

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

**SUBJECT: FINAL READING: PROPOSED ADOPTION OF 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**

At its Board meeting of September 9, 2015, the Board approved Revised Agenda Item G-1 ("MWBE Programs"), which authorized the Superintendent to initiate rulemaking proceedings 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."

On September 9, 2015, the Board accepted Euquant's findings as recommended in Revised Agenda Item G-1. As a result, the proposed amendment of Board Policy 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*, will now include African-American construction subcontractors. Other proposed amendments will: (1) expand M/WBE 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 adopt the proposed 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*.

The Notice of Intended Action was published in the *Miami Daily Business Review* on September 14, 2015, in various places for public information and mailed to various organizations representing persons affected by the amended policy and to individuals requesting notification. The time to request a hearing or protest the adoption of these amendments has elapsed.

In accordance with the Administrative Procedure Act, the proposed amended policies are presented to The School Board of Miami-Dade County, Florida, for adoption and authorization to file the new and amended policies in the official records of The School Board of Miami-Dade County, Florida.

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.

**RECOMMENDED:**

That The School Board of Miami-Dade County, Florida, adopt the proposed amendments to Policies 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*, and 6320.05, *Local Vendor Preference*, and authorize the Superintendent to file the amended policies with The School Board of Miami-Dade County, Florida, to be effective October 14, 2015.

## NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on September 9, 2015, its intention to amend Policies 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*, and 6320.05, *Local Vendor Preference*, at its meeting of October 14, 2015.

**PURPOSE AND EFFECT:** In order to further the Board's commitment to commercial anti-discrimination and inclusion of small/micro and minority/women-owned business enterprises (MWBE) in its construction and construction-related procurement of professional services, Policy 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*, is proposed to be amended to find that there is a statistically significant disparity in the Board's utilization of ready, willing, and able African-American construction subcontractors and that the Board include this category of subcontractors in its affirmative procurement initiatives. 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 and to conform to amendments to Policy 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.

Policy 6320.05, *Local Vendor Preference*, is proposed to be amended to incorporate a legislative 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 proposed amendments also include the legislative requirement 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 and does not include capital construction projects funded by local sources, including general obligation bonds. In addition, the policy is proposed to be updated to include statutory requirements for state business vendor preferences and that construction contracts funded by the state 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. The policy is proposed to be renamed *Vendor and Employment Preferences*.

**SUMMARY:** In order to further the Board's commitment to commercial anti-discrimination and inclusion of small/micro and minority/women-owned business enterprises (MWBE) in its construction and construction-related procurement of professional services, Policy 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*, is proposed to be amended to find that there is a statistically significant disparity in the Board's utilization of ready, willing, and able African-American construction subcontractors and that the Superintendent may develop narrowly tailored race-conscious measures to address the disparity. Policy 6320.05, *Local Vendor Preference*, is proposed to be amended to incorporate statutory changes 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 and to include state business vendor preference and state hiring requirements. The policy is proposed to be renamed *Vendor and Employment Preferences*.

**SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED:** 120.74, 1001.41 (1), (2), F.S.

**LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC:** 218.735, 255.099, 255.0991, 287.055, 287.084, 1001.43 (2), (4), and (10), F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF October 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 October 5, 2015, 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, F. S.

COPIES OF THE PROPOSED AMENDED POLICIES 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.

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

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

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

23 On November 21, 2012, the Board determined that a ~~current~~new disparity study  
24 would need to be conducted in order to continue its M/WBE program. The Board  
25 repealed its Business Development and Assistance Program Policy with the  
26 understanding that it would develop a new M/WBE Program if supported by the  
27 results of a ~~current~~newly commissioned disparity study. At the same time, the  
28 Board approved the Small/Micro Business Enterprise (SMBE) Program and the  
29 continuation of the Minority/Women Owned Business Enterprise MWBE  
30 Certification Program (SMBE) to ~~continue to~~ provide legally permissible race and  
31 gender neutral participation by small and micro businesses in Board procurement of  
32 goods and services, construction, and professional services and to allow M/WBEs to  
33 participate in Board contracting as small and micro business enterprises while the  
34 study was being conducted. The ~~policy program~~ continued to certify M/WBEs, to  
35 include aspirational goals for M/WBEs in contracts, and to track and monitor the  
36 utilization of M/WBEs through the SMBE Program.

1 | ~~Shortly thereafter, in~~ February 2013, the Board contracted with MGT of America, a  
2 Tallahassee consulting firm, to conduct Phase I of a Comprehensive Disparity Study  
3 (Disparity Study) to provide data regarding the Board's design and  
4 construction-related professional services procurement activity and race- and  
5 gender-neutral remedial efforts for the study period between July 1, 2006, through  
6 June 30, 2012. The purpose of the Disparity Study was to analyze the utilization of  
7 minority and women-owned business enterprises (M/WBEs) in the Board's  
8 procurement of capital construction and design and construction related  
9 professional services. The Disparity Study was accepted by the Board on  
10 November 19, 2014. In February 2015, the Board commissioned Euquant, Inc., to  
11 provide further disparity analysis of the Board's utilization of African-American  
12 subcontractors in construction (Subcontractor Disparity Study). The Subcontractor  
13 Disparity Study was accepted by the Board on September 9, 2015. The Disparity  
14 Study and the Subcontractor Disparity Study are both incorporated by reference  
15 and made a part of this policy.

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

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

- 29           A. Prime Construction Contracts (African-American, Asian-American,  
30           Native-American and Non-Minority Women)
- 31 |           B. Construction Subcontracts (African-American, Asian-American and  
32           Native-American)
- 33           C. Prime Design and Construction-Related Professional Services  
34           (African-American, Asian-American, Native-American and  
35           Non-Minority Women)
- 36           D. Design and Construction-Related Professional Services Subcontracts  
37           (African-American, Asian-American, Native-American and  
38           Non-Minority Women)

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

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

5 B. Non-minority firms received an even larger percentage of  
6 construction building permits for private sector commercial  
7 construction and subcontracts. MBE primes received only two  
8 percent (2%) of building permits and certified non-minority  
9 women-owned businesses received zero. Of the .27% of  
10 subcontractors who received building permits, nearly all went to  
11 Hispanic-American owned businesses.

12 C. There are significant disparities for entry into self-employment for  
13 African-Americans, Hispanic Americans, Asian Americans and  
14 Nonminority Women.

15 D. There is a statistically significant positive relationship between the  
16 probability of commercial bank loan denial and African American  
17 business ownership. About fifteen percent (15%) of M/WBE loan  
18 applicants reported being denied commercial bank loans, compared  
19 to 64.7% of African American applicants, 21.6% of Hispanic  
20 American applicants, 0% of Asian American-owned firms, 0% of  
21 Native American applicants, and twenty percent (20%) of ~~a~~Non-  
22 ~~M~~minority women applicants.

23 E. Interviews with District staff and M/WBE firms identified various  
24 discriminatory barriers affecting the relevant job market including  
25 unequal access to bonding, finance, and insurance, having to  
26 unfairly compete against large firms in the selection process,  
27 unnecessarily restrictive contract requirements, an informal network  
28 that precluded M/WBE firms from obtaining work in the private  
29 sector, seldom or never being solicited where there were no M/WBE  
30 goals, being dropped from a project after being included to satisfy  
31 good faith effort requirements, contract bundling, slow or  
32 non-payment by contractors, limited time to prepare bid packages,  
33 difficulty obtaining notification of contract/bid opportunities, and  
34 discriminatory experiences in dealing with the District and prime  
35 contractors.

36 F. The implementation of numerous race and gender-neutral  
37 assistance efforts and programs throughout the relevant market  
38 over the past two (2) decades have been unsuccessful in eliminating  
39 these persistent and significant disparities in the District's ready,  
40 willing and able M/WBE firms. The efforts have included technical  
41 assistance, loan guarantee assistance, bonding assistance, business

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1 development assistance, financial assistance, and mentoring  
2 programs.  
3

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

7 Based upon the totality of the evidence gathered and presented to the Board since  
8 1990, the Board has concluded that there is a strong evidentiary basis establishing  
9 that the District has a compelling interest in remedying the ongoing effects of  
10 discrimination that is occurring in the broader relevant market and adversely affects  
11 the District's utilization of ready, willing and able minority- and women-owned firms  
12 in District construction and construction-related contracts. The Board also  
13 concludes that it needs to take action to avoid becoming a passive participant in  
14 private sector discrimination.

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

23 **General Policy**

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

30 B. Having found that it has a compelling governmental interest to  
31 remedy the effects of identified discrimination in the procurement of  
32 construction and professional services contracts, the Board directs  
33 and authorizes the Superintendent to establish procedures and  
34 implement remedies that are consistent with this policy and are  
35 narrowly tailored to the findings and conclusions of the Disparity  
36 Study.

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



- 1           D.    The District shall take all necessary and reasonable steps  
2                    permissible by law to ensure full equitable participation by M/WBEs  
3                    in the procurement of construction and professional services for the  
4                    District, including:
- 5                    1.    developing programs and services as described in this policy  
6                            that will achieve the Board's diversity objectives in business  
7                            practices and operations in a manner that is consistent with  
8                            this objective;
- 9                    2.    publicizing and enforcing ~~its~~the Board's commercial ~~non~~anti-  
10                            discrimination provisions in Policies 6465 and Policy 6320  
11                            to ensure that District employees and companies doing business  
12                            with the Board do not discriminate in the solicitation,  
13                            selection, or treatment of subcontractors, suppliers, vendors,  
14                            or commercial customers on race, color, ethnic or national  
15                            origin, religion, marital status, disability, genetic information,  
16                            age, political beliefs, sexual orientation, gender, gender  
17                            identification, social and family background, linguistic  
18                            preference, pregnancy, and any other legally prohibited basis;
- 19                    3.    developing additional Board policies, administrative  
20                            programs, procedures and affirmative procurement initiatives  
21                            consistent with Policy 6320.06 to directly address inequities  
22                            and disparities related to the underutilization of M/WBE  
23                            subcontractors on Board construction projects;  
24
- 25                    34.    ensuring that the Office of Economic Opportunity (OEO) is  
26                            included on all selection committees for bids, contracts and  
27                            professional services; and
- 28                    The OEO shall review contract specifications to ensure that  
29                            they are not unnecessarily restricting the availability and  
30                            participation of SDBEs and M/WBE firms in the procurement  
31                            and contracting process.
- 32                    45.    evaluating the levels of availability and utilization in SDBE  
33                            and M/WBE participation and adjusting the implementation  
34                            of this policy according to changing needs and circumstances  
35                            to ensure that appropriate utilization objectives are  
36                            established and ~~achieved~~maintained.

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

2 The OEO shall administer and implement the SMBE and M/WBE Business  
3 Enterprise Program including certification, technical assistance and compliance,  
4 and:

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

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

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

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

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

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

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

27 H. establish administrative procedures to expeditiously resolve  
28 monetary disputes and motivate prime contractors to make timely  
29 payments;

30 I. establish a comprehensive contract reporting and monitoring system  
31 to evaluate the effectiveness of these programs in increasing  
32 contracting opportunities for small/micro and  
33 minority/women-owned businesses;

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- 1 J. serve as chair of the Goal-Setting Committee and staff liaison to the  
2 Small/Micro and Minority/Women-Owned Business Enterprise  
3 Advisory Committee;
- 4 K. monitor, coordinate, and provide support for any disparity study  
5 that may be conducted regarding minority/women-owned business  
6 participation in Board procurement for construction, professional  
7 A/E and non-A/E services, and goods and services;
- 8 L. develop and coordinate any recommendations as a result of any  
9 such disparity study findings;
- 10 M. maintain, distribute, and publish a directory of certified SBE, MBE,  
11 and M/WBE firms; ~~and~~
- 12 N. report ~~quarterly~~ annually through the Superintendent to the Board  
13 regarding the effectiveness of these programs; ~~and~~  
14
- 15 O. monitor local workforce development initiatives and/or goals  
16 through community based agreements with reputable and reliable  
17 referral agencies for Board construction, professional A/E and non-  
18 A/E services, and goods and services.

19 **Small/Micro and Minority/Women-Owned Business Enterprise Advisory**  
20 **Committee**

21 The Small/Micro and Minority/Women-Owned Business Enterprise Advisory  
22 Committee shall be established to:

- 23 A. provide guidance on the implementation of the SMBE and MWBE  
24 Programs and to promote the participation and use of SBEs/MBEs  
25 and M/WBEs in the all procurement activities of the Board;
- 26 B. identify and evaluate issues related to economic opportunities within  
27 the Board for small, micro and minority/women owned businesses;
- 28 C. provide recommendations to the Board to improve the SMBE/MWBE  
29 programs;
- 30 D. annually evaluate and report to the Board on the effectiveness of the  
31 SMBE/MWBE programs in increasing minority and women owned  
32 business participation in the Board's procurement process;
- 33 E. monitor any disparity study that may be conducted by the Board  
34 and make recommendations based on the results of any such study.

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

18 **Terms and Definitions**

- 19           A.    ***Affirmative Procurement Initiatives*** – any procurement tool to  
20           enhance contracting opportunities for SBE/MBE firms including:  
21           bonding waivers, bid incentives, sheltered market, mandatory  
22           subcontracting, competitive business development demonstration  
23           projects, and SBE/MBE evaluation preference points in the scoring  
24           of proposal evaluations.
- 25           B.    ***Available or Availability*** – to have, prior to bid submission, the  
26           ability to provide goods or services under a contract by having  
27           (a) reasonably estimated, uncommitted capacity; (b) all necessary  
28           licenses, permits, registrations and certification, including SMBE or  
29           M/WBE certification to provide the type of goods or services being  
30           purchased under the contract; (c) ability to obtain reasonably  
31           required financing/insurance that is consistent with normal  
32           industry practice; and (d) ability to otherwise meet bid  
33           specifications.
- 34           C.    ***Award*** – final selection of a bidder or offer or for a specified  
35           contract.
- 36           D.    ***Award Amount*** – the dollar value of the contract when awarded.

- 1 E. **Bid** – quotation, proposal, letter of interest or offer by any bidder in  
2 response to any kind of invitation, solicitation, request or public  
3 announcement to submit such quotation, proposal, letter of interest  
4 or offer for a contract.
- 5 F. **Bidder** – any person, partnership, corporation or other business  
6 entity that submits a bid or proposal.
- 7 G. **Certification** – process by which the OEO ~~Office of Economic~~  
8 ~~Opportunity~~ (“OEO”) determines that a business meets the criteria  
9 for classification as a small/micro business enterprise and/or a  
10 minority/women-owned business enterprise.
- 11 H. **Commercially Useful Function** – an SMBE or M/WBE performs a  
12 commercially useful function when it is responsible for execution of  
13 the work of the contract and is carrying out its responsibilities by  
14 actually performing, managing, and supervising the work involved.  
15 To perform a commercially useful function, the SMBE or M/WBE  
16 must also be responsible for negotiating the price of contract  
17 materials and supplies, determining the quantity and quality of  
18 materials, ordering and installing materials if applicable, and paying  
19 for the materials. To determine whether an SMBE or M/WBE is  
20 performing a commercially useful function, an evaluation must be  
21 performed of the amount of work subcontracted, normal industry  
22 practices, whether the amount the SMBE or M/WBE is to be paid  
23 under the contract is commensurate with the work it is actually  
24 performing and the SMBE or M/WBE credit claimed for its  
25 performance of the work, and other relevant factors. Specifically, an  
26 SMBE or M/WBE does not perform a commercially useful function if  
27 its role is limited to that of an extra participant in a transaction,  
28 contract, or project through which funds are passed in order to  
29 obtain the appearance of meaningful and useful SMBE or M/WBE  
30 participation, when in similar transactions in which SMBE or  
31 M/WBE firms do not participate, there is no such role performed.
- 32 I. **Construction Services—and Construction-Related Specialty**  
33 **Trades** - means all labor, services, and materials provided in  
34 connection with the construction, alteration, repair, demolition,  
35 reconstruction, or any other improvements to real property.

- 1 J. **Contract** – an agreement for purchase of goods or services,  
2 including professional services and construction. It does not include  
3 agreements to purchase, lease, or rent real property, or a grant,  
4 license, permit, franchise, or concession.
- 5 K. **Goal** – The annual or contract-specific goals for contract  
6 participation that express the anticipated level or proportion of  
7 contract dollars in a given time frame that would be expected to be  
8 received by a particular segment of the total population of Ready,  
9 Willing, and Able (RWA) firms. These goals are based upon  
10 availability analysis derived from a database established by the OEO  
11 and Purchasing. Upon completion of availability analysis, such  
12 goals for specific contract participation may, under certain  
13 circumstances, be set and narrowly tailored by race, gender, and  
14 industry codes. Annual goals are intended as an administrative  
15 guide only to assist the District in its annual policy review to  
16 determine whether the use of more aggressive or less aggressive  
17 remedies are warranted in the future. Annual goals shall not be  
18 routinely applied to specific contracts absent independent  
19 availability analysis demonstrating that they are appropriate for  
20 application to a specific contract.
- 21 L. **Goal Setting Committee** – committee established by the  
22 Superintendent that is chaired by the OEO and is responsible for  
23 establishing SMBE and M/WBE Program goals and selecting  
24 appropriate Affirmative Procurement Initiatives for application to  
25 specific Board contracts based upon industry categories, vendor  
26 availability, and project-specific characteristics.
- 27 M. **Good Faith Efforts** – documentation of the bidder’s intent to  
28 comply with SMBE and M/WBE Program goals and procedures,  
29 including, but not limited to the following: (1) documentation within  
30 a bid submission or proposal reflecting the bidder’s commitment to  
31 comply with program goals as established by the Goal Setting  
32 Committee for a particular contract; or (2) documentation of efforts  
33 made towards achieving the program goals, including but not  
34 limited to, timely posting of SMBE or M/WBE subcontract  
35 opportunities on the Board web site; solicitations of bids from all  
36 qualified SME or M/WBE firms listed in OEO’s directory of certified  
37 firms; correspondence from qualified SMBE or M/WBE firms  
38 documenting their unavailability to perform SMBE or M/WBE  
39 contracts; documentation of efforts to subdivide work into smaller  
40 quantities for subcontracting purposes to SMBE or M/WBE firms;  
41 documentation of efforts to assist SMBE and M/WBE firms with  
42 obtaining financing, bonding, or insurance required by the bidder;

1 and documentation of consultations with trade associations and  
2 consultants that represent the interests of small and local  
3 businesses in order to identify qualified and available SMBE and  
4 M/WBE subcontractors.

5 | N. **Goods and Services** - ~~refer to~~ all items, supplies, materials, and  
6 general support services, except consulting services and  
7 infrastructure projects, which may be needed in the transaction of  
8 public business or in the pursuit of any government undertaking,  
9 project, or activity. The term refers to, among other subjects,  
10 equipment, furniture, food, information technology, materials for  
11 construction, or personal property or any kind, including  
12 non-personal or contractual services such as the repair and  
13 maintenance of equipment and furniture. It also refers to trucking,  
14 hauling, janitorial, security, and related services as well as  
15 procurement of material and supplies provided by the procuring  
16 entity for such services. The term "related" shall include but not be  
17 limited to, lease or purchase of office space, media advertisements,  
18 health maintenance services, and other services essential to the  
19 operation of the procuring entity.

20 O. **Gross Revenue** – all revenue in whatever form received or accrued  
21 from whatever source, including sales of products or services,  
22 interest, dividends, rents, royalties, fees or commissions, reduced by  
23 returns and allowances. Gross revenue does not include proceeds  
24 from sales of capital assets, and investments, proceeds from  
25 transaction between a firm and its domestic and foreign affiliates.

26 P. **Independently Owned, Managed, and Operated** – ownership of  
27 an SMBE or M/WBE firm must be direct, independent, and by  
28 individuals only. Business firms that are owned by other  
29 businesses or by the principals or owners of other businesses that  
30 cannot themselves qualify under the eligibility requirements shall  
31 not be eligible to participate in the program. The day-to-day  
32 management of the firm must also be direct and independent of the  
33 influence of any other businesses that cannot themselves qualify  
34 under the eligibility requirements.

35 Q. **Industry Categories** – procurement groupings of Board contracts  
36 for administering the Affirmative Procurement Initiatives that shall  
37 include construction, professional services, and goods and services  
38 procurement. Industry categories may also be referred to as  
39 "business categories."

40 R. **Joint Venture** - an association of two (2) or more persons or  
41 businesses under a contract conducting a single business enterprise  
42 in which they combine capital, efforts, skills, knowledge and/or  
43 property and share profits and losses equally. A joint venture

1 composed of qualified business organizations is itself a separate and  
2 distinct organization that must be qualified according to Board  
3 policies and F.S. 489.119(2)(c).

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

21 | T. **Minority/Women-Owned Business Enterprise (M/WBE)** – see the  
22 definitions under the Minority/Women Business Enterprise Program  
23 section of this policy.

24 U. **Points** – the quantitative assignment of value for specific evaluation  
25 criteria in the vendor or consultant selection process.

26 V. **Prime Contractor** – the vendor or contractor to whom a purchase  
27 order or contract is awarded by the Board for purposes of providing  
28 goods or services to the Board.

29 W. **Professional Services** - those services within the scope of the  
30 practice of architecture, professional engineering, landscape  
31 architecture, or registered surveying and mapping, as defined by the  
32 laws of the State, or those performed by any architect, professional  
33 engineer, landscape architect, or registered surveyor and mapper in  
34 connection with his/her professional employment or practice;  
35 Professional Services A/E shall not include job order contracting  
36 consultants, asbestos consultants, program management,  
37 geotechnical, construction materials testing, and environmental  
38 assessment services.

39  
40 Professional Services also includes services rendered by members of  
41 a recognized profession or possessing a special skill. Such services  
42 are generally acquired to obtain information, advice, training, or  
43 direct assistance.



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- X. **Ready, Willing and Able** – any vendor who has registered an interest in doing business with the Board and has the technical expertise, training, and licenses to perform in accordance with the contract document. SMBEs and M/WBEs must also be certified pursuant to this policy.
  
- Y. **Responsible** – means that a firm is capable in all respects of fully performing the contract requirements and has the integrity and reliability to assure good faith performance.
  
- Z. **Responsive** – description of a firm’s bid or proposal that conforms in all material respects to the invitation to bid or request for proposal and shall include compliance with SBE Program requirements.
  
- AA. **School Board** – The School Board of Miami-Dade County, Florida, which is the legal entity with authority to enter contracts on behalf of the District school system under F.S. 1001.41(4).
  
- BB. **Service-Disabled Veteran** - a veteran who is a permanent Florida resident with a service-connected disability as determined by the United States Department of Veterans Affairs or who has been terminated from military service by reason of disability by the United States Department of Defense.
  
- BB.CC. **Sheltered Market** – an affirmative procurement initiative designed to set aside a Board contract bid for bidding or selection exclusively among SMBE/M/WBE firms.
  
- CC.DD. **Significant Employee Presence** – no less than twenty-five percent (25%) of a firm’s total number of employees are domiciled in Miami-Dade County, Florida.
  
- ~~DD. **SMBE and M/WBE Plan Execution Certification (SBE/MBE Form C)** form certifying the general contractor’s intent to use a SBME or M/WBE subcontractor and verifying that an agreement has been executed between the prime and the SMBE or M/WBE.~~
  
- EE.—**SMBE or M/WBE Directory** - listing of certified SMBEs and M/WBEs.
  
- ~~FF. **SMBE and M/WBE Certification/Re-certification Application (Form R)** form that a company must complete when applying for and/or recertifying SMBE or M/WBE status for participation in the SMBE or M/WBE Program. This form shall be completed every~~

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1 two (2) years by certified companies by the anniversary date of their  
2 original certification.

3  
4 ~~GG. **Schedule for Subcontractor Participation ( Form S)** form that~~  
5 ~~must be completed by all non SMBE or M/WBE firms that~~  
6 ~~subcontract to SBE or M/WBE firms, must be submitted for each~~  
7 ~~SMBE or M/WBE subcontractor, and must be reviewed and~~  
8 ~~approved by the OEO manager before contract award.~~

9  
10 FF. **State Appropriated Funds** - all funds appropriated in the General  
11 Appropriations Act, excluding federal funds. This does not include  
12 funds that derive from local sources, including but not limited to,  
13 general obligation bond funds for capital construction or funds  
14 raised through local capital outlay millage and local sales taxes.

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

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

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

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1 | ~~KKII.~~ **Subcontractor** – any vendor or contractor that is providing goods or  
2 | services to a prime contractor in furtherance of the prime  
3 | contractor’s performance under a contract or purchase order with  
4 | the Board.

5 | ~~LLJJ.~~ **Subcontractor Goal** – a proportion of a total contract value stated  
6 | as a percentage to be subcontracted to SMBEs or M/WBEs to  
7 | perform a commercially useful function.

8 | ~~MMKK.~~ **Suspension** – the temporary stoppage of an SBE or M/WBE  
9 | firm’s participation in the Board’s contracting process for a finite  
10 | period of time.

11 | **Application**

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

18 | **Subcontractor Goals and Incentives**

19 | Subcontractor goals may be applied to a contract based on estimates made prior to  
20 | bid advertisement of the quality, quantity, and type of subcontracting opportunities  
21 | provided by the contract and the availability of either SMBEs or M/WBEs to perform  
22 | the work. The Superintendent may also develop affirmative initiatives and/or  
23 | incentive programs that can be applied to identified contracts in the selection and  
24 | contract award process to increase the utilization of SMBE and M/WBE  
25 | subcontractors pursuant to Policy 6320.06.

26 | **Goal Setting Committee**

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

38 | **Small/Micro Business Enterprise Program**

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

7 **SMBE Eligibility and Certification**

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

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

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

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

22 4. The business has a local business tax receipt and all required  
23 professional licenses, contractor qualifier licenses, and/or  
24 Certificate of Competency.

25 5. The owner of the business and/or qualifier must have the  
26 required professional license(s) and contractor qualification  
27 license.

28 6. The Board may honor a valid Small Business Enterprise  
29 Certification and/or Micro Business Enterprise Certification  
30 granted by another agency if the agency's requirements are  
31 consistent with the District's SBE/MBE certification criteria.  
32 The Superintendent shall develop procedures to implement  
33 this policy.

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

36 1. **Micro Business Enterprise**

- 1 a. **Professional Services A/E:** The annual gross revenue  
2 averaged over the previous three (3) years shall not  
3 exceed \$500,000.
- 4 b. **Professional Services non-A/E:** The annual gross  
5 revenue averaged over the previous three (3) years  
6 shall not exceed \$1,000,000.
- 7 c. **Goods and Services (Procurement Program):** The  
8 annual gross revenue averaged over the previous  
9 three (3) year period shall not exceed \$1,000,000.
- 10 d. **Construction and Construction-Related Specialty**  
11 **Trades:** The annual gross revenue averaged over the  
12 previous three (3) years shall not exceed \$1,000,000.

13 2. **Small Business Enterprise**

- 14 a. **Professional Services A/E:** The annual gross revenue  
15 averaged over the previous three (3) years shall be  
16 greater than \$500,000 and not exceed \$1,000,000 (Tier  
17 1) or \$2,000,000 (Tier 2).
- 18 b. **Professional Services non-A/E:** The annual gross  
19 revenue averaged over the previous three (3) years  
20 shall be greater than \$1,000,000 and not exceed  
21 \$2,000,000 (Tier 1) or \$4,000,000 (Tier 2).
- 22 c. **Goods and Services (Procurement Program):** The  
23 annual gross revenue averaged over the previous  
24 three (3) year period shall be greater than \$1,000,000  
25 and not exceed \$2,000,000 (Tier 1) or \$4,000,000 (Tier  
26 2).
- 27 d. **Construction and Construction-Related Specialty**  
28 **Trades:** The annual gross revenue averaged over the  
29 previous three (3) years shall be greater than  
30 \$1,000,000 and not exceed \$3,000,000 (Tier 1) or  
31 \$6,000,000 (Tier 2).  
32

33 C. Applicant shall submit a verified declaration that the information  
34 provided for certification and re-certification is truthful and accurate.  
35 Any applicant who knowingly makes a false statement on the  
36 application and/or in writing with the intent to mislead OEO and/or  
37 its representatives in the performance of their official duties of  
38 reviewing and/or approving an application is guilty of a second degree  
39 misdemeanor under F.S. 837.06. In addition, anyone who knowingly

1 | makes a false verified declaration is guilty of perjury, a third degree  
2 | felony under F.S. 92.525."  
3 |  
4 |

5 | GD. Upon receipt of a certification or re-certification application, the  
6 | OEO shall review all enclosed forms, affidavits and documentation  
7 | and determine whether the applicant satisfies the eligibility  
8 | requirements. The OEO shall send a letter to ineligible applicants  
9 | stating the basis for the denial of eligibility. Applicants may appeal  
10 | an ineligibility determination in accordance with this policy.  
11 | Applicants determined ineligible shall not be eligible to submit a new  
12 | application for at least one (1) year after the date of the notice of  
13 | denial of eligibility.

14 | DE. Applicants determined eligible to participate in the program shall  
15 | ~~submit a completed re-certification form (SBE/MBE R) every two (2)~~  
16 | three (3) years to the OEO for review and continued certification.  
17 | However, upon application for re-certification, an SBE/MBE firm  
18 | must be an independently owned and operated business concern,  
19 | and maintain its principal place of business or have a significant  
20 | employment presence in Miami-Dade County in accordance with  
21 | this policy. To qualify for recertification, a firm must comply with  
22 | the thresholds established and published in its OEO Procedures  
23 | Manual. the firm's average gross revenue for the three (3) fiscal years  
24 | immediately preceding the application for recertification shall not  
25 | exceed \$9 million for construction, \$6 million for goods and services,  
26 | \$2.5 million for specialty trade, or \$2.5 million for professional  
27 | services. The eligibility criteria regarding years of existence shall  
28 | only apply for the initial certification.  
29 |

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

36 | EG. In considering certification or re-certification status of any firm, the  
37 | OEO shall periodically conduct audits and inspect the office, job  
38 | site, records, and documents of the firm, and shall interview the  
39 | firm's employees, subcontractors, and vendors as reasonably  
40 | necessary to ensure that all eligibility standards are satisfied and  
41 | that the integrity of this program is maintained.

42 | SBE/MBE Program Graduation and Suspension

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

4 A. An SBE shall be permanently graduated after its three (3) fiscal year  
5 average gross revenue exceeds \$9 million for construction and  
6 construction-related specialty trades, ~~or \$76 million for goods and~~  
7 services, \$52.5 million for professional services (Architectural and  
8 Engineering), and specialty trade, and \$72.5 million for professional  
9 services (Non Architectural and Engineering).

10 B. When an MBE exceeds the eligibility certification thresholds, it  
11 automatically graduates and is subject to the small business criteria  
12 and restrictions.

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

17  
18 D. Upon graduation from the SBE/MBE program, the OEO shall  
19 provide the SBE/MBE with written notice that includes the basis for  
20 graduation.

21  
22 **SBE/MBE Program Suspension, Certification Revocation, and/or Debarment** }

Revised

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

30 ~~EB.~~ Upon suspension from the SBE/MBE program, The OEO shall  
31 provide written notice to the SBE/MBE upon graduation or  
32 suspension from the SBE/MBE program including the including  
33 specific findings constituting the reasons basis for suspension,  
34 certification revocation and/or debarment. The notice must also  
35 provide the applicable sanctions and the process to appeal the  
36 decision.

37 **SBE/MBE Certification Appeals**

38 A business that is denied eligibility, whose eligibility is revoked, or who has been  
39 denied a waiver request, may appeal the decision to the Superintendent. A written  
40 notice of appeal must be received by the Superintendent within fifteen (15)  
41 business calendar days of the date of the written notice. ~~Upon receipt of a t~~ Timely

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1 ~~notice of appeals will be reviewed pursuant to procedures developed and~~  
2 ~~implemented by, the Superintendent shall conduct a hearing. The Superintendent,~~  
3 ~~The Superintendent shall make a recommendation on the appeal to the School~~  
4 ~~Board which shall make a final determination. shall develop procedures for the~~  
5 ~~appeal process and report quarterly to the Board on the status of appeals.~~

**Service Disabled Veteran Enterprise Program**

The Service Disabled Veteran Enterprise (SDVE) Program is a race and gender neutral program designed to benefit service disabled veteran businesses. The OEO shall certify SDVE businesses in accordance with state guidelines and law. Vendor preferences for SDVEs are governed by Policy 6320. In addition, the Superintendent is authorized to develop and implement affirmative procurement initiatives to increase participation by SDVEs in all of the Board's procurement processes to the extent allowed by law.

6 **Minority/Women Business Enterprise Program**

7 The Minority/Women Business Enterprise (M/WBE) Program is established to  
8 enhance the bidding and selection opportunities for M/WBEs on certain contracts  
9 and to address findings in the 2014 Disparity Study and 2015 Subcontractor  
10 Disparity Study pursuant to this policy and as provided in Policies 6610 and  
11 6320.06.

12 A. **Terms and Definitions**

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

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



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

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

8 a. An African American, a person having origins in any of  
9 the black racial groups of the African Diaspora,  
10 regardless of cultural origin.

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

15 c. An Asian American, a person having origins of the Far  
16 East, Southeast Asia, the Indian Subcontinent, or the  
17 Pacific Islands, including the Hawaiian Islands before  
18 1778.

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

23 e. An American born or naturalized woman.

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

30 B. **M/WBE Eligibility and Certification**

31 1. The OEO shall certify a company or other business entity as a  
32 M/WBE upon its submission of a completed certification  
33 form, ~~(M/WBE Form 3920), and~~ supporting documentation.  
34 The applicant may self-identify as a Minority Person pursuant  
35 to the definitions above. The Board recognizes that there is a  
36 clear distinction between race and ethnicity. The OEO may

1                    request additional documentation on the applicant's minority  
2                    status only if it suspects fraud or misrepresentation and  
3                    provides the reasons in writing to the applicant. In addition,  
4                    the application must submit ~~and~~ a signed affidavit stating  
5                    that it meets the following criteria:

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

9                    For sole proprietorships, the \$5 million net worth  
10                    requirement shall include both personal and business  
11                    investments.

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

21                    A minority business enterprise may primarily involve  
22                    the practice of a profession.

23                    c.            the business must have an actual place of business in  
24                    the Miami-Dade Metropolitan Statistical Area County  
25                    (Miami-Dade County, Broward County, and Palm  
26                    Beach County, FL) for at least one (1) year preceding  
27                    the application and be registered as a vendor with the  
28                    District.

29                    d.            the business has an occupational license and all  
30                    required professional licenses and/or contractor  
31                    qualifier licenses.

32                    e.            the owner of the business must have the required  
33                    professional license(s) and contractor qualification  
34                    license.

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

37                    a.            Whether minority/women owners are entitled to share  
38                    in the profits of the business, through salaries,

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- 1 bonuses, profit sharing, dividends, and all other  
2 benefits, commensurate their ownership.
- 3 b. Whether minority/women owners share in all the risks  
4 of business, including, but not limited to, third party  
5 agreements, bonding and financial arrangements.
- 6 c. Ownership by a minority person does not include  
7 ownership that is the result of a transfer from a  
8 non-minority person to a minority person within a  
9 related immediate family group if the combined total  
10 net asset value of all members of such family group  
11 exceeds \$1 million. The term "related immediate  
12 family group" means one (1) or more children under  
13 sixteen (16) years of age and a parent of such children  
14 or the spouse of such parent residing in the same  
15 house or living unit.
- 16 d. Minority/Women owners must also demonstrate  
17 control over the affairs, management, and operations of  
18 the business. The discretion of minority/women  
19 owners shall not be subject to any formal or informal  
20 restrictions (including, but not limited to, bylaw  
21 provisions, partnership agreements, trust agreements,  
22 or requirements for cumulative voting) that would  
23 impact or usurp the minority/women owners'  
24 managerial and operational discretion.
- 25 Documents that establish control include but are not  
26 limited to: corporate bylaws, operating agreements,  
27 partnership agreements, management agreements or  
28 other agreements. Such documents should be free of  
29 restrictive language which dilutes a minority/woman  
30 owner(s)' control and prohibits him/her from making  
31 decisions.  
32
- 33 1) The minority/woman owner(s) must submit  
34 documentation demonstrating control through  
35 the authority and responsibility to sign company  
36 checks, for all bank accounts, and letters of  
37 credit, negotiate contracts on behalf of the  
38 business, signature responsibility for insurance,  
39 bid bonds, and performance and payment  
40 bonds, negotiate bank transactions, and  
41 guarantee all instruments which indebt the  
42 business.

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- 2) Unless a business is a franchise, agreements for contractual support services that usurp a minority/woman owner's authority to control a company are not allowed.
  
- 3) Minority/Women owners shall control or supervise the hiring, firing, and supervision of employees, and establishment of employment policies, wages, benefits, and other employment conditions.
  
- 4) Minority/Women owners shall have knowledge and control of all financial matters of the business.

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

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

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

56. M/WBEs must notify the OEO within fifteen (15) business days, of any material changes to the company's ownership and/or management of the firm. Any misrepresentation by a company of its M/WBE status shall be grounds for termination of any contract awarded based on the misrepresentation. Violations may also subject the

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1 signatories to any other statutory penalties and Board  
2 policies.

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

8 | 78. The Board may honor a valid minority business certification  
9 granted by another agency if the agency's requirements are  
10 consistent with the District's M/WBE certification criteria.  
11 The Superintendent may develop procedures to implement  
12 this policy.

13 | 89. An M/WBE must apply for recertification at least thirty (30)  
14 days prior to the certification expiration. A Board M/WBE  
15 Recertification Form may be submitted only if an M/WBE's  
16 certificate has not expired and no material changes have  
17 occurred in the ownership and control of the M/WBE. If  
18 certification has expired, the M/WBE must submit a new  
19 application.  
20

21 | 910. An M/WBE may be decertified if the firm no longer meets the  
22 certification requirements; for failure to comply with the  
23 Board's M/WBE policies and procedures regarding requests  
24 for information or documents pertaining to ownership,  
25 control, or operation of the business; failure to submit a  
26 complete M/WBE Recertification Application; debarment; or  
27 by written request from the firm's minority/women owners for  
28 voluntary removal from the M/WBE Directory.

29 | **M/WBE Certification C.—Appeals**

30 | Applicants denied certification or recertification as an M/WBE may appeal  
31 to the Superintendent or his/her designee. A written request to appeal  
32 must be received by the Superintendent within ~~five (5)~~ fifteen (15) business  
33 days of the date of the written notice. ~~Upon receipt of a timely~~  
34 ~~notice~~ appeals will be reviewed pursuant to procedures developed and  
35 implemented by the Superintendent. The Superintendent shall make a  
36 recommendation on the appeal to the School Board which shall make the  
37 final determination. ~~of appeal, the Superintendent or designee shall~~  
38 ~~conduct a hearing. The Superintendent shall develop procedures for the~~  
39 ~~appeal process and report quarterly to the Board on the status of appeals.~~

40 | **Industry Specific Programs**

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

7           **A. Construction Programs**

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

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

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

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

33           2. A Minority/Women Business Enterprise Program for  
34 non-professional services contracts may be established if  
35 future studies establish disparities that may be legally  
36 addressed through such a program. If disparities are found,  
37 this policy will be amended to allow a legally permissible  
38 M/WBE program.

39           **C. Professional Services Program**

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

15                   **D.    General Procurement Programs**

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

29                   **Administration**

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

33                   **A.    Availability Analysis**

- 34                   1.    Overall Availability – The measure of overall availability is  
35                                    based on all the vendors and contractors that register in the  
36                                    automated and mandatory centralized bidder registration  
37                                    system. Such availability measurements shall be segmented  
38                                    according to the proportion of business ownership by race,  
39                                    gender and size within appropriate industry codes.

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

23                   **B.    Utilization Analysis**

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

31                   **C.    Disparity Analysis**

- 32                   1.    The disparity analysis shall be based on the eighty  
33                   percent (80%) statistical significance rule adopted under  
34                   *Croson v. Richmond*, which is defined as two (2) standard  
35                   deviations between utilization and availability. Utilization of  
36                   RWA M/WBE firms that is eighty percent (80%) or less of the  
37                   level of availability or M/WBE firms in a particular market is  
38                   considered statistically significant under-utilization.  
39                   Utilization that is above 100% of the level of availability is  
40                   considered over-utilization.



1                   2.     Statistically significant underutilization creates an inference  
2                   of discrimination, and in combination with other factors,  
3                   permits consideration of the use of narrowly tailored race-  
4                   and gender-conscious remedies to ameliorate the effects of  
5                   such discrimination.

6                   **D.     Remedy Analysis**

7                   1.     If disparity is shown in the disparity analysis above, the  
8                   District shall review the findings and recommendations from  
9                   the 2014 MGTDisparity Study, the 2015 Subcontractor  
10                  Disparity Study,—(or from the District’s most recent  
11                  independent disparity study,) to determine the most  
12                  appropriate and effective remedies to apply to a given set of  
13                  contracts to eliminate barriers and overcome the effects of  
14                  various forms of discrimination identified through the 2014  
15                  MGTDisparity Study, the 2015 Subcontractor Disparity  
16                  Study, or any subsequent studies.

17                  2.     In selecting a remedial approach for any given contract, the  
18                  District shall seek to identify the remedy that is most likely to  
19                  be effective in promoting fair and equitable contract  
20                  participation by all segments of the relevant vendor  
21                  population, yet does not impose any undue burden on  
22                  innocent third parties.

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

24                  1.     At least once every four (4) years, the OEO and  
25                  Superintendent shall recommend a contract with an  
26                  independent disparity study consultant to the Board to  
27                  conduct an updated review of the factual predicate for the  
28                  District’s M/WBE programs to determine whether there is  
29                  any ongoing need for the use of race- and gender-conscious  
30                  remedies.

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

34                  3.     Each successive disparity study update shall make specific  
35                  findings and recommendations regarding the ongoing need for  
36                  race- and gender- neutral and race- and gender-conscious  
37                  remedies for certain categories of contracts. Study  
38                  recommendations should also suggest appropriate  
39                  modifications to existing District procurement procedures,  
40                  SMBE programs, and M/WBE programs to promote fair and  
41                  equitable participation in District contracting opportunities in

1 the most effective but least restrictive and least burdensome  
2 manner.

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

8 **Affirmative Procurement Initiatives**

9 | The following Affirmative Procurement Initiatives may be used in awarding Board  
10 contracts to SBE/MBEs or M/WBEs according to the industry-specific programs  
11 identified in this policy. However, pursuant to state law and Policy 6320.05, no local  
12 vendor or employment preference for SBE/MBEs or M/WBEs may be applied to  
13 competitive solicitations for construction services in which 50 percent or more of the  
14 cost will be paid from state-appropriated funds which have been appropriated at the  
15 time of the competitive solicitation. The solicitation documents for construction  
16 services in this event must disclose that no SBE/MBE or M/WBE will be awarded  
17 based upon the state restriction regarding the utilization of local vendor preference.

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

30 B. **Bid Preferences:**

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

38 **Evaluation Preference** – In ranking and evaluating proposals for  
39 “best value” contracts in which factors other than price are relevant  
40 to the selection process, the Board may award up to twenty  
41 percent (20%) of the total points available to a SMBE or M/WBE or a

1 joint venture with an SMBE or M/WBE partner in response to a  
2 request for proposal.

3 **Professional Services Evaluation**

4 1. In the selection process for the award of certain professional  
5 services contracts, the District may include as one (1) of its  
6 evaluation criteria the level of SBE or M/WBE participation  
7 on the team or in subcontract participation. Under this  
8 remedial approach, the maximum number of evaluation  
9 points is available to an SMBE or M/WBE proposer.

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

27 **C. Mandatory Subcontracting:**

28 1. The GSC may at its discretion and on a contract-by-contract  
29 basis, require that a predetermined percentage up to forty  
30 percent (40%) of a specific contract be subcontracted to  
31 eligible SMBEs or M/WBEs.

32 2. An SMBE or M/WBE prime contractor may not subcontract  
33 more than forty-nine percent (49%) of the contract value to a  
34 non-SMBE or M/WBE.

35 3. A prospective bidder on a Board contract shall submit at the  
36 time of bid Form S providing the name of the SMBE or MWBE  
37 subcontractor or subcontractors and describing both the  
38 percentage of subcontracting by the SMBE or MWBE and the  
39 work to be performed by the SMBE or M/WBE. A bidder may  
40 request a full or partial waiver of this mandatory  
41 subcontracting requirement from the OEO for good cause by

- 1 submitting the Unavailability Certification Form to the OEO  
2 prior to bid opening. Under no circumstances shall a waiver  
3 of a mandatory subcontracting requirement be granted  
4 without submission of adequate documentation of good faith  
5 efforts by the bidder and careful review by the OEO. The  
6 OEO shall determine a waiver request upon the following  
7 criteria:
- 8 a. whether the requestor of the waiver has made good  
9 faith efforts to subcontract with qualified and available  
10 SMBEs or M/WBEs;
- 11 b. whether subcontracting would be inappropriate and/or  
12 not provide a "commercially useful function" under the  
13 circumstances of the contract; or
- 14 c. whether there are no certified SMBEs or M/WBEs that  
15 are qualified and available to provide the goods or  
16 services required.
- 17 4. In the absence of a waiver granted by the OEO, failure of a  
18 prime contractor to commit in its bid or proposal to satisfying  
19 the mandatory SMBE or M/WBE subcontracting goal shall  
20 render its bid or proposal non-responsive.
- 21 5. In the absence of a waiver granted by the OEO, failure of a  
22 prime contractor to attain a mandatory subcontracting goal  
23 for SMBE or M/WBE participation in the performance of its  
24 awarded contract shall be grounds for termination of existing  
25 contracts with the Board, debarment from performing future  
26 Board contracts, and/or any other remedies available under  
27 the terms of its contract with the Board or under the law.
- 28 6. A prime contractor is required to notify and obtain written  
29 approval from the OEO in advance of any reduction in  
30 subcontract scope, termination, or substitution for a  
31 designated SMBE or M/WBE Subcontractor. Failure to do so  
32 shall constitute a material breach of its contract with the  
33 Board.
- 34 **D. Sheltered Market:**
- 35 1. The OEO and GSC may select certain contracts for award to a  
36 SMBE or M/WBE or a joint venture with a SMBE or M/WBE  
37 through the Sheltered Market Program.
- 38 2. In determining whether a particular contract is eligible for the  
39 Sheltered Market Program, the OEO and GSC shall consider

1 whether there are at least three (3) SMBEs or M/WBEs that  
2 are capable and available to participate in the Sheltered  
3 Market Program for that contract; the degree of  
4 underutilization of the SMBE or M/WBE prime contractors in  
5 the specific industry categories; and the extent to which the  
6 Board's SMBE or M/WBE prime contractor utilization goals  
7 are being achieved.

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

13 **Contract Solicitation and Award**

14 A. The OEO shall preview all solicitations for construction,  
15 procurement and professional services prior to public dissemination  
16 for compliance with the objectives stated in this policy and to ensure  
17 that bid specifications do not unnecessarily restrict the ability of  
18 SMBE and M/WBE firms to compete and bid. All District award  
19 recommendations shall bear the review signature of the OEO  
20 Director.

21 B. Disqualification/Rejection – The District and Board may reject any  
22 proposals from bidders who have previously failed to perform  
23 properly and who have done so by commission or omission of an act  
24 of such serious and compelling nature that the act indicates a  
25 serious lack of business integrity or honesty.

26 C. Contract Compliance – As the Superintendent's designee, the OEO  
27 will establish procedures for monitoring and evaluating program  
28 performance and compliance.

29 D. The District and Board may reject any proposal deemed  
30 non-responsive for failing to meet the diversity requirements.

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

34 **Pre-Award Waiver**

36 At any time prior to the award of a contract for a purchase of goods and supplies,  
37 the Superintendent or designee may grant a partial or complete waiver of diversity  
38 requirements for reasons such as (1) emergency procurement; (2) where a  
39 non-M/WBE is the sole source of the needed goods or services and there are no  
40 apparent commercially useful functions available to be performed by Ready, Willing,

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1 and Able SMBE or M/WBE subcontractors; or (3) good faith efforts to meet the  
2 contract goal have proven unsuccessful. The Department making an emergency  
3 procurement shall consider the availability of SMBEs or M/WBEs from which to  
4 make the purchases. The Purchasing Director shall make available a report of  
5 procurement activities, including at a minimum, project name, project number,  
6 project description, awarded vendor, advertisement date, waivers and reasons for  
7 the waiver, and an estimated dollar value to include change orders.

8  
9 **Fair Subcontracting Practices**

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

**Prompt Payment**

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

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

10 **Violations and Sanctions**

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

- 12 1. fraudulently obtain, retain or attempt to obtain, or aid  
13 another in fraudulently obtaining, retaining, or attempting to

- 1 obtain or retain certification status as an SMBE or M/WBE  
2 for purposes of this policy;
- 3 2. willfully falsify, conceal or cover up by a trick, scheme or  
4 device, a material fact or make any false, fictitious or  
5 fraudulent statements or representations, or make use of any  
6 false writing or document, knowing it contains any false,  
7 fictitious, or fraudulent statements or entry pursuant to this  
8 policy;
- 9 3. willfully obstruct, impede or attempt to obstruct or impede  
10 any authorized official or employee who is investigating the  
11 qualifications of a business entity that has requested  
12 certification as an SMBE or M/WBE;
- 13 4. fraudulently obtain, attempt to obtain or aid another person  
14 fraudulently obtaining, or attempting to obtain public monies  
15 to which the person is not entitled under this policy;
- 16 5. failing to cooperate in any investigation of violations of this  
17 policy or Policy 6465;
- 18 6. making false statements to any entity that any other entity is  
19 or is not certified as an SMBE or M/WBE for purposes of this  
20 policy.
- 21 B. Sanctions – Any person or business entity that violates this policy  
22 shall be subject to suspension, contract cancellation, or debarment  
23 pursuant to Policiesy 6320 and 6320.04 and any other penalty  
24 provided by law.
- 25  
26 C. The Superintendent shall apply appropriate sanctions for violations  
27 of this policy upon recommendation of OEO.  
28  
29

**Anti-Discrimination Complaints**

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

40 | **Pre-Award Waiver**

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

13 **SMBE and M/WBE Program Performance Review**

14           A. The OEO shall monitor the implementation of this policy and the  
15 |           progress of these programs. On an annual ~~quarterly~~ basis, the OEO  
16 |           shall report to the Superintendent and Board on the progress of  
17 |           achieving the goals and objectives established for awards to certified  
18 |           SMBE and M/WBE firms, reporting both dollars awarded and  
19 |           expended. In addition, the OEO shall annually report on the  
20 |           progress in achieving the stated program objectives, including, but  
21 |           not limited to, enhancing competition, establishing and building new  
22 |           business capacity, and removing barriers to and eliminating  
23 |           disparities in the utilization of available minority business  
24 |           enterprises and women business enterprises on Board contracts.

25 |           B. The Board shall ~~quarterly~~ annually review these programs to  
26 |           determine whether the various contracting procedures used to  
27 |           enhance SMBE or M/WBE contract participation needs to be  
28 |           adjusted or used more or less aggressively in future years to achieve  
29 |           the stated program objectives.

30 **Policy Review**

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

37 **Severability**

38 If any section, paragraph, sentence, clause, phrase or word of this policy is for any  
39 reason held by a court to be unconstitutional, inoperative, or void, it is intended that



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1 to the maximum extent practicable, such holding shall not affect the remainder of  
2 this policy.

3 **Statutory Citations**

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

6 | F.S. 218.735, 255.0991, 287.093, 607.11, 1001.41(2), 1013.46(1)(b)

7 Revised 11/21/12  
8 Revised 1/16/13  
9 Revised 9/3/13  
10 Revised 6/18/14  
11 Revised 1/14/15

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1 | LOCAL VENDOR AND EMPLOYMENT PREFERENCES

2 |  
3 | **Purpose:**

4 | The Board provides bidding and award preferences in certain contracts for state and local businesses and employment preferences for state residents as required by law.

5 |  
6 | **Definitions**

7 |  
8 | **Competitive Solicitation** - an invitation to bid, a request for proposals, request for qualifications or an invitation to negotiate, which are defined in Policy 6320, 6320.03, 6330 and 6331.

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11 |  
12 | **Construction Services** - all labor, services, and materials provided in connection with the construction, alterations, repair, demolition, reconstruction, or any other improvements to real property.

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16 | **Local Business** - a vendor or business that has a valid Local Business Tax Receipt, issued by a jurisdiction located in Miami-Dade County, that has either (1) its headquarters, manufacturing facility, or locally-owned franchise located within the legal boundaries of Miami-Dade County, for at least twelve (12) months, or (2) has an office with a street address within the boundaries of Miami-Dade County for at least twenty-four (24) months, calculated from the bid or proposal opening date. Post office boxes are not verifiable and shall not be used for the purpose of establishing said physical address. In order to be considered for local preference, vendors must provide a copy of their Local Business Tax Receipt and the Local Business Affidavit of Eligibility with their bid or proposal.

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22 | **State Appropriated Funds** - 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.

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26 | **A. Vendor Preferences**

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34 | (1) State - When the Board is required to make purchases of personal property through competitive solicitation and the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in that state, Florida law requires that the Board shall award a preference to the lowest responsible and responsive vendor having a principal place of business within this state. This preference must be equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive vendor has its principal place of business. In a competitive solicitation in which the lowest bid is submitted by a vendor whose principal place of business is located outside the state and that state does not grant a preference in competitive solicitation to vendors having a principal place of business in that state, the preference to the lowest responsible and responsive vendor having a principal place of business in this state shall be 5 percent.

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1 A vendor whose principal place of business is outside this state must accompany any  
2 written bid, proposal, or reply documents with a written opinion of an attorney at law  
3 licensed to practice law in that foreign state, as to the preferences, if any or none,  
4 granted by the law of that state to its own business entities whose principal places of  
5 business are in that foreign state in the letting of any or all public contracts.  
6

7 A vendor whose principal place of business is in this state may not be precluded from  
8 being an authorized reseller of information technology commodities of a state  
9 contractor as long as the vendor demonstrates that it employs an internationally  
10 recognized quality management system, such as ISO 9001 or its equivalent, and  
11 provides a warranty on the information technology commodities which is, at a  
12 minimum, of equal scope and length as that of the contract.  
13

14 (2) Small/Micro and Minority/Women-Owned Business Enterprises – Preferences for  
15 small/micro and minority/women-owned business enterprises will be given in  
16 accordance with Policies 6320 and 6320.02.

17 ~~To give~~ (3) Local - Preference will be given to businesses located in Miami-Dade County,  
18 Florida, when evaluating the lowest responsible, responsive bid or submittal for the  
19 purchase of goods and services, professional and construction-related services, in  
20 excess of \$50,000 dollars or the current formal bidding threshold set by statute. The  
21 preference does not apply to purchases of goods or services exempted by statute as  
22 reflected in Policy 6320, or where prohibited by Federal or State law, or other funding  
23 source restrictions.  
24

25  
26 **Definition:**

27 request for qualifications, 6320.03, 6330 and 6331

28 Local business means the vendor has a valid business license, issued by a jurisdiction  
29 located in Miami Dade County, with its headquarters, manufacturing facility, or locally-  
30 owned franchise located within the legal boundaries of Miami Dade County, for at least  
31 twelve (12) months, (or having a street address for at least twenty four (24) months), prior to  
32 the bid or proposal opening date. Post office boxes are not verifiable and shall not be used  
33 for the purpose of establishing said physical address. In order to be considered for local  
34 preference, vendors must provide a copy of their business license and the local business  
35 affidavit of eligibility with their bid or proposal. A vendor who misrepresents the local  
36 preference status of its firm in a proposal or bid submitted to the School Board will lose the  
37 privilege to claim local preference status, and shall lose eligibility to claim local preference  
38 status for a period of one (1) year. The Superintendent may also recommend that the firm be  
39 referred for debarment in accordance with Policy 6320.04.  
40

**PROCESS:**

**Application**

41 **1. Competitive Bid:**

42 When a responsive, responsible non-local business submits the lowest  
43 price bid, and the bid submitted by one or more responsive,  
44 responsible local businesses is within five percent (5%) of the price  
45 submitted by the non-local business, then each of the aforementioned  
46 local businesses shall have the opportunity to submit a best and final  
47 bid equal to or lower than the amount of the low responsive,  
48 responsive bid submitted by the non-local business. Contract award  
49 shall be made to the responsive, responsible business submitting the

1 lowest best and final bid. In the case of a tie bid in the best and final  
2 bid between the local businesses, the tie shall be broken as delineated  
3 in Policy 6320.

4 **2. Request for Proposals:**

5 If following the completion of initial evaluations, a local firm has  
6 submitted a proposal and is competing with a non-local proposer(s),  
7 then the local vendor(s) shall have the opportunity to proceed to be  
8 considered for further evaluation provided the price is within five  
9 percent (5%) of the cost proposed by the non-local vendor, all other  
10 technical requirements being equal. In the case of a tie in the best and  
11 final proposal between a local business, the tie shall be broken as  
12 delineated in Policy 6320.

13 **3. Professional Services:**

14 Local preference policy shall apply to services ~~of which that is~~ are  
15 subject to the Consultants' Competitive Negotiation Act, as delineated  
16 in F.S. 287.055. When a local firm that is not initially short-listed for  
17 interviews, and has a scores within 5% of the lowest-ranked short-  
18 listed firm's score, it will be added to the short-list if the lowest-ranked  
19 short-listed firm is non-local. If two (2) firms, one local and one non-  
20 local are within five percent (5%) of each other's total qualitative  
21 scores, and for design build solicitations, the adjusted low bid as  
22 defined in the corresponding implementing order, the local firm shall  
23 be ranked higher than the non local firm in the final ranking. In case  
24 of a two tiered evaluation process, the local preference shall also apply  
25 at the conclusion of the first tier to allow eligible local proposers within  
26 five percent (5%) of the points assigned to those recommended to  
27 participate in the second tier evaluation.

28 **Waivers and Exceptions**

29 The application of local vendor preference to a particular purchase, contract,  
30 or category of contracts for which the Board is awarding authority may be  
31 waived upon written justification and recommendation by the Superintendent.  
32

33 The local vendor preference established in this policy does not prohibit the  
34 right of the Board, or other authorized purchasing authority, from giving  
35 preference permitted by law in addition to the preference authorized in this  
36 policy.

37 The preference established in this policy does not prohibit the right of the  
38 Board, or other authorized purchasing authority, to compare quality or fitness  
39 for use of supplies, materials, equipment and services proposed for purchase  
40 and compare qualifications, character, responsibility and fitness of all  
41 persons, firms or corporations submitting bids or proposals.  
42

43 **Restrictions**

44 Pursuant to Florida law, in addition to any other restrictions, no local vendor,  
45 employment or subcontractor preference may be applied to competitive  
46 solicitations for construction services in which 50 percent or more of the cost  
47

1 will be paid from state-appropriated funds which have been appropriated at  
2 the time of the competitive solicitation. The solicitation documents for  
3 construction services in this event must disclose that no local vendor,  
4 employment or subcontractor preference will be applied.

5  
6 **Sanctions**

7  
8 A vendor who misrepresents the local vendor preference status of its firm in a  
9 proposal or bid submitted to the School Board will lose the privilege to claim  
10 local vendor preference status and shall lose eligibility to claim local vendor  
11 preference status for a period of one (1) year. The Superintendent may also  
12 recommend that the firm be referred for debarment in accordance with Policy  
13 6320.04.  
14

**B. Employment Preference for Florida Residents**

15 Florida law requires that each contract for construction that is funded by state  
16 appropriated funds must contain a provision requiring the contractor to give preference  
17 to the employment of state residents in the performance of the work on the project if  
18 state residents have substantially equal qualifications to those of nonresidents. A  
19 contract for construction funded by local funds may contain such a provision.  
20

21 As used in this section, the term "substantially equal qualifications" means the  
22 qualifications of two or more persons among whom the employer cannot make a  
23 reasonable determination that the qualifications held by one person are better suited for  
24 the position than the qualifications held by the other person or persons.  
25

26 A contractor required to employ state residents must contact the Department of  
27 Economic Opportunity to post the contractor's employment needs in the state's job bank  
28 system.  
29

No contract shall be let to any person refusing to execute an agreement containing the  
provisions required by this section. However, in work involving the expenditure of federal  
aid funds, this section may not be enforced in such a manner as to conflict with or be  
contrary to federal law prescribing a labor preference to honorably discharged soldiers,  
sailors, or marines, or prohibiting as unlawful any other preference or discrimination  
among the citizens of the United States.

30 F.S. 255.0991, 255.099, 287.055, 287.084

31  
32 Adopted 10/19/11  
33 Revised 10/16/13