

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:crl

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:**

11
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 a. An African American, a person having origins in any of
17 the black racial groups of the African Diaspora,
18 regardless of cultural origin.
- 19 b. A Hispanic American, a person of Spanish or
20 Portuguese culture with origins in Spain, Portugal,
21 Mexico, South America, Central America, or the
22 Caribbean, regardless of race.
- 23 c. An Asian American, a person having origins of the Far
24 East, Southeast Asia, the Indian Subcontinent, or the
25 Pacific Islands, including the Hawaiian Islands before
26 1778.
- 27 d. A Native American, a person who has origins in any of
28 the Indian Tribes of North America before 1835, upon
29 presentation of proper documentation as established
30 by rule of the Department of Management Services.
- 31 e. An American born or naturalized woman.
- 32 f. A service-disabled veteran means a veteran who is a
33 permanent Florida resident with a service-connected
34 disability as determined by the United States
35 Department of Veterans Affairs or who has been
36 terminated from military service by reason of disability
37 by the United States Department of defense.
38

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

9
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
23 A minority business enterprise may primarily involve
24 the practice of a profession.

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

- 1 2. Other factors in determining ownership that will be
2 considered shall include, but are not limited to the following:
- 3 a. Whether minority/women owners are entitled to share
4 in the profits of the business, through salaries,
5 bonuses, profit sharing, dividends, and all other
6 benefits, commensurate their ownership.
- 7 b. Whether minority/women owners share in all the risks
8 of business, including, but not limited to, third party
9 agreements, bonding and financial arrangements.
- 10 c. Ownership by a minority person does not include
11 ownership that is the result of a transfer from a
12 nonminority person to a minority person within a
13 related immediate family group if the combined total
14 net asset value of all members of such family group
15 exceeds \$1 million. The term "related immediate
16 family group" means one (1) or more children under
17 sixteen (16) years of age and a parent of such children
18 or the spouse of such parent residing in the same
19 house or living unit.
- 20 d. Minority/Women owners must also demonstrate
21 control over the affairs, management, and operations,
22 of the business. The discretion of minority/women
23 owners shall not be subject to any formal or informal
24 restrictions (including, but not limited to, bylaw
25 provisions, partnership agreements, trust agreements,
26 or requirements for cumulative voting) that would
27 impact or usurp the minority/women owners'
28 managerial and operational discretion.
- 29 Documents that establish control include but are not
30 limited to: corporate bylaws, operating agreements,
31 partnership agreements, management agreements or
32 other agreements. Such documents should be free of
33 restrictive language which dilutes a minority/woman
34 owner(s)' control and prohibits him/her from making
35 decisions.
36

- 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 indebted the business.
- 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.
- 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.
- 4) Minority/Women owners shall have knowledge and control of all financial matters of the business.
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.
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.

- 1 5. M/WBEs must notify the OEO within fifteen (15) days, of any
2 material changes to the company's ownership and/or
3 management of the firm. Any misrepresentation by a
4 company of its M/WBE status shall be grounds for
5 termination of any contract awarded based on the
6 misrepresentation. Violations may also subject the
7 signatories to any other statutory penalties and Board
8 policies.
- 9 6. M/WBE certification shall be valid for a two (2) year period.
10 Certified M/BWEs shall not request a change in their
11 minority/woman designation, to another minority designation
12 during the certification period, unless changes are due to
13 extenuating circumstances.
- 14 7. The Board may honor a valid minority business certification
15 granted by another agency if the agency's requirements are
16 consistent with the District's M/BWE certification criteria.
17 The Superintendent may develop procedures to implement
18 this policy.
- 19 8. An M/WBE must apply for recertification at least thirty (30)
20 days prior to the certification expiration. A Board M/WBE
21 Recertification Form may be submitted only if an M/WBE's
22 certificate has not expired and no material changes have
23 occurred in the ownership and control of the M/WBE. If
24 certification has expired, the M/WBE must submit a new
25 application.
- 26 9. An M/WBE may be decertified for failure to comply with the
27 Board's M/WBE policies and procedures regarding requests
28 for information or documents pertaining to ownership,
29 control, or operation of the business; failure to submit a
30 complete M/WBE Recertification Application; debarment; or
31 by written request from the firm's minority/women owners for
32 voluntary removal from the MBWE Directory.

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C. Appeals

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