

**MEMORANDUM**

March 12, 2013

**TO:** The Honorable Chair and Members of The School Board of Miami-Dade County, Florida

**FROM:** Alberto M. Carvalho, Superintendent of Schools *AMC*

**SUBJECT: WITHDRAWAL OF AGENDA ITEM E-200, PROPOSED AMENDMENT OF BOARD POLICY: INITIAL READING POLICY 6320.02, SMALL/MICRO BUSINESS ENTERPRISE PROGRAM AND MINORITY/WOMEN BUSINESS ENTERPRISE CERTIFICATION**

Inasmuch as this item is pending further review of participation levels for entrance into SBE/MBE programs, it is requested that the item be withdrawn. This item will be resubmitted at a later time.

If you require additional information, please contact Dr. Richard H. Hinds, Associate Superintendent and Chief Financial Officer, Financial Services, at 305 995-1225.

AMC:crl  
M876  
Attachments

cc: Superintendent's Cabinet  
School Board Attorney  
Mr. Barry S. Meltz

Office of Superintendent of Schools  
Board Meeting of March 13, 2013

March 12, 2013

Financial Services  
Richard H. Hinds, Chief Financial Officer

**SUBJECT:            PROPOSED AMENDMENT OF BOARD POLICY: INITIAL  
READING POLICY 6320.02, SMALL/MICRO BUSINESS  
ENTERPRISE PROGRAM AND MINORITY/WOMEN  
BUSINESS ENTERPRISE CERTIFICATION**

**COMMITTEE:        INNOVATION, EFFICIENCY & GOVERNMENTAL RELATIONS**

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

The purpose of this item is to provide the Board the proposed amendment to Board Policy 6320.02, Small/Micro Business Enterprise Program and Minority/Women Enterprise Certification, by including language to allow minority and small enterprise certification of vendors located in Miami-Dade, Broward and Palm Beach counties, and maximize business opportunities for these firms.

Attached are the Notice of Intended Action and the policy proposed for amendment. Changes to the current policy are indicated by underscoring words to be added and ~~striking through~~ words to be deleted.

Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act for the amendment of Board Policy 6320.02, Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification.

**RECOMMENDED:** That The School Board of Miami-Dade County, Florida, authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Board Policy 6320.02, Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification.

RHH:cr1

**Item Withdrawn  
(3/12/2013)  
E-200**

## NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on March 13, 2013, its intention to amend Board Policy 6320.02, Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification, at its meeting of April 17, 2013.

**PURPOSE AND EFFECT:** It is recommended that Board Policy 6320.02, Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification, be amended to incorporate the certification of minority and small business enterprise firms located in Miami-Dade, Broward and Palm Beach counties, to enable the opportunity for these firms to participate in this program.

**SUMMARY:** This policy creates 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 in the tri-county area. All procurement services shall comply with laws, rules, regulations and Board policies.

**SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED:** 1001.41(1) and (2); 1001.42(25); 1001.43(10), F.S.

**LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC:** 287.093; 1001.32(2); 1013.46(1)(b), F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE SCHOOL BOARD MEETING OF April 17, 2013, 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 in Section 120.541(1), F.S. must do so in writing by April 8, 2013, to the Superintendent of Schools, 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: February 25, 2013

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

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

6     **Office of Economic Opportunity (OEO)**

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

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

- 1 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 J. serve as chair of the Goal-Setting Committee and staff liaison to the  
5 Small Business Enterprise Advisory Committee;
- 6 K. monitor, coordinate, and provide support for any disparity study  
7 that may be conducted regarding minority/women business  
8 participation in Board procurement;
- 9 L. develop and coordinate any recommendations as a result of any  
10 such disparity study findings;
- 11 M. maintain, distribute, and publish a directory of certified SBE, MBE,  
12 and M/WBE firms; and
- 13 N. quarterly report through the Superintendent to the Board regarding  
14 the effectiveness of these programs.

15 **Small Business Enterprise Advisory Committee**

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

- 17 A. provide guidance on the implementation of the SBE/MBE Program  
18 and to promote the participation and use of SBE/MBEs and MWBEs  
19 in the procurement activities of the Board;
- 20 B. identify and evaluate issues related to economic opportunities within  
21 the Board for small, micro and minority/women owned businesses;
- 22 C. provide recommendations to the Board to improve the SBE/MBE  
23 program;
- 24 D. annually evaluate and report to the Board on the effectiveness of the  
25 SBE/MBE program in increasing minority and women owned  
26 business participation in the Board's procurement process;
- 27 E. monitor any disparity study that may be conducted by the Board  
28 and make recommendations based on the results of any such study.

1 The Board and Superintendent shall each appoint a community member who is not  
2 employed by the Board and does not have any direct or indirect business  
3 relationship with the Board. The committee shall have representation from local  
4 small, micro, minority, women, and majority business interest organizations,  
5 community based organizations and local government entities which may include  
6 professional, construction and trade, business, and socio-economic organizations.  
7 The Board and Superintendent shall approve a list of representative organizations  
8 and the Superintendent shall appoint a member nominated by each recommended  
9 organization from their membership. The term of each Board appointee shall be  
10 coterminous with the appointing Board member and the term of the  
11 Superintendent's appointees shall be at the will and discretion of the  
12 Superintendent. In no event shall any Board member serve more than four (4)  
13 consecutive years. All appointments must comply with Policy 9140, Citizen Advisory  
14 Committees. The Committee shall annually elect a chair and vice-chair, meet at  
15 least six (6) times per year, and be governed by the latest edition of *Robert's Rules of*  
16 *Order*. The committee may adopt bylaws, to be recommended by the Superintendent  
17 to the Board for approval, to facilitate the operation of the committee.

18 **Small/Micro Business Enterprise Program**

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

25 **Terms and Definitions**

26 A. ***Affirmative Procurement Initiatives*** – any procurement tool to  
27 enhance contracting opportunities for SBE/MBE firms including:  
28 bonding waivers, bid incentives, sheltered market, mandatory  
29 subcontracting, competitive business development demonstration  
30 projects, and SBE/MBE evaluation preference points in the scoring  
31 of proposal evaluations.

- 1           B.    **Available or Availability** – to have, prior to bid submission, the  
2           ability to provide goods or services under a contract by having  
3           (a) reasonably estimated, uncommitted capacity; (b) all necessary  
4           licenses, permits, registrations and certification, including  
5           SBE/MBE certification to provide the type of goods or services being  
6           purchased under the contract; (c) ability to obtain reasonably  
7           required financing/insurance that is consistent with normal  
8           industry practice; and (d) ability to otherwise meet bid  
9           specifications.
- 10          C.    **Award** – final selection of a bidder or offer or for a specified  
11          contract.
- 12          D.    **Award Amount** – the dollar value of the contract when awarded.
- 13          E.    **Bid** – quotation, proposal, letter of interest or offer by any bidder in  
14          response to any kind of invitation, solicitation, request or public  
15          announcement to submit such quotation, proposal, letter of interest  
16          or offer for a contract.
- 17          F.    **Bidder** – any person, partnership, corporation or other business  
18          entity that submits a bid or proposal.
- 19          G.    **Certification** – process by which the Office of Economic  
20          Opportunity (“OEO”) determines that a business meets the criteria  
21          for classification as a small/micro business enterprise.

- 1           H.     **Commercially Useful Function** – an SBE/MBE performs a  
2           commercially useful function when it is responsible for execution of  
3           the work of the contract and is carrying out its responsibilities by  
4           actually performing, managing, and supervising the work involved.  
5           To perform a commercially useful function, the SBE/MBE must also  
6           be responsible for negotiating the price of contract materials and  
7           supplies, determining the quantity and quality of materials, ordering  
8           and installing materials if applicable, and paying for the materials.  
9           To determine whether an SBE/MBE is performing a commercially  
10          useful function, an evaluation must be performed of the amount of  
11          work subcontracted, normal industry practices, whether the amount  
12          the SBE/MBE is to be paid under the contract is commensurate  
13          with the work it is actually performing and the SBE/MBE credit  
14          claimed for its performance of the work, and other relevant factors.  
15          Specifically, an SBE/MBE does not perform a commercially useful  
16          function if its role is limited to that of an extra participant in a  
17          transaction, contract, or project through which funds are passed in  
18          order to obtain the appearance of meaningful and useful SBE/MBE  
19          participation, when in similar transactions in which SBE/MBE firms  
20          do not participate, there is no such role performed.
- 21          I.     **Contract** – an agreement for purchase of goods or services,  
22          including professional services and construction. It does not include  
23          agreements to purchase, lease, or rent real property, or a grant,  
24          license, permit, franchise or concession.
- 25          J.     **Goal** – a non-mandatory annual aspirational percentage goal for  
26          SBE/MBE contract participation established each year for  
27          professional architectural, engineering, landscape, surveying, and  
28          mapping services, construction, goods and services and other  
29          professional services. Mandatory percentage goals for SBE/MBE  
30          subcontract participation may be established on a  
31          contract-by-contract basis.
- 32          K.     **Goal Setting Committee** – committee established by the  
33          Superintendent that is chaired by the OEO and is responsible for  
34          establishing SBE/MBE Program goals and selecting appropriate  
35          Affirmative Procurement Initiatives for application to specific Board  
36          contracts based upon industry categories, vendor availability, and  
37          project-specific characteristics.



- 1 L. **Good Faith Efforts** – documentation of the bidder’s intent to  
2 comply with SBE/MBE Program goals and procedures, including,  
3 but not limited to the following: (1) documentation within a bid  
4 submission or proposal reflecting the bidder’s commitment to  
5 comply with SBE/MBE Program goals as established by the Goal  
6 Setting Committee for a particular contract; or (2) documentation of  
7 efforts made towards achieving the SBE/MBE Program goals,  
8 including but not limited to, timely posting of SBE/MBE  
9 subcontract opportunities on the Board web site; solicitations of  
10 bids from all qualified SBE firms listed in OEO’s SBE/MBE  
11 Directory of certified SBE/MBE firms; correspondence from qualified  
12 SBE/MBE firms documenting their unavailability to perform  
13 SBE/MBE contracts; documentation of efforts to subdivide work  
14 into smaller quantities for subcontracting purposes to SBE firms;  
15 documentation of efforts to assist SBE/MBE firms with obtaining  
16 financing, bonding, or insurance required by the bidder; and  
17 documentation of consultations with trade associations and  
18 consultants that represent the interests of small and local  
19 businesses in order to identify qualified and available SBE/MBE  
20 subcontractors.
- 21 M. **Gross Revenue** – all revenue in whatever form received or accrued  
22 from whatever source, including sales of products or services,  
23 interest, dividends, rents, royalties, fees or commissions, reduced by  
24 returns and allowances. Gross revenue does not include proceeds  
25 from sales of capital assets, and investments, proceeds from  
26 transaction between a firm and its domestic and foreign affiliates.
- 27 N. **Independently Owned, Managed, and Operated** – ownership of  
28 an SBE/MBE firm must be direct, independent, and by individuals  
29 only. Business firms that are owned by other businesses or by the  
30 principals or owners of other businesses that cannot themselves  
31 qualify under the eligibility requirements shall not be eligible to  
32 participate in the program. The day-to-day management of the firm  
33 must also be direct and independent of the influence of any other  
34 businesses that cannot themselves qualify under the eligibility  
35 requirements.
- 36 O. **Industry Categories** – procurement groupings of Board contracts  
37 for administering the Affirmative Procurement Initiatives that shall  
38 include construction, professional services, and goods and services  
39 procurement. Industry categories may also be referred to as  
40 “business categories.”

- 1 P. **Joint Venture** - an association of two (2) or more persons or  
2 businesses under a contract conducting a single business enterprise  
3 in which they combine capital, efforts, skills, knowledge and/or  
4 property and share profits and losses equally. A joint venture  
5 composed of qualified business organizations is itself a separate and  
6 distinct organization that must be qualified according to Board  
7 policies and F.S. 489.119(2)(c).
- 8 Q. **Micro-Business Enterprise** - any contractor, subcontractor,  
9 manufacturer or service company (a) that has been doing business  
10 under the same ownership or management and has maintained its  
11 principal place of business in Miami-Dade, Broward or Palm Beach  
12 County, Florida, for a period of at least one (1) year immediately  
13 prior to the date of application for certification under this section, (b)  
14 that had annual gross revenues not exceeding the thresholds for a  
15 Micro-Business Enterprise as identified in this policy for each  
16 industry, and (c) at least fifty-one percent (51%) of the ownership of  
17 which is held by a person or persons who exercise operational  
18 authority over the daily affairs of the business and have the power to  
19 direct the management and policies and receive the beneficial  
20 interests of the company. Representations regarding average gross  
21 revenue and payroll are subject to audit. If a business has not  
22 existed for three (3) years, the employment and gross revenue limits  
23 shall be applied based upon the annual averages over the course of  
24 the existence of the business.
- 25 R. **Points** - the quantitative assignment of value for specific evaluation  
26 criteria in the vendor or consultant selection process.
- 27 S. **Prime Contractor** - the vendor or contractor to whom a purchase  
28 order or contract is awarded by the Board for purposes of providing  
29 goods or services to the Board.
- 30 T. **Principal Place of Business** - the location where a firm maintains  
31 a physical office and through which it obtains no less than fifty  
32 percent (50%) of its overall customers or sales dollars, or through  
33 which no less than twenty-five percent (25%) of its employees are  
34 located and domiciled within the service area ~~of Miami-Dade~~  
35 County.
- 36 U. **Responsible** - means that a firm is capable in all respects of fully  
37 performing the contract requirements and has the integrity and  
38 reliability to assure good faith performance.

- 1 V. **Responsive** – description of a firm’s bid or proposal that conforms in  
2 all material respects to the invitation to bid or request for proposal  
3 and shall include compliance with SBE Program requirements.
- 4 W. **School Board** – The School Board of Miami-Dade County, Florida,  
5 which is the legal entity with authority to enter contracts on behalf  
6 of the District school system under F.S. 1001.41(4).
- 7 X. **Sheltered Market** – an Affirmative Procurement Initiative designed  
8 to set aside a Board contract bid for bidding or selection exclusively  
9 among SBE/MBE firms.
- 10 Y. **Significant Employee Presence** – no less than twenty-five  
11 percent (25%) of a firm’s total number of employees are domiciled in  
12 Miami-Dade County, Florida.
- 13 Z. **SBE/MBE Plan Execution Certification (SBE/MBE**  
14 **Form - C)** - form certifying the general contractor’s intent to use a  
15 SBE/MBE subcontractor and verifying that an agreement has been  
16 executed between the prime and the SBE/MBE.
- 17 AA. **SBE/MBE Directory** - listing of certified SBE/MBEs.
- 18 BB. **SBE/MBE Certification/Re-certification Application (SBE/MBE**  
19 **Form - R)** – form that a company must complete when applying for  
20 and/or recertifying SBE/MBE status for participation in the  
21 SBE/MBE Program. This form shall be completed every two (2)  
22 years by certified SBE/MBEs by the anniversary date of their  
23 original certification.
- 24 CC. **SBE/MBE Schedule for Subcontractor Participation (SBE/MBE**  
25 **Form - S)** – form that must be completed by all non-SBE/MBE firms  
26 that subcontract to SBE/MBE firms, must be submitted for each  
27 SBE/MBE subcontractor, and must be reviewed and approved by  
28 the OEO Manager before contract award.

- 1 DD. **SBE/MBE Unavailability Certification (SBE Form - U)** - form  
2 demonstrating a bidder's unsuccessful good faith effort to meet the  
3 small business local participation requirements of the contract  
4 which shall only be considered after proper completion of the  
5 outreach and compliance efforts and methods used to notify and  
6 inform SBE/MBE firms of contracting opportunities have been fully  
7 exhausted.
- 8 EE. **Small Business Enterprise (SBE)** - any contractor, subcontractor,  
9 manufacturer or service company (a) that has been doing business  
10 under the same ownership or management and has maintained its  
11 principal place of business in Miami-Dade, Broward or Palm Beach  
12 County, Florida, for a period of at least one (1) year immediately  
13 prior to the date of application for certification under this section, (b)  
14 that had annual gross revenues not exceeding the thresholds  
15 identified in this policy for each industry, and (c) at least fifty-one  
16 percent (51%) of the ownership of which is held by a person or  
17 persons who exercise operational authority over the daily affairs of  
18 the business and have the power to direct the management and  
19 policies and receive the beneficial interests of the company.  
20 Representations regarding average gross revenue and payroll are  
21 subject to audit. If a business has not existed for three (3) years,  
22 the employment and gross revenue limits shall be applied based  
23 upon the annual averages over the course of the existence of the  
24 business.
- 25 FF. **Spend Dollars** - dollars actually paid to prime and/or  
26 subcontractors and vendors for Board contracted goods and/or  
27 services.
- 28 GG. **Subcontractor** - any vendor or contractor that is providing goods or  
29 services to a prime contractor in furtherance of the prime  
30 contractor's performance under a contract or purchase order with  
31 the Board.
- 32 HH. **Subcontractor Goal** - a proportion of a total contract value stated  
33 as a percentage to be subcontracted to SBE/MBEs to perform a  
34 commercially useful function.
- 35 II. **Suspension** - the temporary stoppage of an SBE/MBE firm's  
36 participation in the Board's contracting process for a finite period of  
37 time.

1 **Application**

2 This program applies to Board contracts funded in whole or in part by Board funds  
3 except where Federal or State laws or regulations prohibit its application. The  
4 Superintendent has the discretion to identify classes of contracts or parts of  
5 contracts that are subject to this program. The Superintendent shall also prepare  
6 necessary procedures, bid and contract documents to implement the program.

7 **Subcontractor Goals**

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

11 **Goal Setting Committee**

12 The Superintendent shall create and staff a Goal Setting Committee (GSC) to  
13 establish SBE/MBE Program goals and select appropriate incentives to apply to  
14 specific contracts based upon industry categories, vendor availability and  
15 project-specific characteristics. The Superintendent shall determine the size of the  
16 GSC that is to be chaired by the OEO who shall serve as a voting member. The  
17 Superintendent shall also appoint the remaining members of the GSC from the  
18 Board's procurement personnel and other Board departments affected by this  
19 Program. The GSC shall meet as often as it determines necessary, but not less than  
20 twice annually, to develop the SBE/MBE goal setting methodology to be  
21 implemented by the OEO on a contract-by-contract basis, and monitor and support  
22 the implementation of this policy.

23 **SBE/MBE Eligibility and Certification**

24 A. The OEO shall certify a company or other business entity as a SBE  
25 or MBE upon its submission of a completed District required  
26 certification form, supporting documentation, and a signed affidavit  
27 stating that it meets all of the following criteria:

28 1. Is an independently owned and operated business that is not  
29 dominant in its field of operation and is performing a  
30 commercially useful function.

- 1                    2.     The business has its principal place of business in  
2                    Miami-Dade, Broward or Palm Beach County, Florida, for at  
3                    least a year preceding the application.
- 4                    3.     The business has been established for at least one (1) year or  
5                    the principals of the business have at least three (3) years of  
6                    relevant experience prior to forming or joining the business.
- 7                    4.     The business has an occupational license and all required  
8                    professional licenses and/or contractor qualifier licenses.
- 9                    5.     The owner of the business must have the required  
10                   professional license(s) and contractor qualification license.
- 11  
12                   6.     The Board may honor a valid Small Business Enterprise  
13                   Certification and/or Micro Business Enterprise Certification  
14                   granted by another agency if the agency's requirements are  
15                   consistent with the District's SBE/MBE certification criteria.  
16                   The Superintendent may develop procedures to implement  
17                   this policy.
- 18                   B.     Additionally, the requirements for SBE/MBE Program eligibility  
19                   based on industry are:
- 20                   1.     **Micro Business Enterprise**
- 21                   a.     **Professional Services:** The annual gross revenue  
22                   averaged over the previous three (3) years shall not  
23                   exceed \$300,000.
- 24                   b.     **Goods and Services (Procurement Program):** The  
25                   annual gross revenue averaged over the previous  
26                   three (3) year period shall not exceed \$500,000.
- 27                   c.     **Construction:** The annual gross revenue averaged  
28                   over the previous three (3) years shall not exceed  
29                   \$750,000.
- 30                   d.     **Specialty Trade:** The annual gross revenue average  
31                   over the previous three (3) years shall not exceed  
32                   \$300,000.  
33  
34

2. **Small Business Enterprise**

- a. **Professional Services:** The annual gross revenue averaged over the previous three (3) years shall not exceed \$600,000.
- b. **Goods and Services (Procurement Program):** The annual gross revenue averaged over the previous three (3) year period shall not exceed \$1,000,000.
- c. **Construction:** The annual gross revenue averaged over the previous three (3) years shall not exceed \$3,000,000.
- d. **Specialty Trade:** The annual gross revenue average over the previous three (3) years shall not exceed \$750,000.

C. 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 (1) year after the date of the notice of denial of eligibility.

D. Applicants determined eligible to participate in the program shall submit a completed re-certification form (SBE/MBE-R) every two (2) 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, Broward or Palm Beach County, Florida, in accordance with this policy. To qualify for recertification, the firm's average gross revenue for the three (3) fiscal years immediately preceding the application for recertification shall not exceed \$7 million for construction, \$5 million for goods and 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.

E. 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.

1 **Graduation and Suspension**

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

5 A. An SBE shall be permanently graduated after its three (3) fiscal year  
6 average gross revenue exceeds \$7 million for construction, or  
7 \$5 million for goods and services, \$1.8 million for specialty trade,  
8 and \$1.5 million for professional services.

9 B. When an MBE exceeds the eligibility certification thresholds, it  
10 automatically graduates and is subject to the small business criteria  
11 and restrictions.

12 C. If an SBE exceeds the size standards for the Small Business  
13 Program during any fiscal year, it shall be allowed to complete any  
14 pending contractual obligation(s), and its participation can be  
15 counted in the goals.

16 D. The OEO may permanently revoke SBE/MBE eligibility if it fails to  
17 perform a commercially useful function under a contract, or if it  
18 allows its SBE/MBE status to be fraudulently used for the benefit of  
19 a non-SBE/MBE firm or the owners of a non-SBE/MBE firm so as  
20 to provide the non-SBE/MBE firm or firm owners benefits from  
21 Affirmative Procurement Initiatives for which the non-SBE/MBE  
22 firm and its owners would not otherwise be entitled.

23 E. The OEO shall provide written notice to the SBE/MBE upon  
24 graduation or suspension from the SBE/MBE program including the  
25 reasons.

26 **Appeals**

27 A business that is denied eligibility, whose eligibility is revoked, or who has been  
28 denied a waiver request, may appeal the decision to the Superintendent. A written  
29 notice of appeal must be received by the Superintendent within fifteen (15) calendar  
30 days of the date of the written notice. Upon receipt of a timely notice of appeal, the  
31 Superintendent shall conduct a hearing. The Superintendent shall develop  
32 procedures for the appeal process. The decision of the Superintendent shall be the  
33 final decision of the Board.



1 **Affirmative Procurement Initiatives**

2 The following Affirmative Procurement Initiatives may be used in awarding Board  
3 contracts to SBE/MBEs.

4 A. **Bonding Waiver.** The Board, at its discretion and consistent with  
5 State law, may waive or reduce the bonding requirements depending  
6 on the type of contract and whether the Board determines that the  
7 bonding requirements would deny the SBE/MBE an opportunity to  
8 perform the contract which the SBE/MBE has shown itself  
9 otherwise capable of performing.

10 B. **Bid Incentives:**

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12 **Evaluation Preference** – In ranking and evaluating proposals for  
13 “best value” contracts in which factors other than price are relevant  
14 to the selection process, the Board may award up to twenty percent  
15 (20%) of the total points available to a SBE/MBE or a joint venture  
16 with an SBE/MBE partner in response to a request for proposal.

17 C. **Mandatory Subcontracting:**

18 1. The GSC may at its discretion and on a contract-by-contract  
19 basis, require that a predetermined percentage up to forty  
20 percent (40%) of a specific contract be subcontracted to  
21 eligible SBE/MBEs.

22 2. An SBE/MBE prime contractor may not subcontract more  
23 than forty-nine percent (49%) of the contract value to a  
24 non-SBE/MBE.

25 3. A prospective bidder on a Board contract shall submit at the  
26 time of bid SBE/MBE – Form S providing the name of the  
27 SBE/MBE subcontractor or subcontractors and describing  
28 both the percentage of subcontracting by the SBE/MBE and  
29 the work to be performed by the SBE/MBE. A bidder may  
30 request a full or partial waiver of this mandatory  
31 subcontracting requirement from the OEO for good cause by  
32 submitting the SBE/MBE Unavailability Certification Form to  
33 the OEO prior to bid opening. Under no circumstances shall  
34 a waiver of a mandatory subcontracting requirement be  
35 granted without submission of adequate documentation of  
36 good faith efforts by the bidder and careful review by the  
37 OEO. The OEO shall determine a waiver request upon the  
38 following criteria:

- 1 a. whether the requestor of the waiver has made good  
2 faith efforts to subcontract with qualified and available  
3 SBE/MBE
- 4 b. whether subcontracting would be inappropriate and/or  
5 not provide a "commercially useful function" under the  
6 circumstances of the contract
- 7 c. whether there are no certified SBE/MBEs that are  
8 qualified and available to provide the goods or services  
9 required
- 10 4. In the absence of a waiver granted by the OEO, failure of a  
11 prime contractor to commit in its bid or proposal to satisfying  
12 the mandatory SBE/MBE subcontracting goal shall render its  
13 bid or proposal non-responsive.
- 14 5. In the absence of a waiver granted by the OEO, failure of a  
15 prime contractor to attain a mandatory subcontracting goal  
16 for SBE/MBE participation in the performance of its awarded  
17 contract shall be grounds for termination of existing contracts  
18 with the Board, debarment from performing future Board  
19 contracts, and/or any other remedies available under the  
20 terms of its contract with the Board or under the law.
- 21 6. A prime contractor is required to notify and obtain written  
22 approval from the OEO in advance of any reduction in  
23 subcontract scope, termination, or substitution for a  
24 designated SBE/MBE Subcontractor. Failure to do so shall  
25 constitute a material breach of its contract with the Board.
- 26 D. **Sheltered Market:**
- 27 1. The OEO and GSC may select certain contracts for award to a  
28 SBE/MBE or a joint venture with a SBE/MBE through the  
29 Sheltered Market program.
- 30 2. In determining whether a particular contract is eligible for the  
31 Sheltered Market Program, the OEO and GSC shall consider  
32 whether there are at least three (3) SBE/MBEs that are  
33 capable and available to participate in the Sheltered Market  
34 Program for that contract; the degree of underutilization of  
35 the SBE/MBE prime contractors in the specific industry  
36 categories; and the extent to which the Board's SBE/MBE  
37 prime contractor utilization goals are being achieved.

- 1           3.     If a responsive and responsible bid or response is not received  
2                     for a contract that has been designated for the Sheltered  
3                     Market Program, or the apparent low bid is determined to be  
4                     too high in price, the contract shall be removed from the  
5                     Sheltered Market Program.

6     **SBE/MBE Program Performance Review**

- 7           A.     The OEO shall monitor the implementation of this policy and the  
8                     progress of this program. On a quarterly basis, the OEO shall  
9                     report to the Superintendent and Board on the progress of achieving  
10                    the goals and objectives established for awards to certified  
11                    SBE/MBE firms, reporting both dollars awarded and expended. In  
12                    addition, the OEO shall report on the progress in achieving the  
13                    stated program objectives, including, but not limited to, enhancing  
14                    competition, establishing and building new business capacity, and  
15                    removing barriers to and eliminating disparities in the utilization of  
16                    available minority business enterprises and women business  
17                    enterprises on Board contracts.

- 18          B.     The Board shall quarterly review the SBE/MBE Program to  
19                     determine whether the various contracting procedures used to  
20                     enhance SBE/MBE contract participation needs to be adjusted or  
21                     used more or less aggressively in future years to achieve the stated  
22                     program objectives.

23     **Minority/Women Business Enterprise Program**

24     The Minority/Women Business Enterprise (MWBE) Program is established to  
25     enhance the bidding and selection opportunities of M/WBEs on certain contracts as  
26     specifically provided in Board Policy 6610. The M/WBE Enterprise Program and its  
27     certification procedure should be modified, adjusted and revised in accordance with  
28     the results of the Disparity Study.

29          A.     **Terms and Definitions**

- 30           1.     **Minority Ownership** – minority ownership means that for:
- 31                   a.     Sole Proprietorship - a sole proprietor must be a  
32                             minority person or woman.
- 33                   b.     Partnership - a minority/woman individual's interest  
34                             must include at least fifty-one percent (51%) of the  
35                             ownership, profit/loss, voting control, and capital of  
36                             the partnership.
- 37                   c.     Corporation - minority/women must own at least  
38                             fifty-one percent (51%) of all voting stock, issued by a

1 corporation. No stock held in trust, or by any guardian  
2 for a minor, shall be considered held by the  
3 minority/woman individual, in determining ownership  
4 and control.

- 5 d. Limited Liability Company (LLC) - minority/women  
6 must control the management and operations, as well  
7 as hold at least fifty-one percent (51%) of the  
8 company's ownership interest.

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

- 12 2. **Minority Person** - is a person born or naturalized in the  
13 United States. Resident aliens and holders of permanent visas  
14 are not considered to be citizens. The following groups are  
15 considered:

16  
17 a. An African American, a person having origins in any of  
18 the black racial groups of the African Diaspora,  
19 regardless of cultural origin.

20 b. A Hispanic American, a person of Spanish or  
21 Portuguese culture with origins in Spain, Portugal,  
22 Mexico, South America, Central America, or the  
23 Caribbean, regardless of race.

24 c. An Asian American, a person having origins of the Far  
25 East, Southeast Asia, the Indian Subcontinent, or the  
26 Pacific Islands, including the Hawaiian Islands before  
27 1778.

28 d. A Native American, a person who has origins in any of  
29 the Indian Tribes of North America before 1835, upon  
30 presentation of proper documentation as established  
31 by rule of the Department of Management Services.

32 e. An American born or naturalized woman.

33 f. A service-disabled veteran means a veteran who is a  
34 permanent Florida resident with a service-connected  
35 disability as determined by the United States  
36 Department of Veterans Affairs or who has been  
37 terminated from military service by reason of disability  
38 by the United States Department of defense.

1           B.     MWBE Eligibility and Certification

2           1.     The OEO shall certify a company or other business entity as a  
3                 MWBE upon its submission of a completed certification form,  
4                 (MWBE Form-3920), supporting documentation, and a signed  
5                 affidavit stating that it meets the following criteria:

6                 a.     it employs 200 or fewer permanent full-time employees  
7                         and that, together with its affiliates, has a net worth of  
8                         not more than \$5 million

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10                         For sole proprietorships, the \$5 million net worth  
11                         requirement shall include both personal and business  
12                         investments.

13                 b.     it is owned and controlled by at least fifty-one  
14                         percent (51%) by a minority person/s who are  
15                         members of an insular group that is of a specific racial,  
16                         ethnic, or gender makeup or national origin which has  
17                         been subjected historically to disparate treatment due  
18                         to identification in and with that group resulting in an  
19                         underrepresentation of commercial enterprises under  
20                         the group's control, and whose management and daily  
21                         operations are controlled by such persons

22                         A minority business enterprise may primarily involve  
23                         the practice of a profession.  
24

25                 c.     it ~~h~~Has its ~~principal place of~~ been in business in  
26                         Miami-Dade County and for at least one (1) year  
27                         preceding the application

28                 d.     the business has an occupational license and all  
29                         required professional licenses and/or contractor  
30                         qualifier licenses

31                 e.     the owner of the business must have the required  
32                         professional license(s) and contractor qualification  
33                         license

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2. Other factors in determining ownership that will be considered shall include, but are not limited to the following:
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- a. Whether minority/women owners are entitled to share in the profits of the business, through salaries, bonuses, profit sharing, dividends, and all other benefits, commensurate their ownership.
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- b. Whether minority/women owners share in all the risks of business, including, but not limited to, third party agreements, bonding and financial arrangements.
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- c. Ownership by a minority person does not include ownership that is the result of a transfer from a nonminority person to a minority person within a related immediate family group if the combined total net asset value of all members of such family group exceeds \$1 million. The term "related immediate family group" means one (1) or more children under sixteen (16) years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.
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- d. Minority/Women owners must also demonstrate control over the affairs, management, and operations, of the business. The discretion of minority/women owners shall not be subject to any formal or informal restrictions (including, but not limited to, bylaw provisions, partnership agreements, trust agreements, or requirements for cumulative voting) that would impact or usurp the minority/women owners' managerial and operational discretion.
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- Documents that establish control include but are not limited to: corporate bylaws, operating agreements, partnership agreements, management agreements or other agreements. Such documents should be free of restrictive language which dilutes a minority/woman owner(s)' control and prohibits him/her from making decisions.

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- 1) The minority/woman owner(s) must 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.
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- 2) Unless a business is a franchise, agreements for contractual support services that usurp a minority/woman owner's authority to control a company are not allowed.
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- 3) Minority/Women owners shall control or supervise the hiring, firing and supervision of employees, and establishment of employment policies, wages, benefits and other employment conditions.
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- 4) Minority/Women owners shall have knowledge and control of all financial matters of the business.
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3. Upon receipt of MWBE certification or re-certification applications, the OEO shall review all enclosed forms, affidavits and documentation, and determine whether the applicant satisfies the eligibility requirements. All applicants shall be notified in writing as to whether they are eligible. The OEO shall also provide to ineligible applicants in writing the basis for the denial of eligibility and the right to request an appeal. Applicants determined ineligible shall not be eligible to submit a new application for at least one (1) year after the date of the notice of denial of eligibility.
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4. All certified M/WBEs will be included in the District's M/WBE Directory which will be regularly updated and provided to school sites.

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5. M/WBEs must notify the OEO within fifteen (15) days, of any material changes to the company's ownership and/or management of the firm. Any misrepresentation by a company of its M/WBE status shall be grounds for termination of any contract awarded based on the misrepresentation. Violations may also subject the signatories to any other statutory penalties and Board policies.
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6. M/WBE certification shall be valid for a two (2) year period. Certified M/BWEs shall not request a change in their minority/woman designation, to another minority designation during the certification period, unless changes are due to extenuating circumstances.
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7. The Board may honor a valid minority business certification granted by another agency if the agency's requirements are consistent with the District's M/BWE certification criteria. The Superintendent may develop procedures to implement this policy.
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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.
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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.



1           C.     **Appeals**

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3           Applicants denied certification or recertification as an M/WBE may  
4           appeal to the Superintendent. A written request to appeal must be  
5           received by the Superintendent within five (5) days of the date of the  
6           written notice. Upon receipt of a timely notice of appeal, the  
7           Superintendent or designee shall conduct a hearing. The  
8           Superintendent shall develop procedures for the appeal process. The  
9           decision of the Superintendent shall be the final decision of the  
10          Board.

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

12       Revised 11/21/12

13       Revised 1/16/13

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