails to
6 | perform a Commercially Useful Function under a contract, or if it allows
7 | its SBE/MBE status to be fraudulently used for the benefit of a non-
8 | SBE/MBE firm or the owners of a non-SBE/MBE firm so as to provide the
9 | non-SBE/MBE firm or firm owners benefits from Affirmative Procurement
10 | Initiatives for which the non-SBE/MBE firm and its owners would not
11 | otherwise be entitled.

12 |
13 | 4.5. The OEO shall provide written notice to the SBE/MBE upon
14 | graduation or suspension from the SBE/MBE program including the
15 | reasons.

16 |
17 | **G. H. Appeals**

18 |
19 | A business that is denied eligibility, whose eligibility is revoked, or who has been
20 | denied a waiver request, may appeal the decision to the Superintendent. A written
21 | notice of appeal must be received by the Superintendent within 15 calendar days of
22 | the date of the written notice. Upon receipt of a timely notice of appeal, the
23 | Superintendent shall conduct a hearing. The Superintendent shall develop
24 | procedures for the appeal process. The decision of the Superintendent shall be the
25 | final decision of the School Board.

26 |
27 | **H. I. Affirmative Procurement Initiatives**

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29 | The following Affirmative Procurement Initiatives may be used in awarding School
30 | Board contracts to SBE/MBEs.

31 |
32 | a. **Bonding Waiver:** The School Board, at its discretion and consistent with
33 | State law, may waive or reduce the bonding requirements depending on
34 | the type of contract and whether the School Board determines that the
35 | bonding requirements would deny the SBE/MBE an opportunity to
36 | perform the contract which the SBE/MBE has shown itself otherwise
37 | capable of performing.

38 |
39 | b. **Bid Incentives:**

40 |
41 | a. **Evaluation Preference** – In ranking and evaluating proposals for “best
42 | value” contracts in which factors other than price are relevant to the
43 | selection process, the School Board may award up to 20% of the total

1 points available to a SBE/MBE or a joint venture with an SBE/MBE
2 partner in response to a Request for Proposal.

3
4 **3. Mandatory Subcontracting:**

5
6 a. The GSC may at its discretion and on a contract-by-contract basis,
7 require that a predetermined percentage up to 40% of a specific
8 contract be subcontracted to eligible SBE/MBEs.

9
10 b. An SBE/MBE prime contractor may not subcontract more than 49% of
11 the contract value to a non-SBE/MBE.

12
13 c. A prospective bidder on a School Board contract shall submit at the
14 time of bid SBE/MBE – Form S providing the name of the SBE/MBE
15 subcontractor or subcontractors and describing both the percentage of
16 subcontracting by the SBE/MBE and the work to be performed by the
17 SBE/MBE. A bidder may request a full or partial waiver of this
18 mandatory subcontracting requirement from the OEO for good cause
19 by submitting the SBE/MBE Unavailability Certification form to the
20 OEO prior to bid opening. Under no circumstances shall a waiver of a
21 mandatory subcontracting requirement be granted without submission
22 of adequate documentation of Good Faith Efforts by the bidder and
23 careful review by the OEO. The OEO shall determine a waiver request
24 upon the following criteria:

25
26 (1) Whether the requestor of the waiver has made Good Faith Efforts
27 to subcontract with qualified and available SBE/MBE;

28
29 (2) Whether subcontracting would be inappropriate and/or not
30 provide a “Commercially Useful Function” under the
31 circumstances of the contract; and

32
33 (3) Whether there are no certified SBE/MBEs that are qualified and
34 available to provide the goods or services required.

35
36 d. In the absence of a waiver granted by the OEO, failure of a Prime
37 Contractor to commit in its bid or proposal to satisfying the mandatory
38 SBE/MBE subcontracting goal shall render its bid or proposal non-
39 responsive.

40
41 e. In the absence of a waiver granted by the OEO, failure of a Prime
42 Contractor to attain a mandatory subcontracting goal for SBE/MBE
43 participation in the performance of its awarded contract shall be
44 grounds for termination of existing contracts with the School Board.

1 debarment from performing future School Board contracts, and / or
2 any other remedies available under the terms of its contract with the
3 School Board or under the law.

4
5 f. A Prime Contractor is required to notify and obtain written approval
6 from the OEO in advance of any reduction in subcontract scope,
7 termination, or substitution for a designated SBE/MBE Subcontractor.
8 Failure to do so shall constitute a material breach of its contract with
9 the School Board.

10
11 **4. Sheltered Market:**

12
13 a. The OEO and GSC may select certain contracts for award to a
14 SBE/MBE or a joint venture with a SBE/MBE through the Sheltered
15 Market program.

16
17 b. In determining whether a particular contract is eligible for the
18 Sheltered Market Program, the OEO and GSC shall consider: whether
19 there are at least three SBE/MBEs that are capable and available to
20 participate in the Sheltered Market Program for that contract; the
21 degree of underutilization of the SBE/MBE prime contractors in the
22 specific industry categories; and the extent to which the School Board's
23 SBE/MBE prime contractor utilization goals are being achieved.

24
25 c. If a responsive and responsible bid or response is not received for a
26 contract that has been designated for the Sheltered Market Program, or
27 the apparent low bid is determined to be too high in price, the contract
28 shall be removed from the Sheltered Market Program.

29
30 **I. J. SBE/MBE Program Performance Review**

31
32 1. The OEO shall monitor the implementation of this Policy and the progress
33 of this Program. On a quarterly basis, the OEO shall report to the
34 Superintendent and School Board on the progress of achieving the goals
35 and objectives established for awards to certified SBE/MBE firms,
36 reporting both dollars awarded and expended. In addition, the OEO shall
37 report on the progress in achieving the stated Program Objectives,
38 including, but not limited to, enhancing competition, establishing and
39 building new business capacity, and removing barriers to and eliminating
40 disparities in the utilization of available minority business enterprises and
41 women business enterprises on School Board contracts.
42
43

- 1 2. The School Board shall quarterly review the SBE/MBE Program to
2 determine whether the various contracting procedures used to enhance
3 SBE/MBE contract participation needs to be adjusted or used more or
4 less aggressively in future years to achieve the stated Program Objectives.

Minority/Women Business Enterprise Program

5 The Minority/Women Business Enterprise (MWBE) Program is established to
6 enhance the bidding and selection opportunities of M/WBEs on certain contracts as
7 specifically provided in Board Policy 6610. "Minority business enterprise" means
8 any business as defined in F.S. 288.703. The M/WBE Enterprise Program and its
9 certification procedure should be modified, adjusted and revised in accordance with
10 the results of the Disparity Study.

11 **A. Terms and Definitions**

12 **Minority Ownership** – minority ownership means that for

- 13
14
15 1. Sole Proprietorship - a sole proprietor must be a minority person or
16 woman.
17
18 2. Partnership - a minority/ woman individual's interest must include at
19 least fifty-one percent (51%) of the ownership, profit/loss, voting control,
20 and capital of the partnership.
21 3. Corporation - Minority/Women must own at least fifty-one percent (51%)
22 of all voting stock, issued by a corporation. No stock held in trust, or by
23 any guardian for a minor, shall be considered held by the
24 minority/woman individual, in determining ownership and control.
25 4. Limited Liability Company (LLC) – Minority/women must control the
26 management and operations, as well as hold at least fifty-one percent
27 (51%) of the company's ownership interest.

28 A minority owner(s) also has voting rights to elect the board of directors, chief
29 executive officer and all other management personnel.

30
31 **Minority Person** - is a person born or naturalized in the United States. Resident
32 aliens and holders of permanent visas are not considered to be citizens. The
33 following groups are considered:

- 34
35 1. An African American, a person having origins in any of the black racial
36 groups of the African Diaspora, regardless of cultural origin.
37

- 1 2. A Hispanic American, a person of Spanish or Portuguese culture with
2 origins in Spain, Portugal, Mexico, South America, Central America, or the
3 Caribbean, regardless of race.
- 4
- 5 3. An Asian American, a person having origins of the Far East, Southeast
6 Asia, the Indian Subcontinent, or the Pacific Islands, including the
7 Hawaiian Islands before 1778.
- 8
- 9 4. A Native American, a person who has origins in any of the Indian Tribes of
10 North America before 1835, upon presentation of proper documentation
11 as established by rule of the Department of Management Services.
- 12
- 13 5. An American born or naturalized woman.
- 14

15 **B. C. MWBE Eligibility and Certification**

- 16
- 17 1. The OEO shall certify a company or other business entity as a MWBE
18 upon its submission of a completed certification form (MWBE Form-),
19 supporting documentation, and a signed affidavit stating that it meets the
20 following criteria:
- 21
- 22 a. it employs 200 or fewer permanent full-time employees and that,
23 together with its affiliates, has a net worth of not more than \$5 million
24 For sole proprietorships, the \$5 million net worth requirement shall
25 include both personal and business investments;
- 26
- 27 b. it is owned and controlled by at least 51% by a minority person/s who
28 are members of an insular group that is of a specific racial, ethnic, or
29 gender makeup or national origin which has been subjected
30 historically to disparate treatment due to identification in and with that
31 group resulting in an underrepresentation of commercial enterprises
32 under the group's control, and whose management and daily
33 operations are controlled by such persons. A minority business
34 enterprise may primarily involve the practice of a profession.
- 35
- 36 c. it has its principal place of business in Miami-Dade County and for at
37 least one year preceding the application;
- 38
- 39 d. The business has an occupational license and all required professional
40 licenses and/or contractor qualifier licenses.
- 41
- 42 e. The owner of the business must have the required professional
43 license(s) and contractor qualification license.

1 **Ownership**

2 ~~Ownership for specific business entities seeking Minority/Women Business~~
3 ~~Enterprise status shall be determined by:~~

4 ~~A. Sole Proprietorship a sole proprietor must be a minority person or~~
5 ~~woman.~~

6
7 ~~B. Partnership a minority/ woman individual's interest must include~~
8 ~~at least fifty one percent (51%) of the ownership, profit/loss, voting~~
9 ~~control, and capital of the partnership.~~

10
11 ~~C. Corporation Minority/Women must own at least fifty one percent~~
12 ~~(51%) of all voting stock, issued by a corporation. No stock held in~~
13 ~~trust, or by any guardian for a minor, shall be considered held by~~
14 ~~the minority/woman individual, in determining ownership and~~
15 ~~control.~~

16
17 ~~D. Limited Liability Company (LLC) Minority/women must control the~~
18 ~~management and operations, as well as hold at least fifty one~~
19 ~~percent (51%) of the company's ownership interest.~~

20
21 ~~A minority owner(s) has voting rights to elect the board of directors, chief~~
22 ~~executive officer and all other management personnel.~~

23 2. Other factors in determining ownership that will be considered shall
24 include, but are not limited to the following:

25 a. Whether minority/women owners are entitled to share in the profits of
26 the business, through salaries, bonuses, profit sharing, dividends, and
27 all other benefits, commensurate their ownership.

28 b. Whether minority/women owners share in all the risks of business,
29 including, but not limited to, third party agreements, bonding and
30 financial arrangements.

31
32 c. Ownership by a minority person does not include ownership that is the
33 result of a transfer from a nonminority person to a minority person
34 within a related immediate family group if the combined total net asset
35 value of all members of such family group exceeds \$1 million. The term
36 "related immediate family group" means one or more children under 16
37 years of age and a parent of such children or the spouse of such parent
38 residing in the same house or living unit.

1 **Control**

2 d. Minority/women owners must also demonstrate control over the
3 affairs, management, and operations, of the applicant business. The
4 discretion of minority/women owners shall not be subject to any
5 formal or informal restrictions (including, but not limited to, bylaw
6 provisions, partnership agreements, trust agreements, or requirements
7 for cumulative voting) that would impact or usurp the minority/women
8 owners' managerial and operational discretion.

9 Documents that establish control include but are not limited to:
10 corporate bylaws, operating agreements, partnership agreements,
11 management agreements or other agreements. Such documents
12 should be free of restrictive language which dilutes a minority/woman
13 owner(s)' control and prohibits him/her from making decisions.

(1) the minority/woman owner(s) must ~~demonstrate~~ by submit
documentation demonstrating control through the authority and
responsibility to sign company checks, for all bank accounts, and
letters of credit, negotiate contracts on behalf of the business,
signature responsibility for insurance, bid bonds, and performance
and payment bonds, negotiate bank transactions, and guarantee all
instruments which indebt the business.

14 (2) Unless a business is a franchise, agreements for contractual
15 support services that usurp a minority/woman owner's authority to
16 control a company are not allowed.

17 (3) Minority/Women owners shall control or supervise the hiring, firing
18 and supervision of employees, and establishment of employment
19 policies, wages, benefits and other employment conditions.

20 (4) Minority/Women owners shall have knowledge and control of all
21 financial matters of the business.

22 ~~Illustrations of operational involvement by minority/woman owner(s), include,~~
23 ~~but are not limited to the following:~~

24 A. ~~The minority/woman owner should have the knowledge, training,~~
25 ~~education, and experience necessary to operate the applicant's type~~
26 ~~of business.~~

27 B. ~~The minority/woman owner(s) must demonstrate that s/he is able~~
28 ~~to independently make basic management and contractual~~

1 ~~decisions, relating to the day to day operation of the business. This~~
2 ~~does not necessarily rule out the minority/woman owner(s) seeking~~
3 ~~paid or unpaid advice and assistance. The minority/woman~~
4 ~~owner(s) must presently have the knowledge to consider all advice~~
5 ~~provided, and make an independent decision.~~

6 ~~C. A minority/woman owner(s) should have some technical knowledge~~
7 ~~of the business including technical requirements. Employment,~~
8 ~~education, and training will be considered to determine whether a~~
9 ~~minority/woman as the technical knowledge capable of~~
10 ~~independently making decisions regarding the management and~~
11 ~~operate such a business.~~

12 3. Upon receipt of MWBE certification or re-certification applications, the OEO
13 shall review all enclosed forms, affidavits and documentation, and determine
14 whether the applicant satisfies the eligibility requirements. All applicants
15 shall be notified in writing as to whether they are eligible. The OEO shall also
16 provide to ineligible applicants in writing the basis for the denial of eligibility
17 and the right to request an appeal. Applicants determined ineligible shall not
18 be eligible to submit a new application for at least one year after the date of
19 the notice of denial of eligibility.

20
21 4. All certified M/WBEs will be included in the District's M/WBE Directory
22 which will be regularly updated and provided to school sites.

23 **Issuance of Determination**

24
25 ~~A. The Division will notify an applicant in writing that it has been~~
26 ~~found eligible for certification and~~
27

28 5. M/WBEs must notify the ~~Division of Business Development and~~
29 ~~Assistance~~OEO within fifteen (15) days, of any material changes to the
30 company's ownership and/or management of the firm. Any
31 misrepresentation by a company of its M/WBE status shall be grounds for
termination of any contract which was awarded based on the
misrepresentation in reliance thereon. A ~~violation~~, as described herein,
may also subject the signatories to any other statutory penalties, pursuant to
Florida statutes and Board policies.

28 6. ~~G.C.~~ M/WBE certification shall be valid for a two (2) year period. Certified
29 M/BWEs shall not request a change in their minority/woman designation, to
30 another minority designation during the certification period, unless changes
31 are due to extenuating circumstances.

- 1 7. H.D. The Board may honor a valid minority business certification granted by
2 another agency if the agency's requirements are consistent with the District's
3 M/BWE certification criteria. The Superintendent may develop procedures to
4 implement this policy.
5
- 6 8. An M/WBE must apply for recertification at least thirty (30) days prior to the
certification expiration. A Board M/WBE Recertification Form may be
submitted only if an M/WBE's certificate has not expired and no material
changes have occurred in the ownership and control of the M/WBE. If
certification has expired, the M/WBE must submit a new application
9. An M/WBE may be decertified for failure to comply with the Board's M/WBE
policies and procedures regarding requests for information or documents
pertaining to ownership, control, or operation of the business; failure to
submit a complete M/WBE Recertification Application; debarment; or by
written request from the firm's minority/women owners for voluntary
removal from the MBWE Directory.

7 **Denial of Certification**

8 ~~Companies ineligible for certification will be notified in writing. Written notices will~~
9 ~~include reasons for the denial and the right to request to appeal before the~~
10 ~~Certification Committee.~~

11 **Appeal Process**

12 C. D. Appeals

13 Applicants denied certification or recertification as an M/WBE may appeal
14 to the Superintendent. A written request to appeal must be received by the
15 superintendent within five (5) days of the date of the written notice. Upon
16 receipt of a timely notice of appeal, the Superintendent or designee shall
17 conduct a hearing. The Superintendent shall develop procedures for the
18 appeal process. The decision of the Superintendent shall be the final
19 decision of the School Board. the Notice of Denial.

20 ~~B. The Clerk of the Board shall be notified in writing, upon receipt of a~~
21 ~~request for an appeal hearing.~~

22 ~~C. Hearings by the Certification Appeals Committee shall not be de~~
23 ~~novo and the decision of the Certification Appeals Committee shall~~
24 ~~be final. If the applicant fails to submit a written request for appeal,~~
25 ~~the denial shall be conclusive, and the applicant foreclosed from any~~
26 ~~further appeal to the District. However, the applicant may request~~

1 that the Florida Department of Administrative Hearings review the
2 denial.

3 D. ~~Applicants denied certification shall not reapply for M/WBE~~
4 ~~Certification for a period of fourteen (14) months from the date of~~
5 ~~final determination.~~

6 **Certification Appeals Committee (CAC)**

7 The CAC is responsible for hearing all appeal requests from firms denied M/WBE
8 Certification. The committee is authorized to uphold or overturn the denial based
9 on the hearing and the M/WBE applicant's original certification application and
10 supporting documents. The CAC will consist of the following or their designees:

11 A. ~~Deputy Superintendent, School Operations~~

12 B. ~~Chief Facilities Officer, Facilities Planning and Construction~~

13 C. ~~Assistant Superintendent, Procurement Management Services~~

14 D. ~~Chief Auditor, Management and Compliance Audits~~

15 E. ~~Treasurer, Office of Treasury Management~~

16 **Recertification**

17 A. ~~An M/WBE must apply for recertification at least thirty (30) days~~
18 ~~prior to its certification expiring. A Board M/WBE Recertification~~
19 ~~Form may be submitted only if:~~

20 1. ~~an M/WBE's certificate has not expired; and~~

21 2. ~~no material changes have occurred in the ownership and control of~~
22 ~~the M/WBE.~~

23 B. ~~If certification has expired, the M/WBE must submit a new~~
24 ~~application.~~

25 **Decertification**

26 An M/WBE may be decertified as a result of the following:

- 1 A. ~~Failure to comply with the Board's M/WBE policies and procedures~~
2 ~~regarding requests for information or documents pertaining to~~
3 ~~ownership, control, or operation of the business; or~~
- 4 B. ~~Failure to submit a complete M/WBE Recertification Application;~~
- 5 C. ~~Debarment; or~~
- 6 D. ~~Voluntary removal from all Board M/WBE listings is requested in~~
7 ~~writing by the firm's minority/woman owner(s).~~

8 F.S. 287.093, 607.11, 1001.41(2), 1013.46(1)(b)

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on October 10, 2012, its intention to repeal Board Policy 6460.01, Business Development and Assistance Program, at its meeting of November 21, 2012.

PURPOSE AND EFFECT: To repeal the existing School Board Policy 6460.01, Business Development and Assistance Program, and incorporate language into Board Policy 6320.02, Minority/Women Business Enterprise Certification Procedures. The title to the proposed amended policy 6320.02 is being changed to Small and Minority/Women Business Enterprise Programs and Certification Procedures.

SUMMARY: The repeal of this Board Policy will allow incorporation of the definitions for Business Development and Assistance Program into amended Board Policy 6320.02, Minority/Women Business Enterprise Certification Procedures.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED:
287.093; 1013 F.S.

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: 287.093; 1013 F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING OF November 21, 2012, which begins at 1:00 p.m., in the School Board Auditorium, 1450 N.E. Second Avenue, Miami, Florida 33132. Persons requesting such a hearing or who wish to provide a proposal for a lower cost regulatory alternative as provided by Section 541(1), F.S. must do so in writing by November 5, 2012, to the Superintendent, Room 912, at the same address.

ANY PERSON WHO DECIDES TO APPEAL THE DECISION made by The School Board of Miami-Dade County, Florida, with respect to this action, will need to ensure the preparation of a verbatim record of the proceedings, including the testimony and evidence upon which the appeal is to be based (Section 286.0105, Florida Statutes).

A COPY OF THE PROPOSED REPEALED POLICY is available at cost to the public for inspection and copying in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

Originator: Mr. Barry S. Meltz
Supervisor: Dr. Richard H. Hinds
Date: September 28, 2012

1

BUSINESS DEVELOPMENT AND ASSISTANCE PROGRAM

2 The School Board, in March of 1985 and June of 1990, determined through
3 statistical analysis of current contracting expenditures and evaluation of economic
4 and sociological studies applicable to Miami-Dade County in general, that a
5 disparity continues to exist in the award of contracts to minority/women business
6 enterprises, and that such disparity is the result of past discriminatory practices. In
7 accordance with the United States Supreme Court decision in City of Richmond v.
8 J.A. Croson, 109 S.Ct. 706 (1989), the Board commissioned a disparity study. The
9 study discovered and analyzed evidence of the nature and extent of discrimination
10 against minority and women businesses in the District market area. The Supreme
11 Court held that all race-conscious programs now require direct evidence of past
12 discrimination against minority contractors, consultants, and vendors, and that the
13 programs must be narrowly tailored to specifically address such discrimination. It
14 is, therefore, the Board's intent to continue the Business Development and
15 Assistance (BD&A) Program to:

- 16 A. ensure that the Board does not discriminate in the award of
17 contracts for construction projects, procurement of goods and
18 services, and professional services on the basis of race, color, sex, or
19 national origin.
- 20 B. ensure the maximum opportunity for minority/women business
21 enterprises to participate in the award and performance of contracts
22 with the Board.
- 23 C. eliminate the current disparity in the award of contracts to
24 minority/women business enterprises by affirmatively ensuring
25 progressively greater participation by minority/women business
26 enterprises through the use of minority/women set aside contracts,
27 the establishment of goals for minority/women subcontract
28 participation, prime contracting, and other methods as may be
29 developed and approved by the Board, in conformance with
30 applicable State statutes, regulations and rules.
- 31 D. develop, and implement through the adoption of additional related
32 Board rules, such administrative procedures as may be necessary to
33 fully implement the Business Development and Assistance Program.

- 1 E. establish progressive annual objectives and related affirmative
2 implementation actions for increased participation by the various
3 minority/women business enterprise subgroups.
- 4 F. using the Ready, Willing and Able (RWA) M/WBE Assistance
5 Methodology, evaluate the levels and increases in minority/women
6 business enterprise participation annually and adjust the
7 affirmative implementation actions accordingly to account for
8 changing needs and circumstances to ensure that progressive
9 utilization objectives are achieved.
- 10 G. phase out affirmative implementation actions when evaluation of
11 contract expenditures indicates that the present effects of past
12 discriminatory practices have been eradicated.
- 13 Based on the disparity study of 1990, it is the Board's intent to modify the Business
14 Development and Assistance Program to:
- 15 A. strengthen the efficiency and fairness of general procurement
16 procedures and practices to increase opportunities for contracting
17 with M/WBEs;
- 18 B. establish insurance requirements which, although providing
19 appropriate protection, are not more restrictive than necessary to
20 protect the public's interest;
- 21 C. establish economic incentives that encourage the waiver of bonds,
22 and enhance the bonding technical assistance program;
- 23 D. establish administrative procedures regarding the expeditious
24 resolution of monetary disputes, and motivate prime contractors to
25 make timely payments;
- 26 E. establish a more comprehensive contract reporting and monitoring
27 system to provide accurate information;
- 28 F. establish a Small Business Enterprise Program which will focus on
29 all small business concerns, without regard to ethnicity, race or
30 gender;

1 G. ensure that the Division of Business Development and Assistance is
2 directly responsible for the full implementation of the Business
3 Development and Assistance Program; and

4 H. establish a statistically based goal assistance methodology for
5 determining the assistance levels, to be established on an annual
6 basis, using the Ready, Willing and Able model.

7 **Definitions**

8 A. Minority/Women Business Enterprise (M/WBE)

9 1. "Minority business enterprise" means any business as defined
10 in F.S. 288.703.

11 2. "Minority person" means a person who is a citizen or lawful
12 permanent resident of the United States, and who is:

13 a. an African American, a person having origins in any of
14 the Black racial groups of Africa;

15 b. an Hispanic, a person of Spanish or Portuguese
16 culture, including, but not limited to, persons with
17 origins in Mexico, South America, Central America, or
18 the Caribbean Islands, regardless of race; or

19 c. a woman.

20 B. Business Development and Assistance (BD&A) Program

21 The Board's Business Development and Assistance Program
22 encompasses all available diversity methods, to assist minority,
23 women and small firms with contracting opportunities.
24

25 Two (2) components of the Business Development Assistance
26 Program are:
27

28 1. Minority/Women Business Enterprise (M/WBE) Program will
29 monitor, track and certify M/WBE firms for the Board.

30 2. Small Business Enterprise (SBE) Program will be in addition
31 to the M/WBE program. The program will provide assistance
32 to small business concerns without regard to ethnicity, race
33 or gender.

1 C. Board

2
3 The Board.

4 D. M/WBE Assistance Levels (Subcontract Goals)

5 Applied to all construction projects in excess of \$5,000,000. When
6 utilized, goals shall be based on estimates made prior to bid
7 advertisement of the quantity and type of subcontracting
8 opportunities provided by a project to be constructed, or goods and
9 services to be purchased, and on the availability and capability of
10 minority/women business enterprises to do such work or provide
11 such goods or services. When goals are utilized, the bid
12 advertisement or request for proposal shall set forth the
13 minority/women participation goals and, as a condition of
14 responsiveness, bidders, as part of their bid submission, shall
15 demonstrate every reasonable effort to meet the goals. The
16 Instructions to Bidders and General Conditions for Construction
17 contracts, and Special Conditions for Procurement shall incorporate
18 a M/WBE Contractor Participation Provision, which shall specify the
19 steps required to demonstrate every reasonable effort to meet the
20 goals, and set forth such other specifications, terms, conditions and
21 procedures applicable to minority/women business enterprise
22 participation.
23

24 E. Prime Contracting

25 Large general single contracts may be divided into multiple
26 contracts. Those contracts may be bid as minority/women set aside
27 contracts, may utilize minority/women subcontracting goals, and/or
28 identify specific scopes of work for M/WBE participation.
29

30 F. Minority Business Enterprise Advisory Committee

31 A standing committee established by the Board to monitor and
32 evaluate the Business Development and Assistance Program. This
33 Committee is comprised of community members representing
34 various minority, women and majority business interests, and a
35 member appointed by each Board member and the Superintendent.
36

1 G. Certification
2

3 The procedures and necessary documentation required to determine
4 that a contractor, consultant, or vendor is a minority/women
5 business enterprise.

6 H. Construction and Procurement Contract Review Committees
7

8 The Construction and Procurement Contract Review Committees
9 (CCRC and PCRC) determine which diversity methods will be applied
10 on a construction project or procurement bid. Professional services
11 contracts, other than construction related professional services, will
12 be included in procurement.

13
14 The CCRC will consist of one (1) representative from the Division of
15 Business Development and Assistance, one (1) from Maintenance
16 Operations, and one (1) from Capital Construction and one (1)
17 observer from the Office of Management and Compliance Audits.
18 Reviews shall be held as necessary to effectively implement the
19 M/WBE Program.
20

21 The Procurement Contract Review Committee (PCRC) will consist of
22 two (2) representatives from the Division of Business Development
23 and Assistance, two (2) from Procurement Management Services,
24 one (1) from School Operations, and one (1) observer from the Office
25 of Management and Compliance Audits.

26 I. Small/Exempt Contract
27

28 The purchase or contract by a buyer, a school site administrator, or
29 other work location administrator of \$50,000 and under.

30 J. Disparity Study
31

32 A study to determine whether differences exist between the
33 availability of presumptive groups in a relevant market area and
34 their utilization.

1 K. District Market Area

2
3 The relevant market area for construction is Florida where
4 eighty-five percent (85%) or more of the contractors or design
5 professionals are located.

6
7 The relevant market area for procurement is the United States
8 where eighty-five percent (85%) or more of the vendors or
9 professional service providers are located.

10 L. Ready, Willing and Able Firm (RWA)

11
12 A firm that indicates it wants to do business with the Board.

13 M. Ready, Willing and Able Model

14
15 A statistically based formula for determining assistance levels.

16 **M/WBE Certification**

17 Any business seeking to participate in the District's M/WBE Program must be
18 certified by the Division of Business Development and Assistance.

19 **M/WBE Contracting Reports**

20 Prime contractors will report, quarterly, all payments to M/WBE
21 subcontractors/consultants to the Division of Business Development and
22 Assistance. M/WBE expenditures will be reported annually to the Board through
23 the Superintendent and reviewed by the Minority Business Enterprise Advisory
24 Committee. Expenditures will be delineated by ethnic/gender group and by
25 procurement/construction category for all non-salaried expenditures, except
26 payments for utilities and to the Florida Retirement System.

27 **Program Evaluation**

28 The Minority Business Enterprise Advisory Committee shall, upon review of
29 Business Development and Assistance Program reports and other pertinent data,
30 make recommendations, as appropriate, to the Board, for modification, expansion,
31 or curtailment of specific aspects of the program, and/or adjustments in the
32 diversity methods employed for each M/WBE category.

1 **Advertising Projects for M/WBE Participation**

2 All solicitations for formal bids and requests for proposals may be electronically
3 posted or advertised as follows (this list is not all inclusive):

4	PUBLICATIONS	ORGANIZATIONS
5	Miami Times	Latin Chamber of Commerce
6	Diario Las Americas	The Women's Chamber of
7		Commerce
8	Miami Daily Business Review	Miami-Dade Chamber of
9		Commerce
10	El Nuevo Herald	Allied Minority Contractors
11		Association, Inc.
12		Latin Builders Association,
13		Inc.
14		Hatian Chamber of Commerce
15		National Association of
16		Women in Construction
17		Black Business Association
18		Asian American Federation of
19		Florida, Inc.

20 **Determining Diversity Measures**

21 The CCRC will review projects to determine diversity measures.

22 Whenever projects are reviewed by the CCRC for diversity measures, in whole or in
23 part, the Committee shall be guided by the following criteria:

- 24 A. The scope of work, method of construction, and estimated
25 construction cost of the project which may be appropriate for
26 M/WBE participation.

- 1 B. The availability and capability of M/WBE contractors to compete in
2 the bidding process.
- 3 C. Unless the Board specifically directs otherwise, the CCRC will make
4 the decision as to whether projects of \$8 million or less are
5 designated for the diversity program projects. Projects over \$8
6 million must be approved in advance by the Board before being
7 designated for the diversity program. The M/WBE Advisory
8 Committee will review this requirement on an annual basis and
9 recommend changes, as appropriate.
- 10 D. Projects estimated to cost \$5 million or more must have M/WBE
11 Subcontracting Assistance Levels.

12 Joint ventures between M/WBEs and non-minorities may be recommended by the
13 Construction Contract Review Committee (CCRC) on a project by project basis.
14 Joint ventures will be certified and their agreements reviewed by the Division of
15 Business Development and Assistance to verify that minority/women business
16 enterprises share in the profits, risks, and management of such joint ventures.

17 **Technical Review Committee (TRC) Review**

18 M/WBE Assistance Levels are goals and are not rigid or inflexible. For this reason,
19 if a low bid is determined to be in noncompliance because the bidder failed to
20 achieve M/WBE Assistance Levels, the Division of Business Development and
21 Assistance and the TRC may review appropriate documentation and recommend
22 award, notwithstanding the finding of noncompliance. This action will be exercised
23 only for compelling reasons. Bidders may not apply for this review, but the review
24 shall occur at the sole discretion of the Superintendent.

25 The application of this provision will be reported to the MBE Advisory Committee.

26 **Criteria for Reducing Large Contracts**

27 Large projects shall be reduced, when possible.

28 The Construction Contract Review Committee (CCRC) will consider dividing large
29 contracts thereby creating small contracts that are more feasible for M/WBE
30 participation. Pertinent factors to be considered are:

- 31 A. the degree of complexity of the project's design which permits
32 reduction;

- 1 B. the extent of the need for M/WBE participation in a specific type of
2 work or a particular project;
- 3 C. the extent to which the construction annual M/WBE Assistance
4 Levels are being met; and
- 5 D. the potential costs/benefits of reducing the project.

6 **Payment to Subcontractors**

7 The prime contractor will be expected to make payment to subcontractors, material
8 suppliers and others providing goods/services on Board projects, within ten (10)
9 days of receipt of payment from the Board.

10 **Retainage**

11 Retainage may not be released if a contractor fails to comply with the special
12 provisions, as determined by the Division of Business Development and Assistance.

13 The Division of Business Development and Assistance generates a summary of all
14 contracts reviewed by the Construction Contract Review Committee (CCRC) during
15 its scheduled meetings. The minutes of these meetings shall be forwarded quarterly
16 to the Board.

17 **Specifications**

18 The specifications for goods and services should not preclude bidding by MWBEs.
19 Exceptions are noted when proprietary specifications are necessary to protect the
20 interests of the Board.

21 Formal written bids (over \$50,000) will be presented weekly to no less than four (4)
22 committee members for review. Small/Exempt contracts up to \$50,000 are not
23 regularly reviewed for M/WBE participation; however, periodic reviews will be
24 conducted to monitor activities in this area to encourage M/WBE participation.

1 Reduction of Large Contracts

2 The Procurement Contract Review Committee (PCRC) will consider dividing large
3 contracts, to create smaller contracts that are more feasible for M/WBE
4 participation. The methodology used for subdividing the contracts can be tailored to
5 the unique factors present in each situation. The various options include, but are
6 not limited to:

- 7 A. the full quantity of a given item(s) on a large contract may be placed
8 on a separate contract for bidding;
- 9 B. a partial quantity of a given item(s) on a large contract may be
10 placed on a separate contract for bidding;
- 11 C. the term of a contract may be shortened which results in a dual
12 effect - the reduction of quantities required and the risk inherent in
13 guaranteeing prices over a longer time period;
- 14 D. work to be performed may be grouped according to geographic
15 location and placed on separate contracts; and
- 16 E. unrelated scopes of work to be performed or portions of work not
17 requiring completion by a single bidder may be placed on separate
18 contracts.

19 Prime contracts resulting from the above measures may then be bid either as a
20 minority/women diversity measures or open to all bidders. This determination will
21 be made based on the criteria stipulated in the section addressing Minority/Women
22 Diversity Measures.

23 Minority/Women Diversity Measure

24 Prior to invitation for bid or request for proposal, a given contract will be evaluated
25 by the Procurement Contract Review Committee to determine whether it is in the
26 best interest of the Board to designate it as a diversity measure. The criteria to be
27 applied in this decision making process is detailed below.

- 28 A. There is a sufficient number of M/WBEs offering the items or
29 services to be purchased.
- 30 B. If sufficient competition is not generated from the identified bidders
31 within one (1) minority classification, then the diversity measure
32 may encompass more than one subgroup of M/WBEs.

1 **Technical Assistance and Outreach**

2 The Board shall maintain a public/private partnership with major organizations to
3 provide administrative and, to the degree feasible, technical assistance, to minorities
4 and women desiring to do business with the Board.

5 **Payment**

6 Payments will be made to vendors and consultants for goods and services as
7 prescribed by Board policy and Florida statute.

8 F.S. 287.093, 1013