

Lisa M. Martinez, Chief Strategy Officer

**SUBJECT:            FINAL READING:    PROPOSED AMENDMENTS TO BOARD  
POLICY 6320.02, *SMALL/MICRO AND MINORITY/WOMEN-  
OWNED BUSINESS ENTERPRISE PROGRAMS* AND APPROVE  
THE *OFFICE OF ECONOMIC OPPORTUNITY ADMINISTRATIVE  
PROCEDURES MANUAL***

**COMMITTEE:        FISCAL ACCOUNTABILITY AND GOVERNMENT RELATIONS**

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

At the May 16, 2018 meeting, the School Board of Miami-Dade County, Florida approved Agenda Item E-117, authorizing the Superintendent to initiate rulemaking to amend Policy 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*. This item requests that the Board adopt the proposed amendments. In addition, the item requests approval of the *Office of Economic Opportunity Administrative Procedures Administrative Manual* (OEO Manual), which has been rewritten and reformatted to better align with Policy 6320.02 and OEO practices.

The amendments to both the policy and *OEO Manual* include clarity on multiple items referenced by the Office of Inspector General in its memo dated February 2, 2018, as well as other changes that respond to Board and stakeholder concerns. 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 both School Board Policy 6320.02 and the *OEO Manual*. On May 8, 2018, the Miami-Dade County Office of Inspector General sent a formal letter to members of the School Board of Miami-Dade County, Florida and the Superintendent reflecting the broader process of OEO staff affirmatively responding to their observations outlined in the February 2018 memo and asked for favorable consideration of the proposed changes. Other changes in the *OEO Manual* are proposed in order to align the administrative procedures with policy changes and practices.

**E-117**

In addition, the title of the Policy is proposed to be changed to *Small/Micro, Minority/Women-Owned, and Veteran Business Enterprise Programs* which is reflective of the broader inclusion of Veteran Business Enterprise Programs from Service-Disabled Veteran Business Enterprise Programs.

The item also authorizes the Superintendent to update the *OEO Manual*, as needed, in accordance with Policy 6320.02 and other Board policies with input from stakeholders including feedback from the Small, Micro & M/WBE Advisory Committee.

The Notice of Intended Action was published in the *Miami Daily Business Review* on May 21, 2018, and posted in various places for public information and mailed to various organizations representing persons affected by the amended Policy and to individuals requesting notification. The time to request a hearing or protest the adoption of these amendments has elapsed.

Attached are the Notice of Intended Action and the proposed Policy Amendments. Changes are indicated by underscoring words to be added and ~~striking through~~ words to be deleted. The revised OEO Manual is also attached.

**RECOMMENDED:** That The School Board of Miami-Dade County, Florida;

1. Adopt the proposed amendments to School Board Policy 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*, and authorize the Superintendent to file the amended policy with The School Board of Miami-Dade County, Florida, to be effective June 20, 2018;
2. Approve the revised *Office of Economic Opportunity Administrative Procedures Manual*; and
3. Authorize the Superintendent to update the *Office of Economic Opportunity Administrative Procedures Manual*, as needed in accordance with Board policies and with input from stakeholders.

## 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 and Minority/Women-Owned Business Enterprise Programs*, at its meeting of June 20, 2018.

**PURPOSE AND EFFECT:** It is recommended that Board Policy 6320.02, *Small/Micro and Minority/Women-Owned 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. In addition, the title of the policy is proposed to be changed to *Small/Micro, Minority/Women-Owned, and Veteran Business Enterprise Programs*.

**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) (2); and 1001.43(10), F.S.

**LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC:** 287.0943; 288.703; 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, AND MINORITY/WOMEN-OWNED, AND VETERAN  
2                                    BUSINESS 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 VBEs to participate in the award and performance of  
12 all Board contracts, including construction, professional services  
13 including A/E and non-A/E, and goods and services;

14 C. monitor, track, and certify small/micro businesses, ~~and~~  
15 minority/women business—enterprises, and veteran business  
16 enterprises;

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

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

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

26 G. establish economic incentives that encourage the waiver of bonds,  
27 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 firms;
- 19 N. report annually through the Superintendent to the Board regarding  
20 the effectiveness of these programs; and
- 21 O. ~~monitor local workforce development initiatives and/or goals~~  
22 ~~through community based agreements with reputable and reliable~~  
23 ~~referral agencies for Board construction, professional A/E and non-~~  
24 ~~A/e services, and goods and services. monitor local workforce goals~~  
25 ~~as established by the Goal Setting Committee for construction,~~  
26 ~~professional services and goods and services; including initiatives~~  
27 ~~through community based agreements with reputable and reliable~~  
28 ~~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 Programs and to promote the participation and use of  
7           SBEs/MBEs, M/WBEs, and VBEs in all procurement activities of  
8           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 S/MBE,  
13           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 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 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 certification to provide the type of goods or services  
34 being purchased under the contract; (c) ability to obtain reasonably  
35 required financing/insurance that is consistent with normal  
36 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            I.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, or 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, or 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            J.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            K.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            LK.    **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           ML.    **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            NM.    **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           ON.    **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            PQ.    **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            QR.    **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           RQ.    **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           SR.    **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           T.      **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           US.    **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           VF.    **Minority/Women-Owned Business Enterprise (M/WBE)** – see the  
19            definitions under the Minority/Women Business Enterprise Program  
20            section of this policy.
- 21           WU.    **Points** – the quantitative assignment of value for specific evaluation  
22            criteria in the vendor or consultant selection process.
- 23           XV.    **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           YW.   **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           ZX.   **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           AAV.   **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           BBZ.   **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           CCAA. **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            DDBB. **Service-Disabled Veteran** - a veteran who is a permanent Florida  
2            resident with a service-connected disability as determined by the  
3            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            EECC. **Sheltered Market** - an affirmative procurement initiative designed  
7            to set aside an M-DCPS Board contract/project bid for bidding or  
8            selection exclusively among S/MBE, M/WBE, and/or VBE firms.
- 9            FFDD. **Significant Employee Presence** - no less than twenty-five  
10           percent (25%) of a firm's total number of employees are domiciled in  
11           Miami-Dade County, Florida.
- 12           EE. ~~**SMBE or M/WBE Directory**~~ - ~~listing of certified SMBEs and~~  
13           ~~MWBEs.~~
- 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, M/WBEs, or  
27 VBEs to perform a commercially useful function.
- 28            LLKK. **Suspension** - the temporary stoppage of an S/MBE, M/WBE or  
29 VBE firm's participation in the Board's contracting process for a  
30 finite period of time.
- 31  
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)
- 37  
38



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, 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, 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.*

17  
18 **Goal Setting Committee**

19 The Superintendent shall create and staff a Goal Setting Committee (GSC) to  
20 establish S/MBE, and M/WBE, and VBE Program goals and select appropriate  
21 incentives to apply to specific contracts based upon industry categories, vendor  
22 availability, and project-specific characteristics. The Superintendent shall  
23 determine the size of the GSC that is to be chaired by the OEO who shall serve as a  
24 voting member. The Superintendent shall also appoint the remaining members of  
25 the GSC from the Board's procurement personnel and other Board departments  
26 affected by this program. The GSC shall meet as often as it determines necessary,  
27 but not less than twice annually, to develop the goal setting methodologies to be  
28 implemented by the OEO on a project-by-project or contract-by-contract basis, and  
29 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/MBE Small/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 \$69 million for construction and  
28 construction-related specialty trades, \$47 million for goods and  
29 services, \$25 million for professional services (architectural and  
30 engineering), and \$47 million for professional services  
31 (non-architectural and non-engineering).  
32

| 1

2 B. When an MBE exceeds the eligibility certification thresholds, it  
3 automatically graduates ~~and is subject to the SBE small business~~  
4 criteria and restrictions.

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

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

| 12 **Small Business Enterprise/Micro Business Enterprise Program Suspension,**  
13 **Certification Revocation, and/or Debarment**

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

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

| 26 **Small Business Enterprise/Micro Business Enterprise Certification Appeals**

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

1 **Veteran Business Service-Disabled Veteran Enterprise Program**

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

10 **Veteran Business Eligibility Criteria**

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

- 13
- 14 1. Employs 200 or fewer permanent full-time employees;
- 15 2. Together with its affiliates has a net worth of \$5 million or less or, if a sole  
16 proprietorship, has a net worth of \$5 million or less including both personal and  
17 business investments;
- 18 3. Is organized to engage in commercial transactions;
- 19 4. Is domiciled in this state; and,
- 20 5. Is at least fifty-one (51%) owned and controlled by one or more veterans.
- 21 6. The business must have an actual place of business in the MSA for at least one (1)  
22 year preceding the application and be registered as a vendor with the District;
- 23 7. The business has an applicable local business tax receipt in the MSA and all  
24 required licenses;
- 25 8. An owner of the business must have the required professional license(s); and,
- 26 9. An owner of the business must submit a DD-214 form issued by the United States  
27 Department of Veteran Affairs or the United States Department of Defense or evidence of  
28 veteran status.
- 29

30 **Minority/Women Business Enterprise Program**

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

1           A.    Terms and Definitions

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

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

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

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

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4

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

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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 or naturalized non-minority 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.

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c. Ownership by a minority person does not include ownership that is the result of a transfer from a non-minority person to a minority person within a related immediate family group if the combined total net asset value of all members of such family group exceeds \$1 million. The term "related immediate family group" means one (1) or more children under sixteen (16) years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.

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d. Minority/Women owners must also demonstrate control over the affairs, management, and operations of the business. The discretion of minority/women owners shall not be subject to any formal or informal restrictions (including, but not limited to, bylaw provisions, partnership agreements, trust agreements, or requirements for cumulative voting) that would impact or usurp the minority/women owners' managerial and operational discretion.

- 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 M/WBE  
23                  online Directory which will be regularly updated and available  
24                  to 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/MBBE 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.



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



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C. **Mandatory Subcontracting:**

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

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

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

6    **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 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;
- 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

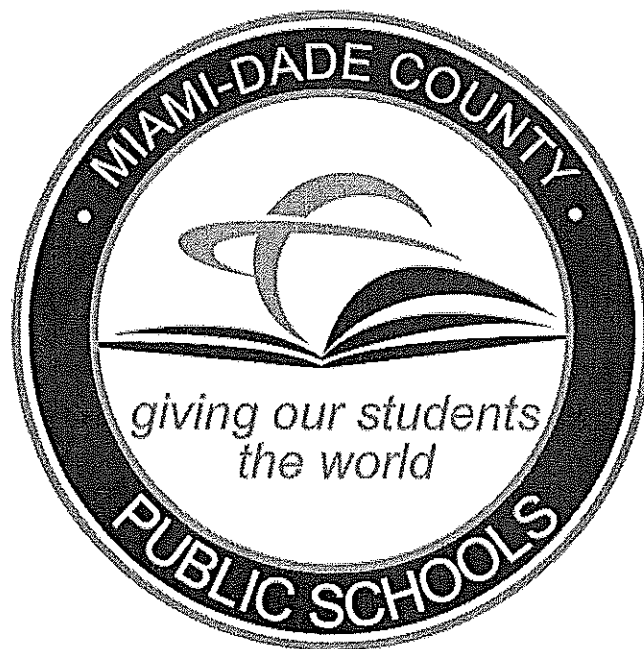
15 Revised 3/9/16

16 Revised 11/15/17

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# Office of Economic Opportunity Administrative Procedures Manual



## **The School Board of Miami-Dade County, Florida**

Ms. Perla Tabares Hantman, Chair

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Ms. Susie V. Castillo

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Ms. Mari Tere Rojas

### **Superintendent of Schools**

Mr. Alberto M. Carvalho

### **Student Advisor**

Mr. Bryce Febres

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## I. INTRODUCTION

Miami-Dade County Public Schools (M-DCPS) is the fourth largest school district in the United States. The School Board of Miami-Dade County, Florida originally adopted Policy 6320.02 *Small, Micro Business Enterprise (S/MBE) Program* on November 2012 to provide expanded and equitable participation by small and micro businesses in M-DCPS procurement of goods and services, construction, and professional services. At the November 2014 and the September 2015 School Board meetings, School Board Policy 6320.02 was updated to include Minority and Women-Owned Business Enterprise (M/WBE) Program.

The Office of Economic Opportunity (OEO) Administrative Procedures Manual (Procedures) was created to supplement Policy 6320.02. The purpose of the OEO Procedures is to provide key elements for the implementation of all initiatives and objectives of the programs. The Procedures further detail the certification and re-certification process, contractor prequalification, compliance, identifying Small/Micro Business Enterprise (S/MBE), Minority/Women Business Enterprise (M/WBE) or Veteran Business Enterprise (VBE) business assistance opportunities and other affirmative procurement initiatives. The original Procedures was brought to the May 7, 2014, School Board Meeting for approval.

## II. PURPOSE

This document constitutes the Procedures for the implementation of goals and objectives as set forth in the current adopted Policy 6320.02 *Small/Micro, Minority/Women-Owned, and Veteran Business Enterprise Programs* (Programs).

The Procedures establish rules and guidelines for the application of various Affirmative Procurement Initiatives (APIs) by expanding the availability of contracting opportunities for S/MBE, M/WBE, and VBE and removing barriers to doing business with M-DCPS. The APIs include but are not limited to sheltered markets, mandatory subcontracting goals, evaluation preferences, bonding assistance, and mentor-protégé programs.

The purpose of the Programs is to: (1) stimulate the local economy by providing equitable and expanded contracting opportunities for local businesses within the area served by M-DCPS; (2) increase the capacity of S/MBE, M/WBE and VBE firms in the community by affording the opportunity to grow in size and become more competitive with more established businesses; (3) remove barriers within the District's control that affects the formation, growth, and equitable participation of minority and women business enterprises in Board contracts through both a race/gender-neutral and race/gender-conscious means; and, (4) maximize the participation of underutilized groups, as identified in the most recent disparity studies.

OEO may amend or provide additional Procedures as required in accordance with Policies 6320.02 and 6334 *Prequalification of Contractors for Educational Facilities Construction*.

**A. M-DCPS Diversity Statement**

School Board Policy 6320.06 *Diversity, Equity and Inclusion in Business Operations and Practices*, states in part, "The School Board encourages and fosters an environment of diversity, equity, and inclusion in all of its business operations and practices. Inherent in this policy is the Board's commitment to ensuring that the rich tapestry of diversity, inclusion of varying ideas, backgrounds, and perspectives, if collectively recognized, creates cultural value and endorses the Board's obligation to eliminating perceived, artificial, or actual barriers to business engagements with the District and flourish without the impediments or barriers of discrimination."

**B. OEO Mission Statement**

In keeping with Policy 6320.02 and the District's mission and values, OEO promotes the formation, economic inclusion, and growth of S/MBEs, M/WBEs, and VBEs. Moreover, OEO engages in ongoing collaboration with other municipal agencies, quasi-public agencies, and private sector stakeholders to promote a more vibrant and inclusive local marketplace that maximizes future economic opportunities. The OEO strives to ensure that local SBEs, MBEs, M/WBEs, and VBEs have the maximum opportunity to do business with the School Board of Miami-Dade County, Florida, and provide equal opportunity for all segments of the contracting community. The OEO currently operates under Policy 6320.02.

**III. SCOPE/OBJECTIVES**

Unless precluded by applicable State or local procurement laws or by limitations imposed by the dollar thresholds identified therein, the provisions of these Programs shall apply to the procurement of construction, architecture & engineering (A&E) professional services, non-A/E professional services, and goods and other non-professional services. Procurements subject to a S/MBE, M/WBE and VBE sheltered market (formerly called set-asides) are not exempt from the other requirements of Policy 6320.02.

To meet the objectives of this Program, OEO is committed to:

1. Increase the participation of S/MBE, M/WBE and VBE in contracting with M-DCPS;
2. Annually evaluate the progress and effectiveness of the various Programs using accumulated availability and utilization data to identify specific program provisions



and Affirmative Procurement Initiatives (APIs) that require modification, expansion, and/or curtailment;

3. Maintain a Goal Setting Committee (GSC) to establish the Programs annual goals and/or contract-specific goals. The purpose of the GSC is to apply the appropriate APIs to specific Board contracts based upon industry categories, vendor availability, and other project-specific characteristics identified under these Procedures. The Superintendent shall approve the size and composition of the GSC, not to exceed nine (9) members. The GSC is to be chaired by the OEO Program Administrator or designee. Members of the GSC may include staff from various District departments including Procurement, Capital Construction, A/E Selection, Maintenance, School Operations, Audit and staff from other District departments impacted by this program as described in Policy 6320.02; and,
4. Maintaining a S/MBE, M/WBE, and VBE Advisory Committee to provide guidance on the implementation and/or modification of the Programs, and to promote participation and use of these businesses in the procurement activities of M-DCPS. The S/MBE, M/WBE, and VBE Advisory Committee shall have representation from stakeholders in the local, small, micro, and general business community based organizations, and local government entities which may include professional construction, trade businesses and socio-economic organizations.

#### **IV. RESPONSIBILITIES AND DUTIES**

##### **A. Office of Economic Opportunity (OEO)**

The OEO is responsible for general oversight, management, and coordination of all aspects of the administration of the Programs pursuant to Policy 6320.02 that are engaged in the procurement of goods and services, construction, non-A/E professional service, and A/E professional services.

##### **B. Economic Equity and Diversity Compliance Officer**

The OEO is the Superintendent's designee to administer the Programs, and shall serve as the Program Administrator. The responsibilities of the Program Administrator are identified in and are in accordance with Policy 6320.02.

##### **C. Certification Administrator**

The Certification Administrator is responsible for the implementation and evaluation of businesses seeking certification status for participation in the OEO Programs. The Certification Administrator shall review and evaluate every certification application

submitted through the Online Diversity Compliance System or directly to the District. The Certification Administrator shall also be responsible for periodically re-evaluating the certification status of firms in accordance with Policy 6320.02, or upon formal request regarding changed circumstances that may have affected a firm's size, industry designation, ownership, or control. The Certification Administrator shall ensure that firms are certified, re-certified, or de-certified in accordance with the relevant eligibility standards set forth in Policy 6320.02.

**D. Compliance Administrator**

The Compliance Administrator is responsible for monitoring the level of S/MBE, M/WBE, and VBE utilization, and over all compliance by vendors with applicable goals as it applies to bid solicitations, and in subsequent terms of awarded contracts and subcontracts.

**E. Contractor Prequalification Administrator**

The Contractor Prequalification Administrator is responsible for obtaining complete Contractor Prequalification Applications, and all other information that is deemed necessary to determine whether a firm meets the criteria for prequalification eligibility as set forth in State Requirements for Educational Facilities 2014 (SREF) Chapter 4.1 and relevant Policies.

**F. Outreach Administrator**

The Outreach Administrator is responsible for facilitating engagement with community organizations and vendors seeking certification, prequalification and general information as it relates to M-DCPS bid solicitations and contract opportunities, procurement policies and practices, and policies and practices of the OEO. The Outreach Administrator will manage the outreach efforts with collaborating agencies and community boards, and provide technical assistance to the businesses in accordance with Policy 6320.02.

**V. TERMS AND DEFINITIONS**

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

***Affiliate*** – Business concerns, organizations, or individuals that directly or indirectly, (a) are controlled by another entity or either controls or has the power to control the other, or (b) third-party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity that has been organized by a delinquent entity, individual, or affiliate, following a contractor being declared

delinquent that has the same or similar management, ownership, or principal employees as the delinquent contractor.

**Affirmative Procurement Initiatives** – Refers to any procurement tool to enhance contracting opportunities for S/MBE, M/WBE and VBE firms including: bonding / insurance waivers, bid incentives, price preferences, sheltered market, mandatory subcontracting, S/MBE and M/WBE evaluation preference points in the scoring of proposal evaluations.

**Award** –Final selection of a bidder or offeror for a specified prime contract or subcontract dollar amount. Awards are made by the School Board to prime contractors or by vendors or by prime contractors to subcontractors or sub-vendors, usually pursuant to an open invitation to bid (ITB) or request for proposal (RFP) process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar value of a contract instead of the actual dollar amounts that have been paid to a bidder or offeror under an awarded contract.)

**Bid Incentives** – Additional inducements or enhancements in the bidding process that are designed to increase the chances for the selection of S/MBE, M/WBE and VBE firms in competition with other firms. These bid incentives may be applied to all solicitations, contracts, and letter agreements for the purchase of Construction, Professional Services, and Goods and Services, including change orders and amendments.

**Certificate of Compliance** – Certificate and/or letter indicating the firm has complied with all relevant M-DCPS policies.

**Certificate of Compliance Renewal** – Application submitted by the firm indicating the firm has complied with all relevant M-DCPS policies.

**Certification** – Process by which OEO determines a business meets the criteria for classification as S/MBE, M/WBE and/or VBE according to Policy 6320.02.

**Close Out Exit Conference** – Meeting with the firm officials to discuss the tentative findings of the compliance evaluation, propose recommendations, and to determine the firm's compliance with all relevant M-DCPS policies.

**Commercially Useful Function** –S/MBE, M/WBE or VBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a commercially useful function, the S/MBE, M/WBE or VBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and

quality, ordering the material, and installing (where applicable) and paying for the material itself.

**Community Outreach** – Activities and targeted events to increase awareness of M-DCPS' procurement and contracting opportunities for Small and Micro, M/WBE and VBE participation.

**Conciliation Agreement** – Binding written agreement between a contractor and M-DCPS that details specific contractor commitments, actions, or both to resolve the violations set forth in the agreement.

**Conditional Certificate of Compliance** - Certificate and/or letter indicating the firm has conditionally complied with all relevant M-DCPS policies.

**Construction and Construction-related Specialty Trades** – Means all labor, services, and materials provided relating to the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property.

**Contractor**- Person, firm or corporation that is authorized to do business in the State of Florida and that is properly licensed or registered for the work to be performed with whom a contract may be made for the performance of Board work.

**Contract Compliance Review** – Analysis and evaluation of the firm's policies & procedures and any supporting documentation verifying compliance with M-DCPS policies.

**Contractor Disciplinary Review Committee (CDRC)** –Committee established under Policy 6320.04, Contractor Discipline, that is responsible for making recommendations for contractor suspension, prequalification certificate suspension and revocation, debarment, and other disciplinary actions.

**Contractor Prequalification Appeals Committee (CPAC)** – Committee responsible for hearing all appeal requests from companies that are denied contractor prequalification.

**Contractor Prequalification Review Committee (CPRC)** – Committee responsible for reviewing and evaluating Contractor Prequalification Applications determining eligibility and recommending that contractors be prequalified or not, to bid on construction projects of a specific scope, type, and dollar value.

**Control** –A person or business owner authorized to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business, and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

**Corrective Action Plan** –Written agreement between a contractor and M-DCPS that details specific contractor commitments, actions, or both to correct the deficiencies and/or violations identified during the compliance review.

**Desk Audit** – Comprehensive analysis utilizing the M-DCPS On-line Diversity Compliance System of the firm's contracts, policies & procedures, small/micro & minority/women business utilization & goals, local workforce hiring utilization & goals and any supporting documentation to determine whether a firm is compliant.

**Economic Inclusion** – Efforts to promote and maximize commercial transactions within, between, and among all segments of the business population, regardless of race or gender, within the relevant marketplace.

**Findings & Recommendations** – Identification of any discrepancies, and/or violations and any recommendations necessary to resolve the identified findings with a corrective action plan or conciliation agreement.

**Front** – Business which purports to be a certified firm for the purpose of obtaining District contracts, but which is actually owned, controlled, and/or operated in a manner that is inconsistent with certification procedures, the performance of a commercially useful function and/or that does not comply with the District's procurement, professional services and construction contracts.

**Goal** – The level of contract participation or proportion of contract dollars that is anticipated to be spent on an annual basis or on a specific contract with a specified segment of the total population of Ready, Willing, and Able (RWA) firms (e.g., S/MBE firms). These goals are based upon availability analysis derived from a database established by the OEO and Purchasing. Upon completion of availability analysis, such goals for specific contract participation may, under certain circumstances, be set and narrowly tailored by race, gender, and industry codes. Annual goals are intended as an administrative guide only to assist the District in its annual policy review to evaluate the effectiveness of OEO policies and procedures, and to determine whether the use of more aggressive or less aggressive remedies are warranted in the future. Annual goals shall not be routinely applied to specific contracts absent independent availability analysis demonstrating that they are appropriate for application to a specific contract

**Goal Setting Committee** – Committee established by the Superintendent and chaired by the OEO Program Administrator to determine S/MBE, M/WBE, and/or VBE project goals, workforce goals, and select appropriate S/MBE, M/WBE, and/or VBE Affirmative Procurement Initiatives to be applied to each contract.

**Good Faith Efforts** – Documentation (evidence) of the Bidder’s intent to comply with S/MBE, M/WBE, and/or VBE Program goals and procedures, including, but not limited to the following: (1) documentation within a bid submission or proposal reflecting the Bidder’s commitment to comply with S/MBE, M/WBE, and/or VBE Program goals as established by the Goal Setting Committee for a particular contract; or (2) documentation of efforts made towards achieving the S/MBE, M/WBE, and/or VBE Program goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of S/MBE and/or M/WBE subcontract opportunities on the Miami-Dade County Public Schools (M-DCPS) web site; solicitations of bids from all qualified S/MBE, M/WBE, and/or VBE firms listed in the District’s Certification Directory of certified S/MBE and/or M/WBE firms; correspondence from qualified S/MBE, M/WBE, and/or VBE firms documenting their unavailability to perform contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for S/MBE, M/WBE, and/or VBE firms to perform; documentation of efforts to assist S/MBE, M/WBE and/or VBE firms with obtaining financing, bonding, or insurance required by the bidder; and documentation of consultations with trade associations and consultants that represent the interests of small and local businesses in order to identify qualified and available S/MBE, M/WBE, and/or VBE subcontractors).

**Goods and Services** – Refers to all items, supplies, materials and general support services, except consulting services and capital projects, which may be needed in the transaction of public business or in the pursuit of any government undertaking, project or activity. The term refers to, among other subjects, equipment, furniture, food, information technology, materials for construction, or personal property of any kind, including non-personal or contractual services such as the repair and maintenance of equipment and furniture. It also refers to transportation or hauling of goods or commodities, janitorial, security, and related services as well as procurement of material and supplies provided by the Procuring Entity for such services. The term "related" shall include but not be limited to, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the Procuring Entity.

**Graduation** – Firm whose gross revenue exceeds the eligibility certification thresholds and as a result moves to the next tier of eligibility within a program; ascends to a higher tier within another program; or progression out of all programs.

**Gross Revenue** – All revenue obtained in whatever form received or accrued from whatever source as compensation for goods and services sold including sales of products or services, interest, dividends, rents, royalties, fees or commissions, reduced by returns and allowances.

Gross revenue does not include proceeds from sales of capital assets, and investments, proceeds from transaction between a firm and its domestic and foreign affiliates

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

***Industry Categories*** – Procurement groupings for M-DCPS contracts for purposes of the administration of APIs shall be inclusive of Architectural & Engineering, Construction, Professional Services, Goods and Services, and Commodities procurements. Industry Categories may also be referred to as “business categories.”

***Interlocal Agreement*** – Partnership with a public agency and M-DCPS to expedite and increase participation with S/MBE, M/WBE, and VBE firms.

***Joint Venture*** - Association of two or more persons or businesses carrying out a single business enterprise for which purpose they combine their capital, efforts, skills, knowledge and/or property. Joint ventures must be established by written agreement. Joint Ventures may be certified on a contract-by-contract basis for purposes of qualifying for treatment as S/MBE firms.

***M-DCPS Board Item Reviews for Compliance and Certification*** – Formal review process of all compliance-related and certification data included in all board items including construction, professional services, non-A/E professional services and goods and services.

***M-DCPS Internal Goal Compliance and Contracting Reviews*** – Formal review process of all potential vendors to determine compliance with S/MBE, M/WBE, and VBE established goals for Construction, Professional Services, Non-A/E Professional Services and Goods & Services.

***Metropolitan Statistical Area (MSA)*** – Geographical region within the relevant geographic market of the Miami-Dade Metropolitan Statistical Area (Miami-Dade/Broward/Palm Beach Counties).

***Micro-Business Enterprise*** - Any contractor, subcontractor, manufacturer or service firm (a) that has been doing business under the same ownership or management and has maintained its actual place of business in the MSA for a period of at least one (1) year immediately prior to the date of application for certification under this section, (b) that had annual gross revenues

not exceeding the thresholds for a Micro-Business Enterprise as identified in this policy for each industry, and (c) at least fifty-one percent (51%) of the ownership of which is held by a person or persons who exercise operational authority over the daily affairs of the business and have the power to direct the management and policies and receive the beneficial interests of the firm. Representations regarding average gross revenue and payroll are subject to audit. If a business has not existed for three (3) years, the employment and gross revenue limits shall be applied based upon the annual averages over the course of the existence of the business.

**Minority Ownership** means that for:

- **Sole Proprietorship** – sole proprietor must be a minority person or woman.
- **Partnership**- minority/woman individual's interest must include at least fifty-one (51%) of the ownership, profit/loss, voting control, and capital of the partnership.
- **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.
- **Limited Liability Company (LLC)** - minority/women must control the management and operations, as well as hold at least fifty-one (51%) of the company's ownership interest.

**Minority Person** – Naturalized citizen or person born in the United States. Resident aliens and holders of permanent visas are not considered to be citizens. The following groups are considered:

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



- A **Hispanic American**, person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, not of the African Diaspora.
- An **Asian American**, person having origins of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands before 1778.
- A **Native American**, 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.
- A **Woman**, an American born or naturalized non-minority woman.

**Minority/Women Business Enterprise (M/WBE)** – Any contractor, subcontractor, manufacturer or service company (a) that has been doing business under the same ownership or management and has maintained its actual place of business in the MSA for a period of at least one(1) year immediately prior to the date of application for certification under this section, and (b) at least fifty-one percent (51%) of the ownership of which is held by a minority or woman person or persons who exercise operational authority over the management and control of the daily affairs of the business and have the unfettered power to make key decisions about the business, and that share in financial benefits and liabilities of the company commensurately with the percentage of overall ownership interests that they hold in the company.

**Naturalization** –Process by which U.S. citizenship is granted to a foreign citizen or national after he or she fulfills the requirements established by Congress in the Immigration and Nationality Act (INA).

**Non-Compliance** – Company’s failure to adhere to the conditions set out in M-DCPS policy and/or failure to correct deficiencies and/or violations.

**Non-Discriminatory Employment** – Prohibit discrimination against and harassment of any employee because of race, color, national or ethnic origin, age, religion and any other protected classes.

**Online Diversity Compliance System (ODCS)** - Web-based software application used by the M-DCPS to track and monitor S/MBE, M/WBE and VBE availability and utilization (i.e., “Spend” or “Payments”) on school district contracts.

**On-Site Workforce Visit Review** – Visit to a project site by OEO Staff to analyze, observe and record if the workforce reported through the Online Diversity Compliance System is accurate and in compliance.

**Permanent Resident** – Person who has been granted permanent resident status in the United States and has (or is pending receipt of) a Permanent Residence Card.

**Post On-site Workforce Visit Review** – Summary of the observation and findings from the on-site workforce visit by OEO Staff determine the contractor's compliance.

**Preference Points** – Quantitative assignment of value for specific evaluation criteria in the selection process of contracts where factors other than price are considered

**Pre-Onsite Workforce Visit Review Report** – Desk audit review utilizing the M-DCPS On-Line Diversity Compliance System to evaluate the company's workforce reports; including information on employees and subcontractors, to determine the contractor's compliance.

**Prime Contractor** – Vendor or contractor to whom a purchase order or contract is awarded by M-DCPS for purposes of providing goods or service to the District.

**Professional Services A/E** – Services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper relating to his or her professional employment or practice.

**Professional Services Non-A/E** - Job Order Contracting Consultants, Asbestos Consultants, Program Management, Geotechnical, Construction Materials Testing and Environmental Assessment Services.

**Responsive** - Firm's bid or proposal conforms in all material respects to the invitation to bid or request for proposal and shall include compliance Small, Micro and M/WBE Program requirements.

**Service Disabled Veteran** – Veteran who is a permanent Florida resident with a service connected disability as determined by the United States Department of Veteran Affairs or who has been terminated from military service by reason of disability by the United States Department of Defense.

**Sheltered Market** – Affirmative Procurement Initiative designed to set aside an M-DCPS contract/project exclusively among S/MBE M/WBE and/or VBE firms.

**Small Business Enterprise (SBE)** - Contractor, subcontractor, manufacturer or service company (a) that has been doing business under the same ownership or management and has maintained its actual place of business in the MSA for a period of at least one (1) year immediately prior to the date of application for certification under this section, (b) that had annual gross revenues not exceeding the thresholds identified in this policy for each industry, and (c) at least fifty-one percent (51%) of the ownership of which is held by a person or persons who exercise operational authority over the daily affairs of the business and have the power to

direct the management and policies and receive the beneficial interests of the company. Representations regarding average gross revenue and payroll are subject to audit. If a business has not existed for three (3) years, the employment and gross revenue limits shall be applied based upon the annual averages over the course of the existence of the business.

**Strategic Partnership Agreement** – Partnership with a public agency or private organization and M-DCPS to expedite and increase participation with S/MBE, M/WBE, and VBE firms.

**Surety Letter of Intent** – Statement from a surety, certifying the surety will issue a bond to a contractor for projects that are valued up to the limits for which the company is seeking contractor prequalification.

**Veteran Business Enterprise** – The management, ownership, control and daily business operations of a veteran business owner(s), as defined in Florida Statute 295.187.

## VI. SMALL/MICRO BUSINESS ENTERPRISE PROGRAM<sup>1</sup>

S/MBE Program is a race and gender-neutral program that provides greater S/MBE availability, capacity development and contract participation in Board contracts, to advance the Board's compelling interest in ensuring that it is neither an active nor passive participant in private sector marketplace discrimination, and to promote equal opportunity for all segments of the contracting community to participate in Board contracts. To be eligible for certification as a S/MBE, a business must submit all required supporting documents referenced in ODCS.

A business is eligible for a S/MBE certification, pursuant to Policy 6320.02 if it meets the following criteria:

1. Is an independently owned and operated business that is not dominant in its field of operation and is performing a commercially useful function;
2. The business must have an actual place of business in the MSA for at least one (1) year preceding the application and be registered as a vendor with the District.;
3. The business must be established for a least one (1) year or the principals of the business have at least three (3) years of relevant experience (collectively and/or individually) prior to forming or joining the business;

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<sup>1</sup> Nonprofit/Not-for-profit organizations 501(c)(3) are NOT eligible for certification.

4. The business has an applicable local business tax receipt in the MSA and all required licenses;
5. An owner of the business must have the required professional license(s); and,
6. The Board may honor a valid Small Business Enterprise (SBE) Certification and/or Micro Business Enterprise (MBE) Certification granted by another agency if the agency's requirements are consistent with the District's S/MBE certification criteria.

**A. Non-Affiliation Rule**

Ownership of the S/MBE must be direct, independent, and by individuals only. Any license or permit required for the business must be held personally by an owner. The S/MBE firm cannot be a subsidiary of another firm. The day to day management of the S/MBE firm must be direct and independent of the influence of any other business that cannot itself qualify under the S/MBE eligibility requirements.

**B. Revenue Threshold for Small/Micro Business Enterprise**

A firm seeking a S/MBE certificate must meet the revenue thresholds pursuant to Policy 6320.02. The Certification Administrator shall ensure that the application does not exceed the revenue Tier threshold by adhering to the procedures below.

A business entity is certified as a S/MBE based on the revenue generated for the preceding three (3) years before the firm has applied for the certification or recertification. The revenue threshold is based upon the standards as defined in Policy 6320.02 at the time of the publication of this manual. Please note that the thresholds published in Policy 6320.02 will be used to guide eligibility requirements. The OEO shall only certify a business who meets the following thresholds:

1. Micro Business Enterprise (MBE)  
**Professional Services A/E:** The annual gross revenue averaged over the previous three (3) years shall not exceed \$300,000 (Tier 1) or \$500,000 (Tier 2).  
**Professional Services Non-A/E:** The annual gross revenue averaged over the previous three (3) years shall not exceed \$300,000 (Tier 1) or \$1,000,000 (Tier 2).

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

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

2. Small Business Enterprise (SBE)

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

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

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

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

**C. Determining Gross Revenue<sup>2</sup>**

The Certification Administrator shall be responsible for determining if a business qualifies as a S/MBE, pursuant to the revenue thresholds established in Policy 6320.02.

Gross revenues are determined by the average of the last three (3) year's tax returns.

**D. Formula to Determine Revenue**

Example: ABC Construction Company submits an application for certification as a S/MBE along with three (3) years of tax returns: Year 1 revenue was \$2 million; Year 2 revenue was \$4 million; Year 3 Revenue was \$1 million. Total gross revenue for the 3 year period is \$7 million. The average revenue for the period is = \$2,333,333 (\$7 million ÷ 3). ABC is

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<sup>2</sup> If a business has existed less than three (3) years, the average annual gross revenue shall be based upon the gross revenue over the existence of the business.

eligible for certification as a Tier 1 SBE based upon the average annual gross revenue of \$2,333,333.

**E. If Firm Meets Revenue Threshold**

If the Certification Administrator calculates the firms' revenue and determines that the firm meets and does not exceed the revenue threshold, the Certification Administrator shall proceed with processing the application.

**F. If Firm Exceeds Revenue Threshold**

If the Certification Administrator determines that the firm's revenue has exceeded the revenue threshold for S/MBE, the Certification Administrator shall deny the firms certification as a S/MBE. The Certification Administrator shall proceed with the rejection procedures as prescribed in this manual and shall provide written notification to the firm of the denial.

**G. Annual Eligibility Affidavit**

The OEO will require business entities to submit an Annual Eligibility Affidavit. The affidavit will ensure that the certified entity is compliant with the eligibility criteria of the respective certification requirements. The affidavit must be signed by an authorized agent of the business, as well as notarized. The affidavit should be returned within thirty (30) days of the date of the notice. Failure to submit the affidavit will subject the entity to suspension from the program.

If the Certification Administrator determines that the business entity is not eligible, the Certification Administrator shall notify the business.

**H. Material Change in Firm**

Certified S/MBE shall provide written notice to the OEO of any change(s) that impact its eligibility as an S/MBE, including, but not limited to, changes that affect address change, ownership, management, or control of the S/MBE. Within fifteen (15) calendar days of the effective date of such changes, S/MBE shall provide notice to the OEO by written correspondence via U.S. Mail and/or electronic mail, including any supporting documentation, that describes the nature of the change(s) and that states the effective date of the change(s). OEO will review the requested change and determine if the firm is still eligible to continue as a certified S/MBE in the program. OEO shall notify other internal departments of any material changes to certified firms.

**I. SBE/MBE Program Graduation**

**1. MBE to SBE Graduation**

Pursuant to Policy 6320.02, when a MBE exceeds the three (3) year annual gross revenue Tier threshold, the firm shall graduate to the following graduation designation of SBE.

Upon an MBE graduating to a SBE, the Administrator must provide the impacted business a written notification via the S/MBE Graduation Form Letter, which includes the basis of graduation, within fifteen (15) days of the Administrator determining the firm has exceeded the MBE eligibility revenue Tier threshold and falls within the revenue Tier threshold of a SBE. The OEO will also notify internal departments of graduation of firms from the micro to small business designation.

**2. SBE Graduation**

When an SBE exceeds the three (3) year annual gross revenue Tier threshold for their designated industry; the firm will automatically graduate out of the S/MBE program. The Administrator must provide the impacted business with written notification via S/MBE Graduation Form Letter within seven (7) days of graduating out of the S/MBE program.

Upon graduating out of the S/MBE program, the SBE shall be ineligible to re-apply for the SBE program for a period of one (1) year. Upon re-applying for certification, the business entity will be subject to the criteria as provided in Policy 6320.02. The OEO will also notify internal departments of graduation of SBE firms.

**3. SBE Permanent Graduation**

Pursuant to Policy 6320.02, a SBE shall be permanently graduated after its three (3) year annual average gross revenue exceeds \$6 million for construction and construction-related specialty trades, \$4 million for goods and services, \$2 million for professional services (architectural and engineering), and \$4 million for professional services (non-architectural and non-engineering). The OEO will also notify internal departments of permanent graduation of firms.

## VII. MINORITY/WOMEN BUSINESS ENTERPRISE<sup>3</sup>

M/WBE Program is established to enhance the bidding and selection opportunities for M/WBE on certain contracts and to address findings in the 2014 Disparity Study on construction and construction-related professional services and 2015 Subcontractor Disparity Study pursuant to this policy and as provided in Policy 6610 Internal Funds and Policy 6320.06.

The OEO shall certify a firm as a M/WBE if it meets the following eligibility requirements:

1. The firm must be a minority person born or naturalized in the United States, as defined in Policy 6320.02;
2. It employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million;
3. For sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments;
4. It is owned and controlled by at least fifty-one (51%) by a minority or minorities who are members of an insular group that is of a specific racial, ethnic, or gender makeup or national origin which has been subjected historically to disparate treatment due to identification in and with that group resulting in an underrepresentation of commercial enterprises under the group's control, and whose management and daily operations are controlled by such persons. A M/WBE may primarily involve the practice of a profession;
5. The business must have an actual place of business in the MSA for at least one (1) year preceding the application and be registered as a vendor with the District;
6. The business has an applicable local business tax receipt in the MSA and all required licenses; and,
7. An owner of the business must have the required professional license(s).

The Certification Administrator will consider the following factors when a firm has more than one owner to satisfy the minority ownership threshold:

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<sup>3</sup> NOTE: Nonprofit/Not-for-profit organizations 501(c)(3) are NOT eligible for certification.



- Whether M/WBE owners are entitled to share in the profits of the business, through salaries, bonuses, profit sharing, dividends, and all other benefits, commensurate their ownership.
- Whether each M/WBE owner shares commensurately with ownership interests in all the risks of business, including, but not limited to, third party agreements, bonding and financial arrangements.
- Ownership by a minority person does not include ownership that is the result of a transfer from a non-minority person to a minority person within a related immediate family group if the combined total net asset value of all members of such family group exceeds \$1 million. The term "related immediate family group" means one (1) or more children under sixteen (16) years of age and a parent of such children or the spouse of such parent residing in the same house or living unit. Florida Statute 288.703.
- M/WBE owners must also demonstrate control over the affairs, management, and operations of the business. The discretion of the M/WBE owners shall not be subject to any formal or informal restrictions (including, but not limited to, bylaw provisions, partnership agreements, trust agreements, or requirements for cumulative voting) that would impact or usurp the M/WBE owners' independent managerial and operational control.

**A. Required Documentation for M/WBE Program**

Requirements for certification eligibility into the M/WBE is determined by OEO after review of the required supporting documents have been submitted by the firm. A list of the required supporting documents for certification eligibility into the M/WBE Program can be found in the ODCS M/WBE application.

**B. Determining a Firm's Net Worth**

All firms who seek certification as M/WBE must employ 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million and for sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments in accordance with Policy 6320.02.

The Certification Administrator is responsible for verifying that a firm or a sole proprietorship's net worth does not exceed \$5 million.

**C. Non-Affiliation Rule**

Ownership of the M/WBE must be direct, independent, and by individuals only. Any license or permit required for the business must be held personally by an owner of the firm. The M/WBE firm cannot be a subsidiary of another firm. The day to day management of the M/WBE firm must be direct and independent of the influence of any other business that cannot itself qualify under the M/WBE certification eligibility requirements of the Program.

**Documents that establish control include but are not limited to:** corporate bylaws, operating agreements, partnership agreements, management agreements, or other agreements. Such documents should be free of restrictive language which dilutes a M/WBE owner control and prohibits him/her from making decisions.

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

Unless a business is a franchise, agreements for contractual support services that usurp a M/WBE owner's authority to control a company are not allowed.

An M/WBE owner shall control or supervise the hiring, firing, and supervision of employees, and establishment of employment policies, wages, benefits, and other employment conditions.

An M/WBE owner shall have knowledge and control of all financial matters of the business.

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

Upon receipt of M/WBE certification or re-certification applications, the OEO shall review all enclosed forms, affidavits and documentation, and determine whether the firm satisfies the eligibility requirements. All firms shall be notified in writing of the status of eligibility or ineligibility into the M/WBE Program. Firms determined ineligible

shall not be eligible to submit a new application for at least one (1) year after the date of the notice of ineligibility.

All certified M/WBEs will be included in the ODCS and available to school sites and the general public.

M/WBE certification shall be valid for a three (3) year period. Certified M/WBEs shall not request a change in their M/WBE designation, to another minority designation during the certification period, unless changes are due to extenuating circumstances.

The OEO may honor a valid M/WBE certification granted by another agency if the agency's requirements are consistent with the District's M/WBE certification criteria.

An M/WBE must apply for recertification at least thirty (30) days prior to the certification expiration. If certification has expired, the M/WBE shall submit a new application on the ODCS. Pursuant to Policy 6320.02, a business must submit their recertification application at least thirty (30) days before the expiration date of certification.

An M/WBE may be de-certified if the firm no longer meets the certification requirements such as failure to comply with the M/WBE Policies and Procedures regarding ownership, control, or operation of the business, and failure to submit a complete M/WBE re-certification application.

#### **VIII. VETERAN BUSINESS ENTERPRISE PROGRAM<sup>4</sup>**

The VBE Program is a race and gender-neutral program designed to benefit all veteran businesses. The OEO shall certify VBE businesses in accordance with State guidelines and law. Any veteran of the armed services who received an honorable discharge may apply and seek certification under the VBE Program pursuant to Florida Statute §295.187.

A VBE as defined in Board Policy 6320.02 means a veteran who is a permanent Florida resident including those who may have a service-connected disability as determined by the United States Department of Defense or the United States Department of Veteran Affairs.

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<sup>4</sup> NOTE: Nonprofit/Not-for-profit organizations 501(c)(3) are NOT eligible for certification.

**A. VBE Eligibility Criteria**

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

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

**B. Non-Affiliation Rule**

Ownership of the VBE must be direct, independent, and by individuals only. Any license or permit required for the business must be held personally by an owner. The VBE firm cannot be a subsidiary of another firm. The day to day management of the VBE firm must be direct and independent of the influence of any other business that cannot itself qualify under the VBE eligibility requirements.

**IX. VIOLATIONS, SANCTIONS AND PENALTIES**

**A. Decertification (Ineligibility or Suspension)**

Pursuant to Policy 6320.02 the Office of Economic Opportunity (OEO) may decertify a S/MBE, M/WBE and VBE by deeming a firm ineligible to participate in the program or suspended from the program for any of the following reasons:

1. Changes in the S/MBE, M/WBE and VBE firm's circumstances that render the firm unable to meet the eligibility standards;
2. A change in the certification standards or requirements of M-DCPS since the certification of the firm;

3. Information or evidence that was not available to the OEO at the time the firm was certified that, if available, would have resulted in the denial of certification;
4. Concealed or misrepresented information by the firm as it pertains to the certification application or review conducted by the OEO; and/or,
5. Suspension – Temporary action pending final decision from the CDRC. The CDRC makes determination on whether to sustain the suspension or to permanently revoke the certification.

Prior to taking formal action to de-certify a firm, M-DCPS shall provide the firm with a written notice (via U.S. Mail and/or email notification) of the de-certification intent listing the reasons and facts leading to the de-certification intent. The firm shall then have thirty (30) days after issuance of the Notice of Intent to De-Certify to request a hearing and/or to present such evidence and arguments in opposition to the Notice to De-Certify. Following any requested hearing, and upon completion of its review of all such evidence and arguments presented, the OEO may either rescind the Notice of Intent to De-certify, or issue a Final Notice of De-Certification to the owner of the firm by certified mail. If the OEO de-certifies a firm currently working on an M-DCPS contract, the de-certified firm's participation on the contract will not be counted toward the fulfillment of M-DCPS firm's goals for the duration of the contract. The OEO shall maintain a list of all de-certified firms with the facts leading to de-certification and shall provide internal departments notification of this action within five (5) business days. For those instances when the OEO de-certifies a firm after contract award but prior to the issuance of a Notice to Proceed, the prime contractor or bidder shall be required to seek a waiver of the application of the API, or, in the alternative, to exercise good faith efforts in attempting to replace the de-certified firm with a qualified certified firm. When the OEO de-certifies a firm after bid opening, but prior to contract award, the prime contractor shall be required to substitute the de-certified firm with the next certified qualified responsible responsive bidding firm.

**B. Appeals**

- Denial of Certification – upon denial of certification, re-certification or de-certification, the OEO shall notify the affected party in writing, via certified mail, setting forth the reasons for the denial of certification.
- Time for Filing a Notice of Appeal - a firm may appeal a Denial of Certification/Re-Certification and/or a Notice of De-Certification to the Program Administrator within fifteen (15) business days of receipt of the

Denial of Certification. If the firm's owner fails to appeal the denial of certification/re-certification and/or de-certification within the period set forth in this section, the denial shall be final and take effect immediately. Upon receipt of a timely Notice of Appeal, the Program Administrator shall conduct an informal hearing within thirty (30) business days. At the hearing, all parties including staff and the business owner(s) shall be provided an opportunity to produce evidence in either party's possession concerning the denial of certification/re-certification and/or de-certification.

- Decision on Appeal – within fifteen (15) business days after the conclusion of the hearing regarding an appeal, the OEO shall issue a written notice of the decision on appeal. The notice of the decision shall be sent to all parties by Certified U.S. Mail and shall set forth the reasons for the decision. The decision of the Program Administrator serving as the hearing officer shall be binding and final.
- A penalty of 1% of the contract amount or one (\$1,000) thousand dollars per day (whichever is less) may be applied if reporting requirements are not provided within the specified time. A financial penalty will not halt construction on a project, unless non-compliance is continuous.
- If non-compliance is not cured in a reasonable amount of time with the OEO, the District shall deem non-reporting a breach of contract, in which case the District may terminate the contract.

**C. Penalty for Non-Reporting**

Vendors with S/MBE, M/WBE, and VBE participation must submit monthly online reporting, in the M-DCPS online diversity system. The OEO designated forms shall include: Subcontractor Participation Best Faith Efforts, Participation Letter of Intent, Best Faith Efforts Non-Compliance Supplement, Business Feedback and Business Complaint forms. A penalty of 1% of the contract amount or one (\$1,000) thousand dollars per day (whichever is less) may be applied if reporting requirements are not provided within the specified time. A financial penalty will not halt construction on a project, unless non-compliance is continuous. If non-compliance is not cured in a reasonable amount of time with the OEO, the District shall deem non-reporting a breach of contract, in which case the District may terminate the contract.

**D. Breach of Contract**

Failure of an S/MBE, M/WBE, and VBE to meet the requirements of the contract, will constitute a breach of contract.

**E. Suspension, Debarment and Repeated Violations**

Where a vendor is found to be in breach of contract, the OEO, in consultation with both the Board Attorney's Office and Chief Auditor's Office, shall consider a series of corrective actions, consequences and penalties including, but not limited to, debarment pursuant to Policy 6320.04 *Contractor Discipline*. This information shall be considered by future selection and evaluation committees.

**X. ONLINE CERTIFICATION PROCESS FOR ALL PROGRAMS**

**A. Online Diversity Compliance System Registration**

The firm shall obtain a vendor number with the Procurement Department and register with the ODCS. A firm will have ninety (90) days to complete an application prior to deletion of the application. The application process start date on ODCS is printed on the application for the vendor.

The firm, that seeks certification as a S/MBE, M/WBE, and VBE, shall complete the appropriate application(s) as provided for on ODCS. A firm may be eligible for multiple certifications. All firms are required to submit complete and accurate information, as well as the required documents as specified in Policy 6320.02. M-DCPS offers the following certification applications:

1. Interlocal/Partnership Certification Recognition Application shall be completed by a firm that is certified with a recognized agency that has an interlocal agreement with M-DCPS.
2. New certification application shall be completed by a firm who is a first-time firm; that has never been certified by M-DCPS as an S/MBE, M/WBE, and VBE; that has previously been rejected for certification; or whose certification has lapsed and they desire to seek certification or seeking an additional certification designation.
3. Re-certification application shall be completed by the firm that is presently certified with M-DCPS as an S/MBE, M/WBE, and/or VBE that desires to be re-certified for another three (3) year period. Certified firms will be informed three (3) months in advance of certification expiration.

**B. Interlocal/Partnership Certification Recognition Application**

A firm that is certified with a recognized agency that has an interlocal agreement with M-DCPS may apply for certification with M-DCPS. The firm shall obtain a vendor number with the Procurement Department and register with the ODCS. The firm shall fill out an interlocal application on ODCS along with submitting the required documents for the respective certification.

After receipt of the application, the Certification Administrator shall verify that the application is complete and all required documents have been uploaded to ODCS. The Administrator shall refer to the Interlocal checklist to ensure that all required items have been submitted with the application. If the Administrator determines that the firm has not completed the application, the firm shall be notified via ODCS that they have fifteen (15) days to submit the pending document(s) as identified on the checklist.

**C. Required Documentation for Interlocal/Partnership Certification Applications**

To be eligible and certified through an Interlocal/Partnership Certification, the OEO requires that a firm submit required certain supporting documents, if applicable. A firm seeking certification as an S/MBE, M/WBE, and/or VBE shall submit documents as requested.

**D. New Certification Application**

A firm submitting a New Certification Application for S/MBE, M/WBE, and/or VBE shall complete the four sections of the application, and upload and submit all required/mandatory documents.

**Section 1 - Certification Information – Business Contact Information**

Required information includes: Firm name, Trade Name/Doing Business as (D/B/A), MDCPS Vendor number, Address, Mailing Address, Contact Person, Majority Owner Name, Office Phone, Business Cell Phone, Fax Number, Email address, Website address.

**Section 2 - Certification Information – History**

Required information includes: date firm was established, Federal Tax ID No., firm type, date incorporated, state of incorporation, is the firm a franchise, subsidiary or affiliate of another firm, type of business, the services provided, work performed and/or products sold, primary NIGP code (the firm can list 4 codes), number of employees (full time, part-time, contract personnel), is principal owner a citizen of U.S., minority status, certification applying for, gender status, firms certification history with other agencies, has firm been



denied certification, de-certified, suspended, or challenged as a small, micro, minority, or dis-advantaged business enterprise (DBE) by any agency or institution.

### **Section 3 - Ownership**

Business Information

### **Section 4 - Control**

Indicate firm's office space, number of years at current location, name of landlord, address, indicate firm's storage space, list current licenses/permits held by an owner of the firm (e.g. contractor, engineer, architect, etc.), duties of owners, officers, directors, managers, and key personnel, identify individuals who are responsible for day to day management and policy decision, gross receipts, bonding information.

#### **E. Administrative Processing of Certification Application**

A complete application shall be processed within thirty (30) days of receipt by the Certification Administrator. An application is considered complete when all applicable questions have been answered and all mandatory documents have been uploaded in the ODCS. The firm shall not be allowed to submit a paper application.

A firm that has an application denied will be unable to access the old application and will have to begin a new application. A firm that is determined ineligible shall not be eligible to submit a new application for at least one (1) year after the date of the notice of denial of eligibility.

#### **F. Certification Process & On-Site Reviews**

The OEO shall conduct random certification onsite reviews; visit the firm's office, review job site records, applicable documents of the firm, and shall interview the firm's employees and/or subcontractors.

#### **G. Recertification Process**

Approximately ninety (90) days before the expiration of a business' certification certificate, the firm shall receive electronic notification from ODCS that the business' certification will expire in ninety (90) days.

Pursuant to Policy 6320.02, a firm must submit their re-certification application at least thirty (30) days before the expiration date of certification. A re-certification application may be submitted when a S/MBE, M/WBE, and/or VBE certificate has not expired and no material changes have occurred in the ownership and control of the firm.

The Certification Administrator shall review and approve the application if the re-certification application meets the eligibility requirements. If the application does not meet the eligibility requirements, the application shall be denied. Firms determined ineligible shall not be eligible to submit a new application for at least one (1) year after the date of the notice of denial of eligibility.

## **XI. COMMUNITY OUTREACH AND TECHNICAL ASSISTANCE**

OEO shall provide community outreach and technical assistance to S/MBE, M/WBE and VBE firms. The OEO shall provide the following assistance to these businesses:

### **A. Community Outreach**

OEO, in collaboration with the Office of Facilities and Office of Procurement Management Services, will conduct targeted outreach events to communicate M-DCPS S/MBE, M/WBE and VBE opportunities to increase and maximize participation in the Programs. The OEO may use the services and expertise of third party consultants to conduct the community outreach and perform the services described below.

- Outreach efforts will include:
  - Any form of print and/or electronic media which may include upcoming forums, workshops, trainings, special events, and community/trade organizations including but not limited to the OEO website and ODCS;
  - Certified S/MBE, M/WBE, and/or VBE Directory – M-DCPS shall maintain an online S/MBE, M/WBE, and VBE Directory that lists these businesses by types of firms and trade codes to facilitate identifying businesses with capabilities relevant to a particular specification. Each business listing will contain the business name, contact person, mailing address, email address, website address, and phone number. The National Institute of Government Purchasing (NIGP) Commodity Codes may be identified for each S/MBE, M/WBE, or VBE. The OEO will continuously update and maintain the directory on its website at <http://oed.dadeschools.net/>. In maintaining this directory, the OEO will identify and certify as many firms as possible that perform the types of work and/or supplies needed by M-DCPS;
  - Sponsor matchmaking conferences to connect S/MBE, M/WBE and VBE that are seeking to procure with the District.

**B. Technical Assistance**

The OEO shall also assist, in collaboration with the Office of Facilities and Office of Procurement Management Services, S/MBE, M/WBE, and VBE with the District's solicitation process. This assistance will be offered by M-DCPS, as well as by other agencies and entities within OEO's technical assistance referral network. In addition, the OEO will maintain and distribute information regarding available technical assistance providers in the MSA. The OEO may use the services and expertise of Third Party Consultants to assess technical assistance needs of S/MBE, M/WBE and VBE referenced below:

- OEO will host small business networking forums to provide information on how to do business with M-DCPS;
- OEO will provide training sessions for S/MBE, M/WBE, and VBE business enterprises. Staff will be available to explain instructions for preparation of bid specifications, M-DCPS' procurement policies, procedures and general bid requirements;
- OEO will sponsor intensive group workshops and one-on-one training sessions on identified problem areas, such as: bookkeeping, bonding and insurance requirements, selecting and appropriately using legal and accounting services, commercial lines of credit, marketing, project management, payment requisitions, payroll management and billing, and collections; and,
- OEO will collaborate with construction industry trade associations, small business development centers, community colleges, and others to establish low-cost intensive "contractor college" programs to train M-DCPS Small and MBE contractors on all aspects of estimating, bidding, licenses and permits, accounting, financing, bonding, contract terms, payroll management, tax requirements, project management, Occupational Safety and Health Administration (OSHA) and Equal Employment Opportunity (EEO) compliance, billing, collections, and other aspects required for performing construction contracts on behalf of M-DCPS.

## **XII. SMALL/MICRO, MINORITY/WOMEN-OWNED, AND VETERAN BUSINESS ENTERPRISE ADVISORY COMMITTEE**

Small/Micro, Minority/Women, and Veteran Business Enterprise Advisory Committee in accordance with Policy 6320.02, shall:

1. provide guidance on the implementation of the S/MBE, M/WBE, and VBE Program and to promote the participation and use of small and micro businesses in the procurement activities of the Board;
2. identify and evaluate issues related to economic opportunities for S/MBE, M/WBE, and VBE owned businesses;
3. provide recommendations to the Board to improve the S/MBE, M/WBE, and VBE program;
4. annually evaluate and report to the Board on the effectiveness of the S/MBE, M/WBE, and VBE program in increasing minority and women owned business participation in the Board's procurement process; and,
5. monitor any disparity study and make recommendations.

The Board and Superintendent shall each appoint a community member and alternate member who is not employed by the Board and does not have any direct or indirect business relationship with the Board. The term of each Board appointee shall be coterminous with the appointing Board member and the term of the Superintendent's appointees shall be at the will and discretion of the Superintendent. All appointments must comply with Policy 9140 Citizen Advisory Committees. The Committee shall annually elect a chair and vice-chair, meet at least six (6) times per year, and be governed by the latest edition of Robert's Rules of Order. The committee may adopt bylaws, to be recommended by the Superintendent to the Board for approval, to facilitate the operation of the committee. OEO will provide staff support for this committee.

## **XIII. GOAL SETTING COMMITTEE**

The Goal Setting Committee ("GSC"), as described in Policy 6320.02 will recommend annual aspirational goals for S/MBE utilization, consistent with Policy 6320.02 based on the availability of S/MBE that can participate in projected subcontracting opportunities.

The Superintendent shall determine the size of the GSC that is to be chaired by the Program Administrator who shall serve as a voting member. The Superintendent shall also appoint the remaining members of the GSC from the Board's procurement personnel and other Board departments affected by this Program. The GSC shall meet as often as it determines necessary, but not less than twice (2) annually. The GSC shall utilize goal-setting methodology to be

implemented by the District on a contract-by-contract basis, and to monitor and support the overall implementation of this policy.

1. To determine overall availability, the GSC will review the database to identify contractors in the local market who are prequalified, certified and available firms at the prime level and certified and available firms at the subcontractor level to perform on projects for which the District expects to solicit contractors or vendors in the coming year;
2. The GSC will have the discretion on a contract-by-contract basis to apply appropriate APIs, including, but not limited to, mandatory subcontracting goals for the participation of certified subcontractors on those general procurement contracts, nonprofessional services contracts, professional services contracts and construction contracts. The GSC shall review each contract and make every effort to apply the appropriate Tiers within each category. This may include but not limited to lower Tier 1 firms competing in open tier opportunities;
3. The GSC shall be responsible for recommending to the Superintendent new API methods by which annual aspirational goals for contract participation may be achieved;
4. The GSC shall monitor and support the implementation of the policy and procedures of the Program;
5. All recommendations made by the GSC shall be decided by simple majority vote. Decisions on appeal by the GSC regarding the APIs on a contract shall be forwarded to OEO for recommendation and final determination by the Superintendent; and,
6. The GSC consists of five (5) members. A quorum consists of three (3) members of the GSC.

#### **XIV. AFFIRMATIVE PROCUREMENT INITIATIVES**

API may be used in awarding Board contracts to S/MBE, M/WBE, and/or VBE according to the industry-specific programs identified in this policy. However, pursuant to State law and Policy 6320.05, no local vendor or employment preference for S/MBE, M/WBE, and/or VBE may be applied to competitive solicitations for construction services in which fifty percent (50%) or more of the cost will be paid from State-appropriated funds at the time of the competitive solicitation. The solicitation documents for construction services in this event must disclose that

no S/MBE, M/WBE, and/or VBE will be awarded based upon the State restriction regarding the utilization of local vendor preference.

**A. Subcontracting/Subconsultant Goals**

*(This will be applicable to Construction, Construction related Professional Services, Non-Professional Services, Maintenance, Goods & Services and any other area under Procurement).*

GSC will evaluate and utilize the M-DCPS Online Diversity Compliance System (ODCS) for each solicitation where S/MBE, M/WBE and/or VBE goal may be applicable. The M-DCPS ODCS may generate a recommended goal for the individual solicitation and/or a requesting department could make a recommendation for consideration by the Goal Setting Committee. The OEO will then present the recommendations to the GSC along the recommendations by the requesting department, if any. The GSC will review and examine all the evidence applicable to determine what adjustment should be made to the recommended goal.

There are many types of evidence that must be considered when considering and/or adjusting the recommended goal. These include:

1. The current capacity of certified firms to perform work in the program, as measured by the volume of work certified firms have performed in recent years;
2. Evidence from disparity studies conducted anywhere within the jurisdiction and/or MSA, to the extent it is not already accounted for in the recommended goal;
3. If a recommended goal is the goal of another recipient, it should be adjusted for differences in the local market and the contracting program; and,
4. If available, consider evidence from related fields that affect the opportunities for certified firms to form, grow and compete. These include, but are not limited to:

- a) Statistical disparities in the ability of certified firms to get the financing, bonding and insurance required to participate in your program; and,
- b) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent it relates to the opportunities for certified firms to perform in the program.

**B. Sheltered Markets (Set-Aside Contracts)**

The OEO and GSC may select certain contracts for award to a S/MBE, MWBE or VBE or a joint venture with a S/MBE, MWBE or VBE through the Sheltered Market Program.

In determining whether a particular contract is eligible for the Sheltered Market Program, the OEO and GSC shall consider whether there are: 1) at least three (3) S/MBEs, MWBEs or VBEs (or any combination thereof including by the various Tiers within a program) that are capable and available to participate in the Sheltered Market Program for that contract; 2) the degree of underutilization of the S/MBE, MWBE or VBE prime contractors in the specific industry categories; and 3) the extent to which the Board's S/MBE, MWBE or VBE prime contractor utilization goals are being achieved.

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

In addition, the GSC will evaluate and consider the following information with respect to each solicitation where Sheltered Markets (formerly called set-asides) shall be approved:

- **Scope of Services** - The scope of services for the solicitation shall be examined to determine the areas where SBE/MBE participation is possible.
- **Budget** - The dollar value of the solicitation or cost for services/product being procured.
- **Availability** - The availability of S/MBE, M/WBE and VBE firms in the commodity/scope which is being solicited. The GSC will also consider the number of vendors currently registered under the specific commodity code with the Office of Procurement and Management Services.
- **Capacity** - If available, the current capacity of S/MBE, M/WBE or VBE firms in the commodity/scope which is being solicited.
- **Complexity of Scope/Services** - The complexity or specialized nature of the services will be reviewed to determine the ability of S/MBE, M/WBE or VBE firms to complete the work.

- **Tiers** – The availability and targeted approach to shelter contracts based on the size standard categories (if they exist) within a program.

**C. Bid Preference Points**

Specific goals for each project or contract may be adopted on a project-by-project, or contract-by-contract basis. The contract award shall be made to the lowest responsive responsible bidder meeting the S/MBE, M/WBE or VBE subcontracting goals on the contract when that bidder's price does not exceed the lowest bidder's price by an amount greater than the dollar or percentage amount set by the GSC.

The GSC will evaluate and utilize the ODCS for each solicitation where S/MBE, M/WBE, and/or VBE goal may be applicable. The ODCS may generate a recommended goal for the individual solicitation and/or a requesting department could make a recommendation for consideration by the Goal Setting Committee. The OEO will then present the recommendation to the GSC along with any recommendation by the requesting department. The GSC will review and examine all the evidence applicable to determine the adjustment, if any, should be made to the recommended goal.

Evidence considered when adjusting the recommended goals to include related fields that impact the opportunities for certified firms to perform, grow, and compete are:

1. The current capacity of certified firms to perform work in the program, as measured by the volume of work certified firms have performed in recent years;
2. Evidence from disparity studies conducted anywhere within the jurisdiction and/or MSA, to the extent it is not already accounted for in the recommended goal;
3. Statistical disparities in the ability of certified firms to get the financing, bonding and insurance required to participate in the programs;
4. Data on employment, self-employment, education, training and union apprenticeship programs, to the extent certified firms can relate it to the opportunities in the programs; and,
5. Tiers will be considered within each Program.

**D. Mentor-Protégé Program**

The OEO shall establish a workgroup which will include selected members of M-DCPS staff, the SBE Advisory Committee, representatives of the surety industry, government officials and representatives of local construction trade associations to research "best practices" in Mentor-Protégé Program models and to then recommend to the OEO the establishment of a S/MBE Mentor Protégé Program



and, at a minimum, this workgroup shall consider inclusion of the following elements for this program;

- Establishment of program guidelines and a final process for teaming of more-established and successful construction/professional services/goods & services firm owners and managers with less-established S/MBE, M/WBE, and VBE firms to provide management guidance and training in such areas as office procedures, estimating and bidding, bookkeeping and accounting, management of funds, project management, supplier relationships, bonding and insurance, etc.;
- Submission of written Mentor-Protégé team plans outlining the expectations and responsibilities of each team member;
- Consideration of Solicitation Incentives for OEO-approved Mentor-Protégé teams.
- Periodic reports from Mentors and Protégés regarding progress in achieving objectives and elements of Mentor-Protégé plans.

## **XV. PROGRAM COMPLIANCE, REPORTING, AND MONITORING**

### **A. Compliance Monitoring and Utilization**

The OEO shall monitor the level of S/MBE, M/WBE, and VBE utilization by vendors with applicable goals as established by the GSC. If a vendor is having difficulties meeting the contractual S/MBE, M/WBE, and VBE targets, the OEO shall help the vendor identify additional potential S/MBE, M/WBE, and VBE sub-contractors and/or suppliers.

### **B. Board Item Review Process**

Pursuant to Policy 6320.02, the OEO is required to preview all solicitations for construction, procurement, and professional services prior to public dissemination for compliance with the objectives stated in this policy and to ensure that bid specifications do not unnecessarily restrict the ability of S/MBE, M/WBE, and VBE firms to participate in the District's procurement and contracting process. All District award recommendations (Board Items) shall bear the review signature of the Program Administrator.

Review includes:

- Compliance with established S/MBE, M/WBE, and VBE Goals as set by the GSC;

- Confirming and verifying the signed Letter of Intent for contract dollars awarded to S/MBE, M/WBE, and VBE Sub-contractors;
- Confirming and verifying signed Memorandum of Understanding contract dollars awarded to S/MBE, M/WBE, and VBE Sub-consultants; and,
- Confirming and verifying S/MBE, M/WBE, and VBE Prime, Sub-contractors/Sub-consultant Certificates.

**C. Pre-Proposal Review**

Pursuant to Policy 6320.02, the OEO is required to preview all solicitations for construction, procurement, and professional services prior to public dissemination. The review ensures that the solicitation is compliant with the objectives stated in this policy and to ensure that bid specifications do not unnecessarily restrict the ability of S/MBE, M/WBE, and VBE firms to participate in the District's procurement and contracting process. All District award recommendations (Board Items) shall bear the review signature of the Economic Equity and Diversity Compliance Officer.

Review (scoring) includes:

- Compliance with established S/MBE, M/WBE, and VBE Goals as set by the GSC;
- Confirming S/MBE, M/WBE, and VBE Sub-contractors;
- Confirming and verifying signed Memorandum of Understanding contract dollars to be awarded to S/MBE, M/WBE, and VBE Sub-consultants;
- Confirming and verifying M-DCPS S/MBE, M/WBE, and VBE Prime, Sub-contractors/Sub-consultants Certificates;
- Confirming and verifying compliance with the M-DCPS ODCS;
- Confirming and verifying compliance available through OEO's Outreach division; and,
- Confirming and verifying Workforce Diversity within the firm's management and staff.

**D. Contract Compliance Reviews & On-Site Workforce Monitoring**

The OEO reserves the right to perform compliance reviews and on-site workforce monitoring reviews on M-DCPS projects. To include but not limited to contract monitoring conducted by other M-DCPS staff responsible for the project.

**E. Reporting Requirements**

Vendors with S/MBE, M/WBE, and VBE participation must submit a monthly report, and in a form and manner prescribed by the OEO. In addition to the reporting submitted via the ODCS, there are additional specific forms<sup>5</sup> that may be required:

- **Form Title:** Best Faith Effort Non-Compliance Documentation – FM-7539
- **Form Title:** Business Complaint Form – FM-7540
- **Form Title:** Business Feedback Form – FM-7541
- **Form Title:** Request for Sub-Contractor Substitution – FM-7686

**F. Subcontractor or Subconsultant Payment**

Upon award of the prime contract to a vendor, the Prime Contractor shall be required to submit accurate progress payment information with each invoice on the ODCS on each of its Subcontractors or Subconsultants, including S/MBE, M/WBE, and VBE Subcontractors. (Refer to the S/MBE, M/WBE, and VBE Compliance Monitoring, Utilization and Penalties Section). The OEO shall monitor and/or verify 100% of the reported payments to Subcontractors to ensure that the Prime Contractor's reported subcontract participation is accurate.

**XVI. CONTRACT COMPLIANCE REVIEW**

The purpose of a contract compliance review is to determine if a firm is compliant with Policy 6320.02, maintains non-discriminatory employment and contracting practices, and promotes equal opportunity for all segments of the contracting community. A valid Certificate of Compliance will be issued upon review completion.

The OEO will select and schedule a firm for a contract compliance review when notified that the firm has been selected for award on a district contract for construction, goods and services and professional services, or at the discretion of the OEO. Notice of a contract compliance review will be provided in writing at least 10 business days prior to the contract compliance review. Within 10 business days of the completion of a contract compliance review, the OEO compliance staff shall submit a report to the OEO Program Administrator consisting of findings and recommendations, including compliance deficiencies, if any, found in the firm's employment and/or contracting practices.

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<sup>5</sup> All executed originals of the compliance forms listed above must be submitted by vendors to the OEO via email at: [compliance1@dadeschools.net](mailto:compliance1@dadeschools.net).

- A. A contract compliance review includes a detailed analysis utilizing the ODCS. The contract compliance review consists of:
- desk audits,
  - on-site workforce review,
  - on-site project visits,
  - contract utilization analysis,
  - findings and recommendations,
  - close-out conference; and,
  - corrective action plan (if required) including any follow up action needed to address identified deficiencies.

A certificate of compliance will be issued upon the satisfactory completion of the review.

- B. The desk audit consists of a comprehensive compliance analysis of the firm's contracts, policy & procedures, local workforce hiring utilization & goals, S/MBE, M/WBE, and VBE utilization & goals and any supporting documentation to determine compliance with the OEO policies and procedures outlined in Policy 6320.02, including all reporting requirements.
1. If the firm's desk audit, on-site workforce review and on-site project visits indicate the firm is maintaining nondiscriminatory employment and contracting practices, meeting the established contract & local workforce project goals, and are in compliance with the OEO policies and procedures, the OEO will issue their Findings and Recommendations, conduct a close-out exit conference with the firm and issue a Certificate of Compliance.
  2. The firm shall provide at the request of the OEO, all records and supporting documentation pertaining to employment and contracting on M-DCPS projects. The OEO Compliance staff may request additional information be submitted after the contract compliance review.
  3. If the comprehensive analysis of the firm's policies, procedures and practices, discovered during the desk audit and on-site project reviews indicate the firm is not maintaining nondiscriminatory employment and contracting practices, not meeting the established S/MBE, M/WBE, and VBE goals, and/or not complying with the policies and procedures outlined in Policy 6320.02. The OEO will enter into a corrective action plan or conciliation agreement with the firm. After agreeing and entering into a corrective action plan or conciliation agreement, the firm will be issued a 3-6-month Conditional Certificate of Compliance.

4. The timeframe of the Conditional Certificate of Compliance will depend on the size, complexity and duration of the contract, as well as employment and contracting opportunities, and the terms of any corrective action plan or conciliation agreement
- C. Upon completion of the contract compliance review, the OEO compliance staff will schedule & conduct a close-out meeting with the firm to review the finding of the compliance review and to initiate any recommendations and necessary corrective action plans. A written account of the discussions and any agreed upon corrective action plans will be provided to the firm.
1. If the firm disagrees with the findings and recommendations of the compliance review or is unable to comply with the agreed upon corrective action plan, further meetings will be scheduled at the firm's request with the OEO Program Administrator to enter into a conciliation agreement prior to the issuance of a letter of noncompliance.
  2. The corrective action plan and the conciliation agreement shall include the firm's specific commitment, in writing, to correct any deficiencies found during the compliance review. The commitment must include the action to be taken and the target dates for accomplishment. The time allotted shall be no longer than the minimum agreed upon period necessary to correct the deficiencies. Upon approval of the OEO Program Administrator, the firm may be considered in conditional compliance with the OEO policies and procedures outlined in Policy 6320.02, on condition that the firm implements and enforces the commitments outlined in the corrective action plan or conciliation agreement.
  3. A compliance review indicates a firm may not be exerting good faith efforts to accomplish the goals of maintaining non-discriminatory employment and contracting practices. Further if, the firm is not achieving the established project goals, when acceptable corrective action plan cannot be reached, the OEO shall provide the firm with an opportunity to submit a conciliation agreement prior to an issuance of non-compliance with the Policy 6320.02.
  4. If the firm is issued a conciliation agreement, which includes the firm's specific commitments in writing to correct the deficiencies, and the firm does not comply with the terms of the conciliation agreement, the firm is found in non-

compliance and may be fined, disciplined, and/or debarred from performing future M-DCPS projects.

## **XVII. LOCAL WORKFORCE**

Local workforce hiring can have a powerful impact on the local economy by improving employment opportunities for unemployed local residents. M-DCPS will use zip codes, targeted Miami-Dade County boundaries to identify which residents qualify as local-residents.

The purpose in creating local workforce participation goals is to target residents who are close to the project and who would likely benefit from the available construction opportunities. By using zip codes within 5 miles, 7 miles, 10 miles and/or countrywide for the project, the Goal Setting Committee will stipulate which zip codes within the approved radii qualify as local residents on a project-by-project basis.

All local hiring on M-DCPS projects must be in compliance with the Jessica Lunsford Act. Local workforce participation goals shall apply to all M-DCPS Capital Construction contracts and work orders for school facilities, as determined by the Goal Setting Committee.

The OEO will identify schools and community organizations as referral sources to assist with the recruitment of local workers. OEO Referral Sources will include but not limited to: Career Source of South Florida, Lindsey Hopkins Technical School, Miami-Lakes Technical School, Turner Technical High School, NAACP, Urban Construction Craft Academy, Associated Builders & Contractors, and others identified by local stakeholders and community organizations. Contractors may use OEO Referral Sources if their preferred method of local hiring is not sufficient.

## **XVIII. WORKFORCE SITE REVIEW PROCEDURES**

The following procedures should be used as guidelines for performing Workforce On-Site Reviews of Construction Projects.

### **A. Pre-Workforce On-Site Review**

The Compliance Administrator and/or compliance team member shall visit school construction projects according to the project workforce site schedule. Site visit will be based on workforce utilization and the status of completion of the project. The Compliance Administrator and/or compliance team member shall usually complete at least (6) project worksite reviews per week.

The Compliance Administrator and/or compliance team member shall conduct a workforce desk audit using the ODCS before scheduling an on-site workforce project review. The Compliance Administrator can access ODCS at <https://miamidadeschools.diversitycompliance.com/>

The workforce audit should be reviewed for each prime and subcontractor on the project. The Compliance Administrator and/or compliance team member must access the "workforce employee list" tab in ODCS to access the workforce employee list for the prime contractor and subcontractors working on the school construction project. The Compliance Administrator and/or compliance team member shall be responsible for:

1. Ensuring that a workforce employee report is generated before visiting a project site;
2. Generate a workforce summary report; and,
3. Noting any findings that should be investigated while at the site visits.

**B. On-Site Workforce Review**

To conduct an on-site workforce review, the following must be considered:

1. The Compliance Administrator and/or compliance team member shall be required to wear a M-DCPS identification badge, hard hat, protective eyewear, appropriate shoe wear (steel toe shoes suggested) when performing on- site work reviews;
2. Upon reaching the work-site to conduct a site review, the Compliance Administrator and/or compliance team member should check in with the prime contractor's Superintendent or foreman on site;
3. The Compliance Administrator and/or compliance team member should identify themselves and inform the Superintendent/foreman of the visit. *(The Compliance Administrator and/or compliance team member shall take all steps as to not to impede workers on the construction site.);*
4. The Compliance Administrator and/or compliance team member shall request the project schedule from the Construction Manager;

5. The Compliance Administrator and/or compliance team member should walk around the construction site and take clear pictures of the construction site, as well as take clear pictures of the workforce.
6. The Compliance Administrator and/or compliance team member shall request and photograph the daily work logs. The interviewed subcontractor's employee on-site, shall be cross-referenced with the daily work logs, and workforce employee list that was generated from ODCS to ensure that the worker is listed. The Compliance Administrator and/or compliance team member shall make any notation of workers who have been verified to be working on-site but are not listed on the workforce employee list;
7. The Compliance Administrator and/or compliance team member shall interview subcontractors using the Employee On-Site Questionnaire. (*The Compliance Administrator and/or compliance team member shall document whether each vendor has on appropriate vendor identification badge issued by M-DCPS.*);
8. The Compliance Administrator and/or compliance team member should interview at least one (1) employee from each subcontractor on site;
9. The Compliance Administrator and/or compliance team member shall insure that the questionnaire is legible and completely filled-out; and,
10. After the interview, the Compliance Administrator and/or compliance team member should take a clear picture of the work in progress by the interviewed worker.

**C. Post On-Site Workforce Review**

Upon returning from the onsite review, the Compliance Administrator and/or compliance team member shall:

1. Upload the "Employee On-Site Questionnaire" from each workforce site visit into ODCS.
2. Ensure that the standardized "Workforce Site Review Report" is completed with the appropriate pictures on each project site visited.



3. A copy of the Workforce Site Review Report will be made available online and accessible to the Office of Facilities and appropriate District staff.

## **XIX. PROCEDURES FOR CHANGING LISTED SUBCONTRACTORS**

Per Policy 6320.02, a prime contractor is required to notify and obtain written approval from the Office of School Facilities – Capital Improvement Projects in advance of any reduction in subcontract scope, termination, or substitution for a designated non-certified subcontractor, Certified S/MBE, M/WBE, and VBE subcontractor. Failure to do so shall constitute a material breach of contract.

If at any time after submission of a solicitation response, the apparent successful subcontractor or at any time after award of a contract, the contractor, determines that a non-certified Subcontractor or certified S/MBE, M/WBE, and VBE sub-contractor listed on the participation schedule has become or will become unavailable, then the apparent successful subcontractor or contractor shall immediately notify the Office of School Facilities – Capital Improvement Projects.

Any desired change in the S/MBE, M/WBE, and VBE participation schedule shall be approved in advance first by the Office of Facilities – Capital Projects and confirmed by the OEO and shall indicate the Prime Contractor's good faith efforts to substitute another certified S/MBE, M/WBE, and VBE subcontractor (as appropriate) to perform the work. Any desired changes (including substitutions or termination and self-performance) must be approved in writing in advance by the OEO.

Contractors requesting to change the subcontractors must use Forms FM7686 and provide documentation for justification of their request for a change or substitution.

Prior to submitting the request to the OEO, the contractor must first be approved by the Assistant Superintendent of Construction Management designated by the Office of School Facilities. After properly submitting a request to change a listed subcontractor, OEO will notify the apparent successful subcontractor or contractor if one or more of the firms proposed qualify as a Certified S/MBE, M/WBE, and VBE firm. The apparent successful subcontractor or contractor will be requested, within five (5) days of notification, to provide a new Certified S/MBE, M/WBE, and VBE firm. This does not imply that the contractor cannot utilize the proposed firm, only that doing so will not be considered toward fulfilling the goals.

The apparent successful subcontractor or contractor agrees to exercise diligence to achieve S/MBE, M/WBE, and VBE firm utilization goals. To qualify for a waiver of any of the goals, the

apparent successful subcontractor or contractor must demonstrate a good faith effort to obtain certified S/MBE, M/WBE, and VBE subcontractors and material suppliers. In determining whether apparent successful subcontractor or contractor has made a good faith effort to meet the utilization goal requirements, the OEO will consider all efforts to comply with the goals as well as the intensity of those efforts.

Please note that the notice requirement stated in this section does not satisfy the contractors notice and approval requirements for substitution of subcontractors as stated in the General Conditions of Contract for Construction.

## **XX. CONTRACTOR PREQUALIFICATION**

### **A. Introduction**

On July 1, 1998, the Florida legislature enacted Senate Bill 482/HB 3063 requiring the local boards of education to prequalify bidders seeking to build educational facilities. Florida became one of two states that enacted such laws. Part of the process was to ensure that the contractors had the appropriate credentials and experience in building schools.

State Board of Education requirements adopted pursuant to Chapter 120, F.S., to implement the State Uniform Building Code for Public Educational Facilities Construction in Chapter 1013, F.S., are contained in Section 423 of the Florida Building Code and the Department of Education publication, "State Requirements for Educational Facilities 2014." All educational and ancillary facilities constructed by a school board or Florida college board shall comply with "State Requirements for Educational Facilities 2014."

In accordance with State Requirements for Educational Facilities ("SREF") Chapter 4.1, school boards are required to prequalify contractors on an annual basis prior to submitting bids to do business with the school board. The purpose of the prequalification process is to make a pool of qualified contractors available to local school districts to construct school projects and to avoid problems during the construction process by ensuring that contractors meet certain standards.

On December 9, 1998, The School Board of Miami-Dade County, Florida ("Board") adopted Board Rule 6Gx13-7D-1.05, *Prequalification of Contractors for Educational Facilities Construction*. This rule was created pursuant to Section 235.31 of Florida

Statutes and State Requirement for Educational Facilities (1997). Since December 9, 1998, the Board has approved the prequalification of contractors on a yearly basis.

On July 1, 2011, Board Rule 6Gx13-7D-1.05, Prequalification of Contractors for Educational Facilities Construction, was repealed and Policy 6334, Prequalification of Contractors for Educational Facilities Construction, was adopted. Since the inception of the law, Policy 6334 has been through continual procedural changes to ensure compliance with SREF and, most importantly, the safety of the students as it pertains to the construction of educational facilities.

**B. Purpose and Mission of the Contractor Prequalification Program**

The purpose and mission of the Contractor Prequalification Program of The School Board of Miami-Dade County, Florida is to evaluate and determine if a firm is responsible to perform the construction services that meet the District's expectations for such services. Contractor Prequalification is open to all contractors who meet the District's requirements. The District, through pre-determined criteria, eliminates candidates who do not demonstrate that they have the necessary financial capacity, technical expertise, managerial ability, project success, and relevant experience for the project at hand. Prequalification also simplifies the award of the contract process by allowing only qualified contractors from a pool of available pre-qualified contractors to bid on a project.

The purpose of this program is to qualify rather than disqualify contractors. The program is based on qualitative/quantitative criteria. The program is authorized by SREF Chapter 4 §4.1 and Florida Statutes Chapter 120. It is important to note that prequalification does not guarantee bid selection it simply streamlines those contractors that meet the District's criteria during the bid selection process.

**C. About the Contractor Prequalification Program**

The contractor prequalification program is to evaluate and determine if a firm is responsible to perform the construction services that meet the District's expectations for such services. It is used in many different aspects in the business arena such as prequalifying for a home loan or a supplier prequalifying its products for purchase by a public agency. Streamlining responsible bidders who demonstrate the attribute of trust worthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public work contract.

**D. Elements of Contractor Prequalification**

The most common elements found in any contractor prequalification program are:

1. qualifying criteria,
2. standardized questionnaire,
3. system of scoring used to score the questionnaire (not utilized by the District),
4. an appeals process that is made available to contractors whose applications are denied; and,
5. rules applicable to the functioning of the program.

The criteria implemented by the District to prequalify contractors is derived from SREF Chapter 4 §4.1 and Chapter 120, Florida Statutes as with criteria 3, the purpose of the District to use a standardized questionnaire is to ensure that all firms are treated in the same manner while in the process of prequalifying. Should an appeal arise after a denial, the standardized questionnaire will be utilized as the primary record for the District's decision determination.

**E. Responsibilities and Duties**

Below are the designated officials charged with executing the various programs:

**District Administrator**

The District Administrator is responsible for the overall implementation, reporting, and monitoring of contractor prequalification activities, as well as serving as staff to the Contractor Prequalification Appeal Committee and Contractor Prequalification Review Committee. The Program Administrator shall be the District Administrator for purposes of this section.

**Contractor Prequalification Review Committee**

The Contractor Prequalification Review Committee (CPRC) is responsible for evaluating applications for contractor prequalification. CPRC will, recommend acceptance or rejection to the District Administrator who will forward the recommendation to the Superintendent for Board approval. The CPRC shall review completed new applications, renewal applications, requests for single bid limit, revisions, and adjustments to aggregate bid limits.

**Contractor Prequalification Administrator**

The Contractor Prequalification Administrator is responsible for obtaining complete contractor prequalification applications, and all other information that is deemed necessary to determine whether a firm meets the criteria for eligibility as set forth in SREF Chapter 4.1 and relevant Board policy.

**F. Contractor Prequalification Criteria**

The following information shall be included in a New Contractor Prequalification Application located in the ODCS:

- Information that demonstrates the firm's competence, past performance, experience, financial resources, and capability including a Public Entity Crime Statement and references;
- Evidence that the contractor has the financial ability to successfully complete the construction work such as:
  - audited financial statements,
  - balance sheet,
  - income statement,
  - statement of cash flows;
  - all schedules and notes, on a reporting that ended not more than twelve (12) months prior to the date of the firm's application date;
  - a Surety Letter of Intent to verify that in the event the contractor successfully bids Board work the surety will issue the contractor a performance and payment bond for the work (*The maximum bid limits for a prequalified contractor will be determined by the contractor's bonding capacity or ten (10) times the contract's net quick assets as determined from the contractor's audited financial statements*);
- Information about the organization, ownership, and management of the firm;
- Information regarding all state and local licenses that are held by the firm;
- Information related to projects that the firm has completed within the past five (5) years. The information shall include, but not limited to, project dates, delivery methods, locations, construction costs, scope, contact and actual completion dates as well as whether there were delays and whether liquidated damages were assessed against the firm;

- Qualifier/Qualifying Agent, a person(s) who submits an application for the firm seeking contractor prequalification certification approval, and provides a State of Florida contractor license in the specified construction category.
- Information that demonstrates that the firm has the appropriate insurances required by the District such as worker's compensation, public liability, and property damage insurance;
- Information regarding all claims and/or litigation to which the firm has been a party for the past five (5) years, including an explanation of each. Claims or litigation that were or have been initiated by the contractor to protect the contractor's legal rights shall not be used as a basis for rejecting the contractor;
- A notarized affidavit that attests to the completeness and accuracy of the information. The affidavit shall be attested to, signed, and notarized by an authorized officer, owner, or agent of the firm,

**G. Submitted Prequalification Online Application**

A prospective contractor must be a registered vendor through the Miami-Dade County Public Schools Procurement Management Services Department:

[http://procurement.dadeschools.net/a\\_vendors\\_vif.asp](http://procurement.dadeschools.net/a_vendors_vif.asp)

Upon assignment of a vendor number through M-DCPS Procurement Management Services Department, the Contractor may then submit a contractor prequalification application through the ODCS at <https://miamidadeschools.diversitycompliance.com/>. The Prequalification Administrator periodically checks the ODCS throughout the work day to ascertain whether a new or renewal Prequalification Application has been submitted by accessing the System dashboard through ODCS. The Administrator shall review the categories of "incomplete, pending submission", and "submitted, pending review".

Upon determining that a new or renewal application has been submitted, the Administrator shall review the contractor's application to verify the application has been completed according to the following procedures.

**H. Submission of an Incomplete Application**

Every Contractor Prequalification Application submitted should contain complete and accurate information. If an Administrator concludes that a contractor's application

contains inadequate or inaccurate information, the Administrator shall flag the corresponding question or document.

The applicant firm will receive email notification from ODCS that a question or document has been flagged. The firm must contact the Administrator at 305-995-1307 for further clarification.

A firm will have ten (10) working days to comply with the request or the firm's application will be denied. Upon the resubmission of a flagged application, the Administrator will review the application to confirm all information is complete and the requisite documents are included.

#### **I. Joint Venture Prequalification Criteria**

When two (2) or more prequalified contractors that wish to combine their assets for a specific project, they must be prequalified and must file an Affidavit of Joint Venture on a Board prescribed form and meet all other requirements, including, but not limited to the requirements established by Florida Administrative Code 61G4-15.0022. Contractor Prequalification certificates will be issued to joint ventures for a specific project once they have complied with all requirements for contractor prequalification.

The Contractor Prequalification Application for joint venture includes the following required documentation:

- M-DCPS Joint Venture Affidavit (must list the project description and project number);
- Joint Venture Agreement filed with the State of Florida;
- Valid M-DCPS Contractor Prequalification Certificates by each vendor;
- Surety Letter of Intent listing the Joint Venture entity name;
- Power of Attorney (provided by the surety firm);
- Certificate of Insurance listing the Joint Venture entity name;
- State License listing joint ventures firm discipline seeking to be prequalified for, firm name, address and qualifier name;

- Local Business Tax Receipt License listing joint venture of the firm's name, discipline seeking to be prequalified for, and address;
- Copies of two of the highest completed projects of either firm within the past five years of similar scope and size to determine the Single Bid Limit set by the Board; and,
- Project Evaluation forms for each project.

**J. Submitted Contractor Prequalification Renewal Application**

The contractor prequalification renewal process is to substantiate whether a prequalified contractor remains eligible to bid on Board construction projects. Certificates not for a specific project shall be renewed annually. A prequalified contractor may apply to renew its certification if its certification is current. A contractor, whose certificate has expired, and has not submitted a renewal application must re-apply as a new contractor and electronically submit the standardized questionnaire and documentations. The contractor prequalification renewal process does not apply to certificates that are issued for a specific project. A contractor previously prequalified with the District is required to submit a RENEWAL application and attach the following documents:

- a) Affidavit (District Form 7544)
- b) Surety Letter of Intent (District Form 6696)
- c) Power of Attorney from surety company
- d) Audited notarized financial statement
- e) Contractor's license
- f) Local Business Tax Receipt
- g) Insurance: General, Auto, and Workers Compensation or Exemption Certificate if exempted from carrying Workers Compensation
- h) Disclosure of litigation letter on Company letterhead
- i) Corporate Certificate
- j) Joint Venture (if applicable)

The Board may allow prequalified contractors to request a revision of their prequalification status at any time they believe the dollar volume of work under contract or the size and complexity of projects should be increased if experience, staff size, staff qualifications, and other pertinent data justify the action.

**K. Contractor Prequalification Renewal Application for Increase to Bid Limits**

The contractor prequalification bid limit increase is a formal process to request an increase to the single and/or aggregate bid limit. This process has no impact on the



existing prequalification certificate status. A new certificate will be reissued reflecting the requested increase upon recommendation by the CPRC to the Superintendent for Board approval. A contractor whose certificate has expired and is requesting an increase to the bid limits, must submit a new application and required documentation. The contractor prequalification increase process does not apply to certificates that are issued for a specific project. A contractor currently prequalified with the District requesting to increase their single and/or aggregate bid limit must submit a renewal application and attach the following:

- a) Request for increase on company letterhead
- b) Affidavit (District Form 7544)
- c) Surety Letter of Intent (District Form 6696)
- d) Power of Attorney from surety company
- e) Contractor's license
- f) Local Business Tax Receipt
- g) Insurance: General, Auto, and Workers Compensation or Exemption Certificate if exempted from carrying Workers Compensation

Information related to two (2) of the highest projects that the applicant firm has completed within the past five (5) years. The information shall include, but not limited to, project dates, delivery methods, locations, construction costs, scope, actual completion dates, project evaluation forms.

The submission of a contractor's prequalification application does not authorize the contractor to submit any proposals or bid until its application has been approved by the Board.

A firm will have seventy-five (75) days from the date of submission to submit a completed prequalification application. If a contractor's prequalification application is not completed within seventy-five (75) days, the application is administratively rejected and deleted from the system. A firm will not be able to retrieve any information from an application that has been deleted and a new application will have to be submitted.

**1. Single Bid Limit Formula**

Projects of \$200,000.00 or more, firms must submit two (2) of their highest completed projects within past-consecutive five (5) years. The first highest project is doubled (2x) and must be lower or equal to the Single Bid limit amount indicated on the firm's Surety Letter of Intent.

The contractor; however, must document and show experience and familiarity with commercial projects.

However, for projects \$200,000 or less, firms must provide an Audited Financial Statement in lieu of a Surety Letter of Intent and the Single Bid Limit formula is ten times (10x) the firm's net liquid assets (firms must still submit two (2) of their highest completed projects within past-consecutive five (5) years).

## **2. Aggregate Bid Limit Formula**

Projects \$200,000 or more, firms must submit either a Surety Letter of Intent or an Audited Financial Statement for the 12 month period prior to the application. The Aggregate Bid Limit must equally reflect the Firm's Surety Letter of Intent amount. However, for projects \$200,000 or less, an Audited Financial Statement must be provided in lieu of a Surety Letter of Intent and the Aggregate Bid Limit will be automatically set at \$200,000.

### **L. Dissemination of Application to CPRC members**

Once an application has been verified as complete, the Prequalification Administrator should then submit a hard copy of the entire file to the Program Administrator for review and approval. The Administrator will email the CPRC members an application summary sheet and link of firm files within seven (7) days prior to the next scheduled CPRC meeting.

Committee members may email any questions they have regarding a firm to the Administrator. The Administrator shall answer questions received from committee members at the next scheduled CPRC meeting.

### **M. Contractor Prequalification Review Committee**

CPRC is governed by the Contractor Prequalification Review Committee Bylaws.

The purpose of the CPRC is to:

- Evaluate applications for contractor prequalification;
- Recommend acceptance or rejection;
- Forward the recommendation to the Superintendent who will forward to the Board for approval;
- Determine denial, delinquency, suspension, or revocation of a contractor prequalification certificate and then recommend such action to the Superintendent for Board approval;

- Recommend contractors for prequalification based on the criteria set forth by SREF Chapter 4.1 and Board Policy 6334; and,
- Provide recommendations to the Board to improve the Prequalification Program.

**N. CPRC Membership**

The CPRC membership is comprised of seven (7) voting members and two (2) non-voting members for a term of two (2) years:

- one (1) representative from the construction industry or an architectural/engineering organization that are not currently or has not done business within the past five (5) years;
- one (1) representative from PTA/PTSA;
- one (1) representative from the community-at-large appointed by the Superintendent;
- one (1) representative from the Office of Facilities Operations and Maintenance;
- one (1) representative from School Operations;
- two (2) representatives from Office of School Facilities;
- one (1) representative from the Office of Management and Compliance Audits (non-voting) designated by the department director; and,
- one (1) representative from the Office of Procurement Management Services (non-voting).

Recommendation by the appropriate district personnel, community, and/or trade organization will be made to the Administrator. The Administrator will forward notification to the appropriate district personnel, community, and/or trade organizations of their appointment to the CPRC. The new appointees shall submit resumes.

**O. Scheduling of CPRC Meeting**

The CPRC meetings will be held monthly. A special meeting may be held if the District Administrator or Contract Prequalification Administrator deems it necessary. The Contractor Prequalification Administrator will poll CPRC members at least ten (10) days before a scheduled meeting to ensure a voting quorum. Attendance status of the CPRC members will be reflected in the meeting minutes.

**P. CPRC Meeting Quorum**

A quorum must be present to vote on a contractor prequalification application. A quorum shall consist of at least four (4) voting members present.

**Q. Submission of Agenda**

The agenda and attachments shall be submitted via email seven (7) days prior to the scheduled meeting to the CPRC members.

**R. Chairperson**

The Chairman shall preside over CPRC meetings, represent the Committee and approve each final meeting agenda. The Chairperson shall also have the discretion to place time limits on agenda items.

**S. Prequalification Administrator**

During a CPRC meeting the Contractor Prequalification Administrator shall be responsible to:

- Ensure that all CPRC members have signed the attendance roster;
- Distribute and collect "No Conflict of Interest" forms;
- Record the meeting through the use of an audio recorder;
- Provide a hard copy of a firm's prequalification application to CPRC members;
- Record and tally the votes of CPRC members;
- Raise concerns or questions to the Program Administrator; and,
- Record the minutes.

**XXI. CPRC DECISION MAKING PROCESS**

**A. Evaluation of Contractor Prequalification Application**

Upon commencement of a meeting, the CPRC shall review and evaluate every prequalification application. Upon review, recommendations shall be provided on the prequalified contractor on type of project, dollar volume, and bid limits. The CPRC shall review each firm on the basis of the following criteria:

- Proof that the contractor holds a valid Florida contractor's license, as provided for by the Florida Department of Business and Professional Regulation; that authorizes the contractor to supervise the work within the scope of a construction project. If a state license does not exist for a discipline, a local license may be considered depending on the discipline being considered.

- Evidence that the firm has financial resources to commence the project and to respond to damages in case of default. Evidence must be provided in the form of written verification of bonding capacity that equals or exceeds the amount of any project for which the contractor seeks prequalification. The written verification must be submitted by a licensed surety company that is rated excellent "A"- or better in the current A.M. Best Guide, or as may be amended by Florida Statute and/or SREF. The surety must be qualified within the State of Florida and the A.M. Best rating must be included on the Surety Letter of Intent. In the absence of such written verification, the Board may require any firm to submit audited financial statements, for a reporting period that ended not more than twelve (12) months prior to the date of the firm's application date, to validate its (firm's) financial ability to perform a project(s) and to respond to damages in the event of default.
- Evidence of experience with construction techniques, trade standards, quality workmanship, project scheduling, cost control, management of projects, and building codes for similar projects as shown by the successful completion of at least two (2) projects, within the past-consecutive five (5) years, that are similar in size or scope of the largest project that the firm is requesting prequalification to bid. For the purposes of determining experience for an applicant firm, the experience of the firm or that of the firm's primary or secondary qualifier may be considered, so long as the firm presents evidence of successful completion of two (2) projects as described herein.
- Evidence of satisfactory resolution of claims and litigation that was initiated by or against the contractor which was asserted on a project of the same or similar size within the last five (5) years preceding the submission of the application. Any claim against a contractor shall be deemed to have been satisfactory resolved if final judgment is rendered in favor of the contractor or any final judgment rendered against the contractor is satisfied within ninety (90) days of the date the judgment becomes final.

**B. Supplement Information Required by CPRC**

Upon review by the CPRC, if it is determined that an application contains outdated information, or more information is needed then the firm will have a ten (10) day grace period to provide the requested information. The Administrator shall notify the firm

through the ODCS of the request for additional information. The Administrator shall return the firm's application through the ODCS application for correction.

**C. CPRC Decision**

After review of a Contractor's Prequalification Application based on the criteria as set forth in Policy 6334, each committee member should cast their vote to accept, reject, or hold an application pending a request for additional information. A majority vote shall rule.

**D. CPRC Approval of a Contractor's Prequalification Application**

Upon an affirmative vote by the CPRC on a prequalification application, the decision is forwarded for recommendation to the Prequalification Administrator. The Administrator is responsible for updating the applicant firm's prequalified checklist, preparing an Board Agenda item, and updating the ODCS status of the firm after School Board approval.

**E. Board Prequalification Application Approval Process**

The Board will vote on the Board Agenda Item as prepared by the Prequalification Administrator at the monthly Board Meeting. Upon the Board's acceptance and approval of the Agenda Item, the Administrator shall be responsible for preparing the contractor prequalification certificate.

The Board shall approve or reject applications for prequalification within sixty (60) days after a complete application is received by the District.

**F. Issuance of Contractor Prequalification Certificate**

The Board shall issue an approved prequalification firm a contractor prequalification certification that is valid for one (1) year or is project specific. The Contractor Prequalification Certificate shall include:

- A statement that a contractor is authorized to bid for projects during a specific time period.
- If a firm provides experience in a specific area of work (general contractor, demolition services only), the CPRC may request that the prequalification certificate specify that the prequalified firm is only allowed to engage in that specific area of work.

- A statement establishing the maximum dollar values (single and aggregate) of work that a contractor will be permitted to have under contract with the Board at any one time;
- A statement establishing the maximum dollar value of each individual project that a contractor will be permitted to have under contract with the Board at any one time. The District single bid limit may be up to twice the value of the largest project that was previously completed or written verification of bonding capacity equal to the single limit. This shall not exceed the contractor's aggregate bonding capacity or ten (10) times the net quick assets;
- A statement establishing the type of work that a contractor will be permitted to provide; and,
- The expiration date of the contractor's prequalification certificate.

**G. Contractor Prequalification Report**

Upon Board approval of a prequalification application, the Contractor Prequalification Administrator shall be responsible for updating the Contractor Prequalification Report with the newly prequalified firm's information. The Prequalification Report information should include:

- the type of firm prequalified (if applicable, S/MBE, M/WBE, and VBE);
- an updated prequalification status;
- the firm's discipline;
- the firm name;
- the expiration date of the certificate;
- the Board approved single and aggregate limits; and,
- firm email.

The Contractor Prequalification report can be accessed at:

<http://prequalification.dadeschools.net/pdf/ContractorPrequalificationRpt.pdf>

**H. Renewal of a Prequalification Certificate**

A Contractor Prequalification Certificate is valid for one (1) year from the effective date listed on the certificate or is valid for the duration of a specific project. A prequalified contractor who wants to remain a prequalified contractor with M-DCPS must renew their prequalification certificate annually before the expiration of their certificate.

#### I. Renewal Notice

At least sixty (60) days before prequalification certificates expire, the prequalified contractor will be notified via the ODCS of imminent expirations and of the need to renew their certification. As provided for in SREF 4.1(1)(e)1, failure to submit a new statement or verification of bonding capacity after thirty (30) days written notice by the Board, the Board shall automatically revoke a prequalification certificate.

Upon receipt of the renewal notice, as stated above and prior to expiration of the contractor's current prequalification certificate, the firm contractor must complete a Renewal Application. The renewal application must provide the following updated documents:

1. A Contractor Prequalification Renewal Application;
2. Updated audited financial statements or written verification of bonding capacity;
3. Power of Attorney
4. Certificate of insurance;
5. Disclosure of litigation;
6. Public Entity Crime Statement; and,
7. Affidavit attesting to the truthfulness of the information submitted.

The Contractor Prequalification Administrator shall verify that the licensed surety firm is rated "A- "or better in the current A.M. Best Guide. The Administrator may access [www.ambest.com](http://www.ambest.com) to verify the grade of the surety company.

The firm's professional license shall also be verified by performing a search at [www.myfloridalicense.com](http://www.myfloridalicense.com).

The Contractor Prequalification Administrator will upload the renewal application to attachment manager on District's website portal and send a summary link to each CPRC member.

A renewal application will be voted upon by CPRC members during their monthly meeting and forwarded to the Board for informational purposes only. The effective date listed on the certificate shall be the date of CPRC approval.

Failure to submit a current audited financial statement or surety letter of intent after thirty (30) days written notice by the Contractor Prequalification Administrator the contractor's prequalification certificate shall be revoked.



**J. Contractor Prequalification Bid Limit Increase**

A prequalified contractor may seek an increase at any time during their prequalification period of their single bid limit and/or aggregate bid limit by submitting a renewal prequalification application. The application shall be reviewed and approved by the CPRC as stated by the procedures noted in the procedures. However, an approval of an increase in a firm's bid limit will not renew the firm's prequalification term period.

1. **Single Bid Limit Increase** - When a prequalified contractor seeks an increase in their single bid limit they must submit two (2) of their highest completed projects within the past-consecutive five (5) years along with a Surety Letter of Intent. A Power of Attorney must accompany the surety letter. An increase in a firm's single bid increase must be approved by the Board.
2. **Aggregate Bid Limit Increase** - When a prequalified contractor seeks an increase in their aggregate bid limit they must submit a Surety Letter of Intent that indicates their new aggregate bid limit. When there is a modification to a contractor's aggregate bid limit, this information shall be provided to the Board for informational purposes only.

**K. Updating of Firm Information**

A contractor shall notify the Administrator within fifteen (15) days of any changes that occur in the firm's ownership, management, or financial condition. The contractor shall provide a notarized statement to the OEO stating the basis of the change. The Administrator shall be responsible for updating the contractor's information and determining whether the pronounced changes affect the contractor's prequalification status.

**L. Rejection of a Contractor Prequalification Application**

Within seven (7) business days of the CPRC denying a prequalification application, the Administrator shall notify the firm via written notification that their contractor prequalification application has been rejected. The notification shall include at a minimum:

- the basis for denial of the firm's contractor prequalification application;
- a statement notifying the firm that they may not re-apply for contractor prequalification for a period of six (6) months after the written notice of denial; and,

- a statement that the firm may request an appeal to the Contractor Prequalification Appeals Committee (CPAC) by submitting a request within 10 days of the written notice of denial for prequalification.

The Administrator shall also reject the firm's profile in ODCS.

**M. Appeal Procedures for a Rejected Contractor Prequalification Application**

A statement shall be submitted by the firm requesting an appeal to the CPAC within ten (10) days of the written notice of denial. Upon receipt of the request for appeal to the CPAC, a hearing shall be scheduled to consider the application of the appellant firm and any supporting documentation. The CPAC shall then recommend that the Board uphold or overturn a decision to deny the firm's prequalification status. The CPAC shall be governed as set forth in Board Policy 6334.

The CPAC shall be comprised of individuals from the following District offices, and organizations as selected by the Superintendent, or their designees:

- a. one (1) representative from a construction or an architectural engineering organization that is not currently nor has within the past five (5) years contracted with the Board, and who is not currently serving as a member or designee on the CPRC;
- b. one (1) representative from the Office of Superintendent;
- c. Deputy Superintendent, School Operations;
- d. Chief Financial Officer, Financial Services;
- e. Inspections Officer, District Inspections, Operations and Emergency Management; and
- f. Chief Auditor, Office of Management and Compliance Audits (non-voting).

Voting members of the CPRC and CPAC must disclose any conflicts or potential conflicts of interest, and may not vote on the matter upon which there is a potential conflict. In addition, no individual may serve on the CPRC and the CPAC to review the request of a contractor to be prequalified and then hear the appeal of the same contractor.

**N. Duties and Responsibilities**

CPAC is responsible for hearing all appeals from contractors that are denied contractor prequalification certification by the CPRC. The CPAC is authorized to recommend that the Board uphold or overturn a decision to deny a company's prequalification, after a hearing and upon consideration of the firm's application and any supporting documents.

**O. Suspension or Revocation Period**

A contractor who has been declared delinquent and its contractor prequalification certification has been suspended or revoked, shall not apply for renewal during the six (6) months suspension or the revocation period.

**P. Dissemination of Information**

The Administrator is responsible for providing prequalified contractor's status to inter-departmental staff upon request according to bids received by discipline and single/aggregate bid limits.

**XXII. Reporting**

The OEO will:

1. Report annually to the Superintendent and Board on the progress of achieving the goals and objectives established for awards to certified firms, reporting both dollars awarded and expended. In addition, the OEO shall annually report on the progress in achieving the stated program objectives, including, but not limited to, enhancing competition, establishing and building new business capacity, program effectiveness removing barriers to and eliminating disparities in the utilization of available minority business enterprises and women business enterprises on Board contracts, recommendations and an assessment of the overall programs. The annual report shall also provide data by certification category and industry.
2. Provide regular updates and reports to the Small/Micro, Minority/Women, and Veteran Business Enterprise Advisory Committee along with other stakeholders. OEO regular updates and reports should include information on tracking, monitoring and reporting in all areas;
3. Conduct continuous program evaluations and assessment of programs and initiatives; and,
4. Publish or make readily available its listing of all certified firms by program and/or industry.

## Federal and State Laws

The School Board of Miami-Dade County, Florida, adheres to a policy of nondiscrimination in employment and educational programs/activities and programs/activities receiving Federal financial assistance from the Department of Education, and strives affirmatively to provide equal opportunity for all as required by:

**Title VI of the Civil Rights Act of 1964**— prohibits discrimination on the basis of race, color, religion, or national origin.

**Title VII of the Civil Rights Act of 1964** —as amended—prohibits discrimination on the basis of gender.

**Title IX of the Education Amendments of 1972**—prohibits discrimination on the basis of gender.

**Age Discrimination in Employment Act of 1967 (ADEA)** - as amended, prohibits discrimination on the basis of age with respect to individuals who are least 40.

**The Equal Pay Act of 1963**—as amended—prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

**Section 504 of the Rehabilitation Act of 1973**—prohibits discrimination against individuals with disabilities in employment, public service, public accommodations and telecommunications.

**American with Disabilities Act of 1990 (ADA)** - prohibits discrimination against the disabled.

**The Family and Medical Leave Act of 1993 (FMLA)** - requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to “eligible” employees for certain family and medical reasons.

**The Pregnancy Discrimination Act of 1978**—prohibits discrimination in employment on the basis of pregnancy, childbirth, or related medical conditions.

**Florida Educational Equity Action (FEEA)** - prohibits discrimination on the basis of race, gender, national origin, marital status, or handicap against a student or employee.

**Florida Civil Rights Act of 1992**—secures for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status.

**Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)** – Prohibits discrimination against employees or applicants because of genetic information.

**School Board Policies 1362, 3362, 4362, and 5517** - prohibit harassment and/or discrimination against a student or employee on the basis of gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, pregnancy, or disability.

*Veterans are provided re-employment rights in accordance with P.L. 93-508 (Federal Law) and Section 218 of the Florida Statutes), which stipulate categorical preferences for employment.*