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SUBJECT: **INITIAL READING: PROPOSED AMENDMENTS TO BOARD
POLICY 6320.02, *SMALL/MICRO, MINORITY/WOMEN-OWNED,
AND VETERAN BUSINESS ENTERPRISE PROGRAMS***

COMMITTEE: **FISCAL ACCOUNTABILITY AND GOVERNMENT RELATIONS**

**LINK TO
STRATEGIC
BLUEPRINT:** **EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES**

At the November 15, 2017 meeting, the School Board approved Agenda Item G-1, requesting to amend School Board Policy 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*. To strive for greater small business participation and reduce barriers among local businesses, the Office of Economic Opportunity has revised School Board Policy 6320.02 *Small/Micro and Minority/Women-Owned Business Enterprise Programs*.

The Board policy provides for the implementation, certification, and compliance of the Small/Micro, Minority/Women, and Veteran Enterprise programs. On March 9, 2018, the Superintendent asked the Economic Equity and Diversity Compliance Officer to launch a comprehensive approach soliciting input from various stakeholder groups to enhance the School Board Policy 6320.02. The Office of Economic Opportunity designed its Inaugural Program Assessment and Stakeholder Survey receiving 136 surveys from local businesses and community organizations. Furthermore, after four special meetings providing input and suggestions along with public input, on April 19, 2018, the Small, Micro & M/WBE Advisory Committee unanimously endorsed recommended changes to School Board Policy 6320.02. The updated revisions include clarity on multiple items referenced by the Office of Inspector General in its memo dated February 2, 2018.

The recommended revisions to Board Policy 6320.02 is in alignment with Board Item E-116, also being presented, which provides for updates to the Office Economic Opportunity Administrative Procedures Manual.

Attached is the Notice of Intended Action and the 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 School Board Policy 6320.02, *Small/Micro, Minority/Women-Owned, and Veteran Business Enterprise Programs* and authorize the Superintendent to file the amended policies with the School Board of Miami-Dade County, Florida, to be effective June 20, 2018.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on May 16, 2018, its intention to amend Board Policy 6320.02, *Small/Micro Business Enterprise, Minority/Women, and Veteran Business Enterprise Programs*, at its meeting of June 20, 2018.

PURPOSE AND EFFECT: It is recommended that Board Policy 6320.02, *Small/Micro Business Enterprise, Minority/Women, and Veteran Business Enterprise Programs*, be amended to allow for greater small business participation, by adding a lower Tier for the Micro Business Enterprise Program, adding definitions, updating the Metropolitan Statistical Area for consistency with all three programs, and expanding the service disabled veteran enterprise program to include all veterans.

SUMMARY: This policy creates expanded opportunities for small, micro, minority/women, and veteran business participation in the awarding of contracts in Goods and Services, Construction, Architecture/Engineering Services, and other applicable contracts.

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

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: 287.0943; 288.703; and 1001.32(2), F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE SCHOOL BOARD MEETING OF June 20, 2018, which begins at 1:00 p.m., in the School Board Auditorium, 1450 N.E. Second Avenue, Miami, Florida 33132. Persons requesting such a hearing or who wish to provide a proposal for a lower cost regulatory alternative as provided in Section 120.541(1), F.S. must do so in writing by June 12, 2018, to the Superintendent of Schools, Room 912, at the same address.

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

A COPY OF THE PROPOSED AMENDED POLICY is available at cost to the public for inspection and copying in the Citizen Information Center, Room 102, 1450 N.E. Second Avenue, Miami, Florida 33132.

1 SMALL/MICRO, MINORITY/WOMEN-OWNED, AND VETERAN BUSINESS
2 ENTERPRISE PROGRAMS

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

11 The 1990 study concluded that market area industry practices in construction,
12 construction support services, professional services, and commodities and services
13 were discriminatory toward M/WBEs and that the School District had been a
14 passive participant in discrimination against M/WBEs. Based on the results of that
15 study, the Board modified its existing Business Development and Assistance
16 Program to establish incentives that would increase opportunities specifically for
17 M/WBEs contracting with the Board. The Board also implemented several race and
18 gender-neutral initiatives in an effort to eliminate disparities in the utilization of
19 M/WBE firms such as bond waivers, establishing insurance requirements that
20 provided appropriate protection but did not discourage M/WBE firms from
21 competing for contracts, enhancing technical assistance programs, and increasing
22 outreach efforts to M/WBEs.

1 On November 21, 2012, the Board determined that a new disparity study would
2 need to be conducted in order to continue its M/WBE program. The Board repealed
3 its Business Development and Assistance Program Policy with the understanding
4 that it would develop a new M/WBE Program if supported by the results of a newly
5 commissioned disparity study. At the same time, the Board approved the
6 Small/Micro Business Enterprise (S/MBE) Program and the continuation of the
7 M/WBE Certification Program to provide legally permissible race and gender-
8 neutral participation by small and micro businesses in Board procurement of goods
9 and services, construction, and professional services and to allow M/WBEs to
10 participate in Board contracting as small and micro business enterprises while the
11 study was being conducted. The program continued to certify M/WBEs, to include
12 aspirational goals for M/WBEs in contracts, and to track and monitor the utilization
13 of M/WBEs through the S/MBE Program.

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

1 The Disparity Study addressed (1) whether there is a disparity in the utilization of
2 M/WBEs in the District's procurement of construction and professional services,
3 (2) whether any disparity is the product or result of past discrimination or other
4 factors related to race or gender based discrimination, (3) whether any disparity can
5 be effectively ameliorated through race and gender neutral programs, and (4) if the
6 appropriate remedy is a race- or gender-conscious program, how the program
7 should be narrowly tailored to remedy the current effects of past discrimination and
8 conform to constitutional guidelines.

9 The Disparity Study and the subsequent Subcontractor Disparity Study reported
10 findings that within the relevant geographic market of the Miami-Dade Metropolitan
11 Statistical Area (Miami/Broward/Palm Beach) there are statistically significant
12 disparities in the District's utilization of ready, willing, and able M/WBEs in the
13 following categories of contracts and business owners:

- 14 A. Prime Construction Contracts (African-American, Asian-American,
15 Native-American, and Non-Minority Women)
- 16 B. Construction Subcontracts (African-American, Asian-American, and
17 Native-American)
- 18 C. Prime Design and Construction-Related Professional Services
19 (African-American, Asian-American, Native-American, and
20 Non-Minority Women)
- 21 D. Design and Construction-Related Professional Services Subcontracts
22 (African-American, Asian-American, Native-American, and
23 Non-Minority Women)

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

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

- 1 B. Non-minority firms received an even larger percentage of
2 construction building permits for private sector commercial
3 construction and subcontracts. MBE primes received only two
4 percent (2%) of building permits and certified non-minority
5 women-owned businesses received zero. Of the .27% of
6 subcontractors who received building permits, nearly all went to
7 Hispanic-American owned businesses.
- 8 C. There are significant disparities for entry into self-employment for
9 African-Americans, Hispanic Americans, Asian Americans, and
10 Non-minority Women.
- 11 D. There is a statistically significant positive relationship between the
12 probability of commercial bank loan denial and African American
13 business ownership. About fifteen percent (15%) of M/WBE loan
14 applicants reported being denied commercial bank loans, compared
15 to 64.7% of African American applicants, 21.6% of Hispanic
16 American applicants, 0% of Asian American-owned firms, 0% of
17 Native American applicants, and twenty percent (20%) of
18 non-minority women applicants.
- 19 E. Interviews with District staff and M/WBE firms identified various
20 discriminatory barriers affecting the relevant job market including
21 unequal access to bonding, finance, and insurance, having to
22 unfairly compete against large firms in the selection process,
23 unnecessarily restrictive contract requirements, an informal network
24 that precluded M/WBE firms from obtaining work in the private
25 sector, seldom or never being solicited where there were no M/WBE
26 goals, being dropped from a project after being included to satisfy
27 good faith effort requirements, contract bundling, slow or
28 non-payment by contractors, limited time to prepare bid packages,
29 difficulty obtaining notification of contract/bid opportunities, and
30 discriminatory experiences in dealing with the District and prime
31 contractors.

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

9 Together, these District and private sector disparities currently establish an
10 inference of discrimination that is adversely affecting the Board's utilization of ready,
11 willing, and able minority- and women-owned firms.

12 Based upon the totality of the evidence gathered and presented to the Board since
13 1990, the Board has concluded that there is a strong evidentiary basis establishing
14 that the District has a compelling interest in remedying the ongoing effects of
15 discrimination that is occurring in the broader relevant market and adversely affects
16 the District's utilization of ready, willing and able minority- and women-owned firms
17 in District construction and construction-related contracts. The Board also
18 concludes that it needs to take action to avoid becoming a passive participant in
19 private sector discrimination.

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

1 **General Policy**

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

8 B. Having found that it has a compelling governmental interest to
9 remedy the effects of identified discrimination in the procurement of
10 construction and professional services contracts, the Board directs
11 and authorizes the Superintendent to establish procedures and
12 implement remedies that are consistent with this policy and are
13 narrowly tailored to the findings and conclusions of the Disparity
14 Study.

15 C. In addition, the Board shall take all necessary, reasonable, and legal
16 action to prevent discrimination and to ensure that all businesses,
17 including M/WBEs, are afforded the maximum equitable
18 opportunity to participate in the District's procurement process.

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

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

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

- 12 3. developing additional Board policies, administrative
13 programs, procedures and affirmative procurement initiatives
14 consistent with Policy 6320.06 to directly address inequities
15 and disparities related to the underutilization of M/WBE
16 subcontractors on Board construction projects;

- 17 4. ensuring that the Office of Economic Opportunity (OEO) is
18 included on all selection committees for bids, contracts and
19 professional services; and

20 The OEO shall review contract specifications to ensure that
21 they are not unnecessarily restricting the availability and
22 participation of S/MBEs, and M/WBE, and VBE firms in the
23 procurement and contracting process.

- 24 5. evaluating the levels of availability and utilization in S/MBE
25 and M/WBE participation and adjusting the implementation
26 of this policy according to changing needs and circumstances
27 to ensure that appropriate utilization objectives are
28 established and maintained.

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

2 The OEO shall administer and implement the S/MBE, M/WBE, and Veteran
3 Business Enterprise (VBE) Program including certification, technical assistance, and
4 compliance, and:

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

10 B. provide maximum legally permissible opportunities for S/MBEs,
11 M/WBEs, and VBE/VBEs to participate in the award and
12 performance of all Board contracts, including construction,
13 professional services including A/E and non-A/E, and goods and
14 services;

15 C. monitor, track, and certify small/micro businesses, and
16 minority/women business enterprises, and veteran business
17 enterprise;

18 D. to develop procedures and processes to enforce compliance with this
19 policy for all Board vendors, including construction, professional
20 A/E and non-A/E services, and goods and services and when
21 applicable, to recommend appropriate sanctions;

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

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

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

- 1 H. establish administrative procedures to expeditiously resolve
2 monetary disputes and motivate prime contractors to make timely
3 payments;
- 4 I. establish a comprehensive contract reporting and monitoring system
5 to evaluate the effectiveness of these programs in increasing
6 contracting opportunities for small/micro, minority/women-owned,
7 and veteran businesses;
- 8 J. serve as chair of the Goal-Setting Committee and staff liaison to the
9 Small/Micro, Minority/Women-Owned, and Veteran Business
10 Enterprise Advisory Committee;
- 11 K. monitor, coordinate, and provide support for any disparity study
12 that may be conducted regarding minority/women-owned business
13 participation in Board procurement for construction, professional
14 A/E and non-A/E services, and goods and services;
- 15 L. develop and coordinate any recommendations as a result of any
16 such disparity study findings;
- 17 M. maintain, distribute, and publish a directory of certified SBE, MBE,
18 M/WBE, and VBE/VBE firms;
- 19 N. report annually through the Superintendent to the Board regarding
20 the effectiveness of these programs; and
- 21 O. monitor local workforce goals as established by the Goal Setting
22 Committee for construction, professional services and goods and
23 services; including initiatives through community based agreements
24 with reputable and reliable referral agencies.

1 **Small/Micro, and Minority/Women-Owned, and Veteran Business Enterprise**
2 **Advisory Committee**

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

- 5 A. provide guidance on the implementation of the S/MBE, M/WBE,
6 and ~~VBE/VBE~~ Programs and to promote the participation and use of
7 SBEs/MBEs, M/WBEs, and ~~VBE/VBEs~~ in all procurement activities
8 of the Board;
- 9 B. identify and evaluate issues related to economic opportunities within
10 the Board for S/MBE, M/WBE and VBE ~~small, micro and~~
11 ~~minority/women-owned businesses~~;
- 12 C. provide recommendations to the Board to improve the
13 S/MBE, M/WBE, and VBE ~~programs~~;
- 14 D. annually evaluate and report to the Board on the effectiveness of the
15 S/MBE, M/WBE, and VBE programs in increasing minority and
16 women owned business participation in the Board's procurement
17 process;
- 18 E. monitor any disparity study that may be conducted by the Board
19 and make recommendations based on the results of any such study.

1 The Board and Superintendent shall each appoint a community member who is not
2 employed by the Board and does not have any direct or indirect business
3 relationship with the Board. The committee shall have representation from local
4 S/MBE, M/WBE, VBE~~small, micro, minority, women,~~ and majority business interest
5 organizations, community based organizations and local government entities which
6 may include professional, construction and trade, business, and socio-economic
7 organizations. The Board and Superintendent shall approve a list of representative
8 organizations and the Superintendent shall appoint a member nominated by each
9 recommended organization from their membership. The term of each Board
10 appointee shall be coterminous with the appointing Board member and the term of
11 the Superintendent's appointees shall be at the will and discretion of the
12 Superintendent. Board members may appoint alternate members in accordance
13 with Policy 9140, Citizen Advisory Committees. All appointments must comply with
14 Policy 9140. The committee shall annually elect a chair and vice-chair, meet at least
15 six (6) times per year, and be governed by the latest edition of *Robert's Rules of*
16 *Order*. The committee may adopt bylaws, to be recommended by the Superintendent
17 to the Board for approval, to facilitate the operation of the committee.

18 **Terms and Definitions**

19 A. **Actual Place of Business**– Business whose physical office is
20 located in the relevant Metropolitan Statistical Area.

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

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

- 1 C. **Award** – final selection of a bidder or offer or for a specified
2 contract.
- 3 D. **Award Amount** – the dollar value of the contract when awarded.
- 4 E. **Bid** – quotation, proposal, letter of interest or offer by any bidder in
5 response to any kind of invitation, solicitation, request or public
6 announcement to submit such quotation, proposal, letter of interest
7 or offer for a contract.
- 8 F. **Bidder** – any person, partnership, corporation or other business
9 entity that submits a bid or proposal.
- 10 G. **Certification** – process by which the OEO determines that a
11 business meets the criteria for classification as a
12 S/MBE~~small/micro business enterprise,~~ a M/WBE
13 ~~minority/women-owned business enterprise,~~ and/or a ~~veteran~~
14 ~~business enterprise~~VBE.
- 15
16 H. **Certified Directory** - listing of certified S/MBEs, M/WBEs, and
17 VBEs.

- 1 H. **Commercially Useful Function** – an S/MBE, ~~or~~ M/WBE, or VBE
2 performs a commercially useful function when it is responsible for
3 execution of the work of the contract and is carrying out its
4 responsibilities by actually performing, managing, and supervising
5 the work involved. To perform a commercially useful function, the
6 S/MBE, ~~or~~ M/WBE, or VBE must also be responsible for negotiating
7 the price of contract materials and supplies, determining the
8 quantity and quality of materials, ordering and installing materials if
9 applicable, and paying for the materials. To determine whether an
10 S/MBE, ~~or~~ M/WBE, or VBE is performing a commercially useful
11 function, an evaluation must be performed of the amount of work
12 subcontracted, normal industry practices, whether the amount the
13 S/MBE, ~~or~~ M/WBE, VBE is to be paid under the contract is
14 commensurate with the work it is actually performing and the
15 S/MBE, ~~or~~ M/WBE, VBE credit claimed for its performance of the
16 work, and other relevant factors. Specifically, an S/MBE, ~~or~~
17 M/WBE, or VBE does not perform a commercially useful function if
18 its role is limited to that of an extra participant in a transaction,
19 contract, or project through which funds are passed in order to
20 obtain the appearance of meaningful and useful S/MBE, ~~or~~ M/WBE,
21 VBE participation, when in similar transactions in which S/MBE,
22 ~~or~~ M/WBE, or VBE firms do not participate, there is no such role
23 performed.
- 24 I. **Construction Services and Specialty Trades** - means all labor,
25 services, and materials provided in connection with the
26 construction, renovation, alteration, repair, demolition,
27 reconstruction, or any other improvements to real property.
- 28 J. **Contract** – an agreement for purchase of goods or services,
29 including professional services and construction. It does not
30 include agreements to purchase, lease, or rent real property, or a
31 grant, license, permit, franchise, or concession.

1 K. **Goal** – The annual or contract-specific goals for contract
2 participation that express the anticipated level or proportion of
3 contract dollars in a given time frame that would be expected to be
4 received by a particular segment of the total population of Ready,
5 Willing, and Able (RWA)—firms. These goals are based upon
6 availability analysis derived from a database established by the OEO
7 and Purchasing. Upon completion of availability analysis, such
8 goals for specific contract participation may, under certain
9 circumstances, be set and narrowly tailored by race, gender, and
10 industry codes. Annual goals are intended as an administrative
11 guide only to assist the District in its annual policy review to
12 determine whether the use of more aggressive or less aggressive
13 remedies are warranted in the future. Annual goals shall not be
14 routinely applied to specific contracts absent independent
15 availability analysis demonstrating that they are appropriate for
16 application to a specific contract.

17 L. **Goal Setting Committee** – committee established by the
18 Superintendent that is chaired by the OEO and is responsible for
19 establishing S/MBE, ~~and~~ M/WBE, and VBE Program goals and
20 selecting appropriate Affirmative Procurement Initiatives for
21 application to specific Board contracts based upon industry
22 categories, vendor availability, and project-specific characteristics.

1 M. **Good Faith Efforts** - documentation (evidence) of the bidder's
2 intent to comply with S/MBE, ~~and~~ M/WBE, and VBE Program goals
3 and procedures, including, but not limited to the following: (1)
4 documentation within a bid submission or proposal reflecting the
5 bidder's commitment to comply with program goals as established
6 by the Goal Setting Committee for a particular contract; or (2)
7 documentation of efforts made towards achieving the program goals,
8 including but not limited to, timely posting of S/MBE, ~~or~~ M/WBE, or
9 VBE subcontract opportunities on the Board web site; solicitations
10 of bids from all qualified S/MBE, ~~or~~ M/WBE, or VBE firms listed in
11 OEO's directory of certified firms; correspondence from qualified
12 S/MBE, ~~or~~ M/WBE, or VBE firms documenting their unavailability
13 to perform S/MBE, ~~or~~ M/WBE, or VBE contracts; documentation of
14 efforts to subdivide work into smaller quantities for subcontracting
15 purposes to S/MBE, ~~or~~ M/WBE, or VBE firms; documentation of
16 efforts to assist S/MBE and M/WBE firms with obtaining financing,
17 bonding, or insurance required by the bidder; and documentation of
18 consultations with trade associations and consultants that
19 represent the interests of small and local businesses in order to
20 identify qualified and available S/MBE, ~~and~~ M/WBE, and VBE
21 subcontractors.

22 N. **Goods and Services** - all items, supplies, materials, and general
23 support services, except consulting services and infrastructure
24 capital projects, which may be needed in the transaction of public
25 business or in the pursuit of any government undertaking, project,
26 or activity. The term refers to, among other subjects, equipment,
27 furniture, food, information technology, materials for construction,
28 or personal property, or any kind, including non-personal or
29 contractual services such as the repair and maintenance of
30 equipment and furniture. It also refers to trucking, hauling,
31 janitorial, security, and related services as well as procurement of
32 material and supplies provided by the procuring entity for such
33 services. The term "related" shall include but not be limited to, lease
34 or purchase of office space, media advertisements, health
35 maintenance services, and other services essential to the operation
36 of the procuring entity.

- 1 O. **Gross Revenue** – all revenue in whatever form received or accrued
2 from whatever source, including sales of products or services,
3 interest, dividends, rents, royalties, fees or commissions, reduced by
4 returns and allowances. Gross revenue does not include proceeds
5 from sales of capital assets, and investments, proceeds from
6 transaction between a firm and its domestic and foreign affiliates.
- 7 P. **Independently Owned, Managed, and Operated** – ownership of
8 an S/MBE, ~~or~~ M/WBE, or VBE firm must be direct, independent,
9 and by individuals only. Business firms that are owned by other
10 businesses or by the principals or owners of other businesses that
11 cannot themselves qualify under the eligibility requirements shall
12 not be eligible to participate in the program. The day-to-day
13 management of the firm must also be direct and independent of the
14 influence of any other businesses that cannot themselves qualify
15 under the eligibility requirements.
- 16 Q. **Industry Categories** – procurement groupings of Board contracts
17 for administering the Affirmative Procurement Initiatives that shall
18 include construction, professional services, and goods and services
19 procurement. Industry categories may also be referred to as
20 “business categories”.
- 21 R. **Joint Venture** - an association of two (2) or more persons or
22 businesses under a contract conducting a single business enterprise
23 in which they combine –capital, efforts, skills, knowledge and/or
24 property and share profits and losses equally. A joint venture
25 composed of qualified business organizations is itself a separate and
26 distinct organization that must be qualified according to Board
27 policies and F.S. 489.119(2)(c).
28
- 29 S. **Metropolitan Statistical Area (MSA)** – Geographical region within
30 the relevant geographic market of the Miami-Dade Metropolitan
31 Statistical Area (Miami-Dade/Broward/Palm Beach Counties).

- 1 TS. **Micro-Business Enterprise (MBE)** - any contractor, subcontractor,
2 manufacturer or service company (a) that has been doing business
3 under the same ownership or management and has maintained its
4 ~~principal actual~~ place of business in the MSA Miami Dade County,
5 Florida, for a period of at least one (1) year immediately prior to the
6 date of application for certification under this section, (b) that had
7 annual gross revenues not exceeding the thresholds for a Micro-
8 Business Enterprise as identified in this policy for each industry,
9 and (c) at least fifty-one percent (51%) of the ownership of which is
10 held by a person or persons who exercise operational authority over
11 the daily affairs of the business and have the power to direct the
12 management and policies and receive the beneficial interests of the
13 company. Representations regarding average gross revenue and
14 payroll are subject to audit. If a business has not existed for three
15 (3) years, the employment and gross revenue limits shall be applied
16 based upon the annual averages over the course of the existence of
17 the business.
- 18 UT. **Minority/Women-Owned Business Enterprise (M/WBE)** – see the
19 definitions under the Minority/Women Business Enterprise Program
20 section of this policy.
- 21 VU. **Points** – the quantitative assignment of value for specific evaluation
22 criteria in the vendor or consultant selection process.
- 23 WV. **Prime Contractor** – the vendor or contractor to whom a purchase
24 order or contract is awarded by the Board for purposes of providing
25 goods or services to the Board.

- | 1 XW. **Professional Services** - those services within the scope of the
2 practice of architecture, professional engineering, landscape
3 architecture, or registered surveying and mapping, as defined by the
4 laws of the State, or those performed by any architect, professional
5 engineer, landscape architect, or registered surveyor and mapper in
6 connection with his/her professional employment or practice;
7 Professional Services A/E shall not include job order contracting
8 consultants, asbestos consultants, program management,
9 geotechnical, construction materials testing, and environmental
10 assessment services.
- 11 Professional services also includes services rendered by members of
12 a recognized profession or possessing a special skill. Such services
13 are generally acquired to obtain information, advice, training, or
14 direct assistance.
- | 15 YX. **Ready, Willing and Able** – any vendor who has registered an
16 interest in doing business with the Board and has the technical
17 expertise, training, and licenses to perform in accordance with the
18 contract document. S/MBEs, and M/WBEs, and VBEs must also
19 be certified pursuant to this policy.
- | 20 ZY. **Responsible** – means that a firm is capable in all respects of fully
21 performing the contract requirements and has the integrity and
22 reliability to assure good faith performance.
- | 23 AAZ. **Responsive** – description of a firm’s bid or proposal that conforms in
24 all material respects to the invitation to bid or request for proposal
25 and shall include compliance with S/MBE, M/WBE, and VBE
26 Program requirements.
- | 27 AABB. **School Board** – The School Board of Miami-Dade County, Florida,
28 which is the legal entity with authority to enter contracts on behalf
29 of the District school system under F.S. 1001.41(4).

1 CCBB. **Service-Disabled Veteran** - a veteran who is a permanent
2 Florida resident with a service-connected disability as determined by
3 the United States Department of Veteran Affairs or who has been
4 terminated from military service by reason of disability by the United
5 States Department of Defense.

6 DDCC. **Sheltered Market** - an affirmative procurement initiative
7 designed to set aside an M-DCPS Board contract/project bid for
8 bidding or selection exclusively among S/MBE, M/WBE, and/or
9 VBE firms.

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

13 FFEE. **Certified Directory** - listing of certified SMBEs and M/WBEs.

14 GGFF. **State Appropriated Funds** - all funds appropriated in the General
15 Appropriations Act, excluding Federal funds. This does not include
16 funds that derive from local sources, including but not limited to,
17 general obligation bond funds for capital construction or funds
18 raised through local capital outlay millage and local sales taxes.

1 HHGG. **Small Business Enterprise (SBE)** - any contractor,
2 subcontractor, manufacturer or service company (a) that has been
3 doing business under the same ownership or management and has
4 maintained its ~~principal~~ actual place of business in the MSA ~~Miami-~~
5 ~~Dade County, Florida,~~ for a period of at least one (1) year
6 immediately prior to the date of application for certification under
7 this section, (b) that had annual gross revenues not exceeding the
8 thresholds identified in this policy for each industry, and (c) at least
9 fifty-one percent (51%) of the ownership of which is held by a person
10 or persons who exercise operational authority over the daily affairs
11 of the business and have the power to direct the management and
12 policies and receive the beneficial interests of the company.
13 Representations regarding average gross revenue and payroll are
14 subject to audit. If a business has not existed for three (3) years,
15 the employment and gross revenue limits shall be applied based
16 upon the annual averages over the course of the existence of the
17 business.

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

21 JJH. **Subcontractor** - any vendor or contractor that is providing goods or
22 services to a prime contractor in furtherance of the prime
23 contractor's performance under a contract or purchase order with
24 the Board.

25 KKJJ. **Subcontractor Goal** - a proportion of a total contract value stated
26 as a percentage to be subcontracted to S/MBEs, ~~or~~ M/WBEs, or
27 VBEs to perform a commercially useful function.

28 LLKK. **Suspension** - the temporary stoppage of an S/MBE, ~~or~~ M/WBE or
29 VBE firm's participation in the Board's contracting process for a
30 finite period of time.

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32 MM. **Veteran Business Enterprise** - The management and daily business
33 operations of which are controlled by one or more wartime veterans
34 or service-disabled veterans or, for a service-disabled veteran having
35 a permanent and total disability, by the spouse or permanent
36 caregiver of the veteran. (Florida Statute 295.187)

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1 **Application**

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

8 **Subcontractor Goals and Incentives**

9 Subcontractor goals may be applied to a contract based on estimates made prior to
10 bid advertisement of the quality, quantity, and type of subcontracting opportunities
11 provided by the contract and the availability of either S/MBEs, ~~or~~ M/WBEs, or VBEs
12 to perform the work. The Superintendent may also develop affirmative initiatives
13 and/or incentive programs that can be applied to identified contracts in the
14 selection and contract award process to increase the utilization of S/MBE, ~~and~~
15 M/WBE, and VBE subcontractors pursuant to Policy 6320.06 *Diversity, Equity, and*
16 *Inclusion in Business Operations and Practices*.

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18 **Goal Setting Committee**

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

1 **Small/Micro Business Enterprise Program**

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

8 **Small/Micro Business Enterprise MBE-Eligibility and Certification**

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

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

18 2. The business must have an actual place of business in
19 Miami-Dade County—the Miami-Dade Metropolitan Statistical
20 Area (Miami-Dade County, Broward County, and Palm Beach
21 County, Florida) —for at least one (1) year preceding the
22 application and be registered as a vendor with the District.

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

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

29 5. An ~~The~~ owner of the business must have the required
30 professional license(s).

1 6. The Board may honor a valid SBE ~~Small Business Enterprise~~
2 ~~Certification~~ and/or MBE ~~Micro Business Enterprise~~
3 Certification granted by another agency if the agency's
4 requirements are consistent with the District's SBE/MBE
5 certification criteria. The Superintendent shall develop
6 procedures to implement this policy.

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

9 1. **Micro Business Enterprise**

10 a. **Professional Services A/E:** The annual gross revenue
11 averaged over the previous three (3) years shall not
12 exceed \$300,000 (Tier 1) or \$500,000 (Tier 2).

13 b. **Professional Services non-A/E:** The annual gross
14 revenue averaged over the previous three (3) years
15 shall not exceed \$300,000 (Tier 1) or \$1,000,000 (Tier
16 2).

17 c. **Goods and Services (Procurement Program):** The
18 annual gross revenue averaged over the previous
19 three (3) year period shall not exceed \$300,000 (Tier 1)
20 or \$1,000,000 (Tier 2).

21 d. **Construction and Construction-Related Specialty**
22 **Trades:** The annual gross revenue averaged over the
23 previous three (3) years shall not exceed \$300,000 (Tier
24 1) or \$1,000,000 (Tier 2).

25 2. **Small Business Enterprise**

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

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

5 c. **Goods and Services (Procurement Program):** The
6 annual gross revenue averaged over the previous
7 three (3) year period shall be greater than \$1,000,000
8 and not exceed \$2,000,000 (Tier 1) or \$4,000,000 (Tier
9 2).

10 d. **Construction and Construction-Related Specialty**
11 **Trades:** The annual gross revenue averaged over the
12 previous three (3) years shall be greater than
13 \$1,000,000 and not exceed \$3,000,000 (Tier 1) or
14 \$6,000,000 (Tier 2).

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

24 D. Upon receipt of a certification or re-certification application, the
25 OEO shall review all enclosed forms, affidavits, and documentation
26 and determine whether the applicant satisfies the eligibility
27 requirements. The OEO shall send a letter to ineligible applicants
28 stating the basis for the denial of eligibility. Applicants may appeal
29 an ineligibility determined in accordance with this policy.
30 Applicants determined ineligible shall not be eligible to submit a new
31 application for at least one (1) year after the date of the notice of
32 denial of eligibility.

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

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

16 G. In considering certification or re-certification status of any- firm, the
17 OEO shall periodically conduct audits and inspect the office, job
18 site, records, and documents of the firm, and shall interview the
19 firm's employees, subcontractors, and vendors as reasonably
20 necessary to ensure that all eligibility standards are satisfied and
21 that the integrity of this program is maintained.

22 **SME/MBESmall/Micro Business Enterprise Program Graduation**

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

26 A. An SBE shall be permanently graduated after its three (3) fiscal year
27 average gross revenue exceeds \$~~6~~⁹ million for construction and
28 construction-related specialty trades, \$~~4~~⁷ million for goods and
29 services, \$~~2~~⁵ million for professional services (architectural and
30 engineering), and \$~~4~~⁷ million for professional services
31 (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 SBE small business~~ criteria and restrictions.

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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.

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

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Small Business Enterprise/Micro Business Enterprise Program Suspension, Certification Revocation, and/or Debarment

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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.

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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.

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Small Business Enterprise/Micro Business Enterprise Certification Appeals

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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 or designee. A written notice of appeal must be received by the Superintendent or designee 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 or designee shall make a recommendation on the appeal to the Board which shall make a final determination.

1 **Veteran Business Enterprise Program**

2 The Veteran Business Enterprise (VBE) Program is a race and gender-neutral
3 program designed to benefit service disabled-all veteran businesses (excluding non-
4 profits). The OEO shall certify VBEVBE businesses in accordance with State
5 guidelines and law. Vendor-Vendor preferences for VBEVBEs are governed by Policy
6 6320. In addition, the Superintendent or designee is authorized to develop and
7 implement affirmative procurement initiatives to increase participation by VBEVBEs
8 in al-1-of the Board's procurement processes to the extent allowed by law.

9 **Veteran Business Eligibility Criteria**

10 According to Florida Statute §295.187 - VBE means an independently owned and
11 operated business that:

- 12
13 1. Employs 200 or fewer permanent full-time employees;
14 2. Together with its affiliates has a net worth of \$5 million or less or, if a sole
15 proprietorship, has a net worth of \$5 million or less including both personal and
16 business investments;
17 3. Is organized to engage in commercial transactions;
18 4. Is domiciled in this state; and,
19 5. Is at least fifty-one (51%) owned and controlled by one or more veterans.
20 6. The business must have an actual place of business in the MSA for at least one (1)
21 year preceding the application and be registered as a vendor with the District;
22 7. The business has an applicable local business tax receipt in the MSA and all
23 required licenses;
24 8. An owner of the business must have the required professional license(s); and,
25 9. An owner of the business must submit a DD-214 form issued by the United States
26 Department of Veteran Affairs or the United States Department of Defense or evidence of
27 veteran status.
28

29 **Minority/Women Business Enterprise Program**

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

35 A. **Terms and Definitions**

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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/womean 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.

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

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

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

12 a. An African American, a person having origins in any of
13 the black racial groups of the African Diaspora,
14 regardless of cultural origin. (The African diaspora
15 refers to the communities throughout the world that
16 have resulted from the movement in historic times of
17 people from Africa, predominantly to the Americas and
18 among other areas around the globe. The term has
19 been historically applied in particular to the
20 descendants of West and Central Africans between the
21 16th and 19th centuries, with their largest populations
22 in Brazil, the United States, and Haiti. For purposes of
23 this category, African diaspora populations include:
24 African Americans, Black Caribbeans and Black
25 Canadians (descendants of West Africans brought to
26 the United States, the Caribbean, and South America),
27 Zanj (descendants from Southeast Africa, primarily the
28 Swahili Coast, whose ancestors were brought to
29 Western Asia and other parts of Asia) and Siddis
30 (descendants from Southeast Africa, primarily the
31 Swahili Coast, whose ancestors were brought to the
32 Indian subcontinent (Pakistan and India)).
33

34 b. A Hispanic American, a person of Spanish or
35 Portuguese culture with origins in Spain, Portugal,
36 Mexico, South America, Central America, or the
37 Caribbean, ~~regardless of race~~ not in the African
38 Diaspora.

39 c. An Asian American, a person having origins of the Far
40 East, Southeast Asia, the Indian Subcontinent, or the

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Pacific Islands, including the Hawaiian Islands before
1778.

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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.

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e. An American born non-minority naturalized woman.

1 B. Minority/Women Business Enterprise Eligibility and
2 Certification

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

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

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

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

29 A minority business enterprise may primarily involve
30 the practice of a profession.

- 1 c. the business must have an actual place of business in
2 the ~~Miami-Dade~~—Metropolitan Statistical Area
3 (Miami-Dade County, Broward County, and Palm
4 Beach County, Florida) for at least one (1) year
5 preceding the application and be registered as a vendor
6 with the District.
- 7 d. the business has an applicable local business tax
8 receipt and all required ~~professional—licenses,~~
9 ~~contractor—qualifier licenses, and/or Certificate of~~
10 ~~Competency.~~
- 11 e. an ~~the~~ owner of the business must have the required
12 professional license(s).
- 13 2. Other factors in determining ownership that will be
14 considered shall include, but are not limited to the following:
- 15 a. Whether minority/women owners are entitled to share
16 in the profits of the business, through salaries,
17 bonuses, profit sharing, dividends, and all other
18 benefits, commensurate their ownership.
- 19 b. Whether minority/women owners share in all the risks
20 of business, including, but not limited to, third party
21 agreements, bonding and financial arrangements.

- 1 c. Ownership by a minority person does not include
2 ownership that is the result of a transfer from a
3 non-minority person to a minority person within a
4 related immediate family group if the combined total
5 net asset value of all members of such family group
6 exceeds \$1 million. The term "related immediate
7 family group" means one (1) or more children under
8 sixteen (16) years of age and a parent of such children
9 or the spouse of such parent residing in the same
10 house or living unit.
- 11 d. Minority/Women owners must also demonstrate
12 control over the affairs, management, and operations of
13 the business. The discretion of minority/women
14 owners shall not be subject to any formal or informal
15 restrictions (including, but not limited to, bylaw
16 provisions, partnership agreements, trust agreements,
17 or requirements for cumulative voting) that would
18 impact or usurp the minority/women owners'
19 managerial and operational discretion.

- 1 Documents that establish control include but are not
2 limited to: corporate bylaws, operating agreements,
3 partnership agreements, management agreements, or
4 other agreements. Such documents should be free of
5 restrictive language which dilutes a minority/woman
6 owner(s)' control and prohibits him/her from making
7 decisions.
- 8 1) The minority/woman owner(s) must submit
9 documentation demonstrating control through
10 the authority and responsibility to sign company
11 checks, for all bank accounts, and letters of
12 credit, negotiate contracts on behalf of the
13 business, signature responsibility for insurance,
14 bid bonds, and performance and payment
15 bonds, negotiate bank transactions, and
16 guarantee all instruments which indebt the
17 business.
- 18 2) Unless a business is a franchise, agreements for
19 contractual support services that usurp a
20 minority/woman owner's authority to control a
21 company are not allowed.
- 22 3) Minority/Women owners shall control or
23 supervise the hiring, firing, and supervision of
24 employees, and establishment of employment
25 policies, wages, benefits, and other employment
26 conditions.
- 27 4) Minority/Women owners shall have knowledge
28 and control of all financial matters of the
29 business.

- 1 3. Applicants shall submit a verified declaration that the
2 information provided for certification and re-certification is
3 truthful and accurate. Any applicant who knowingly makes a
4 false statement on the application and/or in writing with the
5 intent to mislead the OEO and/or its representatives in the
6 performance of their official duties of reviewing and/or
7 approving an application is guilty of a second-degree
8 misdemeanor under F.S. 837.06. In addition, anyone who
9 knowingly makes a false verified declaration is guilty of
10 perjury, a third-degree felony under F.S. 92.525.
- 11 4. Upon receipt of M/WBE certification or re-certification
12 applications, the OEO shall review all enclosed forms,
13 affidavits and documentation, and determine whether the
14 applicant satisfies the eligibility requirements. All applicants
15 shall be notified in writing as to whether they are eligible.
16 The OEO shall also provide to ineligible applicants in writing
17 the basis for the denial of eligibility and the right to request
18 an appeal in accordance with this policy. Applicants
19 determined ineligible shall not be eligible to submit a new
20 application for at least one (1) year after the date of the notice
21 of denial of eligibility.
- 22 5. All certified M/WBEs will be included in the District's online
23 Directory which will be regularly updated and available to
24 school sites.
- 25 6. M/WBEs must notify the OEO within fifteen (15) business
26 days, of any material changes to the company's ownership
27 and/or management of the firm. Any misrepresentation by a
28 company of its M/WBE status shall be grounds for
29 termination of any contract awarded based on the
30 misrepresentation. Violations may also subject the
31 signatories to any other statutory penalties and Board
32 policies.

- 1 7. M/WBE certification shall be valid for a three (3) year period.
2 Certified M/WBEs shall not request a change in their
3 minority/woman designation, to another minority designation
4 during the certification period, unless changes are due to
5 extenuating circumstances.
- 6 8. The Board may honor a valid minority business certification
7 granted by another agency if the agency's requirements are
8 consistent with the District's M/WBE certification criteria.
9 The Superintendent may develop procedures to implement
10 this policy.
- 11 9. An M/WBE must apply for recertification at least thirty (30)
12 days prior to the certification expiration. A Board M/WBE
13 Recertification Form may be submitted only if an M/WBE's
14 certificate has not expired and no material changes have
15 occurred in the ownership and control of the M/WBE. If
16 certification has expired, the M/WBE must submit a new
17 application.
- 18 10. An M/WBE may be decertified if the firm no longer meets the
19 certification requirements; for failure to comply with the
20 Board's M/WBE policies and procedures regarding requests
21 for information or documents pertaining to ownership,
22 control, or operation of the business; failure to submit a
23 complete M/WBE Recertification Application; debarment; or
24 by written request from the firm's minority/women owners for
25 voluntary removal from the M/WBE Directory.

26 **Minority/Women Business Enterprise Certification Appeals**

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

1 **Industry Specific Programs**

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

8 A. **Construction Programs**

- 9 1. A Small/Micro Business Enterprise Program permitting the
10 use of set asides of small prime contracts that are below
11 competitive dollar thresholds for bidding exclusively among
12 certified S/BMBE firms and also establishing mandatory
13 subcontracting goals for the participation of certified S/MBE
14 subcontractors or those construction contracts that are above
15 the competitive bidding threshold and that have commercially
16 useful subcontract opportunities.
- 17 2. A Minority/Women-Owned Business Enterprise Program
18 establishing bid preferences on certain construction and
19 construction-related contracts on behalf of certified M/WBE
20 African-American, Non-Minority Women Owned,
21 Asian-American and Native-American businesses, including
22 the use of contract-specific subcontracting goals on selected
23 contracts with genuine opportunities for commercially useful
24 subcontracting pursuant to this policy.

1 B. **Non-Professional Services Program**

2 1. A Small/Micro Business Enterprise Program permitting the
3 use of set asides of small prime contracts that are below
4 competitive dollar thresholds for bidding exclusively among
5 certified S/MBME firms and also establishing mandatory
6 subcontracting goals for the participation of certified S/MBE
7 subcontractors or those contracts that are above the
8 competitive bidding threshold and that have commercially
9 useful subcontract opportunities pursuant to this policy.

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

16 C. **Professional Services Program**

17 1. A Small/Micro Business Enterprise Program to establish bid
18 preferences, joint venture/teaming/partnership incentives,
19 and evaluation preferences on behalf of certified S/MBE
20 firms.

21 2. A Minority/Women Business Enterprise Program permitting
22 the use of bid preferences, joint venture/teaming/partnership
23 incentives, and evaluation preferences on construction-
24 related professional services contracts among certified
25 M/WBE firms that are owned by African-Americans, Asian-
26 Americans, Native Americans and Non-Minority Women and
27 also establishing contract-specific subcontracting goals for
28 the participation of certified M/WBE subcontractors on those
29 construction-related professional services contracts that are
30 above the competitive bidding thresholds and that have
31 commercially useful subcontract opportunities.

1 D. **General Procurement Programs**

- 2 1. A Small/Micro Business Enterprise Program permitting the
3 use of set asides of small prime contracts that are below
4 competitive dollar thresholds for bidding exclusively among
5 certified S/BME firms and also establishing mandatory
6 subcontracting goals for the participation of certified S/MBE
7 subcontractors on those construction contracts that are
8 above the competitive bidding threshold and that have
9 commercially useful subcontract opportunities.
- 10 2. A Minority/Women Business Enterprise Program may be
11 established if future studies establish disparities that may be
12 legally addressed through such a program. If disparities are
13 found, this policy will be amended to allow a legally
14 permissible M/WBE program.

15 **Administration**

16 ~~Procedures to ensure that the OEO will conduct analysis using data captured by~~
17 The District will utilize various sources to conduct analysis on program data
18 including information from the Office of Facilities Capital Payment System, Job
19 Order Contracting System; Office of Financial Services District SAP system including
20 but not limited to purchasing card data, purchase order data; and the Online
21 Diversity Compliance System.

22 A. **Availability Analysis**

- 23 1. Overall Availability – The measure of overall availability is
24 based on all the vendors and contractors that register in the
25 automated and mandatory centralized bidder registration
26 system. Such availability measurements shall be segmented
27 according to the proportion of business ownership by race,
28 gender, and size within appropriate industry codes.
- 29 2. S/MBE Availability – The proportion of overall availability of
30 the ready, willing, and able (RWA) vendors that are certified
31 as SBE or MBE firms within the S/MBE Program, categorized
32 by industry codes and relevant markets.

- 1 3. M/WBE Availability – The proportion of overall availability of
2 the ready, willing, and able ~~(RWA)~~ vendors that are certified
3 within the M/WBE program, categorized by race, gender,
4 industry codes, and relevant market.
- 5 4. Race-Neutral S/MBE Contract Goals – Availability analysis
6 shall be used to set contract participation goals on an annual
7 basis and on a contract-specific basis. The contract
8 participation goals shall be set based on the relevant
9 measures of S/MBE availability as compared to all RWA ready
10 willing and able vendors within the specific industry code of
11 the contract in the relevant market.
- 12 5. M/WBE Contract Goals – Availability analysis shall be used
13 whenever setting contract participation goals on an annual
14 basis or on a contract-specific basis. The contract
15 participation goals shall be set based on the relevant
16 measures of M/WBE availability as compared to all RWA
17 ready willing and able vendors within the specific industry
18 code of the contract in the relevant market.

19 **B. Utilization Analysis**

20 The utilization analysis shall be based on the total dollar amount
21 paid in a given year to the vendors and contractors that were
22 registered in the automated and mandatory centralized bidder
23 registration system. This analysis reflects the proportion of contract
24 dollars that are spent, by industry code, and within S/BMBE, ~~or~~
25 M/WBE, or VBE vendor categories, as compared to the total
26 contract dollars spent with the overall vendor population within
27 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~~ ready willing and able 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.

1 E. **Periodic Review of Factual Predicate**

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

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

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

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

1 **Affirmative Procurement Initiatives**

2 The following Affirmative Procurement Initiatives may be used in awarding Board
3 contracts to ~~SBE/MBEs, or M/WBEs, or VBEs~~ according to the industry-specific
4 programs identified in this policy. However, pursuant to State law and Policy
5 6320.05, no local vendor or employment preference for ~~SBE/MBEs, or M/WBEs, or~~
6 VBEs may be applied to competitive solicitations for construction services in which
7 fifty percent (50%) or more of the cost will be paid from State-appropriated funds
8 which have been appropriated at the time of the competitive solicitation. The
9 solicitation documents for construction services in this event must disclose that no
10 SBE/MBE or M/WBE will be awarded based upon the State restriction regarding the
11 utilization of local vendor preference.

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

25 B. **Bid Preferences:**

26 ***Bid Preference:*** Specific goals for each project or contract may be
27 adopted on a project-by-project, or contract-by contract basis, in
28 which the contract award shall be made to the lowest responsive,
29 responsible bidder meeting the ~~S/MBE, or M/WBE, or VBE~~
30 subcontracting goals for the contract/project, when that bidder's
31 price does not exceed the lowest bidder's price by an amount greater
32 than the dollar or percentage amount set by the Goal Setting
33 Committee.

1 **Evaluation Preference** – In ranking and evaluating proposals for
2 “best value” contracts in which factors other than price are relevant
3 to the selection process, the Board may award up to twenty
4 percent (20%) of the total points available to a S/MBE, ~~or~~ M/WBE, or VBE
5 or VBE or a joint venture/teaming/partnership with an S/MBE, ~~or~~
6 M/WBE, or VBE partner in response to a request for proposal.

7 **Professional Services Evaluation**

8 1. In the selection process for the award of certain professional
9 services contracts, the District may include as one (1) of its
10 evaluation criteria the level of S/MBE, ~~or~~ M/WBE, or VBE
11 participation on the team or in subcontract participation.
12 Under this remedial approach, the maximum number of
13 evaluation points is available to an S/MBE, ~~or~~ M/WBE, or
14 VBE proposer.

15 2. A summary of any applicable S/MBE, ~~or~~ M/WBE, or VBE
16 Program procedures shall be plainly stated in each
17 solicitation. For competitive professional services contracts, a
18 point system of evaluation will be used by an evaluation
19 committee to determine the recipient of the contract award
20 recommendation. Businesses submitting proposals to
21 provide professional services to the District will be eligible to
22 receive on a sliding scale a designated number of the total
23 possible points based upon their S/MBE, ~~or~~ M/WBE, or VBE
24 participation. The distribution of points allocated to the
25 evaluation criteria shall be stated in the request for proposal.
26 S/MBE, ~~or~~ M/WBE, or VBE participation shall be only one of
27 several criteria used to evaluate each proposal. Maximum
28 points shall be awarded when the proposer is a certified
29 S/MBE, ~~or~~ M/WBE, or VBE. The provisions within this
30 section pertaining to the procurement of professional services
31 are not intended to be used to the exclusion of other
32 provisions of this policy.

1 C. **Mandatory Subcontracting:**

- 2 1. The GSC may at its discretion and on a contract-by-contract
3 basis, require that a predetermined percentage up to forty
4 percent (40%) of a specific contract be subcontracted to
5 eligible S/MBEs, ~~or~~ M/WBEs, or VBEs.
- 6 2. An S/MBE, ~~or~~ M/WBE, or VBE prime contractor may not
7 subcontract more than forty-nine percent (49%) of the
8 contract value to a non-S/MBE, ~~or~~ M/WBE, or VBE.
- 9 3. A prospective bidder on a Board contract shall submit at the
10 ~~time of bid Form S providing~~ the name of the S/MBE, ~~or~~
11 M/WBE, or VBE subcontractor or subcontractors and
12 describing both the percentage of subcontracting by the
13 S/MBE, ~~or~~ MWBE, or VBE and the work to be performed by
14 the S/MBE, ~~or~~ M/WBE, or VBE. A bidder may request a full
15 or partial waiver of this mandatory subcontracting
16 requirement from the OEO for good cause by submitting the
17 Unavailability Certification Form to the OEO prior to bid
18 opening. Under no circumstances shall a waiver of a
19 mandatory subcontracting requirement be granted without
20 submission of adequate documentation of good faith efforts
21 by the bidder and careful review by the OEO. The OEO shall
22 determine a waiver request upon the following criteria:
- 23 a. whether the requestor of the waiver has made good
24 faith efforts to subcontract with qualified and available
25 S/MBEs, ~~or~~ M/WBEs, or VBEs;
- 26 b. whether subcontracting would be inappropriate and/or
27 not provide a "commercially useful function" under the
28 circumstances of the contract; or
- 29 c. whether there are no certified S/MBEs, ~~or~~ M/WBEs, or
30 VBEs that are qualified and available to provide the
31 goods or services required.

- 1 4. In the absence of a waiver granted by the OEO, failure of a
2 prime contractor to commit in its bid or proposal to satisfying
3 the mandatory S/MBE, ~~or~~ M/WBE, or VBE subcontracting
4 goal shall render its bid or proposal non-responsive.
- 5 5. In the absence of a waiver granted by the OEO, failure of a
6 prime contractor to attain a mandatory subcontracting goal
7 for S/MBE, ~~or~~ M/WBE, or VBE participation in the
8 performance of its awarded contract shall be grounds for
9 termination of existing contracts with the Board, debarment
10 from performing future Board contracts, and/or any other
11 remedies available under the terms of its contract with the
12 Board or under the law.
- 13 6. A prime contractor is required to notify and obtain written
14 approval from the OEO in advance of any reduction in
15 subcontract scope, termination, or substitution for a
16 designated S/MBE, ~~or~~ M/WBE, or VBE Subcontractor.
17 Failure to do so shall constitute a material breach of its
18 contract with the Board.
- 19 D. **Sheltered Market:**
- 20 1. The OEO and GSC may select certain contracts for award to a
21 S/MBE, ~~or~~ M/WBE, or VBE or a joint venture with a S/MBE,
22 ~~or~~ M/WBE, or VBE through the Sheltered Market Program.
- 23 2. In determining whether a particular contract is eligible for the
24 Sheltered Market Program, the OEO and GSC shall consider
25 whether there are at least three (3) S/MBEs, ~~or~~ M/WBEs, or
26 VBEs that are capable and available to participate in the
27 Sheltered Market Program for that contract; the degree of
28 underutilization of the S/MBE, ~~or~~ M/WBE, or VBE prime
29 contractors in the specific industry categories; and the extent
30 to which the Board's S/MBE, ~~or~~ M/WBE, or VBE prime
31 contractor utilization goals are being achieved.

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

6 **Contract Solicitation and Award**

- 7 A. The OEO shall preview all solicitations for construction,
8 procurement, and professional services prior to public dissemination
9 for compliance with the objectives stated in this policy and to ensure
10 that bid specifications do not unnecessarily restrict the ability of
11 S/MBE, ~~and~~ M/WBE, VBE firms to compete and bid. All District
12 award recommendations shall bear the review signature of the OEO
13 Director.
- 14 B. Disqualification/Rejection – The District and Board may reject any
15 proposals from bidders who have previously failed to perform
16 properly and who have done so by commission or omission of an act
17 of such serious and compelling nature that the act indicates a
18 serious lack of business integrity or honesty.
- 19 C. Contract Compliance – As the Superintendent’s designee, the OEO
20 will establish procedures for monitoring and evaluating program
21 performance and compliance.
- 22 D. The District and Board may reject any proposal deemed
23 non-responsive for failing to meet the diversity requirements.
- 24 E. A firm’s failure to comply with the contract may constitute a
25 violation of the anti-discrimination provisions of Policy 6465 and
26 result in suspension or debarment pursuant to Policy 6320.04.

1 **Pre-Award Waiver**

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

14 **Fair Subcontracting Practices**

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

1 **Prompt Payment**

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

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

18 **Violations and Sanctions**

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

- 20 1. fraudulently obtain, retain, or attempt to obtain, or aid
21 another in fraudulently obtaining, retaining, or attempting to
22 obtain or retain certification status as an S/MBE, M/WBE, or
23 ~~VBE~~VBE for purposes of this policy;
- 24 2. willfully falsify, conceal or cover up by a trick, scheme or
25 device, a material fact or make any false, fictitious or
26 fraudulent statements or representations, or make use of any
27 false writing or document, knowing it contains any false,
28 fictitious, or fraudulent statements or entry pursuant to this
29 policy;

- 1 3. willfully obstruct, impede, or attempt to obstruct or impede
2 any authorized official or employee who is investigating the
3 qualifications of a business entity that has requested
4 certification as an S/MBE, M/WBE, or ~~VBE~~VBE;
- 5 4. fraudulently obtain, attempt to obtain or aid another person
6 fraudulently obtaining, or attempting to obtain public monies
7 to which the person is not entitled under this policy;
- 8 5. failing to cooperate in any investigation of violations of this
9 policy or Policy 6465;
- 10 6. making false statements to any entity that any other entity is
11 or is not certified as an S/MBE, ~~or~~M/WBE, VBE for purposes
12 of this policy.
- 13 B. Sanctions – Any person or business entity that violates this policy
14 shall be subject to suspension, contract cancellation, or debarment
15 pursuant to Policy 6320 and Policy 6320.04 and any other penalty
16 provided by law.
- 17 C. The Superintendent shall apply appropriate sanctions for violations
18 of this policy upon recommendation of the OEO.

19 **Anti-Discrimination Complaints**

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

1 **Small/Minority Business Enterprise, —and—Minority/Women Business**
2 **Enterprise, and Veterans Business Enterprise Program Performance Review**

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

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

19 **Policy Review**

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

26 **Severability**

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

1 **Statutory Citations**

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

4 F.S. 218.735

5 F.S. 287.093

6 F.S. 607.11

7 F.S. 1001.41(2)

8 F.S. 1013.46(1)(b)

9 Revised 11/21/12

10 Revised 1/16/13

11 Revised 9/3/13

12 Revised 6/18/14

13 Revised 1/14/15

14 Revised 10/14/15

15 Revised 3/9/16

16 Revised 11/15/17

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