

Office of School Board Attorney  
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**SUBJECT: ACCEPT FINDINGS OF EUQUANT, INC., AND INITIAL READING OF PROPOSED AMENDMENTS TO BOARD POLICIES 6320.02, SMALL/MICRO AND MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE PROGRAMS, AND 6320.05, LOCAL VENDOR PREFERENCE**

**COMMITTEE: INNOVATION, GOVERNMENTAL RELATIONS AND COMMUNITY ENGAGEMENT**

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

This item requests that the Board accept the disparity findings and conclusions of Euquant, Inc., and authorize the Superintendent to initiate rulemaking procedures to amend Policies 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*, and 6320.05, *Local Vendor Preference*, as described below.

**A. Small/Micro and Minority/Women-Owned Business Enterprise Programs**

In 1985, the School Board adopted its first policy to address disparities existing in contract awards to Minority/Women-Owned Business enterprises (M/WBE) based on disparity studies conducted in 1985 and 1990. Pursuant to the US Supreme Court decision in *City of Richmond v. J.A. Croson*, 109 S. Ct. 706 (1989), the Board determined on November 21, 2012, that in order to continue its program, a new disparity study would need to be conducted. In February 2013, the Board commissioned MGT of America, Inc. (MGT) to conduct Phase I of a Comprehensive Disparity Study to determine if disparity existed in the utilization M/WBEs in the Board's procurement of capital construction and design and construction related professional services. At the same time, the Board adopted a gender and race neutral small and micro business enterprise program.

The MGT study reported statistically significant disparities in the District's utilization of ready, willing and able M/WBE's in prime construction, construction-related professional services, and design and construction-related professional service subcontracts for

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African-American, Asian-American, Native American, and Non-Minority women businesses. For construction subcontracts, however, the study found disparities only in Asian-American and Native American companies. After significant public input, discussion with the Board, and an initial review of MGT data by the Board's Office of Management and Compliance Audits, it was determined that additional analysis of African-American sub-contracting disparity by an independent third party was warranted. The Board did, however, accept MGT's findings of disparity in other areas and adopted amendments on January 14, 2015, to Board Policy 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*, to re-establish its MWBE program in the identified categories supported by the MGT study.

At the same time, the Board retained Dr. Thomas Boston, CEO of the firm Euquant, Inc., (Euquant) to conduct an empirical analysis of the findings, conclusions, and methodology employed by MGT in their analysis of disparity as it related to African-American construction subcontractors. After completing its analysis, Euquant concluded that "there is a strong basis in fact and a compelling governmental interest in establishing a remedial subcontracting program for African-Americans in the construction industry."

This item requests that the Board accept the Euquant findings and conclusions and consider amending Board Policy 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*, to include African-American construction subcontractors. Other proposed amendments will: (1) expand MWBE certification eligibility from Miami-Dade County to the Metropolitan Statistical Area (Miami-Dade, Broward and Palm Beach Counties), (2) clarify and adjust the gross revenue levels for Small and Micro Business Program eligibility and graduation, (3) correct and clarify various internal inconsistencies in appeal eligibility timelines, formatting, and other provisions, (4) authorize the development and implementation of programs to provide incentives for bidders to increase diversity in their use of subcontractors consistent with new Policy 6320.06, *Diversity, Equity and Inclusion in Business Operations and Practices*, (5) delete references to specific forms, (6) add fair subcontracting and prompt payment requirements, (7) include provisions addressing local vendor preference changes mandated by the state to conform to 6320.05 as described below, and (8) specifically authorize the establishment of affirmative procurement initiatives to increase the participation of service disabled veteran businesses in the Board's procurement processes.

## **B. Local Vendor Preference**

During the 2015 Florida Legislative Session, the Legislature passed a statutory amendment prohibiting the use of local preference in competitive solicitations for construction services in which 50% or more of the cost will be paid from state-appropriated funds which have been appropriated at the time of the competitive solicitation. The solicitation documents for construction services in this event must disclose that no local preference will be applied. State-appropriated funds are defined as all funds appropriated in the General Appropriations Act, excluding federal funds. This does not include funds that derive from local sources, including but not limited to, general obligation bond funds for capital construction or funds raised through local

capital outlay millage and local sales taxes. In addition, the policy is proposed to be updated to include state business vendor preferences and the requirement for construction contracts funded by the state to include a mandate that the contractor hire state residents when they are substantially equal in qualifications to nonresidents. The changes are expected to have minimal impact on the Board's current capital construction projects since they are primarily funded through capital construction general obligation bonds and other local sources. This item requests that the Board approve amendments to 6320.05, *Local Vendor Preference* to add these requirements. Other proposed amendments correct, clarify and reformat the policy and it is proposed to be renamed *Vendor and Employment Preferences*.

Attached are the Notice of Intended Action and the proposed amended policies. Changes are indicated by underscoring words to be added and ~~striking through~~ words to be deleted.

Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Policies 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*, and 6320.05, *Local Vendor Preference*.

- RECOMMENDED:** That The School Board of Miami-Dade County, Florida,
- (1) accept the findings and conclusions of Euquant, Inc., that there is a significant disparity in the Board's utilization of African-American construction subcontractors; and
  - (2) authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Policies 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*, and 6320.05, *Local Vendor Preference*.