SUBJECT: FINAL READING: PROPOSED AMENDMENTS TO BOARD POLICIES 9140, CITIZENS' ADVISORY COMMITTEES; 6320.02, SMALL/MICRO AND MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE PROGRAMS; AND 6840, AUDIT AND BUDGET ADVISORY COMMITTEE

COMMITTEE: PERSONNEL SERVICES AND STUDENT AND SCHOOL SUPPORT

LINK TO STRATEGIC BLUEPRINT: INFORMED, ENGAGED AND EMPOWERED STAKEHOLDERS

At its meeting of October 11, 2017, the Board approved Agenda Item G-3 (Advisory Committee Alternates/Term Limits), authorizing the Superintendent to initiate rulemaking to amend applicable Board policies to allow School Board members to appoint alternates to advisory committees to "ensure greater community involvement, continuity of services, input, and influences" and to increase the likelihood of advisory committees achieving a quorum. The original item, Revised Agenda Item H-10, sponsored by Ms. Maria Teresa Rojas, Board Member, and approved by the Board at its September 6, 2017, Board meeting, specified that alternate members must be notified and invited to attend committee meetings and will serve as the voting member in the absence of the appointed representative. That item was also amended at that meeting to include the elimination of term limits for Board member appointees to advisory committees.

This item requests that Policy 9140, Citizens' Advisory Committees, be amended to allow Board members to appoint alternates to advisory committees and to prohibit term limits for Board member appointees on advisory committees. Amendments are proposed to Policies 6320.02, Small/Micro and Minority/Women-Owned Business Enterprise Programs, and 6840, Audit and Budget Advisory Committee, to conform to the new proposed amendments to Policy 9140.

The Notice of Intended Action was published in the Miami Daily Business Review on October 16, 2017, and posted in various places for public information and mailed to various organizations representing persons affected by the new and amended policies and to individuals requesting notification. The time to request a hearing or protest the adoption of this amendment has elapsed.

Attached are the Notice of Intended Action and the proposed policy amendments. Changes are indicated by underscoring words to be added and striking-through-words to be deleted.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, adopt the proposed amendments to Policies 9140, Citizens' Advisory Committees, 6320.02, Small/Micro and Minority/Women-Owned Business Enterprise Programs, and 6840, Audit and Budget Advisory Committee, and authorize the Superintendent to file the amended policies with the School Board of Miami-Dade County, Florida, to be effective November 15, 2017.
NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on October 11, 2017, its intention to amend Board Policies 9140, Citizens' Advisory Committees, 6320.02, Small/Micro and Minority/Women-Owned Business Enterprise Programs, and 6840, Audit and Budget Advisory Committee, at its regular meeting on November 15, 2017.

PURPOSE AND EFFECT: Policy 9140, Citizens' Advisory Committees, is proposed to be amended to allow Board members to appoint alternates to advisory committees and to prohibit term limits for Board member appointees on advisory committees. Amendments are proposed to Policies 6320.02, Small/Micro and Minority/Women-Owned Business Enterprise Programs, and 6840, Audit and Budget Advisory Committee, to conform to the new proposed amendments to Policy 9140.

SUMMARY: To amend applicable Board policies to allow Board members to appoint alternates to advisory committees and to eliminate term limits for Board member appointees to advisory committees.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(1), 1001.43(10), F.S.

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 1001.43(10), F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE SCHOOL BOARD MEETING on November 15, 2017, 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 information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided in Section 120.54(1), F.S., must do so in writing by November 6, 2017, to the Superintendent, Room 912, at the same address.

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

COPIES OF THE PROPOSED AMENDED POLICIES are available at cost to the public for inspection and copying in the Citizen Information Center, Room 102, 1450 N.E. Second Avenue, Miami, Florida 33132.
CITIZENS' ADVISORY COMMITTEES

The School Board may establish citizen advisory committees when there is a definite function to be performed.

A. The structure, organization, and appointment of an advisory committee shall be appropriate to the assignment or as specified in the policy creating the committee.

B. Advisory committees shall be encouraged to draw upon a wide variety of resources both inside and outside the School District.

C. Each committee shall be encouraged to include other local residents and to recommend to the Board the official appointment of any such additional member(s) as the committee may desire.

D. The Miami-Dade Council of PTAs/PTSAs may appoint a member and an alternate to each committee that is:

1. specifically created by Board policy and in which each Board member and the Superintendent appoint a member; and,

2. any other committee as deemed appropriate by the Board.

E. As required by F.S. Chapter 112, a registered lobbyist, as defined in Policy 8150, Lobbyists, serving on an advisory committee and who holds any employment or contractual relationship that will create a continuing or frequently recurring conflict between his/her private interests and the performance of his/her public duties, must immediately resign from the committee. In addition, a registered lobbyist must abstain from voting or participating on committee recommendations that directly impact a client's interest for which the lobbyist was retained.
F. Advisory committees shall not have term limits for Board member appointees.

G. Advisory committees shall allow for the appointment of alternates by Board members. Alternates must be notified of all advisory committee meetings, invited to attend the meetings, and provided with all materials in the same manner as appointed representatives. The alternate shall serve as a voting member of the committee only in the absence of the appointed representative.

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1 Criteria for School Board Appointees

Advisory committee members appointed by the Board and individual Board members shall meet the following criteria:

A. Residency

All appointees shall be permanent Miami-Dade County residents and have reputations for integrity and community service. A member of an advisory committee who ceases to be a Miami-Dade County resident must resign from the committee.

B. Conflict of Interest

All advisory committee members must comply with the Code of Ethics of Public Officers and Employees in F.S. Chapter 112, as it applies to employees, and certify in writing that they will comply with applicable ethical guidelines. In addition, the following requirements shall apply.

1. No person shall be appointed if, at the time of appointment, the person has filed a lawsuit against the Board that is pending and/or a challenge to a Board policy.

2. Appointees shall not serve on a committee that regulates or monitors their livelihood.

3. If an appointee qualifies as a candidate for elective political office during the appointed term, the qualification shall be deemed a resignation from the committee.

4. No person shall be appointed in violation of State or Federal law, or Board policies.
C. Multiple Appointments

No person shall be appointed by the Board or an individual Board member to serve simultaneously on more than two (2) advisory committees. A person may be appointed to serve simultaneously on more than two (2) committees if appointed by different Board members.

These requirements apply to Board appointments to all advisory committees unless there are alternate criteria provided in Board policies that establish a specific advisory committee. These requirements, however, do not apply to Board appointments of Board members to District advisory committees.

Expenditures

Expenditure of District funds by an advisory committee shall be made only upon the prior approval of the Superintendent. Supplies, equipment, and personnel from within the School District may be obtained through the appointed staff resource person.

Communication

Correspondence between the Board and its committees shall ordinarily be conducted by the Superintendent.

The Superintendent should transmit the contents of any communication or report from a committee to the Board, as appropriate.

Board Authority

The Board shall have the sole power to dissolve any of its advisory committees and shall reserve the right to exercise this power at any time during the life of any committee.

Board members shall have the right to attend and may participate in any District or Board advisory committee.

F.S. 1001.41(1), (2), (5), 1001.42(25), 1001.43(10)

Revised 10/19/11
Revised 4/18/12

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In 1985 and 1990, the School Board determined through its own statistical analysis of current contracting expenditures and evaluation of economic and sociological studies, that a disparity existed in contract awards to Minority/Women-Owned Business Enterprises (M/WBE) and that the disparity was a result of past discriminatory practices. In order to comply with the United States Supreme Court holding in *City of Richmond v. J.A. Croson*, 109 S. Ct. 706 (1989), that all race conscious programs would require direct evidence of past discrimination, the Board then commissioned a disparity study.

The 1990 study concluded that market area industry practices in construction, construction support services, professional services, and commodities and services were discriminatory toward M/WBEs and that the School District had been a passive participant in discrimination against M/WBEs. Based on the results of that study, the Board modified its existing Business Development and Assistance Program to establish incentives that would increase opportunities specifically for M/WBEs contracting with the Board. The Board also implemented several race and gender-neutral initiatives in an effort to eliminate disparities in the utilization of M/WBE firms such as bond waivers, establishing insurance requirements that provided appropriate protection but did not discourage M/WBE firms from competing for contracts, enhancing technical assistance programs, and increasing outreach efforts to M/WBEs.
On November 21, 2012, the Board determined that a new disparity study would need to be conducted in order to continue its M/WBE program. The Board repealed its Business Development and Assistance Program Policy with the understanding that it would develop a new M/WBE Program if supported by the results of a newly commissioned disparity study. At the same time, the Board approved the Small/Micro Business Enterprise (SMBE) Program and the continuation of the MWBE Certification Program to provide legally permissible race and gender neutral participation by small and micro businesses in Board procurement of goods and services, construction, and professional services and to allow M/WBEs to participate in Board contracting as small and micro business enterprises while the study was being conducted. The program continued to certify M/WBEs, to include aspirational goals for M/WBEs in contracts, and to track and monitor the utilization of M/WBEs through the SMBE Program.

In February 2013, the Board contracted with MGT of America, a Tallahassee consulting firm, to conduct Phase I of a Comprehensive Disparity Study (Disparity Study) to provide data regarding the Board’s design and construction-related professional services procurement activity and race- and gender-neutral remedial efforts for the study period between July 1, 2006 through June 30, 2012. The purpose of the Disparity Study was to analyze the utilization of minority and women-owned business enterprises (M/WBEs) in the Board’s procurement of capital construction and design and construction related professional services. The Disparity Study was accepted by the Board on November 19, 2014. In February 2015, the Board commissioned Euquant, Inc., to provide further disparity analysis of the Board’s utilization of African-American subcontractors in construction (Subcontractor Disparity Study). The Subcontractor Disparity Study was accepted by the Board on September 9, 2015. The Disparity Study and the Subcontractor Disparity Study are both incorporated by reference and made a part of this policy.

The Disparity Study addressed (1) whether there is a disparity in the utilization of M/WBEs in the District’s procurement of construction and professional services, (2) whether any disparity is the product or result of past discrimination or other factors related to race or gender based discrimination, (3) whether any disparity can be effectively ameliorated through race and gender neutral programs, and (4) if the appropriate remedy is a race- or gender-conscious program, how the program should be narrowly tailored to remedy the current effects of past discrimination and conform to constitutional guidelines.
The Disparity Study and the subsequent Subcontractor Disparity Study reported findings that within the relevant geographic market of the Miami-Dade Metropolitan Statistical Area (Miami/Broward/Palm Beach) there are statistically significant disparities in the District's utilization of ready, willing, and able M/WBEs in the following categories of contracts and business owners:

A. Prime Construction Contracts (African-American, Asian-American, Native-American, and Non-Minority Women)

B. Construction Subcontracts (African-American, Asian-American, and Native-American)


Other significant findings in the Disparity Study report include, but are not limited to, the following:

A. Non-minority firms received the majority of the public sector construction permits for prime contracts.

B. Non-minority firms received an even larger percentage of construction building permits for private sector commercial construction and subcontracts. MBE primes received only two percent (2%) of building permits and certified non-minority women-owned businesses received zero. Of the .27% of subcontractors who received building permits, nearly all went to Hispanic-American owned businesses.

C. There are significant disparities for entry into self-employment for African-Americans, Hispanic Americans, Asian Americans, and Non-minority Women.
D. There is a statistically significant positive relationship between the probability of commercial bank loan denial and African American business ownership. About fifteen percent (15%) of M/WBE loan applicants reported being denied commercial bank loans, compared to 64.7% of African American applicants, 21.6% of Hispanic American applicants, 0% of Asian American-owned firms, 0% of Native American applicants, and twenty percent (20%) of non-minority women applicants.

E. Interviews with District staff and M/WBE firms identified various discriminatory barriers affecting the relevant job market including unequal access to bonding, finance, and insurance, having to unfairly compete against large firms in the selection process, unnecessarily restrictive contract requirements, an informal network that precluded M/WBE firms from obtaining work in the private sector, seldom or never being solicited where there were no M/WBE goals, being dropped from a project after being included to satisfy good faith effort requirements, contract bundling, slow or non-payment by contractors, limited time to prepare bid packages, difficulty obtaining notification of contract/bid opportunities, and discriminatory experiences in dealing with the District and prime contractors.

F. The implementation of numerous race and gender-neutral assistance efforts and programs throughout the relevant market over the past two (2) decades have been unsuccessful in eliminating these persistent and significant disparities in the District’s ready, willing and able M/WBE firms. The efforts have included technical assistance, loan guarantee assistance, bonding assistance, business development assistance, financial assistance, and mentoring programs.

Together, these District and private sector disparities currently establish an inference of discrimination that is adversely affecting the Board’s utilization of ready, willing, and able minority- and women-owned firms.
Based upon the totality of the evidence gathered and presented to the Board since 1990, the Board has concluded that there is a strong evidentiary basis establishing that the District has a compelling interest in remedying the ongoing effects of discrimination that is occurring in the broader relevant market and adversely affects the District's utilization of ready, willing and able minority- and women-owned firms in District construction and construction-related contracts. The Board also concludes that it needs to take action to avoid becoming a passive participant in private sector discrimination.

The Board has further concluded that race- and gender-neutral remedies, in and of themselves, may not be sufficient to eliminate the effects of the identified forms of discrimination, and that a narrowly tailored combination of race- and gender-neutral and race and gender-conscious remedies are warranted. Accordingly, this policy specifically authorizes the establishment of a narrowly tailored combination of race and gender-neutral and race and gender-conscious programs that address discrimination in the Board's procurement processes and business operations.

**General Policy**

A. The District shall resort to the use of race- and gender-conscious means for addressing disparities only when it is apparent that the use of neutral means alone will likely be insufficient to remedy the effects of identified discrimination. The determination of when to use race conscious measures will be made on a project-by-project or contract-by-contract basis pursuant to this policy.

B. Having found that it has a compelling governmental interest to remedy the effects of identified discrimination in the procurement of construction and professional services contracts, the Board directs and authorizes the Superintendent to establish procedures and implement remedies that are consistent with this policy and are narrowly tailored to the findings and conclusions of the Disparity Study.
C. In addition, the Board shall take all necessary, reasonable, and legal action to prevent discrimination and to ensure that all businesses, including M/WBEs, are afforded the maximum equitable opportunity to participate in the District's procurement process.

D. The District shall take all necessary and reasonable steps permissible by law to ensure full equitable participation by M/WBEs in the procurement of construction and professional services for the District, including:

1. developing programs and services as described in this policy that will achieve the Board's diversity objectives in business practices and operations in a manner that is consistent with this objective;

2. publicizing and enforcing the Board's commercial anti-discrimination provisions in Policy 6465 and Policy 6320 to ensure that District employees and companies doing business with the Board do not discriminate in the solicitation, selection, or treatment of subcontractors, suppliers, vendors, or commercial customers on race, color, ethnic or national origin, religion, marital status, disability, genetic information, age, political beliefs, sexual orientation, gender, gender identification, social and family background, linguistic preference, pregnancy, and any other legally prohibited basis;

3. developing additional Board policies, administrative programs, procedures and affirmative procurement initiatives consistent with Policy 6320.06 to directly address inequities and disparities related to the underutilization of M/WBE subcontractors on Board construction projects;
4. ensuring that the Office of Economic Opportunity (OEO) is included on all selection committees for bids, contracts and professional services; and

The OEO shall review contract specifications to ensure that they are not unnecessarily restricting the availability and participation of SMBEs and M/WBE firms in the procurement and contracting process.

5. evaluating the levels of availability and utilization in SMBE and M/WBE participation and adjusting the implementation of this policy according to changing needs and circumstances to ensure that appropriate utilization objectives are established and maintained.

Office of Economic Opportunity (OEO)

The OEO shall administer and implement the SMBE and M/WBE Business Enterprise Program including certification, technical assistance, and compliance, and:

A. enforce the Board’s commercial anti-discrimination Policy 6465 in the award of contracts for construction projects, procurement of goods and services, and professional services and implement the measures developed pursuant to Policy 6320.06 to increase diversity, equity and inclusion in business practices and operations;

B. provide maximum legally permissible opportunities for SMBEs and M/WBEs to participate in the award and performance of all Board contracts, including construction, professional services including A/E and non-A/E, and goods and services;

C. monitor, track, and certify small/micro businesses and minority/women business enterprises;
D. to develop procedures and processes to enforce compliance with this policy for all Board vendors, including construction, professional A/E and non-A/E services, and goods and services and when applicable, to recommend appropriate sanctions;

E. develop and implement necessary administrative procedures to fully implement these programs;

F. establish insurance requirements which, although providing appropriate protection, are not more restrictive than necessary to protect the public’s interest;

G. establish economic incentives that encourage the waiver of bonds, and enhance the bonding technical assistance program;

H. establish administrative procedures to expeditiously resolve monetary disputes and motivate prime contractors to make timely payments;

I. establish a comprehensive contract reporting and monitoring system to evaluate the effectiveness of these programs in increasing contracting opportunities for small/micro and minority/women-owned businesses;

J. serve as chair of the Goal-Setting Committee and staff liaison to the Small/Micro and Minority/Women-Owned Business Enterprise Advisory Committee;

K. monitor, coordinate, and provide support for any disparity study that may be conducted regarding minority/women-owned business participation in Board procurement for construction, professional A/E and non-A/E services, and goods and services;

L. develop and coordinate any recommendations as a result of any such disparity study findings;
M. maintain, distribute, and publish a directory of certified SBE, MBE, and M/WBE firms;

N. report annually through the Superintendent to the Board regarding the effectiveness of these programs; and

O. monitor local workforce development initiatives and/or goals through community based agreements with reputable and reliable referral agencies for Board construction, professional A/E and non-A/E services, and goods and services.

Small/Micro and Minority/Women-Owned Business Enterprise Advisory Committee

The Small/Micro and Minority/Women-Owned Business Enterprise Advisory Committee shall be established to:

A. provide guidance on the implementation of the SMBE and MWBE Programs and to promote the participation and use of SBEs/MBEs and M/WBEs in all procurement activities of the Board;

B. identify and evaluate issues related to economic opportunities within the Board for small, micro and minority/women owned businesses;

C. provide recommendations to the Board to improve the SMBE/MWBE programs;

D. annually evaluate and report to the Board on the effectiveness of the SMBE/MWBE programs in increasing minority and women owned business participation in the Board's procurement process;

E. monitor any disparity study that may be conducted by the Board and make recommendations based on the results of any such study.
The Board and Superintendent shall each appoint a community member who is not employed by the Board and does not have any direct or indirect business relationship with the Board. The committee shall have representation from local small, micro, minority, women, and majority business interest organizations, community based organizations and local government entities which may include professional, construction and trade, business, and socio-economic organizations. The Board and Superintendent shall approve a list of representative organizations and the Superintendent shall appoint a member nominated by each recommended organization from their membership. The term of each Board appointee shall be coterminous with the appointing Board member and the term of the Superintendent’s appointees shall be at the will and discretion of the Superintendent. In no event shall any committee member serve more than four (4) consecutive years. Board members may appoint alternate members in accordance with Policy 9140, Citizen Advisory Committees. All appointments must comply with Policy 9140, Citizen Advisory Committees. The committee shall annually elect a chair and vice-chair, meet at least six (6) times per year, and be governed by the latest edition of Robert’s Rules of Order. The committee may adopt bylaws, to be recommended by the Superintendent to the Board for approval, to facilitate the operation of the committee.

**Terms and Definitions**

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

**B. Available or Availability** – to have, prior to bid submission, the ability to provide goods or services under a contract by having (a) reasonably estimated, uncommitted capacity; (b) all necessary licenses, permits, registrations and certification, including SMBE or M/WBE certification to provide the type of goods or services being purchased under the contract; (c) ability to obtain reasonably required financing/insurance that is consistent with normal industry practice; and (d) ability to otherwise meet bid specifications.
C. **Award** – final selection of a bidder or offer or for a specified contract.

D. **Award Amount** – the dollar value of the contract when awarded.

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

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

G. **Certification** – process by which the OEO determines that a business meets the criteria for classification as a small/micro business enterprise and/or a minority/women-owned business enterprise.
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H. Commercially Useful Function – an SMBE or M/WBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SMBE or M/WBE must also be responsible for negotiating the price of contract materials and supplies, determining the quantity and quality of materials, ordering and installing materials if applicable, and paying for the materials. To determine whether an SMBE or M/WBE is performing a commercially useful function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the SMBE or M/WBE is to be paid under the contract is commensurate with the work it is actually performing and the SMBE or M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an SMBE or M/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of meaningful and useful SMBE or M/WBE participation, when in similar transactions in which SMBE or M/WBE firms do not participate, there is no such role performed.

I. Construction Services and Specialty Trades - means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property.

J. Contract – an agreement for purchase of goods or services, including professional services and construction. It does not include agreements to purchase, lease, or rent real property, or a grant, license, permit, franchise, or concession.
K. **Goal** – The annual or contract-specific goals for contract participation that express the anticipated level or proportion of contract dollars in a given time frame that would be expected to be received by a particular segment of the total population of Ready, Willing, and Able (RWA) firms. These goals are based upon availability analysis derived from a database established by the OEO and Purchasing. Upon completion of availability analysis, such goals for specific contract participation may, under certain circumstances, be set and narrowly tailored by race, gender, and industry codes. Annual goals are intended as an administrative guide only to assist the District in its annual policy review to determine whether the use of more aggressive or less aggressive remedies are warranted in the future. Annual goals shall not be routinely applied to specific contracts absent independent availability analysis demonstrating that they are appropriate for application to a specific contract.

L. **Goal Setting Committee** – committee established by the Superintendent that is chaired by the OEO and is responsible for establishing SMBE and M/WBE Program goals and selecting appropriate Affirmative Procurement Initiatives for application to specific Board contracts based upon industry categories, vendor availability, and project-specific characteristics.
M. **Good Faith Efforts** - documentation of the bidder's intent to comply with SMBE and M/WBE Program goals and procedures, including, but not limited to the following: (1) documentation within a bid submission or proposal reflecting the bidder's commitment to comply with program goals as established by the Goal Setting Committee for a particular contract; or (2) documentation of efforts made towards achieving the program goals, including but not limited to, timely posting of SMBE or M/WBE subcontract opportunities on the Board web site; solicitations of bids from all qualified SME or M/WBE firms listed in OEO's directory of certified firms; correspondence from qualified S MBE or M/WBE firms documenting their unavailability to perform S MBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to S MBE or M/WBE firms; documentation of efforts to assist S MBE and M/WBE firms with obtaining financing, bonding, or insurance required by the bidder; and documentation of consultations with trade associations and consultants that represent the interests of small and local businesses in order to identify qualified and available S MBE and M/WBE subcontractors.

N. **Goods and Services** - all items, supplies, materials, and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public business or in the pursuit of any government undertaking, project, or activity. The term refers to, among other subjects, equipment, furniture, food, information technology, materials for construction, or personal property, or any kind, including non-personal or contractual services such as the repair and maintenance of equipment and furniture. It also refers to trucking, hauling, janitorial, security, and related services as well as procurement of material and supplies provided by the procuring entity for such services. The term "related" shall include but not be limited to, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the procuring entity.
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O. **Gross Revenue** – all revenue in whatever form received or accrued from whatever source, including sales of products or services, interest, dividends, rents, royalties, fees or commissions, reduced by returns and allowances. Gross revenue does not include proceeds from sales of capital assets, and investments, proceeds from transaction between a firm and its domestic and foreign affiliates.

P. **Independently Owned, Managed, and Operated** – ownership of an SMBE or M/WBE firm must be direct, independent, and by individuals only. Business firms that are owned by other businesses or by the principals or owners of other businesses that cannot themselves qualify under the eligibility requirements shall not be eligible to participate in the program. The day-to-day management of the firm must also be direct and independent of the influence of any other businesses that cannot themselves qualify under the eligibility requirements.

Q. **Industry Categories** – procurement groupings of Board contracts for administering the Affirmative Procurement Initiatives that shall include construction, professional services, and goods and services procurement. Industry categories may also be referred to as “business categories”.

R. **Joint Venture** - an association of two (2) or more persons or businesses under a contract conducting a single business enterprise in which they combine capital, efforts, skills, knowledge and/or property and share profits and losses equally. A joint venture composed of qualified business organizations is itself a separate and distinct organization that must be qualified according to Board policies and F.S. 489.119(2)(c).
Micro-Business Enterprise (MBE) - any contractor, subcontractor, manufacturer or service company (a) that has been doing business under the same ownership or management and has maintained its principal place of business in Miami-Dade County, Florida, for a period of at least one (1) year immediately prior to the date of application for certification under this section, (b) that had annual gross revenues not exceeding the thresholds for a Micro-Business Enterprise as identified in this policy for each industry, and (c) at least fifty-one percent (51%) of the ownership of which is held by a person or persons who exercise operational authority over the daily affairs of the business and have the power to direct the management and policies and receive the beneficial interests of the company. Representations regarding average gross revenue and payroll are subject to audit. If a business has not existed for three (3) years, the employment and gross revenue limits shall be applied based upon the annual averages over the course of the existence of the business.

Minority/Women-Owned Business Enterprise (M/WBE) – see the definitions under the Minority/Women Business Enterprise Program section of this policy.

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

Prime Contractor – the vendor or contractor to whom a purchase order or contract is awarded by the Board for purposes of providing goods or services to the Board.
W. **Professional Services** - those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the State, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his/her professional employment or practice; Professional Services A/E shall not include job order contracting consultants, asbestos consultants, program management, geotechnical, construction materials testing, and environmental assessment services.

Professional services also includes services rendered by members of a recognized profession or possessing a special skill. Such services are generally acquired to obtain information, advice, training, or direct assistance.

X. **Ready, Willing and Able** - any vendor who has registered an interest in doing business with the Board and has the technical expertise, training, and licenses to perform in accordance with the contract document. SMBEs and M/WBEs must also be certified pursuant to this policy.

Y. **Responsible** - means that a firm is capable in all respects of fully performing the contract requirements and has the integrity and reliability to assure good faith performance.

Z. **Responsive** - description of a firm’s bid or proposal that conforms in all material respects to the invitation to bid or request for proposal and shall include compliance with SBE Program requirements.

AA. **School Board** - The School Board of Miami-Dade County, Florida, which is the legal entity with authority to enter contracts on behalf of the District school system under F.S. 1001.41(4).
BB. **Service-Disabled Veteran** - a veteran who is a permanent Florida resident with a service-connected disability as determined by the United States Department of Veteran Affairs or who has been terminated from military service by reason of disability by the United States Department of Defense.

CC. **Sheltered Market** – an affirmative procurement initiative designed to set aside a Board contract bid for bidding or selection exclusively among SMBE/M/WBE firms.

DD. **Significant Employee Presence** – no less than twenty-five percent (25%) of a firm's total number of employees are domiciled in Miami-Dade County, Florida.

EE. **SMBE or M/WBE Directory** - listing of certified SMBEs and M/WBEs.

FF. **State Appropriated Funds** - all funds appropriated in the General Appropriations Act, excluding Federal funds. This does not include funds that derive from local sources, including but not limited to, general obligation bond funds for capital construction or funds raised through local capital outlay millage and local sales taxes.
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GG. **Small Business Enterprise (SBE)** - any contractor, subcontractor, manufacturer or service company (a) that has been doing business under the same ownership or management and has maintained its principal place of business in Miami-Dade County, Florida, for a period of at least one (1) year immediately prior to the date of application for certification under this section, (b) that had annual gross revenues not exceeding the thresholds identified in this policy for each industry, and (c) at least fifty-one percent (51%) of the ownership of which is held by a person or persons who exercise operational authority over the daily affairs of the business and have the power to direct the management and policies and receive the beneficial interests of the company. Representations regarding average gross revenue and payroll are subject to audit. If a business has not existed for three (3) years, the employment and gross revenue limits shall be applied based upon the annual averages over the course of the existence of the business.

HH. **Spend Dollars** - dollars actually paid to prime and/or subcontractors and vendors for Board contracted goods and/or services.

II. **Subcontractor** – any vendor or contractor that is providing goods or services to a prime contractor in furtherance of the prime contractor's performance under a contract or purchase order with the Board.

JJ. **Subcontractor Goal** – a proportion of a total contract value stated as a percentage to be subcontracted to SMBEs or M/WBEs to perform a commercially useful function.

KK. **Suspension** – the temporary stoppage of an SBE or M/WBE firm's participation in the Board's contracting process for a finite period of time.
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1 Application

These programs apply to Board contracts funded in whole or in part by Board funds 
except where Federal or State laws or regulations prohibit its application. The 
Superintendent has the discretion to identify classes of contracts or parts of 
contracts that are subject to either the SMBE or M/WBE program and are legally 
permissible. The Superintendent shall also prepare necessary procedures, bid and 
contract documents to implement these programs.

2 Subcontractor Goals and Incentives

Subcontractor goals may be applied to a contract based on estimates made prior to 
bid advertisement of the quality, quantity, and type of subcontracting opportunities 
provided by the contract and the availability of either SMBEs or M/WBEs to perform 
the work. The Superintendent may also develop affirmative initiatives and/or 
incentive programs that can be applied to identified contracts in the selection and 
contract award process to increase the utilization of SMBE and M/WBE 
subcontractors pursuant to Policy 6320.06.

3 Goal Setting Committee

The Superintendent shall create and staff a Goal Setting Committee (GSC) to 
establish SMBE and M/WBE Program goals and select appropriate incentives to 
apply to specific contracts based upon industry categories, vendor availability, and 
project-specific characteristics. The Superintendent shall determine the size of the 
GSC that is to be chaired by the OEO who shall serve as a voting member. The 
Superintendent shall also appoint the remaining members of the GSC from the 
Board’s procurement personnel and other Board departments affected by this 
program. The GSC shall meet as often as it determines necessary, but not less than 
twice annually, to develop the goal setting methodologies to be implemented by the 
OEO on a project-by-project or contract-by-contract basis, and monitor and support 
the implementation of this policy.
Small/Micro Business Enterprise Program

The SMBE Program is a race and gender-neutral program to provide greater SMBE availability, capacity development and contract participation in Board contracts, to advance the Board’s compelling interest in ensuring that it is neither an active nor passive participant in private sector marketplace discrimination, and to promote equal opportunity for all segments of the contracting community to participate in Board contracts.

SMBE Eligibility and Certification

A. The OEO shall certify a company or other business entity as a Small Business Enterprise (SBE) or a Micro Business Enterprise (MBE) upon its submission of a completed District required certification form, supporting documentation, and a signed affidavit stating that it meets all of the following criteria:

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

2. The business must have an actual place of business in Miami-Dade County for at least one (1) year preceding the application and be registered as a vendor with the District.

3. The business has been established for at least one (1) year or the principals of the business have at least three (3) years of relevant experience prior to forming or joining the business.

4. The business has an applicable local business tax receipt and all required professional licenses, contractor qualifier licenses, and/or Certificate of Competency.

5. The owner of the business must have the required professional license(s) and contractor qualification license.
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6. The Board may honor a valid Small Business Enterprise Certification and/or Micro Business Enterprise Certification granted by another agency if the agency's requirements are consistent with the District's SBE/MBE certification criteria. The Superintendent shall develop procedures to implement this policy.

B. Additionally, the requirements for SBE/MBE Program eligibility based on industry are:

1. Micro Business Enterprise

   a. Professional Services A/E: The annual gross revenue averaged over the previous three (3) years shall not exceed $500,000.

   b. Professional Services non-A/E: The annual gross revenue averaged over the previous three (3) years shall not exceed $1,000,000.

   c. Goods and Services (Procurement Program): The annual gross revenue averaged over the previous three (3) year period shall not exceed $1,000,000.

   d. Construction and Construction-Related Specialty Trades: The annual gross revenue averaged over the previous three (3) years shall not exceed $1,000,000.

2. Small Business Enterprise

   a. Professional Services A/E: The annual gross revenue averaged over the previous three (3) years shall be greater than $500,000 and not exceed $1,000,000 (Tier 1) or $2,000,000 (Tier 2).
Professional Services non-A/E: The annual gross revenue averaged over the previous three (3) years shall be greater than $1,000,000 and not exceed $2,000,000 (Tier 1) or $4,000,000 (Tier 2).

Goods and Services (Procurement Program): The annual gross revenue averaged over the previous three (3) year period shall be greater than $1,000,000 and not exceed $2,000,000 (Tier 1) or $4,000,000 (Tier 2).

Construction and Construction-Related Specialty Trades: The annual gross revenue averaged over the previous three (3) years shall be greater than $1,000,000 and not exceed $3,000,000 (Tier 1) or $6,000,000 (Tier 2).

C. The applicant shall submit a verified declaration that the information provided for certification and re-certification is truthful and accurate. Any applicant who knowingly makes a false statement on the application and/or in writing with the intent to mislead the OEO and/or its representatives in the performance of their official duties of reviewing and/or approving an application is guilty of a second degree misdemeanor under F.S. 837.06. In addition, anyone who knowingly makes a false verified declaration is guilty of perjury, a third degree felony under F.S. 92.525.

D. 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 may appeal an ineligibility determined in accordance with this policy. 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.
E. Applicants determined eligible to participate in the program shall complete re-certification every three (3) years to the OEO for review and continued certification. However, upon application for re-certification, an SBE/MBE firm must be an independently owned and operated business concern, and maintain its principal place of business or have a significant employment presence in Miami-Dade County in accordance with this policy. To qualify for re-certification, a firm must comply with the thresholds established and published in its OEO Procedure Manual.

F. SBE/MBEs must notify the OEO within fifteen (15) business days of any material changes to the company's ownership and/or management of the firm. Any misrepresentation by a company of its MBE/SBE status shall be grounds for termination of any contract awarded based on the misrepresentation and subject to signatories to any other penalties provided by law and/or Board policies.

G. 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.

SME/MBE Program Graduation

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

A. An SBE shall be permanently graduated after its three (3) fiscal year average gross revenue exceeds $9 million for construction and construction-related specialty trades, $7 million for goods and services, $5 million for professional services (architectural and engineering), and $7 million for professional services (non-architectural and non-engineering).
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B. When an MBE exceeds the eligibility certification thresholds, it automatically graduates and is subject to the small business criteria and restrictions.

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

D. Upon graduation from the SBE/MBE program, the OEO shall provide the SBE/MBE with written notice that includes the basis for graduation.

SBE/MBE Program Suspension, Certification Revocation, and/or Debarment

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

B. Upon suspension from the SBE/MBE program, the OEO shall provide written notice to the SBE/MBE including specific findings constituting the basis for suspension, certification revocation, and/or debarment. The notice must also provide the applicable sanctions and the process to appeal the decision.

SBE/MBE Certification Appeals

A business that is denied eligibility, whose eligibility is revoked, or who has been denied a waiver request, may appeal the decision to the Superintendent. A written notice of appeal must be received by the Superintendent within fifteen (15) business days of the date of the written notice. Timely appeals will be reviewed pursuant to procedures developed and implemented by the Superintendent. The Superintendent shall make a recommendation on the appeal to the Board which shall make a final determination.
Service Disabled Veteran Enterprise Program

The Service Disabled Veteran Enterprise (SDVE) Program is a race and gender neutral program designed to benefit service disabled veteran businesses. The OBO shall certify SDVE businesses in accordance with State guidelines and law. Vendor preferences for SDVEs are governed by Policy 6320. In addition, the Superintendent is authorized to develop and implement affirmative procurement initiatives to increase participation by SDVEs in all of the Board's procurement processes to the extent allowed by law.

Minority/Women Business Enterprise Program

The Minority/Women Business Enterprise (M/WBE) Program is established to enhance the bidding and selection opportunities for M/WBEs on certain contracts and to address findings in the 2014 Disparity Study and 2015 Subcontractor Disparity Study pursuant to this policy and as provided in Policy 6610 and Policy 6320.06.

Terms and Definitions

1. Minority Ownership – minority ownership means that for:

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

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

   c. Corporation - minority/women must own at least fifty-one percent (51%) of all voting stock, issued by a corporation. No stock held in trust, or by any guardian for a minor, shall be considered held by the minority/woman individual, in determining ownership and control.
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d. Limited Liability Company (LLC) – minority/women must control the management and operations, as well as hold at least fifty-one percent (51%) of the company's ownership interest.

5
A minority owner(s) also has voting rights to elect the board of directors, chief executive officer, and all other management personnel.

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

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

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

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

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

27 e. An American born or naturalized woman.
B. **M/WBE Eligibility and Certification**

1. The OEO shall certify a company or other business entity as a M/WBE upon its submission of a completed certification form and supporting documentation. The applicant may self-identify as a minority person pursuant to the definitions above. The Board recognizes that there is a clear distinction between race and ethnicity. The OEO may request additional documentation on the applicant’s minority status only if it suspects fraud or misrepresentation and provides the reasons in writing to the applicant. In addition, the applicant must submit a signed affidavit stating that it meets the following criteria:

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

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

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

   A minority business enterprise may primarily involve the practice of a profession.
c. the business must have an actual place of business in the Miami-Dade Metropolitan Statistical Area (Miami-Dade County, Broward County, and Palm Beach County, Florida) for at least one (1) year preceding the application and be registered as a vendor with the District.

d. the business has an applicable local business tax receipt and all required professional licenses, contractor qualifier licenses, and/or Certificate of Competency.

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

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

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

b. Whether minority/women owners share in all the risks of business, including, but not limited to, third party agreements, bonding and financial arrangements.
c. Ownership by a minority person does not include ownership that is the result of a transfer from a non-minority person to a minority person within a related immediate family group if the combined total net asset value of all members of such family group exceeds $1 million. The term “related immediate family group” means one (1) or more children under sixteen (16) years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.

d. Minority/Women owners must also demonstrate control over the affairs, management, and operations of the business. The discretion of minority/women owners shall not be subject to any formal or informal restrictions (including, but not limited to, bylaw provisions, partnership agreements, trust agreements, or requirements for cumulative voting) that would impact or usurp the minority/women owners' managerial and operational discretion.
Documents that establish control include but are not limited to: corporate bylaws, operating agreements, partnership agreements, management agreements, or other agreements. Such documents should be free of restrictive language which dilutes a minority/woman owner(s)' control and prohibits him/her from making decisions.

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

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. Applicants shall submit a verified declaration that the
information provided for certification and re-certification is
truthful and accurate. Any applicant who knowingly makes a
false statement on the application and/or in writing with the
intent to mislead the OEO and/or its representatives in the
performance of their official duties of reviewing and/or
approving an application is guilty of a second degree
misdemeanor under F.S. 837.06. In addition, anyone who
knowingly makes a false verified declaration is guilty of
perjury, a third degree felony under F.S. 92.525.

4. Upon receipt of M/WBE 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 in accordance with this policy. 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.

5. All certified M/WBEs will be included in the District’s M/WBE
Directory which will be regularly updated and provided to
school sites.

6. M/WBEs must notify the OEO within fifteen (15) business
days, of any material changes to the company’s ownership
and/or management of the firm. Any misrepresentation by a
company of its M/WBE status shall be grounds for
termination of any contract awarded based on the
misrepresentation. Violations may also subject the
signatories to any other statutory penalties and Board
policies.
7. M/WBE certification shall be valid for a three (3) year period. Certified M/WBEs shall not request a change in their minority/woman designation, to another minority designation during the certification period, unless changes are due to extenuating circumstances.

8. The Board may honor a valid minority business certification granted by another agency if the agency's requirements are consistent with the District's M/WBE certification criteria. The Superintendent may develop procedures to implement this policy.

9. An M/WBE must apply for recertification at least thirty (30) days prior to the certification expiration. A Board M/WBE Recertification Form may be submitted only if an M/WBE's certificate has not expired and no material changes have occurred in the ownership and control of the M/WBE. If certification has expired, the M/WBE must submit a new application.

10. An M/WBE may be decertified if the firm no longer meets the certification requirements; for failure to comply with the Board's M/WBE policies and procedures regarding requests for information or documents pertaining to ownership, control, or operation of the business; failure to submit a complete M/WBE Recertification Application; debarment; or by written request from the firm's minority/women owners for voluntary removal from the M/WBE Directory.

M/WBE Certification Appeals

Applicants denied certification or recertification as an M/WBE may appeal to the Superintendent or his/her designee. A written request to appeal must be received by the Superintendent within fifteen (15) business days of the date of the written notice. Timely appeals will be reviewed pursuant to procedures developed and implemented by the Superintendent. The Superintendent shall make a recommendation on the appeal to the Board which shall make the final determination.
Industry Specific Programs

Remedial programs for the purpose of eliminating the disparities in M/WBE contract participation in District and private contracts caused by discrimination will be developed and implemented. The following industry-specific programs are to be established and implemented in a narrowly tailored manner consistent with the factual predicate established in the 2014 Disparity Study, the 2015 Subcontractor Disparity Study, and consistent with the terms of this policy.

A. Construction Programs

1. A Small/Micro Business Enterprise Program permitting the use of set asides of small prime contracts that are below competitive dollar thresholds for bidding exclusively among certified SBME firms and also establishing mandatory subcontracting goals for the participation of certified SMBE subcontractors or those construction contracts that are above the competitive bidding threshold and that have commercially useful subcontract opportunities.

2. A Minority/Women-Owned Business Enterprise Program establishing bid preferences on certain construction and construction-related contracts on behalf of certified M/WBE African-American, Non-Minority Women Owned, Asian-American and Native-American businesses, including the use of contract-specific subcontracting goals on selected contracts with genuine opportunities for commercially useful subcontracting pursuant to this policy.
B. Non-Professional Services Program

1. A Small/Micro Business Enterprise Program permitting the use of set asides of small prime contracts that arebelow competitive dollar thresholds for bidding exclusively among certified SBME firms and also establishing mandatory subcontracting goals for the participation of certified SMBE subcontractors or those contracts that are above the competitive bidding threshold and that have commercially useful subcontract opportunities pursuant to this policy.

2. A Minority/Women Business Enterprise Program for non-professional services contracts may be established if future studies establish disparities that may be legally addressed through such a program. If disparities are found, this policy will be amended to allow a legally permissible M/WBE program.

C. Professional Services Program

1. A Small/Micro Business Enterprise Program to establish bid preferences, joint venture incentives, and evaluation preferences on behalf of certified SMBE firms.

2. A Minority/Women Business Enterprise Program permitting the use of bid preferences, joint venture incentives, and evaluation preferences on construction-related professional services contracts among certified M/WBE firms that are owned by African-Americans, Asian-Americans, Native Americans and Non-Minority Women and also establishing contract-specific subcontracting goals for the participation of certified M/WBE subcontractors on those construction-related professional services contracts that are above the competitive bidding thresholds and that have commercially useful subcontract opportunities.
D. General Procurement Programs

1. A Small/Micro Business Enterprise Program permitting the use of set asides of small prime contracts that are below competitive dollar thresholds for bidding exclusively among certified SBME firms and also establishing mandatory subcontracting goals for the participation of certified SBME subcontractors on those construction contracts that are above the competitive bidding threshold and that have commercially useful subcontract opportunities.

2. A Minority/Women Business Enterprise Program may be established if future studies establish disparities that may be legally addressed through such a program. If disparities are found, this policy will be amended to allow a legally permissible M/WBE program.

Administration

Procedures to ensure that the OEO will periodically conduct the following kinds of analyses using data captured by an automated mandatory centralized bidder registered system will be adopted.

A. Availability Analysis

1. Overall Availability – The measure of overall availability is based on all the vendors and contractors that register in the automated and mandatory centralized bidder registration system. Such availability measurements shall be segmented according to the proportion of business ownership by race, gender, and size within appropriate industry codes.

2. SMBE Availability – The proportion of overall availability of the ready, willing, and able (RWA) vendors that are certified as SBE or MBE firms within the SBME Program, categorized by industry codes and relevant markets.
3. **M/WBE Availability** – The proportion of overall availability of the ready, willing, and able (RWA) vendors that are certified within the M/WBE program, categorized by race, gender, industry codes, and relevant market.

4. **Race-Neutral SMBE Contract Goals – Availability analysis** shall be used to set contract participation goals on an annual basis and on a contract-specific basis. The contract participation goals shall be set based on the relevant measures of SMBE availability as compared to all RWA vendors within the specific industry code of the contract in the relevant market.

5. **M/WBE Contract Goals – Availability analysis** shall be used whenever setting contract participation goals on an annual basis or on a contract-specific basis. The contract participation goals shall be set based on the relevant measures of M/WBE availability as compared to all RWA vendors within the specific industry code of the contract in the relevant market.

**B. Utilization Analysis**

The utilization analysis shall be based on the total dollar amount paid in a given year to the vendors and contractors that were registered in the automated and mandatory centralized bidder registration system. This analysis reflects the proportion of contract dollars that are spent, by industry code, and within SBME or M/WBE vendor categories, as compared to the total contract dollars spent with the overall vendor population within those industries.
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C. Disparity Analysis

1. The disparity analysis shall be based on the eighty percent (80%) statistical significance rule adopted under Croson v. Richmond, which is defined as two (2) standard deviations between utilization and availability. Utilization of RWA M/WBE firms that is eighty percent (80%) or less of the level of availability or M/WBE firms in a particular market is considered statistically significant under-utilization. Utilization that is above 100% of the level of availability is considered over-utilization.

2. Statistically significant underutilization creates an inference of discrimination, and in combination with other factors, permits consideration of the use of narrowly tailored race- and gender-conscious remedies to ameliorate the effects of such discrimination.

D. Remedy Analysis

1. If disparity is shown in the disparity analysis above, the District shall review the findings and recommendations from the 2014 Disparity Study, the 2015 Subcontractor Disparity Study, or from the District’s most recent independent disparity study to determine the most appropriate and effective remedies to apply to a given set of contracts to eliminate barriers and overcome the effects of various forms of discrimination identified through the 2014 Disparity Study, the 2015 Subcontractor Disparity Study, or any subsequent studies.

2. In selecting a remedial approach for any given contract, the District shall seek to identify the remedy that is most likely to be effective in promoting fair and equitable contract participation by all segments of the relevant vendor population, yet does not impose any undue burden on innocent third parties.
E. Periodic Review of Factual Predicate

1. At least once every four (4) years, the OEO and Superintendent shall recommend a contract with an independent disparity study consultant to the Board to conduct an updated review of the factual predicate for the District's M/WBE programs to determine whether there is any ongoing need for the use of race- and gender-conscious remedies.

2. Each successive disparity study update shall use methodologies and data sources that are preferred or consistent with the most recent controlling legal precedents.

3. Each successive disparity study update shall make specific findings and recommendations regarding the ongoing need for race- and gender-neutral and race- and gender-conscious remedies for certain categories of contracts. Study recommendations should also suggest appropriate modifications to existing District procurement procedures, SMBE programs, and M/WBE programs to promote fair and equitable participation in District contracting opportunities in the most effective but least restrictive and least burdensome manner.

4. In the event that the District determines that there is no ongoing need for any race- and gender-conscious remedies, the M/WBE programs shall be gradually phased out and shall sunset within two (2) years after such determination is made.
1 **Affirmative Procurement Initiatives**

2 The following Affirmative Procurement Initiatives may be used in awarding Board contracts to SBE/MBE's or M/WBEs according to the industry-specific programs identified in this policy. However, pursuant to State law and Policy 6320.05, no local vendor or employment preference for SBE/MBE or M/WBE may be applied to competitive solicitations for construction services in which fifty percent (50%) or more of the cost will be paid from State-appropriated funds which have been appropriated at the time of the competitive solicitation. The solicitation documents for construction services in this event must disclose that no SBE/MBE or M/WBE will be awarded based upon the State restriction regarding the utilization of local vendor preference.

12 A. **Bonding Waiver:** The District's Purchasing and OEO Directors are authorized, in accordance with F.S. 255.05, to waive the requirements for performance and payment bonds for projects having a dollar value up to $200,000 or less, at their discretion. This exemption from bonding requirements may be made on a project-by-project or contract-by-contract basis depending on the type of contract and whether the bonding requirements would deny the SBE or M/WBE an opportunity to perform the contract which the SBE or M/WBE has shown itself otherwise capable of performing. If the exemption is granted, neither the Board, the District, or its officers and officials shall be personally liable to persons suffering loss because of granting this exemption.

24 B. **Bid Preferences:**

25 **Bid Preference:** Specific goals for each project or contract may be adopted on a project-by-project, or contract-by-contract basis, in which the contract award shall be made to the lowest responsive, responsible bidder meeting the SBE or M/WBE subcontracting goals for the contract/project, when that bidder's price does not exceed the lowest bidder's price by an amount greater than the dollar or percentage amount set by the Goal Setting Committee.
**Evaluation Preference** – In ranking and evaluating proposals for “best value” contracts in which factors other than price are relevant to the selection process, the Board may award up to twenty percent (20%) of the total points available to a SBE or M/WBE or a joint venture with an SBE or M/WBE partner in response to a request for proposal.

**Professional Services Evaluation**

1. In the selection process for the award of certain professional services contracts, the District may include as one (1) of its evaluation criteria the level of SBE or M/WBE participation on the team or in subcontract participation. Under this remedial approach, the maximum number of evaluation points is available to an SBE or M/WBE proposer.

2. A summary of any applicable SBE or M/WBE Program procedures shall be plainly stated in each solicitation. For competitive professional services contracts, a point system of evaluation will be used by an evaluation committee to determine the recipient of the contract award recommendation. Businesses submitting proposals to provide professional services to the District will be eligible to receive on a sliding scale a designated number of the total possible points based upon their SBE or M/WBE participation. The distribution of points allocated to the evaluation criteria shall be stated in the request for proposal. SBE or M/WBE participation shall be only one of several criteria used to evaluate each proposal. Maximum points shall be awarded when the proposer is a certified SBE or M/WBE. The provisions within this section pertaining to the procurement of professional services are not intended to be used to the exclusion of other provisions of this policy.
C. Mandatory Subcontracting:

1. The GSC may at its discretion and on a contract-by-contract basis, require that a predetermined percentage up to forty percent (40%) of a specific contract be subcontracted to eligible SMBEs or M/WBEs.

2. An SMBE or M/WBE prime contractor may not subcontract more than forty-nine percent (49%) of the contract value to a non-SMBE or M/WBE.

3. A prospective bidder on a Board contract shall submit at the time of bid Form S providing the name of the SMBE or MWBE subcontractor or subcontractors and describing both the percentage of subcontracting by the SMBE or MWBE and the work to be performed by the SMBE or M/WBE. A bidder may request a full or partial waiver of this mandatory subcontracting requirement from the OEO for good cause by submitting the Unavailability Certification Form to the OEO prior to bid opening. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the bidder and careful review by the OEO. The OEO shall determine a waiver request upon the following criteria:

   a. whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available SMBEs or M/WBEs;

   b. whether subcontracting would be inappropriate and/or not provide a “commercially useful function” under the circumstances of the contract; or

   c. whether there are no certified SMBEs or M/WBEs that are qualified and available to provide the goods or services required.
In the absence of a waiver granted by the OEO, failure of a prime contractor to commit in its bid or proposal to satisfying the mandatory SMBE or M/WBE subcontracting goal shall render its bid or proposal non-responsive.

In the absence of a waiver granted by the OEO, failure of a prime contractor to attain a mandatory subcontracting goal for SMBE or M/WBE participation in the performance of its awarded contract shall be grounds for termination of existing contracts with the Board, debarment from performing future Board contracts, and/or any other remedies available under the terms of its contract with the Board or under the law.

A prime contractor is required to notify and obtain written approval from the OEO in advance of any reduction in subcontract scope, termination, or substitution for a designated SMBE or M/WBE Subcontractor. Failure to do so shall constitute a material breach of its contract with the Board.

D. Sheltered Market:

The OEO and GSC may select certain contracts for award to a SMBE or M/WBE or a joint venture with a SMBE or M/WBE through the Sheltered Market Program.

In determining whether a particular contract is eligible for the Sheltered Market Program, the OEO and GSC shall consider whether there are at least three (3) SMBEs or M/WBEs that are capable and available to participate in the Sheltered Market Program for that contract; the degree of underutilization of the SMBE or M/WBE prime contractors in the specific industry categories; and the extent to which the Board’s SMBE or M/WBE prime contractor utilization goals are being achieved.
3. If a responsive and responsible bid or response is not received for a contract that has been designated for the Sheltered Market Program, or the apparent low bid is determined to be too high in price, the contract shall be removed from the Sheltered Market Program.

**Contract Solicitation and Award**

7 A. The OEO shall preview all solicitations for construction, procurement, and professional services prior to public dissemination for compliance with the objectives stated in this policy and to ensure that bid specifications do not unnecessarily restrict the ability of SMBE and M/WBE firms to compete and bid. All District award recommendations shall bear the review signature of the OEO Director.

14 B. Disqualification/Rejection – The District and Board may reject any proposals from bidders who have previously failed to perform properly and who have done so by commission or omission of an act of such serious and compelling nature that the act indicates a serious lack of business integrity or honesty.

19 C. Contract Compliance – As the Superintendent’s designee, the OEO will establish procedures for monitoring and evaluating program performance and compliance.

22 D. The District and Board may reject any proposal deemed non-responsive for failing to meet the diversity requirements.

24 E. A firm’s failure to comply with the contract may constitute a violation of the anti-discrimination provisions of Policy 6465 and result in suspension or debarment pursuant to Policy 6320.04.
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1 Pre-Award Waiver

At any time prior to the award of a contract for a purchase of goods and supplies, the Superintendent or designee may grant a partial or complete waiver of diversity requirements for reasons such as (1) emergency procurement; (2) where a non-M/WBE is the sole source of the needed goods or services and there are no apparent commercially useful functions available to be performed by ready, willing, and able SBE or M/WBE subcontractors; or (3) good faith efforts to meet the contract goal have proven unsuccessful. The department making an emergency procurement shall consider the availability of SBEs or M/WBEs from which to make the purchases. The Purchasing Director shall make available a report of procurement activities, including at a minimum, project name, project number, project description, awarded vendor, advertisement date, waivers, and reasons for the waiver, and an estimated dollar value to include change orders.

14 Fair Subcontracting Practices

The Board is committed to promoting diversity, equity, and inclusion in the use of subcontractors on Board contracts pursuant to Policy 6320.06. Bidders are encouraged to adopt policies and procedures that (a) notify the broadest number of local subcontractors of the opportunity to be awarded a subcontract, (2) invite local subcontractors to submit bids in a practical, expedient manner, (3) provide local subcontractors access to the information necessary to prepare and formulate a subcontracting bid, (4) allow local subcontractors to meet with the bidder to discuss the bidder's requirements, and (5) award subcontracts based on full and complete consideration of all submitted proposals and in accordance with the bidder's stated objectives.
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1 Prompt Payment

It is the Board’s policy that payment for all purchases by the Board be made in a timely manner. The Superintendent is authorized to develop and implement administrative directives and procedures to provide that contractors and vendors will receive prompt payment from the Board, upon receipt of proper documentation, including an approved invoice for the amount due and confirmation that the goods or services have been received and accepted by the appropriate District staff. Prompt payment provisions may be waived or suspended if the Superintendent has made a determination, after consultation with the Chief Financial Officer, that an urgent situation, crisis, or other compelling condition exists that seriously impacts normal business operations. The Board may also provide for expedited payments to prime SMBE and M/WBEs. Late-penalty interest payments will only be made by the Board pursuant to the Florida Prompt Payment Act, F.S. 218.735.

In addition, the Superintendent shall develop and include appropriate language in Board contracts to require the prime vendor to issue prompt payment to SMBEs and M/WBEs. Prime vendors must have dispute resolution procedures in place to address disputed payments to subcontractors.

18 Violations and Sanctions

A. Violations of this policy, include but are not limited to:

1. fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain certification status as an SMBE or M/WBE for purposes of this policy;

2. willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing it contains any false, fictitious, or fraudulent statements or entry pursuant to this policy;
policy

3. willfully obstruct, impede, or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity that has requested certification as an SMBE or M/WBE;

4. fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining, or attempting to obtain public monies to which the person is not entitled under this policy;

5. failing to cooperate in any investigation of violations of this policy or Policy 6465;

6. making false statements to any entity that any other entity is or is not certified as an SMBE or M/WBE for purposes of this policy.

B. Sanctions – Any person or business entity that violates this policy shall be subject to suspension, contract cancellation, or debarment pursuant to Policy 6320 and Policy 6320.04 and any other penalty provided by law.

C. The Superintendent shall apply appropriate sanctions for violations of this policy upon recommendation of the OEO.

Anti-Discrimination Complaints

Complaints alleging discrimination maybe filed according to Policy 6465 against employees and companies doing business with the Board in the solicitation, selection or treatment of subcontractors, suppliers, vendors, or commercial customers on the basis of race, color, ethnic or national origin, religion, marital status, disability, genetic information, age, political beliefs, sexual orientation, gender, gender identification, social and family background, linguistic preference, pregnancy, and any other legally prohibited basis. The anti-discrimination prohibitions must be included in every contract under this policy and each contractor must certify that it will comply with anti-discrimination provisions. A violation of this policy may constitute a violation of Policy 6465.
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1 SMBE and M/WBE Program Performance Review

2 A. The OEO shall monitor the implementation of this policy and the
3 progress of these programs. On an annual basis, the OEO shall
4 report to the Superintendent and Board on the progress of achieving
5 the goals and objectives established for awards to certified SMBE
6 and M/WBE firms, reporting both dollars awarded and expended.
7 In addition, the OEO shall annually report on the progress in
8 achieving the stated program objectives, including, but not limited
9 to, enhancing competition, establishing and building new business
10 capacity, and removing barriers to and eliminating disparities in the
11 utilization of available minority business enterprises and women
12 business enterprises on Board contracts.

13 B. The Board shall annually review these programs to determine
14 whether the various contracting procedures used to enhance SMBE
15 or M/WBE contract participation needs to be adjusted or used more
16 or less aggressively in future years to achieve the stated program
17 objectives.

18 Policy Review

19 As required by F.S. 120.74, the Board shall review and revise this policy as often as
20 necessary to ensure that it complies with legal requirements such as applicable
21 current standards of binding decisions of the Eleventh Circuit Court of Appeals and
22 the United State Supreme Court. In addition, at least every (4) years, the Board will
23 review the successes and failures of the M/WBE program and make a determination
24 as to the need for a continuing M/WBE program.

25 Severability

26 If any section, paragraph, sentence, clause, phrase, or word of this policy is for any
27 reason held by a court to be unconstitutional, inoperative, or void, it is intended that
28 to the maximum extent practicable, such holding shall not affect the remainder of
29 this policy.
1 Statutory Citations

2 Citations in this policy refer to the statute in place at the time this policy is adopted or as amended from time to time.

4 F.S. 218.735, 287.093, 607.11, 1001.41(2), 1013.46(1)(b)

5 Revised 11/21/12
6 Revised 1/16/13
7 Revised 9/3/13
8 Revised 6/18/14
9 Revised 1/14/15
10 Revised 10/14/15
11 Revised 3/9/16

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AUDIT AND BUDGET ADVISORY COMMITTEE

The general purpose of the Audit and Budget Advisory Committee is to review and make recommendations to the School Board and Superintendent on fiscal management matters presented to the committee by either the Board or the Superintendent. The Audit and Budget Advisory Committee shall serve as the principal advisory committee to assist the Board in fulfilling its fiduciary responsibilities on budgeting, financial reporting and accounting and business policies and practices and is the Board's principal agent in ensuring the independence of the District's external and internal auditors.

The Audit and Budget Advisory Committee's goals are to assist in:

A. strengthening accountability for the stewardship and efficient and effective use of School District funds;

B. maintaining transparency of the District's financial and business operations; and

C. promoting an adequate system of internal control.

Membership

Members of the Audit and Budget Advisory Committee should reflect the Board's commitment to diversity, have a basic understanding of finance and accounting and be able to understand and interpret financial statements and audit reports. Members should have a background in auditing, accounting, finance, business, management consulting, or law.

The members of the Audit and Budget Advisory Committee are:

A. eleven (11) members and alternates from the community not employed by the School District or having any direct or indirect business dealings with the School District;

The nine (9) Board members will each select one (1) appointee and alternate.

One (1) voting member and alternate appointed by the Superintendent.

One (1) voting member and alternate appointed by the Miami-Dade County Council of PTAs/PTSA.
B. one (1) voting Board member and alternate appointed by the Chair of the Board;

The Board member or alternate appointed to the Audit and Budget Advisory Committee shall vote on all matters that come before the Audit and Budget Advisory Committee.

C. one (1) non-voting member from the District to be appointed by the Superintendent;

D. the Chief Auditor shall serve as the District's liaison and provide administrative and logistical support to the Audit and Budget Advisory Committee.

Alternates may only vote in the absence of the member.

The Audit and Budget Advisory Committee shall elect a chair and vice-chair from its community members. An Audit and Budget Advisory Committee member may not serve more than four (4) consecutive years as either chair or vice-chair.

Term of Service

The term of service is two (2) fiscal years. The terms of community members nominated by Board members shall be consistent with the terms of their respective nominating Board members. Newly appointed Board members shall have the discretion to retain the former Board member's appointee or to nominate a new committee member. A member's term may be extended beyond the two (2) year term by nomination by any Board member. Community members may be removed should they miss three (3) consecutive regular meetings without good cause upon a majority vote of the audit committee.

Meetings

The Audit and Budget Advisory Committee will meet on a regular basis throughout the fiscal year with the first meeting to be scheduled in early September and the last meeting in late June. The committee will meet at least six (6) times during the fiscal year, subject to any unforeseen circumstances such as natural disasters, emergencies, etc.

When deemed necessary and appropriate, special meetings of the Audit and Budget Advisory Committee may be called by the Chief Auditor or by the chair of the Audit and Budget Advisory Committee. Such special meetings shall require at least two (2) days prior public notice.

A majority of the voting members shall constitute a quorum for the committee in order to conduct business.
All committee and subcommittee meetings are governed by the Florida’s Government in the Sunshine and Public Records Laws, F.S. Chapter 119 and 286.011. Meetings will be held in open public sessions and all materials made or received by the Audit and Budget Advisory Committee in connection with official business are available for public inspection.

The Office of Management and Compliance Audits is responsible for providing administrative support to the committee, including publishing meeting notices, keeping its minutes, establishing the agenda in collaboration with the chair of the Audit and Budget Advisory Committee, and gathering the supporting documentation for distribution, and ensuring the smooth operation of the committee affairs.

**Authority**

The Audit and Budget Advisory Committee is advisory in nature. Its recommendations regarding audit findings and exceptions, and other items will be provided in writing to the Board and Superintendent. In its advisory role, the Audit and Budget Advisory Committee is subject to the control and direction of the Board.

**Duties and Responsibilities**

The duties and responsibilities of the Audit and Budget Advisory Committee are:

A. with regard to the external auditor:

1. serve as the committee to select and recommend the hiring of the external auditing firm to conduct the District’s annual audit according to Florida statutes and assist in the development of the external audit contract;

2. oversee the work and evaluate the qualifications, performance, and independence of the external auditor and recommend the termination or replacement of the external auditor;

3. review with the external auditor their annual audit plan;

4. review the Consolidated Annual Financial Report (CAFR), Management Letter, and Single Audit Report with the external auditor and District staff and make recommendations as appropriate;

5. the Chief Auditor will provide administrative support to the committee for all external audit contracts.
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B. with regard to the District's budgeting and financial management:

1. with the Chief Financial Officer, review proposed annual
   budgets, revenues, and expense forecasts and forecast
   assumptions, and budget amendments;

2. receive periodic progress reports from the Chief Financial
   Officer regarding the District administration's collection and
   disbursement of financial resources pursuant to the District's
   budget;

3. receive periodic reports from and consult with the Chief
   Financial Officer on the adequacy of the District's budget and
   tracking system;

4. make recommendations to the Superintendent and Board to
   improve the quality and reliability of budgeting and
   accounting for the results of financial operations and not
   opine on the policy and programmatic implications of budget
   proposals and amendments.

C. with regard to the Chief Auditor and the Office of Management and
   Compliance Audits:

1. review the annual budget of the Office of Management and
   Compliance Audits and make recommendations to the Board
   and the Superintendent as to the sufficiency of the budget;

   The budget shall make adequate provisions for external
   auditing fees, staffing of the office, required continued
   professional education/staff development, equipment, and
   supplies. The committee should review the costs of the use of
   outside professional services deemed necessary by the Chief
   Auditor and make recommendations to the Board.

2. review, provide feedback and approve the annual Audit Plan
   presented by the Chief Auditor;

   Receive periodic updates on the progress in completing the
   Audit Plan and confer with the Chief Auditor on any
   significant changes in the required planned scope of the
   annual Audit Plan.
3. review the operations and projects against the Audit Plan to determine the progress made in the execution of the Audit Plan;

4. review internal audit reports with the Chief Auditor and District administration and make recommendations regarding audit findings, recommendations, and management responses;

5. serve as the committee, in consultation with the Superintendent, to make recommendations to the Board on the person to fill the position;

At the request of the Board, the committee will provide recommendations on the contractual provisions for the position of Chief Auditor. Prior to negotiation of the employment contract, the Board shall conduct a workshop to provide guidance to the Board’s designated negotiator.

6. any recommendation for the removal or transfer of the Chief Auditor not made by the Audit Committee and the reasons for such removal or transfer shall be brought before the committee to obtain its recommendation to the Board;

7. in conjunction with Board members and at each Board member’s sole discretion, review the Chief Auditor’s performance. Written evaluations will be kept on file.

D. review and make recommendations on the audited financial statements of the District’s charter schools, community-based organizations, direct support organizations and audits of impact fees, and any other relevant external audits brought before the committee;

E. review and make recommendations on District-related audit reports prepared by Federal and State auditors;

F. provide an effective communication link between the external and internal auditors, the Board, and the Superintendent to accomplish the following objectives:

1. completeness of audit coverage;
2. reduction of redundant efforts; and

3. effective use of audit resources.

G. receive and comment on periodic updates of selected audit follow-up regarding corrective action(s) being taken by the administration to implement audit recommendations;

H. submit periodic reports, at least annually, on the work of the Audit and Budget Advisory Committee, to the Board and the Superintendent;

I. review and make recommendations on any amendments to Policy 6835, Policy 6840, and Policy 0157;

   At the request of the Board, provide input to the Board with respect to the selection of the Inspector General, and with regard to the operation of the Inspector General as more specifically outlined in Policy 0157.

J. receive and review reports from the Inspector General and receive, review, and monitor corrective action plans and responses submitted pursuant to Inspector General reports or recommendations.

F.S. 119.07(3)(y), 286.011, 1001.32, 1001.41(1)(2), 1012.31

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