

Financial Services  
Mr. Alberto Carvalho, Superintendent of Schools

**SUBJECT:**            **PROPOSED AMENDMENT OF BOARD POLICY: INITIAL  
READING POLICY 6320.02, *MINORITY/WOMEN ENTERPRISE*  
*CERTIFICATION PROCEDURES***

**PROPOSED REPEAL OF SCHOOL BOARD POLICY: INITIAL  
READING POLICY 6460.01, *BUSINESS DEVELOPMENT AND*  
*ASSISTANCE PROGRAM***

**COMMITTEE:**        **INNOVATION, EFFICIENCY & GOVERNMENTAL RELATIONS**

**LINK TO STRATEGIC  
FRAMEWORK:**      **FINANCIAL EFFICIENCY/STABILITY**

The purpose of this item is to provide the Board the proposed amendment to Board Policy 6320.02, Minority/Women Enterprise Certification Procedures, and repeal Board Policy 6460.01, Business Development and Assistance Program. It is recommended that Board Policy 6460.01, Business Development and Assistance Program be repealed in order to incorporate language from this policy into proposed amended policy 6320.02, Minority/Women Enterprise Certification Procedures. In addition, a title change of amended policy 6320.02, is recommended to reflect the proposed new language. The combination of these policies will enable the District to implement these programs to establish a comprehensive contract reporting and monitoring system. In addition, it will allow the maximum legally permissible opportunities for small and minority/women business enterprises to participate in the award and performance of Board contracts. It will also provide the community information concerning contracting opportunities for small and minority/women businesses.

Attached are the Notice of Intended Action and the policy proposed for amendment and repeal. Changes to the current policy are indicated by underscoring words to be added and ~~striking through~~ words to be deleted.

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Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act for the amendment of Board Policy 6320.02, Minority/Women Business Enterprise Certification Procedures and repeal Board Policy 6460.01, Business Development and Assistance Program.

**RECOMMENDED:** That The School Board of Miami-Dade County, Florida, authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Board Policy 6320.02, Minority/Women Business Enterprise Certification Procedures and to repeal Board Policy 6460.01, Business Development and Assistance Program.

RHH:crl

## NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on October 10, 2012, its intention to amend Board Policy 6320.02, Minority/Business Enterprise Certification Procedures, at its meeting of November 21, 2012.

**PURPOSE AND EFFECT:** It is recommended that Board Policy 6460.01 be repealed in order to incorporate language from this policy into proposed amended policy 6320.02. In addition, a title change of amended policy 6320.02, is recommended to reflect the proposed new language. The combination of these policies will enable the District to implement these programs to establish a comprehensive contract reporting and monitoring system. In addition, it will allow the maximum legally permissible opportunities for small and minority/women business enterprises to participate in the award and performance of Board contracts. It will also provide the community information concerning contracting opportunities for small and minority/women businesses.

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

**SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED:** 1001.41(2); 1013.46(1)(b); 287.093 F.S.

**LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC:** 1001.32(2), 1001.41(1), (2), F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING OF November 21, 2012, 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 by Section 541(1), F.S. must do so in writing by November 5, 2012, to the Superintendent, Room 912, at the same address.

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

A COPY OF THE PROPOSED AMENDED POLICY is available at cost to the public for inspection and copying in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

Originator: Mr. Barry S. Meltz  
Supervisor: Dr. Richard H. Hinds  
Date: September 28, 2012

1                    SMALL/MICRO BUSINESS ENTERPRISE PROGRAM AND  
2                    MINORITY/WOMEN BUSINESS ENTERPRISE CERTIFICATION  
3                    PROCEDURES

The Small/Micro Business Enterprise Program is established to provide expanded and equitable participation by small and micro businesses in School Board procurement of goods and services, construction, and professional services.

Office of Economic Opportunity (OEO)

The OEO shall administer and implement the Small/Micro Business Enterprise Program and M/WBE Certification and:

4                    A. enforce the Board's anti-discrimination policy in the award of  
5                    contracts for construction projects, procurement of goods and  
6                    services, and professional services;

7                    B. provide maximum legally permissible opportunities for small and  
8                    minority/women business enterprises to participate in the award  
9                    and performance of Board contracts;

10                    C. monitor, track and certify small businesses and minority/women  
11                    business enterprises,

12                    D. enforce compliance with policy;

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

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

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

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

- 1           H. I. establish a comprehensive contract reporting and monitoring system  
2                 to evaluate the effectiveness of these programs in increasing  
3                 contracting opportunities for small and minority/women businesses.
- 4           I. J. serve as chair of the Goal-Setting Committee and staff liaison to the  
5                 Small Business Enterprise Advisory Committee.
- 6
- 7           J. K. monitor, coordinate, and provide support for any disparity study  
8                 that may be conducted regarding minority/women business  
9                 participation in School Board procurement; and
- 10
- 11           K. L. develop and coordinate any recommendations as a result of any  
12                 such disparity study findings; and
- 13
- 14           L. M. maintain, distribute, and publish a directory of certified SBE, MBE,  
15                 and M/WBE firms; and
- 16
- 17                 N. quarterly report through the Superintendent to the School Board  
18                 regarding the effectiveness of these programs.
- 19

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20           **Small Business Enterprise Advisory Committee**

21

22           The Small Business Enterprise Advisory Committee (SBEAC) shall be established to

- 23
- 24           (1) provide guidance on the implementation of the SBE/MBE Program and to  
25                 promote the participation and use of SBE/MBEs and MWBEs in the  
26                 procurement activities of the School Board,
- 27           (2) identify and evaluate issues related to economic opportunities within the  
28                 School Board for small, micro and minority/women owned businesses.
- 29           (3) provide recommendations to the School Board to improve the SBE/MBE  
30                 program,
- 31           (4) annually evaluate and report to the School Board on the effectiveness of  
32                 the SBE/MBE program in increasing minority and women owned  
33                 business participation in the School Board's procurement process,
- 34           (5) monitor any disparity study that may be conducted by the School Board  
35                 and make recommendations based on the results of any such study.
- 36

37           The School Board and Superintendent shall each appoint a community member who  
38                 is not employed by the School Board and does not have any direct or indirect  
39                 business relationship with the School Board. The committee shall have  
40                 representation from local small, micro, minority, women, and majority business  
41                 interest organizations, community based organizations and local government entities  
42                 which may include professional, construction and trade, business, and socio-  
43                 economic organizations. The School Board and Superintendent shall approve a list

1 of representative organizations and the Superintendent shall appoint a member  
2 nominated by each recommended organization from their membership. The term of  
3 each Board appointee shall be coterminous with the appointing Board member and  
4 the term of the Superintendent's appointees shall be at the will and discretion of the  
5 Superintendent. In no event shall any Board member serve more than four (4)  
6 consecutive years. All appointments must comply with Policy 9140, *Citizen Advisory*  
7 *Committees*. The Committee shall annually elect a Chair and Vice-Chair, meet at  
8 least six (6) times per year, and be governed by the latest edition of *Robert's Rules of*  
9 *Order*. The committee may adopt bylaws, to be recommended by the Superintendent  
10 to the School Board for approval, to facilitate the operation of the committee.  
11

**Small/Micro Business Enterprise Program**

12 The Small/Micro Business Enterprise (SBE/MBE) Program is a race and gender-  
13 neutral process to provide greater SBE/MBE availability, capacity development and  
14 contract participation in School Board contracts, to advance the School Board's  
15 compelling interest in ensuring that it is neither an active nor passive participant in  
16 private sector marketplace discrimination, and to promote equal opportunity for all  
17 segments of the contracting community to participate in School Board contracts.  
18

**A. Terms and Definitions**

19  
20  
21 **Affirmative Procurement Initiatives** - any procurement tool to enhance  
22 contracting opportunities for SBE/MBE firms including: bonding waivers, bid  
23 incentives, sheltered market, mandatory subcontracting, competitive business  
24 development demonstration projects, and SBE/MBE evaluation preference points in  
25 the scoring of proposal evaluations.  
26

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

35 **Award** - final selection of a bidder or offeror for a specified contract.  
36

37 **Award Amount** -the dollar value of the contract when awarded.  
38

39 **Bid** - quotation, proposal, letter of interest or offer by any bidder in response to any  
40 kind of invitation, solicitation, request or public announcement to submit such  
41 quotation, proposal, letter of interest or offer for a contract.  
42

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

3  
4 **Certification** – process by which the Office of Economic Opportunity (“OEO”)  
5 determines that a business meets the criteria for classification as a small/micro  
6 business enterprise.

7  
8 **Commercially Useful Function** – an SBE/MBE performs a commercially useful  
9 function when it is responsible for execution of the work of the contract and is  
10 carrying out its responsibilities by actually performing, managing, and supervising  
11 the work involved. To perform a commercially useful function, the SBE/MBE must  
12 also be responsible for negotiating the price of contract materials and supplies,  
13 determining the quantity and quality of materials, ordering and installing materials  
14 if applicable, and paying for the materials. To determine whether an SBE/MBE is  
15 performing a commercially useful function, an evaluation must be performed of the  
16 amount of work subcontracted, normal industry practices, whether the amount the  
17 SBE/MBE is to be paid under the contract is commensurate with the work it is  
18 actually performing and the SBE/MBE credit claimed for its performance of the  
19 work, and other relevant factors. Specifically, an SBE/MBE does not perform a  
20 commercially useful function if its role is limited to that of an extra participant in a  
21 transaction, contract, or project through which funds are passed in order to obtain  
22 the appearance of meaningful and useful SBE/MBE participation, when in similar  
23 transactions in which SBE/MBE firms do not participate, there is no such role  
24 performed.

25  
26 **Contract** – an agreement for purchase of goods or services, including professional  
27 services and construction. It does not include agreements to purchase, lease, or rent  
28 real property, or a grant, license, permit, franchise or concession.

29  
30 **Goal** – a non-mandatory annual aspirational percentage goal for SBE/MBE contract  
31 participation established each year for professional architectural, engineering,  
32 landscape, surveying, and mapping services, construction, goods & services and  
33 other professional services. Mandatory percentage goals for SBE/MBE subcontract  
34 participation may be established on a contract-by-contract basis.

35  
36 **Goal Setting Committee** – committee established by the Superintendent that is  
37 chaired by the OEO and is responsible for establishing SBE/MBE Program goals  
38 and selecting appropriate Affirmative Procurement Initiatives for application to  
39 specific School Board contracts based upon industry categories, vendor availability,  
40 and project-specific characteristics.

41  
42 **Good Faith Efforts** – documentation of the Bidder’s intent to comply with  
43 SBE/MBE Program goals and procedures, including, but not limited to the following:  
44 (1) documentation within a bid submission or proposal reflecting the Bidder’s

1 commitment to comply with SBE/MBE Program goals as established by the Goal  
2 Setting Committee for a particular contract; or (2) documentation of efforts made  
3 towards achieving the SBE/MBE Program goals, including but not limited to, timely  
4 posting of SBE/MBE subcontract opportunities on the School Board web site;  
5 solicitations of bids from all qualified SBE firms listed in OEO's SBE/MBE Directory  
6 of certified SBE/MBE firms; correspondence from qualified SBE/MBE firms  
7 documenting their unavailability to perform SBE/MBE contracts; documentation of  
8 efforts to subdivide work into smaller quantities for subcontracting purposes to SBE  
9 firms; documentation of efforts to assist SBE/MBE firms with obtaining financing,  
10 bonding, or insurance required by the bidder; and documentation of consultations  
11 with trade associations and consultants that represent the interests of small and  
12 local businesses in order to identify qualified and available SBE/MBE  
13 subcontractors.

14  
15 **Gross Revenue** - all revenue in whatever form received or accrued from whatever  
16 source, including sales of products or services, interest, dividends, rents, royalties,  
17 fees or commissions, reduced by returns and allowances. Gross revenue does not  
18 include proceeds from sales of capital assets, and investments, proceeds from  
19 transaction between a firm and its domestic and foreign affiliates.

20  
21 **Independently Owned, Managed, and Operated** - ownership of an SBE/MBE firm  
22 must be direct, independent, and by individuals only. Business firms that are  
23 owned by other businesses or by the principals or owners of other businesses that  
24 cannot themselves qualify under the eligibility requirements shall not be eligible to  
25 participate in the program. The day-to-day management of the firm must also be  
26 direct and independent of the influence of any other businesses that cannot  
27 themselves qualify under the eligibility requirements.

28  
29 **Industry Categories** - procurement groupings of School Board contracts for  
30 administering the Affirmative Procurement Initiatives that shall include  
31 construction, professional services, and goods & services procurement. Industry  
32 categories may also be referred to as "business categories."

33  
34 **Joint Venture** - an association of two or more persons or businesses under a  
35 contract conducting a single business enterprise in which they combine capital,  
36 efforts, skills, knowledge and/or property and share profits and losses equally. A  
37 joint venture composed of qualified business organizations is itself a separate and  
38 distinct organization that must be qualified according to Board policies and Section  
39 489.119(2)(c), F.S.

40  
41 **Micro-Business Enterprise** - any contractor, subcontractor, manufacturer or  
42 service company (a) that has been doing business under the same ownership or  
43 management and has maintained its principal place of business in Miami-Dade  
44 County, Florida, for a period of at least one year immediately prior to the date of

1 application for certification under this section, (b) that had annual gross revenues  
2 not exceeding the thresholds for a Micro-Business Enterprise as identified in this  
3 policy for each industry, and (c) at least fifty-one per cent of the ownership of which  
4 is held by a person or persons who exercise operational authority over the daily  
5 affairs of the business and have the power to direct the management and policies  
6 and receive the beneficial interests of the company. Representations regarding  
7 average gross revenue and payroll are subject to audit. If a business has not existed  
8 for 3 years, the employment and gross revenue limits shall be applied based upon  
9 the annual averages over the course of the existence of the business.

10  
11 **Points** – the quantitative assignment of value for specific evaluation criteria in the  
12 vendor or consultant selection process.

13  
14 **Prime Contractor** – the vendor or contractor to whom a purchase order or contract  
15 is awarded by the School Board for purposes of providing goods or services to the  
16 School Board.

17  
18 **Principal Place of Business** – the location where a firm maintains a physical office  
19 and through which it obtains no less than fifty percent of its overall customers or  
20 sales dollars, or through which no less than twenty-five percent of its employees are  
21 located and domiciled within the service area of Miami-Dade County.

22  
23 **Responsible** – means that a firm is capable in all respects of fully performing the  
24 contract requirements and has the integrity and reliability to assure good faith  
25 performance.

26  
27 **Responsive** – description of a firm's bid or proposal that conforms in all material  
28 respects to the invitation to bid or request for proposal and shall include compliance  
29 with SBE Program requirements.

30  
31 **School Board** – The School Board of Miami-Dade County, Florida, which is the legal  
32 entity with authority to enter contracts on behalf of the District school system under  
33 Fla. Stat. § 1001.41(4).

34  
35 **Service Disabled Veteran** - a person that was injured while serving in the United  
36 States Armed Forces.

37  
38 **Sheltered Market** – An Affirmative Procurement Initiative designed to set aside a  
39 School Board contract bid for bidding or selection exclusively among SBE/MBE  
40 firms.

41  
42 **Significant Employee Presence** – no less than twenty-five percent of a firm's total  
43 number of employees are domiciled in Miami-Dade County, Florida.

1  
2 **SBE/MBE Plan Execution Certification (SBE/MBE Form - C)** - form certifying the  
3 general contractor's intent to use a SBE/MBE subcontractor and verifying that an  
4 agreement has been executed between the prime and the SBE/MBE.

5  
6 **SBE/MBE Directory** - listing of certified SBE/MBEs.

7  
8 **SBE/MBE Certification/Re-certification Application (SBE/MBE Form - R)** - form  
9 that a company must complete when applying for and/or recertifying SBE/MBE  
10 status for participation in the SBE/MBE Program. This form shall be completed  
11 every two years by certified SBE/MBEs by the anniversary date of their original  
12 certification.

13  
14 **SBE/MBE Schedule for Subcontractor Participation (SBE/MBE Form - S)** - form  
15 that must be completed by all non-SBE/MBE firms that subcontract to SBE/MBE  
16 firms, must be submitted for each SBE/MBE subcontractor, and must be reviewed  
17 and approved by the OEO Manager before contract award.

18  
19 **SBE/MBE Unavailability Certification (SBE Form - U)** - form demonstrating a  
20 bidder's unsuccessful good faith effort to meet the small business local participation  
21 requirements of the contract which shall only be considered after proper completion  
22 of the outreach and compliance efforts and methods used to notify and inform  
23 SBE/MBE firms of contracting opportunities have been fully exhausted.

24  
25 **Small Business Enterprise (SBE)** - any contractor, subcontractor, manufacturer or  
26 service company (a) that has been doing business under the same ownership or  
27 management and has maintained its principal place of business in Miami-Dade  
28 County, Florida, for a period of at least one year immediately prior to the date of  
29 application for certification under this section, (b) that had annual gross revenues  
30 not exceeding the thresholds identified in this policy for each industry, and (c) at  
31 least fifty-one per cent of the ownership of which is held by a person or persons who  
32 exercise operational authority over the daily affairs of the business and have the  
33 power to direct the management and policies and receive the beneficial interests of  
34 the company. Representations regarding average gross revenue and payroll are  
35 subject to audit. If a business has not existed for 3 years, the employment and gross  
36 revenue limits shall be applied based upon the annual averages over the course of  
37 the existence of the business.

38  
39 **Spend Dollars** - dollars actually paid to prime and/or subcontractors and vendors  
40 for School Board contracted goods and/or services.

41  
42 **Subcontractor** - any vendor or contractor that is providing goods or services to a  
43 Prime Contractor in furtherance of the Prime Contractor's performance under a  
44 contract or purchase order with the School Board.

1  
2 Subcontractor Goal – a proportion of a total contract value stated as a percentage  
3 to be subcontracted to SBE/MBEs to perform a commercially useful function.  
4

5 Suspension – the temporary stoppage of an SBE/MBE firm’s participation in the  
6 School Board’s contracting process for a finite period of time.  
7

8 **B. Application**  
9

10 This program applies to School Board contracts funded in whole or in part by School  
11 Board funds except where federal or state laws or regulations prohibit its  
12 application. The Superintendent has the discretion to identify classes of contracts or  
13 parts of contracts that are subject to this program. The Superintendent shall also  
14 prepare necessary procedures, bid and contract documents to implement the  
15 program.  
16

17 **C. Subcontractor Goals**  
18

19 Subcontractor goals may be applied to a contract based on estimates made prior to  
20 bid advertisement of the quality, quantity and type of subcontracting opportunities  
21 provided by the contract and the availability of SBE/MBEs to perform the work.  
22

23 **D. Goal Setting Committee**  
24

25 The Superintendent shall create and staff a Goal Setting Committee (GSC) to  
26 establish SBE/MBE Program goals and select appropriate incentives to apply to  
27 specific contracts based upon industry categories, vendor availability and project-  
28 specific characteristics. The Superintendent shall determine the size of the GSC  
29 that is to be chaired by the OEO who shall serve as a voting member. The  
30 Superintendent shall also appoint the remaining members of the GSC from the  
31 School Board’s procurement personnel and other School Board departments affected  
32 by this Program. The GSC shall meet as often as it determines necessary, but not  
33 less than twice annually, to develop the SBE/MBE goal setting methodology to be  
34 implemented by the OEO on a contract-by-contract basis, and monitor and support  
35 the implementation of this policy.  
36

37 **E. SBE/MBE Eligibility and Certification**  
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- 39 1. The OEO shall certify a company or other business entity as a SBE or  
40 MBE upon its submission of a completed District required certification  
41 form , supporting documentation, and a signed affidavit stating that it  
42 meets all of the following criteria:  
43

- 1 a) Is an independently owned and operated business that is not dominant  
2 in its field of operation and is performing a commercially useful  
3 function; and  
4  
5 b) The business has its principal place of business in Miami-Dade County  
6 for at least a year preceding the application; and  
7  
8 c) The business has been established for at least one year or the  
9 principals of the business have at least three years of relevant  
10 experience prior to forming or joining the business; and  
11  
12 d) The business has an occupational license and all required professional  
13 licenses and/or contractor qualifier licenses.  
14  
15 e) The owner of the business must have the required professional ADDED  
16 license(s) and contractor qualification license.  
17  
18 2. Additionally, the requirements for SBE/MBE Program eligibility based on  
19 industry are:

20  
21 **Micro Business Enterprise**  
22

- 23 a) **Professional Services:** The annual gross revenue averaged over the  
24 previous three years shall not exceed \$300,000.  
25 b) **Goods and Services (Procurement Program):** The annual gross  
26 revenue averaged over the previous three year period shall not exceed  
27 \$500,000.  
28 c) **Construction:** The annual gross revenue averaged over the previous  
29 three years shall not exceed \$750,000.  
30 d) **Specialty Trade:** The annual gross revenue average over the previous  
31 three years shall not exceed \$300,000.  
32

33 **Small Business Enterprise**  
34

- 35 e) **Professional Services:** The annual gross revenue averaged over the  
36 previous three years shall not exceed \$600,000.  
37 f) **Goods and Services (Procurement Program):** The annual gross  
38 revenue averaged over the previous three year period shall not exceed  
39 \$1,000,000.  
40 g) **Construction:** The annual gross revenue averaged over the previous  
41 three years shall not exceed \$3,000,000.  
42 h) **Specialty Trade:** The annual gross revenue average over the previous  
43 three years shall not exceed \$750,000.  
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3. Upon receipt of a certification or re-certification application, the OEO shall review all enclosed forms, affidavits and documentation and determine whether the applicant satisfies the eligibility requirements. The OEO shall send a letter to ineligible applicants stating the basis for the denial of eligibility. Applicants determined ineligible shall not be eligible to submit a new application for at least one year after the date of the notice of denial of eligibility.
  4. Applicants determined eligible to participate in the program shall submit a completed re-certification form (SBE/MBE-R) every two years to the OEO for review and continued certification. However, upon application for re-certification, an SBE/MBE firm must be an independently owned and operated business concern, and maintain its principal place of business or have a significant employment presence in Miami-Dade County in accordance with this policy. To qualify for recertification, the firm's average gross revenue for the three fiscal years immediately preceding the application for recertification shall not exceed \$7 million for Construction, \$5 million for Goods & Services, \$1.8 million for Specialty Trade, or \$1.5 million for Professional Services. The eligibility criteria regarding years of existence shall only apply for the initial certification.
  5. In considering certification or re-certification status of any firm, the OEO shall periodically conduct audits and inspect the office, job site, records, and documents of the firm, and shall interview the firm's employees, subcontractors, and vendors as reasonably necessary to ensure that all eligibility standards are satisfied and that the integrity of this program is maintained.

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30 **F. G. Graduation and Suspension**

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31  
32 A bidder may not count towards its SBE/MBE participation the amount  
33 subcontracted to an SBE firm that has graduated or been suspended from the  
34 program as follows:

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44
1. An SBE shall be permanently graduated after its three fiscal year average gross revenue exceeds \$7 million for Construction, or \$5 million for Goods & Services, \$1.8 million for Specialty Trade, and \$1.5 million for Professional Services.
  - 1.2. When an MBE exceeds the eligibility certification thresholds, it automatically graduates and is subject to the Small Business criteria and restrictions.

1 | 2.3. If an SBE exceeds the size standards for the Small Business Program  
2 | during any fiscal year, it shall be allowed to complete any pending ADDED  
3 | contractual obligation(s), and its participation can be counted in the goals.  
4 |

5 | 3.4. The OEO may permanently revoke SBE/MBE eligibility if it fails to  
6 | perform a Commercially Useful Function under a contract, or if it allows  
7 | its SBE/MBE status to be fraudulently used for the benefit of a non-  
8 | SBE/MBE firm or the owners of a non-SBE/MBE firm so as to provide the  
9 | non-SBE/MBE firm or firm owners benefits from Affirmative Procurement  
10 | Initiatives for which the non-SBE/MBE firm and its owners would not  
11 | otherwise be entitled.  
12 |

13 | 4.5. The OEO shall provide written notice to the SBE/MBE upon  
14 | graduation or suspension from the SBE/MBE program including the  
15 | reasons.  
16 |

#### 17 | **G. H. Appeals**

18 | A business that is denied eligibility, whose eligibility is revoked, or who has been  
19 | denied a waiver request, may appeal the decision to the Superintendent. A written  
20 | notice of appeal must be received by the Superintendent within 15 calendar days of  
21 | the date of the written notice. Upon receipt of a timely notice of appeal, the  
22 | Superintendent shall conduct a hearing. The Superintendent shall develop  
23 | procedures for the appeal process. The decision of the Superintendent shall be the  
24 | final decision of the School Board.  
25 |

#### 26 | **H. I. Affirmative Procurement Initiatives**

27 | The following Affirmative Procurement Initiatives may be used in awarding School  
28 | Board contracts to SBE/MBEs.

29 | a. **Bonding Waiver.** The School Board, at its discretion and consistent with  
30 | State law, may waive or reduce the bonding requirements depending on  
31 | the type of contract and whether the School Board determines that the  
32 | bonding requirements would deny the SBE/MBE an opportunity to  
33 | perform the contract which the SBE/MBE has shown itself otherwise  
34 | capable of performing.  
35 |

#### 36 | b. **Bid Incentives:**

37 | a. **Evaluation Preference** - In ranking and evaluating proposals for "best  
38 | value" contracts in which factors other than price are relevant to the  
39 | selection process, the School Board may award up to 20% of the total  
40 |

1           points available to a SBE/MBE or a joint venture with an SBE/MBE  
2           partner in response to a Request for Proposal.

3  
4           **3. Mandatory Subcontracting:**

5  
6           a. The GSC may at its discretion and on a contract-by-contract basis,  
7           require that a predetermined percentage up to 40% of a specific  
8           contract be subcontracted to eligible SBE/MBEs.

9  
10           b. An SBE/MBE prime contractor may not subcontract more than 49% of  
11           the contract value to a non-SBE/MBE.

12  
13           c. A prospective bidder on a School Board contract shall submit at the  
14           time of bid SBE/MBE – Form S providing the name of the SBE/MBE  
15           subcontractor or subcontractors and describing both the percentage of  
16           subcontracting by the SBE/MBE and the work to be performed by the  
17           SBE/MBE. A bidder may request a full or partial waiver of this  
18           mandatory subcontracting requirement from the OEO for good cause  
19           by submitting the SBE/MBE Unavailability Certification form to the  
20           OEO prior to bid opening. Under no circumstances shall a waiver of a  
21           mandatory subcontracting requirement be granted without submission  
22           of adequate documentation of Good Faith Efforts by the bidder and  
23           careful review by the OEO. The OEO shall determine a waiver request  
24           upon the following criteria:

25  
26           (1) Whether the requestor of the waiver has made Good Faith Efforts  
27           to subcontract with qualified and available SBE/MBE;           ] REVISED

28  
29           (2) Whether subcontracting would be inappropriate and/or not  
30           provide a “Commercially Useful Function” under the  
31           circumstances of the contract; and

32  
33           (3) Whether there are no certified SBE/MBEs that are qualified and  
34           available to provide the goods or services required.

35  
36           d. In the absence of a waiver granted by the OEO, failure of a Prime  
37           Contractor to commit in its bid or proposal to satisfying the mandatory  
38           SBE/MBE subcontracting goal shall render its bid or proposal non-  
39           responsive.

40  
41           e. In the absence of a waiver granted by the OEO, failure of a Prime  
42           Contractor to attain a mandatory subcontracting goal for SBE/MBE  
43           participation in the performance of its awarded contract shall be  
44           grounds for termination of existing contracts with the School Board,

1            debarment from performing future School Board contracts, and / or  
2            any other remedies available under the terms of its contract with the  
3            School Board or under the law.

4  
5            f. A Prime Contractor is required to notify and obtain written approval  
6            from the OEO in advance of any reduction in subcontract scope,  
7            termination, or substitution for a designated SBE/MBE Subcontractor.  
8            Failure to do so shall constitute a material breach of its contract with  
9            the School Board.

10  
11            **4. Sheltered Market:**

12  
13            a. The OEO and GSC may select certain contracts for award to a  
14            SBE/MBE or a joint venture with a SBE/MBE through the Sheltered  
15            Market program.

16  
17            b. In determining whether a particular contract is eligible for the  
18            Sheltered Market Program, the OEO and GSC shall consider: whether  
19            there are at least three SBE/MBEs that are capable and available to  
20            participate in the Sheltered Market Program for that contract; the  
21            degree of underutilization of the SBE/MBE prime contractors in the  
22            specific industry categories; and the extent to which the School Board's  
23            SBE/MBE prime contractor utilization goals are being achieved.

24  
25            c. If a responsive and responsible bid or response is not received for a  
26            contract that has been designated for the Sheltered Market Program, or  
27            the apparent low bid is determined to be too high in price, the contract  
28            shall be removed from the Sheltered Market Program.

29  
30            **I. J. SBE/MBE Program Performance Review**

31            ]REVISED

32            1. The OEO shall monitor the implementation of this Policy and the progress  
33            of this Program. On a quarterly basis, the OEO shall report to the  
34            Superintendent and School Board on the progress of achieving the goals  
35            and objectives established for awards to certified SBE/MBE firms,  
36            reporting both dollars awarded and expended. In addition, the OEO shall  
37            report on the progress in achieving the stated Program Objectives,  
38            including, but not limited to, enhancing competition, establishing and  
39            building new business capacity, and removing barriers to and eliminating  
40            disparities in the utilization of available minority business enterprises and  
41            women business enterprises on School Board contracts.  
42  
43

- 1           2. The School Board shall quarterly review the SBE/MBE Program to  
2           determine whether the various contracting procedures used to enhance  
3           SBE/MBE contract participation needs to be adjusted or used more or  
4           less aggressively in future years to achieve the stated Program Objectives.

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**Minority/Women Business Enterprise Program**

5           The Minority/Women Business Enterprise (MWBE) Program is established to  
6           enhance the bidding and selection opportunities of M/WBEs on certain contracts as  
7           specifically provided in Board Policy 6610. "Minority business enterprise" means  
8           any business as defined in F.S. 288.703. The M/WBE Enterprise Program and its  
9           certification procedure should be modified, adjusted and revised in accordance with  
10          the results of the Disparity Study.

REVISIED

ADDED

**A. Terms and Definitions**

11  
12           **Minority Ownership** – minority ownership means that for

- 13  
14  
15           1. Sole Proprietorship - a sole proprietor must be a minority person or  
16           woman.  
17  
18           2. Partnership - a minority/ woman individual's interest must include at  
19           least fifty-one percent (51%) of the ownership, profit/loss, voting control,  
20           and capital of the partnership.  
21           3. Corporation - Minority/Women must own at least fifty-one percent (51%)  
22           of all voting stock, issued by a corporation. No stock held in trust, or by  
23           any guardian for a minor, shall be considered held by the  
24           minority/woman individual, in determining ownership and control.  
25           4. Limited Liability Company (LLC) – Minority/women must control the  
26           management and operations, as well as hold at least fifty-one percent  
27           (51%) of the company's ownership interest.

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

30  
31           **Minority Person** - is a person born or naturalized in the United States. Resident  
32           aliens and holders of permanent visas are not considered to be citizens. The  
33           following groups are considered:

- 34  
35           1. An African American, a person having origins in any of the black racial  
36           groups of the African Diaspora, regardless of cultural origin.  
37

- 1           2. A Hispanic American, a person of Spanish or Portuguese culture with  
2           origins in Spain, Portugal, Mexico, South America, Central America, or the  
3           Caribbean, regardless of race.
- 4
- 5           3. An Asian American, a person having origins of the Far East, Southeast  
6           Asia, the Indian Subcontinent, or the Pacific Islands, including the  
7           Hawaiian Islands before 1778.
- 8
- 9           4. A Native American, a person who has origins in any of the Indian Tribes of  
10          North America before 1835, upon presentation of proper documentation  
11          as established by rule of the Department of Management Services.
- 12
- 13          5. An American born or naturalized woman.
- 14
- 15

16          **B. C. MWBE Eligibility and Certification**

REVIS

- 17
- 18          1. The OEO shall certify a company or other business entity as a MWBE  
19          upon its submission of a completed certification form (MWBE Form-  
20          \_\_\_\_\_), supporting documentation, and a signed affidavit stating that it meets the  
21          following criteria:
- 22
- 23           a. it employs 200 or fewer permanent full-time employees and that,  
24           together with its affiliates, has a net worth of not more than \$5 million  
25           For sole proprietorships, the \$5 million net worth requirement shall  
26           include both personal and business investments;
- 27
- 28           b. it is owned and controlled by at least 51% by a minority person/s who  
29           are members of an insular group that is of a specific racial, ethnic, or  
30           gender makeup or national origin which has been subjected  
31           historically to disparate treatment due to identification in and with that  
32           group resulting in an underrepresentation of commercial enterprises  
33           under the group's control, and whose management and daily  
34           operations are controlled by such persons. A minority business  
35           enterprise may primarily involve the practice of a profession.
- 36
- 37           c. it has its principal place of business in Miami-Dade County and for at  
38           least one year preceding the application;
- 39
- 40           d. The business has an occupational license and all required professional  
41           licenses and/or contractor qualifier licenses.
- 42
- 43           e. The owner of the business must have the required professional  
44           license(s) and contractor qualification license.

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1 **Ownership**

2 ~~Ownership for specific business entities seeking Minority/Women Business~~  
3 ~~Enterprise status shall be determined by:~~

4 ~~A. Sole Proprietorship a sole proprietor must be a minority person or~~  
5 ~~woman.~~

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

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

16  
17 ~~D. Limited Liability Company (LLC) Minority/women must control the~~  
18 ~~management and operations, as well as hold at least fifty one~~  
19 ~~percent (51%) of the company's ownership interest.~~

20  
21 ~~A minority owner(s) has voting rights to elect the board of directors, chief~~  
22 ~~executive officer and all other management personnel.~~

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

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

1           **b.** Whether minority/women owners share in all the risks of business,  
2 including, but not limited to, third party agreements, bonding and  
3 financial arrangements.  
4

5           **c.** Ownership by a minority person does not include ownership that is the  
6 result of a transfer from a nonminority person to a minority person  
7 within a related immediate family group if the combined total net asset  
8 value of all members of such family group exceeds \$1 million. The term  
9 “related immediate family group” means one or more children under 16  
10 years of age and a parent of such children or the spouse of such parent  
11 residing in the same house or living unit.

12   **Control**

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

20 Documents that establish control include but are not limited to:  
21 corporate bylaws, operating agreements, partnership agreements,  
22 management agreements or other agreements. Such documents  
23 should be free of restrictive language which dilutes a minority/woman  
24 owner(s)' control and prohibits him/her from making decisions.

(1) the minority/woman owner(s) ~~must demonstrate~~ by 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.

25 (2) Unless a business is a franchise, agreements for contractual  
26 support services that usurp a minority/woman owner's authority to  
27 control a company are not allowed.

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

1 (4) Minority/Women owners shall have knowledge and control of all  
2 financial matters of the business.

3 Illustrations of operational involvement by minority/woman owner(s), include,  
4 but are not limited to the following:

5 A. ~~The minority/woman owner should have the knowledge, training,~~  
6 ~~education, and experience necessary to operate the applicant's type~~  
7 ~~of business.~~

8 B. ~~The minority/woman owner(s) must demonstrate that s/he is able~~  
9 ~~to independently make basic management and contractual~~  
10 ~~decisions, relating to the day-to-day operation of the business. This~~  
11 ~~does not necessarily rule out the minority/woman owner(s) seeking~~  
12 ~~paid or unpaid advice and assistance. The minority/woman~~  
13 ~~owner(s) must presently have the knowledge to consider all advice~~  
14 ~~provided, and make an independent decision.~~

15 C. ~~A minority/woman owner(s) should have some technical knowledge~~  
16 ~~of the business including technical requirements. Employment,~~  
17 ~~education, and training will be considered to determine whether a~~  
18 ~~minority/woman as the technical knowledge capable of~~  
19 ~~independently making decisions regarding the management and~~  
20 ~~operate such a business.~~

21 3. Upon receipt of MWBE certification or re-certification applications, the OEO  
22 shall review all enclosed forms, affidavits and documentation, and determine  
23 whether the applicant satisfies the eligibility requirements. All applicants  
24 shall be notified in writing as to whether they are eligible. The OEO shall also  
25 provide to ineligible applicants in writing the basis for the denial of eligibility  
26 and the right to request an appeal. Applicants determined ineligible shall not  
27 be eligible to submit a new application for at least one year after the date of  
28 the notice of denial of eligibility.

29  
30 4. All certified M/WBEs will be included in the District's M/WBE Directory  
31 which will be regularly updated and provided to school sites.

32 **Issuance of Determination**

33  
34 A. ~~The Division will notify an applicant in writing that it has been~~  
35 ~~found eligible for certification and~~  
36

5. ~~M/WBEs must notify the Division of Business Development and~~  
~~Assistance~~OEO within fifteen (15) days, of any material changes to the

company's ownership and/or management of the firm. Any misrepresentation by a company of its M/WBE status shall be grounds for termination of any contract which was awarded based on the misrepresentation in reliance thereon. A violation, as described herein, may also subject the signatories to any other statutory penalties, pursuant to Florida statutes and Board policies.

1     6. ~~G.C.~~ M/WBE certification shall be valid for a two (2) year period. Certified  
2     M/BWEs shall not request a change in their minority/woman designation, to  
3     another minority designation during the certification period, unless changes  
4     are due to extenuating circumstances.

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

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

14     9. An M/WBE may be decertified for failure to comply with the Board's M/WBE  
15     policies and procedures regarding requests for information or documents  
16     pertaining to ownership, control, or operation of the business; failure to  
17     submit a complete M/WBE Recertification Application; debarment; or by  
18     written request from the firm's minority/women owners for voluntary  
19     removal from the MBWE Directory.

20     **Denial of Certification**

21     ~~Companies ineligible for certification will be notified in writing. Written notices will  
22     include reasons for the denial and the right to request to appeal before the  
23     Certification Committee.~~

24     **Appeal Process**  
25     **C. D. Appeals**

] REVISED

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

1 appeal process. The decision of the Superintendent shall be the final  
2 decision of the School Board. the Notice of Denial.

3 ~~B. The Clerk of the Board shall be notified in writing, upon receipt of a~~  
4 ~~request for an appeal hearing.~~

5 ~~C. Hearings by the Certification Appeals Committee shall not be de~~  
6 ~~novo and the decision of the Certification Appeals Committee shall~~  
7 ~~be final. If the applicant fails to submit a written request for appeal,~~  
8 ~~the denial shall be conclusive, and the applicant foreclosed from any~~  
9 ~~further appeal to the District. However, the applicant may request~~  
10 ~~that the Florida Department of Administrative Hearings review the~~  
11 ~~denial.~~

12 ~~D. Applicants denied certification shall not reapply for M/WBE~~  
13 ~~Certification for a period of fourteen (14) months from the date of~~  
14 ~~final determination.~~

15 **Certification Appeals Committee (CAC)**

16 ~~The CAC is responsible for hearing all appeal requests from firms denied M/WBE~~  
17 ~~Certification. The committee is authorized to uphold or overturn the denial based~~  
18 ~~on the hearing and the M/WBE applicant's original certification application and~~  
19 ~~supporting documents. The CAC will consist of the following or their designees:~~

20 ~~A. Deputy Superintendent, School Operations~~

21 ~~B. Chief Facilities Officer, Facilities Planning and Construction~~

22 ~~C. Assistant Superintendent, Procurement Management Services~~

23 ~~D. Chief Auditor, Management and Compliance Audits~~

24 ~~E. Treasurer, Office of Treasury Management~~

25 **Recertification**

- 1           A.    ~~An M/WBE must apply for recertification at least thirty (30) days~~  
2           ~~prior to its certification expiring. A Board M/WBE Recertification~~  
3           ~~Form may be submitted only if:~~  
4  
5           1.    ~~an M/WBE's certificate has not expired; and~~  
6  
7           2.    ~~no material changes have occurred in the ownership and control of~~  
8           ~~the M/WBE.~~  
9  
10          B.    ~~If certification has expired, the M/WBE must submit a new~~  
11          ~~application.~~

12    **Decertification**

13    ~~An M/WBE may be decertified as a result of the following:~~

- 14          A.    ~~Failure to comply with the Board's M/WBE policies and procedures~~  
15          ~~regarding requests for information or documents pertaining to~~  
16          ~~ownership, control, or operation of the business; or~~  
17  
18          B.    ~~Failure to submit a complete M/WBE Recertification Application;~~  
19  
20          C.    ~~Debarment; or~~  
21  
22          D.    ~~Voluntary removal from all Board M/WBE listings is requested in~~  
23          ~~writing by the firm's minority/woman owner(s).~~

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

## NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on October 10, 2012, its intention to repeal Board Policy 6460.01, Business Development and Assistance Program, at its meeting of November 21, 2012.

**PURPOSE AND EFFECT:** To repeal the existing School Board Policy 6460.01, Business Development and Assistance Program, and incorporate language into Board Policy 6320.02, Minority/Women Business Enterprise Certification Procedures. The title to the proposed amended policy 6320.02 is being changed to Small and Minority/Women Business Enterprise Programs and Certification Procedures.

**SUMMARY:** The repeal of this Board Policy will allow incorporation of the definitions for Business Development and Assistance Program into amended Board Policy 6320.02, Minority/Women Business Enterprise Certification Procedures.

**SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED:**  
287.093; 1013 F.S.

**LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC:** 287.093; 1013 F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING OF November 21, 2012, 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 by Section 541(1), F.S. must do so in writing by November 5, 2012, to the Superintendent, Room 912, at the same address.

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

A COPY OF THE PROPOSED REPEALED POLICY is available at cost to the public for inspection and copying in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

Originator: Mr. Barry S. Meltz  
Supervisor: Dr. Richard H. Hinds  
Date: September 28, 2012

1                    BUSINESS DEVELOPMENT AND ASSISTANCE PROGRAM

2     The School Board, in March of 1985 and June of 1990, determined through  
3     statistical analysis of current contracting expenditures and evaluation of economic  
4     and sociological studies applicable to Miami-Dade County in general, that a  
5     disparity continues to exist in the award of contracts to minority/women business  
6     enterprises, and that such disparity is the result of past discriminatory practices. In  
7     accordance with the United States Supreme Court decision in City of Richmond v.  
8     J.A. Croson, 109 S.Ct. 706 (1989), the Board commissioned a disparity study. The  
9     study discovered and analyzed evidence of the nature and extent of discrimination  
10    against minority and women businesses in the District market area. The Supreme  
11    Court held that all race-conscious programs now require direct evidence of past  
12    discrimination against minority contractors, consultants, and vendors, and that the  
13    programs must be narrowly tailored to specifically address such discrimination. It  
14    is, therefore, the Board's intent to continue the Business Development and  
15    Assistance (BD&A) Program to:

- 16            A.     ensure that the Board does not discriminate in the award of  
17            contracts for construction projects, procurement of goods and  
18            services, and professional services on the basis of race, color, sex, or  
19            national origin.
- 20            B.     ensure the maximum opportunity for minority/women business  
21            enterprises to participate in the award and performance of contracts  
22            with the Board.
- 23            C.     eliminate the current disparity in the award of contracts to  
24            minority/women business enterprises by affirmatively ensuring  
25            progressively greater participation by minority/women business  
26            enterprises through the use of minority/women set aside contracts,  
27            the establishment of goals for minority/women subcontract  
28            participation, prime contracting, and other methods as may be  
29            developed and approved by the Board, in conformance with  
30            applicable State statutes, regulations and rules.
- 31            D.     develop, and implement through the adoption of additional related  
32            Board rules, such administrative procedures as may be necessary to  
33            fully implement the Business Development and Assistance Program.

- 1 E. establish progressive annual objectives and related affirmative  
2 implementation actions for increased participation by the various  
3 minority/women business enterprise subgroups.
- 4 F. using the Ready, Willing and Able (RWA) M/WBE Assistance  
5 Methodology, evaluate the levels and increases in minority/women  
6 business enterprise participation annually and adjust the  
7 affirmative implementation actions accordingly to account for  
8 changing needs and circumstances to ensure that progressive  
9 utilization objectives are achieved.
- 10 G. phase out affirmative implementation actions when evaluation of  
11 contract expenditures indicates that the present effects of past  
12 discriminatory practices have been eradicated.
- 13 Based on the disparity study of 1990, it is the Board's intent to modify the Business  
14 Development and Assistance Program to:
- 15 A. strengthen the efficiency and fairness of general procurement  
16 procedures and practices to increase opportunities for contracting  
17 with M/WBEs;
- 18 B. establish insurance requirements which, although providing  
19 appropriate protection, are not more restrictive than necessary to  
20 protect the public's interest;
- 21 C. establish economic incentives that encourage the waiver of bonds,  
22 and enhance the bonding technical assistance program;
- 23 D. establish administrative procedures regarding the expeditious  
24 resolution of monetary disputes, and motivate prime contractors to  
25 make timely payments;
- 26 E. establish a more comprehensive contract reporting and monitoring  
27 system to provide accurate information;
- 28 F. establish a Small Business Enterprise Program which will focus on  
29 all small business concerns, without regard to ethnicity, race or  
30 gender;

1 G. ensure that the Division of Business Development and Assistance is  
2 directly responsible for the full implementation of the Business  
3 Development and Assistance Program; and

4 H. establish a statistically based goal assistance methodology for  
5 determining the assistance levels, to be established on an annual  
6 basis, using the Ready, Willing and Able model.

7 **Definitions**

8 A. Minority/Women Business Enterprise (M/WBE)

9 1. "Minority business enterprise" means any business as defined  
10 in F.S. 288.703.

11 2. "Minority person" means a person who is a citizen or lawful  
12 permanent resident of the United States, and who is:

13 a. an African American, a person having origins in any of  
14 the Black racial groups of Africa;

15 b. an Hispanic, a person of Spanish or Portuguese  
16 culture, including, but not limited to, persons with  
17 origins in Mexico, South America, Central America, or  
18 the Caribbean Islands, regardless of race; or

19 c. a woman.

20 B. Business Development and Assistance (BD&A) Program

21 The Board's Business Development and Assistance Program  
22 encompasses all available diversity methods, to assist minority,  
23 women and small firms with contracting opportunities.  
24

25 Two (2) components of the Business Development Assistance  
26 Program are:  
27

28 1. Minority/Women Business Enterprise (M/WBE) Program will  
29 monitor, track and certify M/WBE firms for the Board.

30 2. Small Business Enterprise (SBE) Program will be in addition  
31 to the M/WBE program. The program will provide assistance  
32 to small business concerns without regard to ethnicity, race  
33 or gender.

1 C. Board

2  
3 The Board.

4 D. M/WBE Assistance Levels (Subcontract Goals)

5  
6 Applied to all construction projects in excess of \$5,000,000. When  
7 utilized, goals shall be based on estimates made prior to bid  
8 advertisement of the quantity and type of subcontracting  
9 opportunities provided by a project to be constructed, or goods and  
10 services to be purchased, and on the availability and capability of  
11 minority/women business enterprises to do such work or provide  
12 such goods or services. When goals are utilized, the bid  
13 advertisement or request for proposal shall set forth the  
14 minority/women participation goals and, as a condition of  
15 responsiveness, bidders, as part of their bid submission, shall  
16 demonstrate every reasonable effort to meet the goals. The  
17 Instructions to Bidders and General Conditions for Construction  
18 contracts, and Special Conditions for Procurement shall incorporate  
19 a M/WBE Contractor Participation Provision, which shall specify the  
20 steps required to demonstrate every reasonable effort to meet the  
21 goals, and set forth such other specifications, terms, conditions and  
22 procedures applicable to minority/women business enterprise  
23 participation.

24 E. Prime Contracting

25  
26 Large general single contracts may be divided into multiple  
27 contracts. Those contracts may be bid as minority/women set aside  
28 contracts, may utilize minority/women subcontracting goals, and/or  
29 identify specific scopes of work for M/WBE participation.

30 F. Minority Business Enterprise Advisory Committee

31  
32 A standing committee established by the Board to monitor and  
33 evaluate the Business Development and Assistance Program. This  
34 Committee is comprised of community members representing  
35 various minority, women and majority business interests, and a  
36 member appointed by each Board member and the Superintendent.

1 G. Certification  
2

3 The procedures and necessary documentation required to determine  
4 that a contractor, consultant, or vendor is a minority/women  
5 business enterprise.

6 H. Construction and Procurement Contract Review Committees  
7

8 The Construction and Procurement Contract Review Committees  
9 (CCRC and PCRC) determine which diversity methods will be applied  
10 on a construction project or procurement bid. Professional services  
11 contracts, other than construction related professional services, will  
12 be included in procurement.

13  
14 The CCRC will consist of one (1) representative from the Division of  
15 Business Development and Assistance, one (1) from Maintenance  
16 Operations, and one (1) from Capital Construction and one (1)  
17 observer from the Office of Management and Compliance Audits.  
18 Reviews shall be held as necessary to effectively implement the  
19 M/WBE Program.

20  
21 The Procurement Contract Review Committee (PCRC) will consist of  
22 two (2) representatives from the Division of Business Development  
23 and Assistance, two (2) from Procurement Management Services,  
24 one (1) from School Operations, and one (1) observer from the Office  
25 of Management and Compliance Audits.

26 I. Small/Exempt Contract  
27

28 The purchase or contract by a buyer, a school site administrator, or  
29 other work location administrator of \$50,000 and under.

30 J. Disparity Study  
31

32 A study to determine whether differences exist between the  
33 availability of presumptive groups in a relevant market area and  
34 their utilization.

1 K. District Market Area

2  
3 The relevant market area for construction is Florida where  
4 eighty-five percent (85%) or more of the contractors or design  
5 professionals are located.  
6

7 The relevant market area for procurement is the United States  
8 where eighty-five percent (85%) or more of the vendors or  
9 professional service providers are located.

10 L. Ready, Willing and Able Firm (RWA)

11  
12 A firm that indicates it wants to do business with the Board.

13 M. Ready, Willing and Able Model

14  
15 A statistically based formula for determining assistance levels.

16 **M/WBE Certification**

17 Any business seeking to participate in the District's M/WBE Program must be  
18 certified by the Division of Business Development and Assistance.

19 **M/WBE Contracting Reports**

20 Prime contractors will report, quarterly, all payments to M/WBE  
21 subcontractors/consultants to the Division of Business Development and  
22 Assistance. M/WBE expenditures will be reported annually to the Board through  
23 the Superintendent and reviewed by the Minority Business Enterprise Advisory  
24 Committee. Expenditures will be delineated by ethnic/gender group and by  
25 procurement/construction category for all non-salaried expenditures, except  
26 payments for utilities and to the Florida Retirement System.

27 **Program Evaluation**

28 The Minority Business Enterprise Advisory Committee shall, upon review of  
29 Business Development and Assistance Program reports and other pertinent data,  
30 make recommendations, as appropriate, to the Board, for modification, expansion,  
31 or curtailment of specific aspects of the program, and/or adjustments in the  
32 diversity methods employed for each M/WBE category.

1 **Advertising Projects for M/WBE Participation**

2 All solicitations for formal bids and requests for proposals may be electronically  
3 posted or advertised as follows (this list is not all inclusive):

4 **PUBLICATIONS**

5 Miami Times

6 Diario Las Americas

7

8 Miami Daily Business Review

9

10 El Nuevo Herald

11

12

13

14

15

16

17

18

19

20 **Determining Diversity Measures**

21 The CCRC will review projects to determine diversity measures.

22 Whenever projects are reviewed by the CCRC for diversity measures, in whole or in  
23 part, the Committee shall be guided by the following criteria:

- 24 A. The scope of work, method of construction, and estimated  
25 construction cost of the project which may be appropriate for  
26 M/WBE participation.

**ORGANIZATIONS**

Latin Chamber of Commerce

The Women's Chamber of  
Commerce

Miami-Dade Chamber of  
Commerce

Allied Minority Contractors  
Association, Inc.

Latin Builders Association,  
Inc.

Hatian Chamber of Commerce

National Association of  
Women in Construction

Black Business Association

Asian American Federation of  
Florida, Inc.

- 1           B.     The availability and capability of M/WBE contractors to compete in  
2           the bidding process.
- 3           C.     Unless the Board specifically directs otherwise, the CCRC will make  
4           the decision as to whether projects of \$8 million or less are  
5           designated for the diversity program projects. Projects over \$8  
6           million must be approved in advance by the Board before being  
7           designated for the diversity program. The M/WBE Advisory  
8           Committee will review this requirement on an annual basis and  
9           recommend changes, as appropriate.
- 10          D.     Projects estimated to cost \$5 million or more must have M/WBE  
11          Subcontracting Assistance Levels.

12     Joint ventures between M/WBEs and non-minorities may be recommended by the  
13     Construction Contract Review Committee (CCRC) on a project by project basis.  
14     Joint ventures will be certified and their agreements reviewed by the Division of  
15     Business Development and Assistance to verify that minority/women business  
16     enterprises share in the profits, risks, and management of such joint ventures.

17     **Technical Review Committee (TRC) Review**

18     M/WBE Assistance Levels are goals and are not rigid or inflexible. For this reason,  
19     if a low bid is determined to be in noncompliance because the bidder failed to  
20     achieve M/WBE Assistance Levels, the Division of Business Development and  
21     Assistance and the TRC may review appropriate documentation and recommend  
22     award, notwithstanding the finding of noncompliance. This action will be exercised  
23     only for compelling reasons. Bidders may not apply for this review, but the review  
24     shall occur at the sole discretion of the Superintendent.

25     The application of this provision will be reported to the MBE Advisory Committee.

26     **Criteria for Reducing Large Contracts**

27     Large projects shall be reduced, when possible.

28     The Construction Contract Review Committee (CCRC) will consider dividing large  
29     contracts thereby creating small contracts that are more feasible for M/WBE  
30     participation. Pertinent factors to be considered are:

- 31           A.     the degree of complexity of the project's design which permits  
32           reduction;

- 1           B.     the extent of the need for M/WBE participation in a specific type of  
2           work or a particular project;
- 3           C.     the extent to which the construction annual M/WBE Assistance  
4           Levels are being met; and
- 5           D.     the potential costs/benefits of reducing the project.

6     **Payment to Subcontractors**

7     The prime contractor will be expected to make payment to subcontractors, material  
8     suppliers and others providing goods/services on Board projects, within ten (10)  
9     days of receipt of payment from the Board.

10    **Retainage**

11    Retainage may not be released if a contractor fails to comply with the special  
12    provisions, as determined by the Division of Business Development and Assistance.

13    The Division of Business Development and Assistance generates a summary of all  
14    contracts reviewed by the Construction Contract Review Committee (CCRC) during  
15    its scheduled meetings. The minutes of these meetings shall be forwarded quarterly  
16    to the Board.

17    **Specifications**

18    The specifications for goods and services should not preclude bidding by MWBEs.  
19    Exceptions are noted when proprietary specifications are necessary to protect the  
20    interests of the Board.

21    Formal written bids (over \$50,000) will be presented weekly to no less than four (4)  
22    committee members for review. Small/Exempt contracts up to \$50,000 are not  
23    regularly reviewed for M/WBE participation; however, periodic reviews will be  
24    conducted to monitor activities in this area to encourage M/WBE participation.

1 **Reduction of Large Contracts**

2 The Procurement Contract Review Committee (PCRC) will consider dividing large  
3 contracts, to create smaller contracts that are more feasible for M/WBE  
4 participation. The methodology used for subdividing the contracts can be tailored to  
5 the unique factors present in each situation. The various options include, but are  
6 not limited to:

- 7           A. the full quantity of a given item(s) on a large contract may be placed  
8           on a separate contract for bidding;
- 9           B. a partial quantity of a given item(s) on a large contract may be  
10           placed on a separate contract for bidding;
- 11           C. the term of a contract may be shortened which results in a dual  
12           effect - the reduction of quantities required and the risk inherent in  
13           guaranteeing prices over a longer time period;
- 14           D. work to be performed may be grouped according to geographic  
15           location and placed on separate contracts; and
- 16           E. unrelated scopes of work to be performed or portions of work not  
17           requiring completion by a single bidder may be placed on separate  
18           contracts.

19 Prime contracts resulting from the above measures may then be bid either as a  
20 minority/women diversity measures or open to all bidders. This determination will  
21 be made based on the criteria stipulated in the section addressing Minority/Women  
22 Diversity Measures.

23 **Minority/Women Diversity Measure**

24 Prior to invitation for bid or request for proposal, a given contract will be evaluated  
25 by the Procurement Contract Review Committee to determine whether it is in the  
26 best interest of the Board to designate it as a diversity measure. The criteria to be  
27 applied in this decision making process is detailed below.

- 28           A. There is a sufficient number of M/WBEs offering the items or  
29           services to be purchased.
- 30           B. If sufficient competition is not generated from the identified bidders  
31           within one (1) minority classification, then the diversity measure  
32           may encompass more than one subgroup of M/WBEs.

1 **Technical Assistance and Outreach**

2 The Board shall maintain a public/private partnership with major organizations to  
3 provide administrative and, to the degree feasible, technical assistance, to minorities  
4 and women desiring to do business with the Board.

5 **Payment**

6 Payments will be made to vendors and consultants for goods and services as  
7 prescribed by Board policy and Florida statute.

8 F.S. 287.093, 1013