

Office of Superintendent of Schools
Board Meeting of January 14, 2015

January 8, 2015

Office of School Board Attorney
Walter J. Harvey, School Board Attorney

SUBJECT: FINAL READING: PROPOSED AMENDMENT TO SCHOOL BOARD POLICY 6320.02, *SMALL/MICRO BUSINESS ENTERPRISE PROGRAM AND MINORITY/WOMEN BUSINESS ENTERPRISE CERTIFICATION*

COMMITTEE: FACILITIES AND CONSTRUCTION } Amended

LINK TO STRATEGIC FRAMEWORK: FINANCIAL EFFICIENCY/STABILITY

At the November 19, 2014, Board meeting, the Board unanimously approved Agenda Item G-5 ("SBE/MWBE Programs") to authorize the Superintendent to initiate rulemaking to amend Board Policy 6320.02, *Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification*. This Item requests the Board adopt the proposed amended policy establishing a race- and gender-conscious procurement program which incorporates the findings of the Disparity Study conducted during 2013 by MGT of America and conforms with the United State's Supreme Court's ruling in *City of Richmond v. J.A. Croson*, 109 S. Ct. 706 (1989), that race conscious programs be based on direct evidence of past discrimination.

The Board has a compelling governmental interest to remedy the effects of identified discrimination in the procurement of construction and professional services contracts, and the proposed policy amendments provide that the District may use certain race- and gender-conscious measures to address disparities only when it is apparent that the use of neutral means alone will likely be insufficient to remedy the effects of identified discrimination. Based on the totality of the evidence gathered, these amendments are founded on the conclusion that race- and gender-neutral remedies, in and of themselves, may not be sufficient to eliminate the effects of the identified forms of discrimination, and that a narrowly tailored combination of race- and gender-neutral and race and gender-conscious remedies is warranted.

The Notice of Intended Action was published in the *Miami Daily Business Review* on November 25, 2014, 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 the amended policy has elapsed.

Pursuant to the Administrative Procedures Act, this amended policy is presented to The School Board of Miami-Dade County, Florida, for adoption and authorization to file the

**Revised
G-1**

amended policy in the official records of The School Board of Miami-Dade County, Florida.

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.

RECOMMEND: That The School Board of Miami-Dade County, Florida, adopt amended Policy 6320.02 *Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification* and authorize the Superintendent to file the amended policy with The School Board of Miami-Dade County, Florida, to be effective January 14, 2015.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on November 19, 2014, its intention to amend Board Policy 6320.02, *Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification*, at its meeting of January 14, 2015.

PURPOSE AND EFFECT: It is recommended that Board Policy 6320.02, *Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification*, be amended to incorporate the findings of the Disparity Study conducted by MGT of America and the District's response to the Study's findings, as well as, change the title of the policy.

SUMMARY: On November 21, 2012, the Board determined that there was a need for a current Disparity Study and retained the services of MGT of America to conduct a comprehensive Disparity Study. The proposed policy amendments serve to incorporate the findings of the Disparity Study and sets forth Board policies that are responsive to the Disparity Study's conclusions.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41 (1), (2), 1001.42 (25), 1001.43 (10), F.S.

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 1001.41 (1), (2); 1001.42 (25); 1001.43 (10), F.S.,

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF January 14, 2015, which begins at 1:00 p.m., in the School Board Auditorium, 1450 N.E. Second Avenue, Miami, Florida 33132. Persons requesting such a hearing or who wish to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided in Section 120.54(1), F.S., must do so in writing by December 16, 2014, 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)

COPIES OF THE PROPOSED AMENDED POLICY are 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: Walter J. Harvey
Date: November 5, 2014

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1 SMALL/MICRO AND MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE
2 PROGRAMS AND
3 MINORITY/WOMEN BUSINESS ENTERPRISE CERTIFICATION

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

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

On November 21, 2012, the Board determined that a current disparity study would need to be conducted in order to continue its M/WBE program. The Board repealed its Business Development and Assistance Program Policy with the understanding that it would develop a new M/WBE Program if supported by the results of a current disparity study. At the same time, the School Board approved the Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification (SMBE) to continue ~~The Small/Micro Business Enterprise Program is established To to provide legally permissible race and gender neutral expanded and equitable participation by small and micro businesses in School Board procurement of goods and services, construction, and professional services and to allow M/WBEs to participate in School Board contracting as small and microbusiness enterprises while the study was being conducted.~~ the Policy continued to certify M/WBEs, to include aspirational goals for M/WBEs in contracts, and to track and monitor the utilization of M/WBEs through the SMBE Program.

4
5 Shortly thereafter, in February 2013, the School Board contracted with MGT of
6 America, a Tallahassee consulting firm, to conduct Phase I of a Comprehensive
7 Disparity Study (Disparity Study) to provide data regarding the School Board's
8 design and construction-related professional services procurement activity and race-

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1 and gender-neutral remedial efforts for the study period between July 1, 2006,
2 through June 30, 2012. The purpose of the Disparity Study was to analyze the
3 utilization of minority and women-owned business enterprises (M/WBEs) in the
4 School Board's procurement of capital construction and design and construction
5 related professional services. The Disparity Study was accepted by the School Board
6 on November 19, 2014.

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

16
17 The Disparity Study reported findings that within the relevant geographic market of
18 the Miami-Dade Metropolitan Statistical Area (Miami/Broward/Palm Beach) there
19 are statistically significant disparities in the District's utilization of ready, willing
20 and able M/WBEs in the following categories of contracts and business owners:

- 21
22 A. Prime Construction Contracts (African-American, Asian-American, Native-
23 American and Non-Minority Women)
24
25 B. Construction Subcontracts (Asian-American and Native-American)
26
27 C. Prime Design and Construction-Related Professional Services (African-
28 American, Asian-American, Native-American and Non-Minority Women)
29
30 D. Design and Construction-Related Professional Services Subcontracts (African-
31 American, Asian-American, Native-American and Non-Minority Women)
32

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

- 35
36 A. Non-minority firms received the majority of the public sector construction
37 permits for prime contracts.
38 B. Non-minority firms received an even larger percentage of construction
39 building permits for private sector commercial construction and subcontracts.
40 MBE primes received only 2% of building permits and certified non-minority
41 women-owned businesses received zero. Of the .27% of subcontractors who
42 received building permits, nearly all went to Hispanic-American owned
43 businesses.
44 C. There are significant disparities for entry into self-employment for African-
45 Americans, Hispanic Americans, Asian Americans and Nonminority Women.
46 D. There is a statistically significant positive relationship between the probability
47 of commercial bank loan denial and African American business ownership.
48 About 15% of M/WBE loan applicants reported being denied commercial
49 bank loans, compared to 64.7% of African American applicants, 21.6% of

1 Hispanic American applicants, 0% of Asian American-owned firms, 0% of
2 Native American applicants and 20% of Nonminority Women applicants.

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

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

21
22 Together, these District and private sector disparities currently establish an
23 inference of discrimination that is adversely affecting the School Board's utilization
24 of ready, willing and able minority- and women-owned firms.

25
26 Based upon the totality of the evidence gathered and presented to the Board since
27 1990, the Board has concluded that there is a strong evidentiary basis establishing
28 that the District has a compelling interest in remedying the ongoing effects of
29 discrimination that is occurring in the broader relevant market and adversely affects
30 the District's utilization of ready, willing and able minority- and women-owned firms
31 in District construction and construction-related contracts. The Board also
32 concludes that it needs to take action to avoid becoming a passive participant in
33 private sector discrimination.

34
35 The Board has further concluded that race- and gender-neutral remedies, in and of
36 themselves, may not be sufficient to eliminate the effects of the identified forms of
37 discrimination, and that a narrowly tailored combination of race- and gender-
38 neutral and race and gender-conscious remedies are warranted.

39
40 **General Policy**

41
42 A. The District shall resort to the use of race- and gender-conscious means for
43 addressing disparities only when it is apparent that the use of neutral means
44 alone will likely be insufficient to remedy the effects of identified
45 discrimination. The determination of when to use race conscious measures
46 will be made on a project-by-project or contract-by-contract basis pursuant to
47 this policy.

48 B. Having found that it has a compelling governmental interest to remedy the
49 effects of identified discrimination in the procurement of construction and

1 professional services contracts, the School Board directs and authorizes the
2 Superintendent to establish procedures and implement remedies that are
3 consistent with this policy and are narrowly tailored to the findings and
4 conclusions of the Disparity Study.

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

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

12 (a) Developing programs and services as described in this Policy that will
13 achieve the School Board's diversity objectives in business practices in a
14 manner that is consistent with this objective;

15 (b) Publicizing and enforcing its commercial non-discrimination Policies 6465
16 and 6320 to ensure that District employees and companies doing business
17 with the School Board do not discriminate in the solicitation, selection, or
18 treatment of subcontractors, suppliers, vendors, or commercial customers
19 on race, color, ethnic or national origin, religion, marital status, disability,
20 genetic information, age, political beliefs, sexual orientation, gender,
21 gender identification, social and family background, linguistic preference,
22 pregnancy, and any other legally prohibited basis;

23 (c) Ensuring that the Office of Economic Opportunity (OEO) is included on all
24 selection committees for bids, contracts and professional services. The
25 OEO shall review contract specifications to ensure that they are not
26 unnecessarily restricting the availability and participation of SDBEs and
27 M/WBE firms in the procurement and contracting process; and

28 (d) Evaluating the levels of availability and utilization in SDBE and M/WBE
29 participation and adjusting the implementation of this policy according to
30 changing needs and circumstances to ensure that appropriate utilization
31 objectives are established and achieved.

32
33
34 **Office of Economic Opportunity (OEO)**

35 The OEO shall administer and implement the SDBE and ~~small/Micro~~ M/WBE
36 Business Enterprise Program including certification, technical assistance and
37 compliance, and M/WBE Certification and:

38 A. enforce the Board's commercial anti-discrimination pPolicy 6465 in
39 the award of contracts for construction projects, procurement of
40 goods and services, and professional services;

41 B. provide maximum legally permissible opportunities for smallSDBEs
42 and ~~minority/women business enterprises~~M/WBEs to participate in
43 the award and performance of Board contracts;

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- 1 | C. monitor, track and certify small/micro businesses and
2 | minority/women business enterprises;
- 3 | D. enforce compliance with this policy;
- 4 | E. develop and implement necessary administrative procedures to fully
5 | implement these programs;
- 6 | F. establish insurance requirements which, although providing
7 | appropriate protection, are not more restrictive than necessary to
8 | protect the public's interest;
- 9 | G. establish economic incentives that encourage the waiver of bonds,
10 | and enhance the bonding technical assistance program;
- 11 | H. establish administrative procedures to expeditiously resolve
12 | monetary disputes and motivate prime contractors to make timely
13 | payments;
- 14 | I. establish a comprehensive contract reporting and monitoring system
15 | to evaluate the effectiveness of these programs in increasing
16 | contracting opportunities for small/micro and minority/women-
17 | owned businesses;
- 18 | J. serve as chair of the Goal-Setting Committee and staff liaison to the
19 | Small/Micro and Minority/Women-Owned Business Enterprise
20 | Advisory Committee;
- 21 | K. monitor, coordinate, and provide support for any disparity study
22 | that may be conducted regarding minority/women-owned business
23 | participation in Board procurement;
- 24 | L. develop and coordinate any recommendations as a result of any
25 | such disparity study findings;
- 26 | M. maintain, distribute, and publish a directory of certified SBE, MBE,
27 | and M/WBE firms; and
- 28 | N. ~~quarterly~~ report quarterly through the Superintendent to the Board
29 | regarding the effectiveness of these programs.

30 | **Small/Micro and Minority/Women-Owned Business Enterprise Advisory**
31 | **Committee**

32 | The Small/Micro and Minority/Women-Owned Business Enterprise Advisory
33 | Committee (CommitteeSBEAC) shall be established to:

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- 1 | A. provide guidance on the implementation of the SMBE/ and MWBE
2 | Programs and to promote the participation and use of SBEs/MBEs
3 | and M/WBEs in the procurement activities of the Board;
- 4 | B. identify and evaluate issues related to economic opportunities within
5 | the Board for small, micro and minority/women owned businesses;
- 6 | C. provide recommendations to the Board to improve the SMBE/MWBE
7 | programs;
- 8 | D. annually evaluate and report to the Board on the effectiveness of the
9 | SMBE/MWBE programs in increasing minority and women owned
10 | business participation in the Board's procurement process;
- 11 | E. monitor any disparity study that may be conducted by the Board
12 | and make recommendations based on the results of any such study.

13 | The Board and Superintendent shall each appoint a community member who is not
14 | employed by the Board and does not have any direct or indirect business
15 | relationship with the Board. The eCommittee shall have representation from local
16 | small, micro, minority, women, and majority business interest organizations,
17 | community based organizations and local government entities which may include
18 | professional, construction and trade, business, and socio-economic organizations.
19 | The Board and Superintendent shall approve a list of representative organizations
20 | and the Superintendent shall appoint a member nominated by each recommended
21 | organization from their membership. The term of each Board appointee shall be
22 | coterminous with the appointing Board member and the term of the
23 | Superintendent's appointees shall be at the will and discretion of the
24 | Superintendent. In no event shall any Board-Committee member serve more than
25 | four (4) consecutive years. All appointments must comply with Policy 9140, Citizen
26 | Advisory Committees. The Committee shall annually elect a chair and vice-chair,
27 | meet at least six (6) times per year, and be governed by the latest edition of *Robert's*
28 | *Rules of Order*. The eCommittee may adopt bylaws, to be recommended by the
29 | Superintendent to the Board for approval, to facilitate the operation of the
30 | eCommittee.

31 | Small/Micro Business Enterprise Program

32 | ~~The Small/Micro Business Enterprise (SBE/MBE) Program is a race and~~
33 | ~~gender neutral process to provide greater SBE/MBE availability, capacity~~
34 | ~~development and contract participation in Board contracts, to advance the Board's~~
35 | ~~compelling interest in ensuring that it is neither an active nor passive participant in~~
36 | ~~private sector marketplace discrimination, and to promote equal opportunity for all~~
37 | ~~segments of the contracting community to participate in Board contracts.~~

38 | **Terms and Definitions**

- 39 | A. ***Affirmative Procurement Initiatives*** - any procurement tool to
40 | enhance contracting opportunities for SBE/MBE firms including:

- 1 bonding waivers, bid incentives, sheltered market, mandatory
2 subcontracting, competitive business development demonstration
3 projects, and SBE/MBE evaluation preference points in the scoring
4 of proposal evaluations.
- 5 B. **Available or Availability** - to have, prior to bid submission, the
6 ability to provide goods or services under a contract by having
7 (a) reasonably estimated, uncommitted capacity; (b) all necessary
8 licenses, permits, registrations and certification, including
9 SBE/MBESMBE or M/WBE certification to provide the type of goods
10 or services being purchased under the contract; (c) ability to obtain
11 reasonably required financing/insurance that is consistent with
12 normal industry practice; and (d) ability to otherwise meet bid
13 specifications.
- 14 C. **Award** - final selection of a bidder or offer or for a specified
15 contract.
- 16 D. **Award Amount** - the dollar value of the contract when awarded.
- 17 E. **Bid** - quotation, proposal, letter of interest or offer by any bidder in
18 response to any kind of invitation, solicitation, request or public
19 announcement to submit such quotation, proposal, letter of interest
20 or offer for a contract.
- 21 F. **Bidder** - any person, partnership, corporation or other business
22 entity that submits a bid or proposal.
- 23 G. **Certification** - process by which the Office of Economic
24 Opportunity ("OEO") determines that a business meets the criteria
25 for classification as a small/micro business enterprise and/or a
26 minority/women-owned business enterprise.
- 27 H. **Commercially Useful Function** - an SBE/MBE or M/WBE
28 performs a commercially useful function when it is responsible for
29 execution of the work of the contract and is carrying out its
30 responsibilities by actually performing, managing, and supervising
31 the work involved. To perform a commercially useful function, the
32 SBE/MBESMBE or M/WBE must also be responsible for negotiating
33 the price of contract materials and supplies, determining the
34 quantity and quality of materials, ordering and installing materials if
35 applicable, and paying for the materials. To determine whether an
36 SBE/MBESMBE or M/WBE is performing a commercially useful
37 function, an evaluation must be performed of the amount of work
38 subcontracted, normal industry practices, whether the amount the
39 SBE/MBE-SMBE or M/WBE is to be paid under the contract is
40 commensurate with the work it is actually performing and the
41 SBE/MBESMBE or M/WBE credit claimed for its performance of the
42 work, and other relevant factors. Specifically, an SBE/MBESMBE

1 | or M/WBE does not perform a commercially useful function if its
2 | role is limited to that of an extra participant in a transaction,
3 | contract, or project through which funds are passed in order to
4 | obtain the appearance of meaningful and useful SBE/MBESMBE or
5 | M/WBE participation, when in similar transactions in which
6 | SBE/MBESMBE or M/WBE firms do not participate, there is no
7 | such role performed.

8 | I. **Construction and Construction-Related Specialty**
9 | **Trades** - means all labor, services, and materials provided in
10 | connection with the construction, alteration, repair, demolition,
11 | reconstruction, or any other improvements to real property.

12 | J. **Contract** - an agreement for purchase of goods or services,
13 | including professional services and construction. It does not include
14 | agreements to purchase, lease, or rent real property, or a grant,
15 | license, permit, franchise or concession.

16 | K. **Goal** - ~~a non-mandatory annual aspirational percentage goal for~~
17 | ~~SBE/MBE contract participation established each year for~~
18 | ~~professional architectural, engineering, landscape, surveying, and~~
19 | ~~mapping services, construction, goods and services and other~~
20 | ~~professional services. Mandatory percentage goals for SBE/MBE~~
21 | ~~subcontract participation may be established on a~~
22 | ~~contract-by-contract basis. The annual or contract-specific goals for~~
23 | ~~contract participation that express the anticipated level or~~
24 | ~~proportion of contract dollars in a given time frame that would be~~
25 | ~~expected to be received by a particular segment of the total~~
26 | ~~population of Ready, Willing, and Able (RWA) firms. These goals are~~
27 | ~~based upon availability analysis derived from a database established~~
28 | ~~by the OEO and Purchasing. Upon completion of availability~~
29 | ~~analysis, such goals for specific contract participation may, under~~
30 | ~~certain circumstances, be set and narrowly tailored by race, gender,~~
31 | ~~and industry codes. Annual goals are intended as an administrative~~
32 | ~~guide only to assist the District in its annual policy review to~~
33 | ~~determine whether the use of more aggressive or less aggressive~~
34 | ~~remedies are warranted in the future. Annual goals shall not be~~
35 | ~~routinely applied to specific contracts absent independent~~
36 | ~~availability analysis demonstrating that they are appropriate for~~
37 | ~~application to a specific contract~~

38 | L. **Goal Setting Committee** - committee established by the
39 | Superintendent that is chaired by the OEO and is responsible for
40 | establishing SBE/MBESMBE and M/WBE Program goals and
41 | selecting appropriate Affirmative Procurement Initiatives for
42 | application to specific Board contracts based upon industry
43 | categories, vendor availability, and project-specific characteristics.

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

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

38 O. **Gross Revenue** - all revenue in whatever form received or accrued
39 from whatever source, including sales of products or services,
40 interest, dividends, rents, royalties, fees or commissions, reduced by
41 returns and allowances. Gross revenue does not include proceeds
42 from sales of capital assets, and investments, proceeds from
43 transaction between a firm and its domestic and foreign affiliates.

44 P. **Independently Owned, Managed, and Operated** - ownership of
45 an SBE/MBESMBE or M/WBE firm must be direct, independent,
46 and by individuals only. Business firms that are owned by other

1 businesses or by the principals or owners of other businesses that
2 cannot themselves qualify under the eligibility requirements shall
3 not be eligible to participate in the program. The day-to-day
4 management of the firm must also be direct and independent of the
5 influence of any other businesses that cannot themselves qualify
6 under the eligibility requirements.

7 Q. **Industry Categories** - procurement groupings of Board contracts
8 for administering the Affirmative Procurement Initiatives that shall
9 include construction, professional services, and goods and services
10 procurement. Industry categories may also be referred to as
11 "business categories."

12 R. **Joint Venture** - an association of two (2) or more persons or
13 businesses under a contract conducting a single business enterprise
14 in which they combine capital, efforts, skills, knowledge and/or
15 property and share profits and losses equally. A joint venture
16 composed of qualified business organizations is itself a separate and
17 distinct organization that must be qualified according to Board
18 policies and F.S. 489.119(2)(c).

19 S. **Micro-Business Enterprise** - any contractor, subcontractor,
20 manufacturer or service company (a) that has been doing business
21 under the same ownership or management and has maintained its
22 principal place of business in Miami-Dade County, Florida, for a
23 period of at least one (1) year immediately prior to the date of
24 application for certification under this section, (b) that had annual
25 gross revenues not exceeding the thresholds for a Micro-Business
26 Enterprise as identified in this policy for each industry, and (c) at
27 least fifty-one percent (51%) of the ownership of which is held by a
28 person or persons who exercise operational authority over the daily
29 affairs of the business and have the power to direct the management
30 and policies and receive the beneficial interests of the company.
31 Representations regarding average gross revenue and payroll are
32 subject to audit. If a business has not existed for three (3) years,
33 the employment and gross revenue limits shall be applied based
34 upon the annual averages over the course of the existence of the
35 business.

36
37 T. Minority/Women-Owned Business Enterprise - See the definitions
38 under the Minority/Women Business Enterprise Program section of
39 this Policy.

40 FU. **Points** - the quantitative assignment of value for specific evaluation
41 criteria in the vendor or consultant selection process.

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- 1 | UV. **Prime Contractor** – the vendor or contractor to whom a purchase
2 | order or contract is awarded by the Board for purposes of providing
3 | goods or services to the Board.
- 4 | VW. **Professional Services** - those services within the scope of the
5 | practice of architecture, professional engineering, landscape
6 | architecture, or registered surveying and mapping, as defined by the
7 | laws of the State, or those performed by any architect, professional
8 | engineer, landscape architect, or registered surveyor and mapper in
9 | connection with his/her professional employment or practice;
10 | Professional Services A/E shall not include job order contracting
11 | consultants, asbestos consultants, program management,
12 | geotechnical, construction materials testing, and environmental
13 | assessment services.
- 14 |
- 15 | WX. **Ready, Willing and Able** – Any vendor who has registered an interest
16 | in doing business with the School Board and has the technical
17 | expertise, training and licenses to perform in accordance with the
18 | contract document. SBEs and M/WBEs must also be certified
19 | pursuant to this policy.
- 20 | WY. **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 | XZ. **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 SBE Program requirements.
- 26 | YAA. **School Board** – The School Board of Miami-Dade County, Florida,
27 | which is the legal entity with authority to enter contracts on behalf
28 | of the District school system under F.S. 1001.41(4).
- 29 | ZBB. **Sheltered Market** – an Affirmative Procurement Initiative designed
30 | to set aside a Board contract bid for bidding or selection exclusively
31 | among SBE/MBESMBE/M/WBE firms.
- 32 | AACC. **Significant Employee Presence** – no less than twenty-five
33 | percent (25%) of a firm's total number of employees are domiciled in
34 | Miami-Dade County, Florida.
- 35 | BBDD. **SBE/MBESMBE and M/WBE Plan Execution Certification**
36 | **(SBE/MBE Form - C)** - form certifying the general contractor's intent
37 | to use a SBE/MBE SBME or M/WBE subcontractor and verifying
38 | that an agreement has been executed between the prime and the
39 | SBE/MBESMBE or M/WBE.

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1 | CCCE. **SBE/MBESMBE or M/WBE Directory** - listing of certified
2 | SBE/MBEs, SMBEs and M/WBEs.

3 | DDFF. **SBE/MBESMBE and M/WBE Certification/Re-certification**
4 | **Application (SBE/MBE Form - R)** - form that a company must
5 | complete when applying for and/or recertifying SBE/MBESMBE or
6 | M/WBE status for participation in the SBE/MBESMBE or M/WBE
7 | Program. This form shall be completed every two (2) years by
8 | certified SBE/MBEs companies by the anniversary date of their
9 | original certification.

10 | EEGG. **SBE/MBE Schedule for Subcontractor Participation (SBE/MBE**
11 | **Form - S)** - form that must be completed by all non-
12 | SBE/MBESMBE or M/WBE firms that subcontract to SBE/MBE
13 | SBE or M/WBE firms, must be submitted for each SBE/MBE SMBE
14 | or M/WBE subcontractor, and must be reviewed and approved by
15 | the OEO Manager before contract award.

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

23 | GGII. **Small Business Enterprise (SBE)** - any contractor, subcontractor,
24 | manufacturer or service company (a) that has been doing business
25 | under the same ownership or management and has maintained its
26 | principal place of business in Miami-Dade County, Florida, for a
27 | period of at least one (1) year immediately prior to the date of
28 | application for certification under this section, (b) that had annual
29 | gross revenues not exceeding the thresholds identified in this policy
30 | for each industry, and (c) at least fifty-one percent (51%) of the
31 | ownership of which is held by a person or persons who exercise
32 | operational authority over the daily affairs of the business and have
33 | the power to direct the management and policies and receive the
34 | beneficial interests of the company. Representations regarding
35 | average gross revenue and payroll are subject to audit. If a business
36 | has not existed for three (3) years, the employment and gross
37 | revenue limits shall be applied based upon the annual averages over
38 | the course of the existence of the business.

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

42 | HKK. **Subcontractor** - any vendor or contractor that is providing goods or
43 | services to a prime contractor in furtherance of the prime

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

3 JLL. **Subcontractor Goal** - a proportion of a total contract value stated
4 as a percentage to be subcontracted to ~~SBE/MBEs~~ SMBEs or
5 M/WBEs to perform a commercially useful function.

6 KKMM. **Suspension** - the temporary stoppage of an ~~SBE/MBE~~ SBE or
7 M/WBE firm's participation in the Board's contracting process for a
8 finite period of time.

9 **Application**

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

16 **Subcontractor Goals**

17 Subcontractor goals may be applied to a contract based on estimates made prior to
18 bid advertisement of the quality, quantity and type of subcontracting opportunities
19 provided by the contract and the availability of ~~SBE/MBEs~~ either SMBEs or
20 M/WBEs to perform the work.

21 **Goal Setting Committee**

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

33 **Small/Micro Business Enterprise Program**

34 The SMBE Program is a race and gender-neutral program to provide greater SMBE
35 availability, capacity development and contract participation in Board contracts, to
36 advance the Board's compelling interest in ensuring that it is neither an active nor
37 passive participant in private sector marketplace discrimination, and to promote

1 equal opportunity for all segments of the contracting community to participate in
2 Board contracts.

3
4
5 SBE/MBESMBE Eligibility and Certification

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

- 11 1. Is an independently owned and operated business that is not
12 dominant in its field of operation and is performing a
13 commercially useful function.
- 14 2. The business must have an actual place of business in
15 Miami-Dade County for at least one (1) year preceding the
16 application and be registered as a vendor with the District.
- 17 3. The business has been established for at least one (1) year or
18 the principals of the business have at least three (3) years of
19 relevant experience prior to forming or joining the business.
- 20 4. The business has a local business tax receipt and all required
21 professional licenses, contractor qualifier licenses, and/or
22 Certificate of Competency.
- 23 5. The owner of the business must have the required
24 professional license(s) and contractor qualification license.
- 25 6. The Board may honor a valid Small Business Enterprise
26 Certification and/or Micro Business Enterprise Certification
27 granted by another agency if the agency's requirements are
28 consistent with the District's SBE/MBE certification criteria.
29 The Superintendent shall develop procedures to implement
30 this policy.
- 31

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

- 34 1. **Micro Business Enterprise**
 - 35 a. **Professional Services A/E:** The annual gross revenue
36 averaged over the previous three (3) years shall not
37 exceed \$500,000.

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

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

 - 7 d. **Construction and Construction-Related Specialty**
8 **Trades:** The annual gross revenue averaged over the
9 previous three (3) years shall not exceed \$1,000,000.
- 10 2. **Small Business Enterprise**
- 11 a. **Professional Services A/E:** The annual gross revenue
12 averaged over the previous three (3) years shall not
13 exceed \$1,000,000 (Tier 1) or \$2,000,000 (Tier 2).

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

 - 18 c. **Goods and Services (Procurement Program):** The
19 annual gross revenue averaged over the previous
20 three (3) year period shall not exceed \$2,000,000
21 (Tier 1) or \$4,000,000 (Tier 2).

 - 22 d. **Construction and Construction-Related Specialty**
23 **Trades:** The annual gross revenue averaged over the
24 previous three (3) years shall not exceed \$3,000,000
25 (Tier 1) or \$6,000,000 (Tier 2).
- 26 C. Upon receipt of a certification or re-certification application, the
27 OEO shall review all enclosed forms, affidavits and documentation
28 and determine whether the applicant satisfies the eligibility
29 requirements. The OEO shall send a letter to ineligible applicants
30 stating the basis for the denial of eligibility. Applicants determined
31 ineligible shall not be eligible to submit a new application for at least
32 one (1) year after the date of the notice of denial of eligibility.
- 33 D. Applicants determined eligible to participate in the program shall
34 submit a completed re-certification form (SBE/MBE-R) every two (2)
35 years to the OEO for review and continued certification. However,
36 upon application for re-certification, an SBE/MBE firm must be an
37 independently owned and operated business concern, and maintain
38 its principal place of business or have a significant employment
39 presence in Miami-Dade County in accordance with this policy. To
40 qualify for recertification, the firm's average gross revenue for the

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1 three (3) fiscal years immediately preceding the application for
2 recertification shall not exceed \$9 million for construction,
3 \$6 million for goods and services, \$2.5 million for specialty trade, or
4 \$2.5 million for professional services. The eligibility criteria
5 regarding years of existence shall only apply for the initial
6 certification.

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

13 **Graduation and Suspension**

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

17 A. An SBE shall be permanently graduated after its three (3) fiscal year
18 average gross revenue exceeds \$9 million for construction, or
19 \$6 million for goods and services, \$2.5 million for specialty trade,
20 and \$2.5 million for professional services.

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

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

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

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

1 Appeals

2 A business that is denied eligibility, whose eligibility is revoked, or who has been
3 denied a waiver request, may appeal the decision to the Superintendent. A written
4 notice of appeal must be received by the Superintendent within fifteen (15) calendar
5 days of the date of the written notice. Upon receipt of a timely notice of appeal, the
6 Superintendent shall conduct a hearing. The Superintendent shall develop
7 procedures for the appeal process and report quarterly to the Board on the status of
8 appeals.
9

10 Minority/Women Business Enterprise Program

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

15 A. Terms and Definitions

16 1. Minority Ownership - minority ownership means that for:

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

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

23 c. Corporation - minority/women must own at least
24 fifty-one percent (51%) of all voting stock, issued by a
25 corporation. No stock held in trust, or by any guardian
26 for a minor, shall be considered held by the
27 minority/woman individual, in determining ownership
28 and control.

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

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

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

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

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

12 c. An Asian American, a person having origins of the Far
13 East, Southeast Asia, the Indian Subcontinent, or the
14 Pacific Islands, including the Hawaiian Islands before
15 1778.

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

20 e. An American born or naturalized woman.

21 f. A service-disabled veteran means a veteran who is a
22 permanent Florida resident with a service-connected
23 disability as determined by the United States
24 Department of Veterans Affairs or who has been
25 terminated from military service by reason of disability
26 by the United States Department of Defense.

27 B. M/WBE Eligibility and Certification

28 1. The OEO shall certify a company or other business entity as a
29 M/WBE upon its submission of a completed certification
30 form, (M/WBE Form-3920), supporting documentation, and a
31 signed affidavit stating that it meets the following criteria:

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

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

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

13 A minority business enterprise may primarily involve
14 the practice of a profession.

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

19 d. the business has an occupational license and all
20 required professional licenses and/or contractor
21 qualifier licenses.

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

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

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

31 b. Whether minority/women owners share in all the risks
32 of business, including, but not limited to, third party
33 agreements, bonding and financial arrangements.

34 c. Ownership by a minority person does not include
35 ownership that is the result of a transfer from a non-
36 minority person to a minority person within a related
37 immediate family group if the combined total net asset
38 value of all members of such family group exceeds \$1
39 million. The term "related immediate family group"
40 means one (1) or more children under sixteen (16)

1 years of age and a parent of such children or the
2 spouse of such parent residing in the same house or
3 living unit.

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

13 Documents that establish control include but are not
14 limited to: corporate bylaws, operating agreements,
15 partnership agreements, management agreements or
16 other agreements. Such documents should be free of
17 restrictive language which dilutes a minority/woman
18 owner(s)' control and prohibits him/her from making
19 decisions.

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

30 2) Unless a business is a franchise, agreements for
31 contractual support services that usurp a
32 minority/woman owner's authority to control a
33 company are not allowed.

34 3) Minority/Women owners shall control or
35 supervise the hiring, firing and supervision of
36 employees, and establishment of employment
37 policies, wages, benefits and other employment
38 conditions.

39 4) Minority/Women owners shall have knowledge
40 and control of all financial matters of the
41 business.

- 1 3. Upon receipt of M/WBE certification or re-certification
2 applications, the OEO shall review all enclosed forms,
3 affidavits and documentation, and determine whether the
4 applicant satisfies the eligibility requirements. All applicants
5 shall be notified in writing as to whether they are eligible.
6 The OEO shall also provide to ineligible applicants in writing
7 the basis for the denial of eligibility and the right to request
8 an appeal. Applicants determined ineligible shall not be
9 eligible to submit a new application for at least one (1) year
10 after the date of the notice of denial of eligibility.

- 11 4. All certified M/WBEs will be included in the District's M/WBE
12 Directory which will be regularly updated and provided to
13 school sites.

- 14 5. M/WBEs must notify the OEO within fifteen (15) days, of any
15 material changes to the company's ownership and/or
16 management of the firm. Any misrepresentation by a
17 company of its M/WBE status shall be grounds for
18 termination of any contract awarded based on the
19 misrepresentation. Violations may also subject the
20 signatories to any other statutory penalties and Board
21 policies.

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

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

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

- 39 9. An M/WBE may be decertified if the firm no longer meets the
40 certification requirements; for failure to comply with the
41 Board's M/WBE policies and procedures regarding requests
42 for information or documents pertaining to ownership,
43 control, or operation of the business; failure to submit a

1 complete M/WBE Recertification Application; debarment; or
2 by written request from the firm's minority/women owners for
3 voluntary removal from the M/WBE Directory.

4 **C. Appeals**

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

Industry Specific Programs -

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

A. Construction Programs

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

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

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

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

- 1
- (2) A Minority/Women Business Enterprise Program for non-professional services contracts may be established if future studies establish disparities that may be legally addressed through such a program. If disparities are found, this Policy will be amended to allow a legally permissible M/WBE program.

C. Professional Services Program

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

D. General Procurement Programs

- (1) A Small/Micro Business Enterprise Program permitting the use of set asides of small prime contracts that are below competitive dollar thresholds for bidding exclusively among certified SBME firms and also establishing mandatory subcontracting goals for the participation of certified SMBE subcontractors on those construction contracts that are above the competitive bidding threshold and that have commercially useful subcontract opportunities.
- (3) A Minority/Women Business Enterprise Program may be established if future studies establish disparities that may be legally addressed through such a program. If disparities are found, this Policy will be amended to allow a legally permissible M/WBE program.

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

A. Availability Analysis

- (1) Overall Availability - The measure of overall availability is based on all the vendors and contractors that register in the automated and mandatory centralized bidder registration system. Such availability measurements shall be segmented according to the proportion of

business ownership by race, gender and size within appropriate industry codes.

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

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

C. Disparity Analysis

- (1) The disparity analysis shall be based on the 80% statistical significance rule adopted under *Croson v. Richmond*, which is defined as two standard deviations between utilization and availability. Utilization of RWA M/WBE firms that is 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 MGT 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 MGT Study or any subsequent studies.
- (2) In selecting a remedial approach for any given contract, the District shall seek to identify the remedy that is most likely to be effective in promoting fair and equitable contract participation by all segments of the relevant vendor population, yet does not impose any undue burden on innocent third parties.

E. Periodic Review of Factual Predicate

- (1) At least once every four(4) years, the OEO and Superintendent shall recommend a contract with an independent disparity study consultant to the Board to conduct an updated review of the factual predicate for the District's M/WBE programs to determine whether there is any ongoing need for the use of race- and gender-conscious remedies.
- (2) Each successive disparity study update shall use methodologies and data sources that are preferred or consistent with the most recent controlling legal precedents.
- (3) Each successive disparity study update shall make specific findings and recommendations regarding the ongoing need for race- and gender- neutral and race- and gender-conscious remedies for certain categories of contracts. Study recommendations should also suggest appropriate modifications to existing District procurement procedures, SMBE programs, and M/WBE programs to promote fair and equitable participation in District contracting opportunities in the most effective but least restrictive and least burdensome manner.
- (4) In the event that the District determines that there is no ongoing need for any race- and gender-conscious remedies, the M/WBE programs shall be gradually phased out and shall sunset within two years after such determination is made.

Affirmative Procurement Initiatives

The following Affirmative Procurement Initiatives may be used in awarding Board contracts to SBE/MBEs or M/WBEs according to the Industry-Specific programs identified in this Policy.-

1 A. **Bonding Waiver.** The Board District's Purchasing and OEO
2 Directors are authorized, in accordance with Section 255.05, F.S., to
3 waive the requirements for performance and payment bonds for
4 projects having a dollar value up to \$200,000 or less, at its
5 discretion, and consistent with State law, may waive or reduce
6 the This exemption from -bonding requirements may be made on a
7 project-by project or contract-by-contract basis depending on the
8 type of contract and whether the Board determines that the bonding
9 requirements would deny the SBE/MBESMBE or M/WBE an
10 opportunity to perform the contract which the SBE/MBESMBE or
11 M/WBE has shown itself otherwise capable of performing. If the
12 exemption is granted, neither the School Board, the District, or its
13 officers and officials shall be personally liable to persons suffering
14 loss because of granting this exemption.

15 B. **Bid Incentives Preferences:**

16 **Bid Preference:** Specific goals for each project or contract may be
17 adopted on a project-by-project, or contract-by contract basis, in
18 which the contract award shall be made to the lowest responsive,
19 responsible bidder meeting the SMBE or M/WBE subcontracting
20 goals for the contract/project, when that bidder's price does not
21 exceed the lowest bidder's price by an amount greater than the
22 dollar or percentage amount set by the Goal Setting Committee.

23
24 **Evaluation Preference** - In ranking and evaluating proposals for
25 "best value" contracts in which factors other than price are relevant
26 to the selection process, the Board may award up to twenty
27 percent (20%) of the total points available to a SBE/MBESMBE or
28 M/WBE or a joint venture with an SBE/MBESMBE or M/WBE
29 partner in response to a request for proposal.

30
31 (1) Professional Services Evaluation

32
33 (a) In the selection process for the award of certain
34 professional services contracts, the District may include
35 as one of its evaluation criteria the level of SBE or M/WBE
36 participation on the team or in subcontract participation.
37 Under this remedial approach, the maximum number of
38 evaluation points is available to an SMBE or M/WBE
39 proposer.

40 (b) A summary of any applicable SMBE or M/WBE Program
41 procedures shall be plainly stated in each solicitation. For
42 competitive professional services contracts, a point system
43 of evaluation will be used by an evaluation committee to
44 determine the recipient of the contract award
45 recommendation. Businesses submitting proposals to
46 provide professional services to the District will be eligible
47 to receive on a sliding scale a designated number of the

1 total possible points based upon their SMBE or M/WBE
2 participation. The distribution of points allocated to the
3 evaluation criteria shall be stated in the request for
4 proposal. SMBE or M/WBE participation shall be only one
5 of several criteria used to evaluate each proposal.
6 Maximum points shall be awarded when the proposer is a
7 certified SMBE or M/WBE. The provisions within this
8 section pertaining to the procurement of professional
9 services are not intended to be used to the exclusion of
10 other provisions of this Policy.

11 C. **Mandatory Subcontracting:**

- 12 1. The GSC may at its discretion and on a contract-by-contract
13 basis, require that a predetermined percentage up to forty
14 percent (40%) of a specific contract be subcontracted to
15 eligible ~~SBE/MBEs~~ SMBEs or M/WBEs.
- 16 2. An ~~SBE/MBE~~ SMBE or M/WBE prime contractor may not
17 subcontract more than forty-nine percent (49%) of the
18 contract value to a non-~~SBE/MBE~~ SMBE or M/WBE.
- 19 3. A prospective bidder on a Board contract shall submit at the
20 time of bid ~~SBE/MBE~~ - Form S providing the name of the
21 ~~SBE/MBE~~ SMBE or MWBE subcontractor or subcontractors
22 and describing both the percentage of subcontracting by the
23 ~~SBE/MBE~~ SMBE or MWBE and the work to be performed by
24 the ~~SBE/MBE~~ SMBE or M/WBE. A bidder may request a full
25 or partial waiver of this mandatory subcontracting
26 requirement from the OEO for good cause by submitting the
27 ~~SBE/MBE~~ Unavailability Certification Form to the OEO prior
28 to bid opening. Under no circumstances shall a waiver of a
29 mandatory subcontracting requirement be granted without
30 submission of adequate documentation of good faith efforts
31 by the bidder and careful review by the OEO. The OEO shall
32 determine a waiver request upon the following criteria:
33
- 34 a. whether the requestor of the waiver has made good
35 faith efforts to subcontract with qualified and available
36 ~~SBE/MBEs~~ SMBEs or M/WBEs;
- 37 b. whether subcontracting would be inappropriate and/or
38 not provide a "commercially useful function" under the
39 circumstances of the contract; or
- 40 c. whether there are no certified ~~SBE/MBEs~~ SMBEs or
41 M/WBEs that are qualified and available to provide the
42 goods or services required.

- 1 4. In the absence of a waiver granted by the OEO, failure of a
2 prime contractor to commit in its bid or proposal to satisfying
3 the mandatory SBE/MBE SMBE or M/WBE subcontracting
4 goal shall render its bid or proposal non-responsive.

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

- 13 6. A prime contractor is required to notify and obtain written
14 approval from the OEO in advance of any reduction in
15 subcontract scope, termination, or substitution for a
16 designated SBE/MBE SMBE or M/WBE Subcontractor.
17 Failure to do so shall constitute a material breach of its
18 contract with the Board.
19

20 D. **Sheltered Market:**

- 21 1. The OEO and GSC may select certain contracts for award to a
22 SBE/MBESMBE or M/WBE or a joint venture with a
23 SBE/MBESMBE or M/WBE through the Sheltered Market
24 program.

- 25 2. In determining whether a particular contract is eligible for the
26 Sheltered Market Program, the OEO and GSC shall consider
27 whether there are at least three (3) SBE/MBESMBEs or
28 M/WBEs that are capable and available to participate in the
29 Sheltered Market Program for that contract; the degree of
30 underutilization of the SBE/MBESMBE or M/WBE prime
31 contractors in the specific industry categories; and the extent
32 to which the Board's SBE/MBESMBE or M/WBE prime
33 contractor utilization goals are being achieved.

- 34 3. If a responsive and responsible bid or response is not received
35 for a contract that has been designated for the Sheltered
36 Market Program, or the apparent low bid is determined to be
37 too high in price, the contract shall be removed from the
38 Sheltered Market Program.
39

40 **Contract Solicitation and Award**

- 41
- 42 A. The OEO shall preview all solicitations for construction, procurement and
43 professional services prior to public dissemination for compliance with the

1 objectives stated in this policy and to ensure that bid specifications do not
2 unnecessarily restrict the ability of SMBE and M/WBE firms to compete and
3 bid. All District award recommendations shall bear the review signature of
4 the OEO Director.

5
6 B. Disqualification/Rejection - The District and School Board may reject any
7 proposals from bidders who have previously failed to perform properly and
8 who have done so by commission or omission of an act of such serious and
9 compelling nature that the act indicates a serious lack of business integrity or
10 honesty.

11
12 C. Contract Compliance - As the Superintendent's designee, the OEO will
13 establish procedures for monitoring and evaluating program performance and
14 compliance.

15
16 D. The District and School Board may reject any proposal deemed non-
17 responsive for failing to meet the diversity requirements.

18
19 E. A firm's failure to comply with the contract may constitute a violation of the
20 anti-discrimination provisions of Policy 6465 and result in suspension or
21 debarment pursuant to Policy 6320.04.

22
23 **Violations and Sanctions -**

24
25 A. Violations of this Policy, include but are not limited to:

26
27 (1) fraudulently obtain, retain or attempt to obtain, or aid another in
28 fraudulently obtaining, retaining, or attempting to obtain or retain
29 certification status as an SMBE or M/WBE for purposes of this Policy;

30 (2) willfully falsify, conceal or cover up by a trick, scheme or device, a material
31 fact or make any false, fictitious or fraudulent statements or
32 representations, or make use of any false writing or document, knowing it
33 contains any false, fictitious or fraudulent statements or entry pursuant to
34 this Policy;

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

38 (4) fraudulently obtain, attempt to obtain or aid another person fraudulently
39 obtaining or attempting to obtain public monies to which the person is not
40 entitled under this Policy;

41 (5) failing to cooperate in any investigation of violations of this Policy or 6465;

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

44
45 B. Sanctions - Any person or business entity that violates this Policy shall be
46 subject to suspension, contract cancellation, or debarment pursuant to Policy
47 6320.04 and any other penalty provided by law.
48

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

11
12 Pre-Award Waiver - At any time prior to the award of a contract for a purchase of
13 goods and supplies, the Superintendent or designee may grant a partial or complete
14 waiver of diversity requirements for reasons such as (1) emergency procurement; (2)
15 where a non-M/WBE is the sole source of the needed goods or services and there are
16 no apparent commercially useful functions available to be performed by Ready,
17 Willing and Able SMBE or M/WBE subcontractors; or (3) good faith efforts to meet
18 the contract goal have proven unsuccessful. The Department making an emergency
19 procurement shall consider the availability of SMBEs or M/WBEs from which to
20 make the purchases. The Purchasing Director shall make available a report of
21 procurement activities, including at a minimum, project name, project number,
22 project description, awarded vendor, advertisement date, waivers and reasons for
23 the waiver, and an estimated dollar value to include change orders.

24
25
26 **SBE/MBESMBE and M/WBE Program Performance Review**

27 A. The OEO shall monitor the implementation of this policy and the
28 progress of theseis programs. On a quarterly basis, the OEO shall
29 report to the Superintendent and Board on the progress of achieving
30 the goals and objectives established for awards to certified
31 SBE/MBESMBE and M/WBE -firms, reporting both dollars awarded
32 and expended. In addition, the OEO shall report on the progress in
33 achieving the stated program objectives, including, but not limited
34 to, enhancing competition, establishing and building new business
35 capacity, and removing barriers to and eliminating disparities in the
36 utilization of available minority business enterprises and women
37 business enterprises on Board contracts.

38 B. The Board shall quarterly review these SBE/MBE Programs to
39 determine whether the various contracting procedures used to
40 enhance SBE/MBESMBE or M/WBE -contract participation needs
41 to be adjusted or used more or less aggressively in future years to
42 achieve the stated program objectives.

Policy Review - As required by Section 120.74, F.S. the Board shall review and
revise this policy as often as necessary to ensure that it complies with legal
requirements such as applicable current standards of binding decisions of the
Eleventh Circuit Court of Appeals and the United State Supreme Court. In addition,

at least every (4) years, the Board will review the successes and failures of the M/WBE program and make a determination as to the need for a continuing M/WBE program.

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

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

1 Minority/Women Business Enterprise Program

2 ~~The Minority/Women Business Enterprise (M/WBE) Program is established to~~
3 ~~enhance the bidding and selection opportunities of M/WBEs on certain contracts as~~
4 ~~specifically provided in Board Policy 6610. The M/WBE Enterprise Program and its~~
5 ~~certification procedure should be modified, adjusted and revised in accordance with~~
6 ~~the results of the Disparity Study.~~

7 A. Terms and Definitions

8 1. ~~Minority Ownership~~ minority ownership means that for:

9 a. ~~Sole Proprietorship~~ a sole proprietor must be a
10 minority person or woman.

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

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

21 d. ~~Limited Liability Company (LLC)~~ minority/women
22 must control the management and operations, as well
23 as hold at least fifty one percent (51%) of the
24 company's ownership interest.

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

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

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

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

12 c. ~~An Asian American, a person having origins of the Far~~
13 ~~East, Southeast Asia, the Indian Subcontinent, or the~~
14 ~~Pacific Islands, including the Hawaiian Islands before~~
15 ~~1778.~~

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

20 e. ~~An American born or naturalized woman.~~

21 f. ~~A service disabled veteran means a veteran who is a~~
22 ~~permanent Florida resident with a service connected~~
23 ~~disability as determined by the United States~~
24 ~~Department of Veterans Affairs or who has been~~
25 ~~terminated from military service by reason of disability~~
26 ~~by the United States Department of Defense.~~

27 B. ~~M/WBE Eligibility and Certification~~

28 1. ~~The OEO shall certify a company or other business entity as a~~
29 ~~M/WBE upon its submission of a completed certification~~
30 ~~form, (M/WBE Form 3920), supporting documentation, and a~~
31 ~~signed affidavit stating that it meets the following criteria:~~

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

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- 1 ~~For sole proprietorships, the \$5 million net worth~~
2 ~~requirement shall include both personal and business~~
3 ~~investments.~~
- 4 ~~b. it is owned and controlled by at least fifty one~~
5 ~~percent (51%) by a minority person/s who are~~
6 ~~members of an insular group that is of a specific racial,~~
7 ~~ethnic, or gender makeup or national origin which has~~
8 ~~been subjected historically to disparate treatment due~~
9 ~~to identification in and with that group resulting in an~~
10 ~~underrepresentation of commercial enterprises under~~
11 ~~the group's control, and whose management and daily~~
12 ~~operations are controlled by such persons~~
- 13 ~~A minority business enterprise may primarily involve~~
14 ~~the practice of a profession.~~
- 15 ~~e. the business must have an actual place of business in~~
16 ~~Miami Dade County for at least one (1) year preceding~~
17 ~~the application and be registered as a vendor with the~~
18 ~~District~~
- 19 ~~d. the business has an occupational license and all~~
20 ~~required professional licenses and/or contractor~~
21 ~~qualifier licenses~~
- 22 ~~e. the owner of the business must have the required~~
23 ~~professional license(s) and contractor qualification~~
24 ~~license~~
- 25 ~~2. Other factors in determining ownership that will be~~
26 ~~considered shall include, but are not limited to the following:~~
- 27 ~~a. Whether minority/women owners are entitled to share~~
28 ~~in the profits of the business, through salaries,~~
29 ~~bonuses, profit sharing, dividends, and all other~~
30 ~~benefits, commensurate their ownership.~~
- 31 ~~b. Whether minority/women owners share in all the risks~~
32 ~~of business, including, but not limited to, third party~~
33 ~~agreements, bonding and financial arrangements.~~
- 34 ~~c. Ownership by a minority person does not include~~
35 ~~ownership that is the result of a transfer from a~~
36 ~~nonminority person to a minority person within a~~
37 ~~related immediate family group if the combined total~~
38 ~~net asset value of all members of such family group~~
39 ~~exceeds \$1 million. The term "related immediate~~
40 ~~family group" means one (1) or more children under~~

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1 ~~sixteen (16) years of age and a parent of such children~~
2 ~~or the spouse of such parent residing in the same~~
3 ~~house or living unit.~~

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

13 ~~Documents that establish control include but are not~~
14 ~~limited to: corporate bylaws, operating agreements,~~
15 ~~partnership agreements, management agreements or~~
16 ~~other agreements. Such documents should be free of~~
17 ~~restrictive language which dilutes a minority/woman~~
18 ~~owner(s)' control and prohibits him/her from making~~
19 ~~decisions.~~

20 ~~1) The minority/woman owner(s) must submit~~
21 ~~documentation demonstrating control through~~
22 ~~the authority and responsibility to sign company~~
23 ~~checks, for all bank accounts, and letters of~~
24 ~~credit, negotiate contracts on behalf of the~~
25 ~~business, signature responsibility for insurance,~~
26 ~~bid bonds, and performance and payment~~
27 ~~bonds, negotiate bank transactions, and~~
28 ~~guarantee all instruments which indebted the~~
29 ~~business.~~

30 ~~2) Unless a business is a franchise, agreements for~~
31 ~~contractual support services that usurp a~~
32 ~~minority/woman owner's authority to control a~~
33 ~~company are not allowed.~~

34 ~~3) Minority/Women owners shall control or~~
35 ~~supervise the hiring, firing and supervision of~~
36 ~~employees, and establishment of employment~~
37 ~~policies, wages, benefits and other employment~~
38 ~~conditions.~~

39 ~~4) Minority/Women owners shall have knowledge~~
40 ~~and control of all financial matters of the~~
41 ~~business.~~

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- 1 ~~3. Upon receipt of M/WBE certification or re certification~~
2 ~~applications, the OEO shall review all enclosed forms,~~
3 ~~affidavits and documentation, and determine whether the~~
4 ~~applicant satisfies the eligibility requirements. All applicants~~
5 ~~shall be notified in writing as to whether they are eligible.~~
6 ~~The OEO shall also provide to ineligible applicants in writing~~
7 ~~the basis for the denial of eligibility and the right to request~~
8 ~~an appeal. Applicants determined ineligible shall not be~~
9 ~~eligible to submit a new application for at least one (1) year~~
10 ~~after the date of the notice of denial of eligibility.~~

- 11 ~~4. All certified M/WBEs will be included in the District's M/WBE~~
12 ~~Directory which will be regularly updated and provided to~~
13 ~~school sites.~~

- 14 ~~5. M/WBEs must notify the OEO within fifteen (15) days, of any~~
15 ~~material changes to the company's ownership and/or~~
16 ~~management of the firm. Any misrepresentation by a~~
17 ~~company of its M/WBE status shall be grounds for~~
18 ~~termination of any contract awarded based on the~~
19 ~~misrepresentation. Violations may also subject the~~
20 ~~signatories to any other statutory penalties and Board~~
21 ~~policies.~~

- 22 ~~6. M/WBE certification shall be valid for a three (3) year period.~~
23 ~~Certified M/BWEs shall not request a change in their~~
24 ~~minority/woman designation, to another minority designation~~
25 ~~during the certification period, unless changes are due to~~
26 ~~extenuating circumstances.~~

- 27 ~~7. The Board may honor a valid minority business certification~~
28 ~~granted by another agency if the agency's requirements are~~
29 ~~consistent with the District's M/BWE certification criteria.~~
30 ~~The Superintendent may develop procedures to implement~~
31 ~~this policy.~~

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

- 39 ~~9. An M/WBE may be decertified for failure to comply with the~~
40 ~~Board's M/WBE policies and procedures regarding requests~~
41 ~~for information or documents pertaining to ownership,~~
42 ~~control, or operation of the business; failure to submit a~~
43 ~~complete M/WBE Recertification Application; debarment; or~~

1 ~~by written request from the firm's minority/women owners for~~
2 ~~voluntary removal from the M/BWE Directory.~~

3 ~~C. Appeals~~

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

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

12 Revised 11/21/12

13 Revised 1/16/13

14 Revised 9/3/13

15 Revised 6/18/14

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