

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 adjusting the thresholds to include Tier 1 and Tier 2 eligibility industry standard requirements. Threshold categories are criteria's set by the District to assist in determining which small business, based on their annual gross revenue, qualifies for certification as a small business with the District. Adjusting the thresholds will allow for greater small business participation with the District in the areas of Professional Services, Goods and Services, Construction, and Specialty Trade.

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.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on July 17, 2013, its intention to amend Board Policy 6320.02, Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification, at its meeting of September 3, 2013.

PURPOSE AND EFFECT: It is recommended that Board Policy 6320.02, Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification be adjusted by adjusting the thresholds to include Tier 1 and Tier 2 eligibility industry standard requirements. Threshold categories are criteria's set by the District to assist in determining which small business, based on their annual gross revenue, qualifies for certification as a small business with the District. Adjusting the thresholds will allow for greater small/micro and minority/women business participation with the District in the areas of Professional Services, Goods and Services, Construction, and Specialty Trade.

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

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(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 September 3, 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 August 14, 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. Brian A. Williams
Supervisor: Dr. Daniel Tosado
Date: July 2, 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.
- 22 H. **Commercially Useful Function** – an SBE/MBE performs a
23 commercially useful function when it is responsible for execution of
24 the work of the contract and is carrying out its responsibilities by
25 actually performing, managing, and supervising the work involved.
26 To perform a commercially useful function, the SBE/MBE must also
27 be responsible for negotiating the price of contract materials and
28 supplies, determining the quantity and quality of materials, ordering
29 and installing materials if applicable, and paying for the materials.
30 To determine whether an SBE/MBE is performing a commercially
31 useful function, an evaluation must be performed of the amount of
32 work subcontracted, normal industry practices, whether the amount
33 the SBE/MBE is to be paid under the contract is commensurate
34 with the work it is actually performing and the SBE/MBE credit
35 claimed for its performance of the work, and other relevant factors.
36 Specifically, an SBE/MBE does not perform a commercially useful
37 function if its role is limited to that of an extra participant in a
38 transaction, contract, or project through which funds are passed in

1 order to obtain the appearance of meaningful and useful SBE/MBE
2 participation, when in similar transactions in which SBE/MBE firms
3 do not participate, there is no such role performed.

4 I. **Contract** - an agreement for purchase of goods or services,
5 including professional services and construction. It does not include
6 agreements to purchase, lease, or rent real property, or a grant,
7 license, permit, franchise or concession.

8 J. **Goal** - a non-mandatory annual aspirational percentage goal for
9 SBE/MBE contract participation established each year for
10 professional architectural, engineering, landscape, surveying, and
11 mapping services, construction, goods and services and other
12 professional services. Mandatory percentage goals for SBE/MBE
13 subcontract participation may be established on a
14 contract-by-contract basis.

15 K. **Goal Setting Committee** - committee established by the
16 Superintendent that is chaired by the OEO and is responsible for
17 establishing SBE/MBE Program goals and selecting appropriate
18 Affirmative Procurement Initiatives for application to specific Board
19 contracts based upon industry categories, vendor availability, and
20 project-specific characteristics.

21 L. **Good Faith Efforts** - documentation of the bidder's intent to
22 comply with SBE/MBE Program goals and procedures, including,
23 but not limited to the following: (1) documentation within a bid
24 submission or proposal reflecting the bidder's commitment to
25 comply with SBE/MBE Program goals as established by the Goal
26 Setting Committee for a particular contract; or (2) documentation of
27 efforts made towards achieving the SBE/MBE Program goals,
28 including but not limited to, timely posting of SBE/MBE
29 subcontract opportunities on the Board web site; solicitations of
30 bids from all qualified SBE firms listed in OEO's SBE/MBE
31 Directory of certified SBE/MBE firms; correspondence from qualified
32 SBE/MBE firms documenting their unavailability to perform
33 SBE/MBE contracts; documentation of efforts to subdivide work
34 into smaller quantities for subcontracting purposes to SBE firms;
35 documentation of efforts to assist SBE/MBE firms with obtaining
36 financing, bonding, or insurance required by the bidder; and
37 documentation of consultations with trade associations and
38 consultants that represent the interests of small and local
39 businesses in order to identify qualified and available SBE/MBE
40 subcontractors.

- 1 M. **Gross Revenue** – all revenue in whatever form received or accrued
2 from whatever source, including sales of products or services,
3 interest, dividends, rents, royalties, fees or commissions, reduced by
4 returns and allowances. Gross revenue does not include proceeds
5 from sales of capital assets, and investments, proceeds from
6 transaction between a firm and its domestic and foreign affiliates.
- 7 N. **Independently Owned, Managed, and Operated** – ownership of
8 an SBE/MBE firm must be direct, independent, and by individuals
9 only. Business firms that are owned by other businesses or by the
10 principals or owners of other businesses that cannot themselves
11 qualify under the eligibility requirements shall not be eligible to
12 participate in the program. The day-to-day management of the firm
13 must also be direct and independent of the influence of any other
14 businesses that cannot themselves qualify under the eligibility
15 requirements.
- 16 O. **Industry Categories** – procurement groupings of Board contracts
17 for administering the Affirmative Procurement Initiatives that shall
18 include construction, professional services, and goods and services
19 procurement. Industry categories may also be referred to as
20 “business categories.”
- 21 P. **Joint Venture** - an association of two (2) or more persons or
22 businesses under a contract conducting a single business enterprise
23 in which they combine capital, efforts, skills, knowledge and/or
24 property and share profits and losses equally. A joint venture
25 composed of qualified business organizations is itself a separate and
26 distinct organization that must be qualified according to Board
27 policies and F.S. 489.119(2)(c).
- 28 Q. **Micro-Business Enterprise** - any contractor, subcontractor,
29 manufacturer or service company (a) that has been doing business
30 under the same ownership or management and has maintained its
31 principal place of business in Miami-Dade County, Florida, for a
32 period of at least one (1) year immediately prior to the date of
33 application for certification under this section, (b) that had annual
34 gross revenues not exceeding the thresholds for a Micro-Business
35 Enterprise as identified in this policy for each industry, and (c) at
36 least fifty-one percent (51%) of the ownership of which is held by a
37 person or persons who exercise operational authority over the daily
38 affairs of the business and have the power to direct the management
39 and policies and receive the beneficial interests of the company.
40 Representations regarding average gross revenue and payroll are
41 subject to audit. If a business has not existed for three (3) years,

- 1 the employment and gross revenue limits shall be applied based
2 upon the annual averages over the course of the existence of the
3 business.
- 4 R. **Points** – the quantitative assignment of value for specific evaluation
5 criteria in the vendor or consultant selection process.
- 6 S. **Prime Contractor** – the vendor or contractor to whom a purchase
7 order or contract is awarded by the Board for purposes of providing
8 goods or services to the Board.
- 9 T. **Principal Place of Business** – the location where a firm maintains
10 a physical office and through which it obtains no less than fifty
11 percent (50%) of its overall customers or sales dollars, or through
12 which no less than twenty-five percent (25%) of its employees are
13 located and domiciled within the service area of Miami-Dade
14 County, Florida.
- 15 U. **Responsible** – means that a firm is capable in all respects of fully
16 performing the contract requirements and has the integrity and
17 reliability to assure good faith performance.
- 18 V. **Responsive** – description of a firm’s bid or proposal that conforms in
19 all material respects to the invitation to bid or request for proposal
20 and shall include compliance with SBE Program requirements.
- 21 W. **School Board** – The School Board of Miami-Dade County, Florida,
22 which is the legal entity with authority to enter contracts on behalf
23 of the District school system under F.S. 1001.41(4).
- 24 X. **Sheltered Market** – an Affirmative Procurement Initiative designed
25 to set aside a Board contract bid for bidding or selection exclusively
26 among SBE/MBE firms.
- 27 Y. **Significant Employee Presence** – no less than twenty-five
28 percent (25%) of a firm’s total number of employees are domiciled in
29 Miami-Dade County, Florida.
- 30 Z. **SBE/MBE Plan Execution Certification (SBE/MBE**
31 **Form - C)** - form certifying the general contractor’s intent to use a
32 SBE/MBE subcontractor and verifying that an agreement has been
33 executed between the prime and the SBE/MBE.
- 34 AA. **SBE/MBE Directory** - listing of certified SBE/MBEs.

- 1 BB. **SBE/MBE Certification/Re-certification Application (SBE/MBE**
2 **Form - R)** - form that a company must complete when applying for
3 and/or recertifying SBE/MBE status for participation in the
4 SBE/MBE Program. This form shall be completed every two (2)
5 years by certified SBE/MBEs by the anniversary date of their
6 original certification.
- 7 CC. **SBE/MBE Schedule for Subcontractor Participation (SBE/MBE**
8 **Form - S)** - form that must be completed by all non-SBE/MBE firms
9 that subcontract to SBE/MBE firms, must be submitted for each
10 SBE/MBE subcontractor, and must be reviewed and approved by
11 the OEO Manager before contract award.
- 12 DD. **SBE/MBE Unavailability Certification (SBE Form - U)** - form
13 demonstrating a bidder's unsuccessful good faith effort to meet the
14 small business local participation requirements of the contract
15 which shall only be considered after proper completion of the
16 outreach and compliance efforts and methods used to notify and
17 inform SBE/MBE firms of contracting opportunities have been fully
18 exhausted.
- 19 EE. **Small Business Enterprise (SBE)** - any contractor, subcontractor,
20 manufacturer or service company (a) that has been doing business
21 under the same ownership or management and has maintained its
22 principal place of business in Miami-Dade County, Florida, for a
23 period of at least one (1) year immediately prior to the date of
24 application for certification under this section, (b) that had annual
25 gross revenues not exceeding the thresholds identified in this policy
26 for each industry, and (c) at least fifty-one percent (51%) of the
27 ownership of which is held by a person or persons who exercise
28 operational authority over the daily affairs of the business and have
29 the power to direct the management and policies and receive the
30 beneficial interests of the company. Representations regarding
31 average gross revenue and payroll are subject to audit. If a business
32 has not existed for three (3) years, the employment and gross
33 revenue limits shall be applied based upon the annual averages over
34 the course of the existence of the business.
- 35 FF. **Spend Dollars** - dollars actually paid to prime and/or
36 subcontractors and vendors for Board contracted goods and/or
37 services.
- 38 GG. **Subcontractor** - any vendor or contractor that is providing goods or
39 services to a prime contractor in furtherance of the prime

1 contractor's performance under a contract or purchase order with
2 the Board.

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

6 II. **Suspension** – the temporary stoppage of an SBE/MBE firm's
7 participation in the Board's contracting process for a finite period of
8 time.

9 **Application**

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

15 **Subcontractor Goals**

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

19 **Goal Setting Committee**

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

31 **SBE/MBE Eligibility and Certification**

32 A. The OEO shall certify a company or other business entity as a SBE
33 or MBE upon its submission of a completed District required

- 1 certification form, supporting documentation, and a signed affidavit
2 stating that it meets all of the following criteria:
- 3 1. Is an independently owned and operated business that is not
4 dominant in its field of operation and is performing a
5 commercially useful function.
 - 6 2. The business has its principal place of business in
7 Miami-Dade County, Florida, for at least a year preceding the
8 application.
 - 9 3. The business has been established for at least one (1) year or
10 the principals of the business have at least three (3) years of
11 relevant experience prior to forming or joining the business.
 - 12 4. The business has ~~an occupational license~~ a local business
13 tax receipt and all required professional licenses, contractor
14 qualifier licenses, and/or Certificate of Competency.
 - 15 5. The owner of the business must have the required
16 professional license(s) and contractor qualification license.
17
 - 18 6. The Board may honor a valid Small Business Enterprise
19 Certification and/or Micro Business Enterprise Certification
20 granted by another agency if the agency's requirements are
21 consistent with the District's SBE/MBE certification criteria.
22 The Superintendent shall develop procedures to implement
23 this policy.
- 24 B. Additionally, the requirements for SBE/MBE Program eligibility
25 based on industry are:
- 26 1. **Micro Business Enterprise**
 - 27
 - 28 a. **Professional Services:** The annual gross revenue
29 averaged over the previous three (3) years shall not
30 exceed \$5300,000.
 - 31 b. **Goods and Services (Procurement Program):** The
32 annual gross revenue averaged over the previous
33 three (3) year period shall not exceed \$500,000.

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- c. **Construction:** The annual gross revenue averaged over the previous three (3) years shall not exceed \$1,000,750,000.
 - d. **Specialty Trade:** The annual gross revenue average over the previous three (3) years shall not exceed \$500,300,000.
2. **Small Business Enterprise**
- a. **Professional Services:** The annual gross revenue averaged over the previous three (3) years shall not exceed \$1,000,600,000 (Tier 1) or \$2,000,000 (Tier 2).
 - b. **Goods and Services (Procurement Program):** The annual gross revenue averaged over the previous three (3) year period shall not exceed \$1,000,000 (Tier 1) or \$2,000,000 (Tier 2).
 - c. **Construction:** The annual gross revenue averaged over the previous three (3) years shall not exceed \$3,000,000 (Tier 1) or \$6,000,000 (Tier 2).
 - d. **Specialty Trade:** The annual gross revenue average over the previous three (3) years shall not exceed \$1,000,750,000 (Tier 1) or \$2,000,000 (Tier 2).
- 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 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 \$97 million for construction,

1 \$~~65~~ million for goods and services, \$~~2.51.8~~ million for specialty
2 trade, or \$~~2.51.5~~ million for professional services. The eligibility
3 criteria regarding years of existence shall only apply for the initial
4 certification.

5 E. In considering certification or re-certification status of any firm, the
6 OEO shall periodically conduct audits and inspect the office, job
7 site, records, and documents of the firm, and shall interview the
8 firm's employees, subcontractors, and vendors as reasonably
9 necessary to ensure that all eligibility standards are satisfied and
10 that the integrity of this program is maintained.

11 **Graduation and Suspension**

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

15 A. An SBE shall be permanently graduated after its three (3) fiscal year
16 average gross revenue exceeds \$~~97~~ million for construction, or
17 \$~~65~~ million for goods and services, \$~~2.51.8~~ million for specialty
18 trade, and \$~~2.51.5~~ million for professional services.

19 B. When an MBE exceeds the eligibility certification thresholds, it
20 automatically graduates and is subject to the small business criteria
21 and restrictions.

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

26 D. The OEO may permanently revoke SBE/MBE eligibility if it fails to
27 perform a commercially useful function under a contract, or if it
28 allows its SBE/MBE status to be fraudulently used for the benefit of
29 a non-SBE/MBE firm or the owners of a non-SBE/MBE firm so as
30 to provide the non-SBE/MBE firm or firm owners benefits from
31 Affirmative Procurement Initiatives for which the non-SBE/MBE
32 firm and its owners would not otherwise be entitled.

33 E. The OEO shall provide written notice to the SBE/MBE upon
34 graduation or suspension from the SBE/MBE program including the
35 reasons.

36 **Appeals**

1 A business that is denied eligibility, whose eligibility is revoked, or who has been
2 denied a waiver request, may appeal the decision to the Superintendent. A written
3 notice of appeal must be received by the Superintendent within fifteen (15) calendar
4 days of the date of the written notice. Upon receipt of a timely notice of appeal, the
5 Superintendent shall conduct a hearing. The Superintendent shall develop
6 procedures for the appeal process and report quarterly to the Board on the status of
7 appeals. ~~The decision of the Superintendent shall be the final decision of the Board.~~

8 **Affirmative Procurement Initiatives**

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

11 A. ***Bonding Waiver.*** The Board, at its discretion and consistent with
12 State law, may waive or reduce the bonding requirements depending
13 on the type of contract and whether the Board determines that the
14 bonding requirements would deny the SBE/MBE an opportunity to
15 perform the contract which the SBE/MBE has shown itself
16 otherwise capable of performing.

17 B. **Bid Incentives:**

18
19 ***Evaluation Preference*** – In ranking and evaluating proposals for
20 “best value” contracts in which factors other than price are relevant
21 to the selection process, the Board may award up to twenty percent
22 (20%) of the total points available to a SBE/MBE or a joint venture
23 with an SBE/MBE partner in response to a request for proposal.

24 C. **Mandatory Subcontracting:**

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

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

32 3. A prospective bidder on a Board contract shall submit at the
33 time of bid SBE/MBE – Form S providing the name of the
34 SBE/MBE subcontractor or subcontractors and describing
35 both the percentage of subcontracting by the SBE/MBE and
36 the work to be performed by the SBE/MBE. A bidder may

1 request a full or partial waiver of this mandatory
2 subcontracting requirement from the OEO for good cause by
3 submitting the SBE/MBE Unavailability Certification Form to
4 the OEO prior to bid opening. Under no circumstances shall
5 a waiver of a mandatory subcontracting requirement be
6 granted without submission of adequate documentation of
7 good faith efforts by the bidder and careful review by the
8 OEO. The OEO shall determine a waiver request upon the
9 following criteria:

- 10 a. whether the requestor of the waiver has made good
11 faith efforts to subcontract with qualified and available
12 SBE/MBE
- 13 b. whether subcontracting would be inappropriate and/or
14 not provide a "commercially useful function" under the
15 circumstances of the contract
- 16 c. whether there are no certified SBE/MBEs that are
17 qualified and available to provide the goods or services
18 required

19 4. In the absence of a waiver granted by the OEO, failure of a
20 prime contractor to commit in its bid or proposal to satisfying
21 the mandatory SBE/MBE subcontracting goal shall render its
22 bid or proposal non-responsive.

23 5. In the absence of a waiver granted by the OEO, failure of a
24 prime contractor to attain a mandatory subcontracting goal
25 for SBE/MBE participation in the performance of its awarded
26 contract shall be grounds for termination of existing contracts
27 with the Board, debarment from performing future Board
28 contracts, and/or any other remedies available under the
29 terms of its contract with the Board or under the law.

30 6. A prime contractor is required to notify and obtain written
31 approval from the OEO in advance of any reduction in
32 subcontract scope, termination, or substitution for a
33 designated SBE/MBE Subcontractor. Failure to do so shall
34 constitute a material breach of its contract with the Board.

35 **D. Sheltered Market:**

- 1 1. The OEO and GSC may select certain contracts for award to a
2 SBE/MBE or a joint venture with a SBE/MBE through the
3 Sheltered Market program.
- 4 2. In determining whether a particular contract is eligible for the
5 Sheltered Market Program, the OEO and GSC shall consider
6 whether there are at least three (3) SBE/MBEs that are
7 capable and available to participate in the Sheltered Market
8 Program for that contract; the degree of underutilization of
9 the SBE/MBE prime contractors in the specific industry
10 categories; and the extent to which the Board's SBE/MBE
11 prime contractor utilization goals are being achieved.
- 12 3. If a responsive and responsible bid or response is not received
13 for a contract that has been designated for the Sheltered
14 Market Program, or the apparent low bid is determined to be
15 too high in price, the contract shall be removed from the
16 Sheltered Market Program.

17 **SBE/MBE Program Performance Review**

- 18 A. The OEO shall monitor the implementation of this policy and the
19 progress of this program. On a quarterly basis, the OEO shall
20 report to the Superintendent and Board on the progress of achieving
21 the goals and objectives established for awards to certified
22 SBE/MBE firms, reporting both dollars awarded and expended. In
23 addition, the OEO shall report on the progress in achieving the
24 stated program objectives, including, but not limited to, enhancing
25 competition, establishing and building new business capacity, and
26 removing barriers to and eliminating disparities in the utilization of
27 available minority business enterprises and women business
28 enterprises on Board contracts.
- 29 B. The Board shall quarterly review the SBE/MBE Program to
30 determine whether the various contracting procedures used to
31 enhance SBE/MBE contract participation needs to be adjusted or
32 used more or less aggressively in future years to achieve the stated
33 program objectives.

34 **Minority/Women Business Enterprise Program**

35 The Minority/Women Business Enterprise (MWBE) Program is established to
36 enhance the bidding and selection opportunities of M/WBEs on certain contracts as
37 specifically provided in Board Policy 6610. The M/WBE Enterprise Program and its

1 certification procedure should be modified, adjusted and revised in accordance with
2 the results of the Disparity Study.

3 A. **Terms and Definitions**

4 1. ***Minority Ownership*** – minority ownership means that for:

5 a. Sole Proprietorship - a sole proprietor must be a
6 minority person or woman.

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

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

17 d. Limited Liability Company (LLC) – minority/women
18 must control the management and operations, as well
19 as hold at least fifty-one percent (51%) of the
20 company's ownership interest.

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

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

28 a. An African American, a person having origins in any of
29 the black racial groups of the African Diaspora,
30 regardless of cultural origin.

31 b. A Hispanic American, a person of Spanish or
32 Portuguese culture with origins in Spain, Portugal,
33 Mexico, South America, Central America, or the
34 Caribbean, regardless of race.
35

- 1 c. An Asian American, a person having origins of the Far
2 East, Southeast Asia, the Indian Subcontinent, or the
3 Pacific Islands, including the Hawaiian Islands before
4 1778.
- 5 d. A Native American, a person who has origins in any of
6 the Indian Tribes of North America before 1835, upon
7 presentation of proper documentation as established
8 by rule of the Department of Management Services.
- 9 e. An American born or naturalized woman.
- 10 f. A service-disabled veteran means a veteran who is a
11 permanent Florida resident with a service-connected
12 disability as determined by the United States
13 Department of Veterans Affairs or who has been
14 terminated from military service by reason of disability
15 by the United States Department of defense.

16 B. **MWBE Eligibility and Certification**

- 17 1. The OEO shall certify a company or other business entity as a
18 MWBE upon its submission of a completed certification form,
19 (MWBE Form-3920), supporting documentation, and a signed
20 affidavit stating that it meets the following criteria:
 - 21 a. it employs 200 or fewer permanent full-time employees
22 and that, together with its affiliates, has a net worth of
23 not more than \$5 million
24
25 For sole proprietorships, the \$5 million net worth
26 requirement shall include both personal and business
27 investments.
28
 - 29 b. it is owned and controlled by at least fifty-one
30 percent (51%) by a minority person/s who are
31 members of an insular group that is of a specific racial,
32 ethnic, or gender makeup or national origin which has
33 been subjected historically to disparate treatment due
34 to identification in and with that group resulting in an
35 underrepresentation of commercial enterprises under
36 the group's control, and whose management and daily
37 operations are controlled by such persons
38

- 1 A minority business enterprise may primarily involve
2 the practice of a profession.
- 3 c. it has its principal place of business in Miami-Dade
4 County, Florida and for at least one (1) year preceding
5 the application
- 6 d. the business has an occupational license and all
7 required professional licenses and/or contractor
8 qualifier licenses
- 9 e. the owner of the business must have the required
10 professional license(s) and contractor qualification
11 license
- 12 2. Other factors in determining ownership that will be
13 considered shall include, but are not limited to the following:
- 14 a. Whether minority/women owners are entitled to share
15 in the profits of the business, through salaries,
16 bonuses, profit sharing, dividends, and all other
17 benefits, commensurate their ownership.
- 18 b. Whether minority/women owners share in all the risks
19 of business, including, but not limited to, third party
20 agreements, bonding and financial arrangements.
- 21 c. Ownership by a minority person does not include
22 ownership that is the result of a transfer from a
23 nonminority person to a minority person within a
24 related immediate family group if the combined total
25 net asset value of all members of such family group
26 exceeds \$1 million. The term "related immediate
27 family group" means one (1) or more children under
28 sixteen (16) years of age and a parent of such children
29 or the spouse of such parent residing in the same
30 house or living unit.
- 31 d. Minority/Women owners must also demonstrate
32 control over the affairs, management, and operations,
33 of the business. The discretion of minority/women
34 owners shall not be subject to any formal or informal
35 restrictions (including, but not limited to, bylaw
36 provisions, partnership agreements, trust agreements,
37 or requirements for cumulative voting) that would

1 impact or usurp the minority/women owners'
2 managerial and operational discretion.
3

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

11 1) The minority/woman owner(s) must submit
12 documentation demonstrating control through
13 the authority and responsibility to sign company
14 checks, for all bank accounts, and letters of
15 credit, negotiate contracts on behalf of the
16 business, signature responsibility for insurance,
17 bid bonds, and performance and payment
18 bonds, negotiate bank transactions, and
19 guarantee all instruments which indebt the
20 business.

21 2) Unless a business is a franchise, agreements for
22 contractual support services that usurp a
23 minority/woman owner's authority to control a
24 company are not allowed.

25 3) Minority/Women owners shall control or
26 supervise the hiring, firing and supervision of
27 employees, and establishment of employment
28 policies, wages, benefits and other employment
29 conditions.

30 4) Minority/Women owners shall have knowledge
31 and control of all financial matters of the
32 business.

33 3. Upon receipt of MWBE certification or re-certification
34 applications, the OEO shall review all enclosed forms,
35 affidavits and documentation, and determine whether the
36 applicant satisfies the eligibility requirements. All applicants
37 shall be notified in writing as to whether they are eligible.
38 The OEO shall also provide to ineligible applicants in writing
39 the basis for the denial of eligibility and the right to request
40 an appeal. Applicants determined ineligible shall not be

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

1 **C. Appeals**

2
3 Applicants denied certification or recertification as an M/WBE may appeal to the
4 Superintendent. A written request to appeal must be received by the
5 Superintendent within five (5) days of the date of the written notice. Upon receipt of
6 a timely notice of appeal, the Superintendent or designee shall conduct a hearing.
7 The Superintendent shall develop procedures for the appeal process and report
8 quarterly to the Board on the status of appeals. ~~The decision of the Superintendent~~
9 ~~shall be the final decision of the Board.~~
10

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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