

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

**SUBJECT: INITIAL READING: PROPOSED AMENDMENTS TO BOARD
POLICIES 6320, *PURCHASING*; 6320.04, *CONTRACTOR
DEBARMENT PROCEDURES*; 6334, *PRE-QUALIFICATION OF
CONTRACTORS FOR EDUCATIONAL FACILITIES
CONSTRUCTION*; AND 6320.02, *SMALL/MICRO AND
MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE PROGRAMS***

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

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

In accordance with the Board's statutory responsibility to update, correct and revise its policies, these policy amendments are presented to clarify and include statutory requirements and current Board practices. This item requests that the Board authorize the Superintendent to initiate rulemaking to amend Board Policies 6320, *Purchasing*, 6320.04, *Contractor Debarment Procedures*, and 6334, *Pre-Qualification of Contractors for Educational Facilities Construction*, to conform to recently approved policy amendments regarding the Minority-Women Owned Business Enterprise Program and to make other procedural and technical updates as described below.

Policy 6320, *Purchasing*, is proposed to be amended to add commonly used definitions, streamline purchasing procedures, reformat for easier public access, provide more specific procedural guidance for staff and departments responsible for procurement of certain types of purchases, and cross-reference the Board's recently adopted anti-discrimination and local preference and vendor policy provisions.

The proposed amendments to 6320.04, *Contractor Debarment Procedures*, strengthen the Board's authority to enforce its diversity policies in construction contracting and subcontracting by providing that failure to comply with the Board's commercial anti-discrimination policies will result in disciplinary action. The Contractor Debarment Committee has been revised, renamed as the Contractor Disciplinary Review

**REVISED
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Committee (CDRC), and its responsibilities and authority are specified and enhanced. The CDRC may also recommend other disciplinary action or sanctions including revocation of a prequalification certificate or SBE/MWBE eligibility or suspend a contractor that violates any Board policy. The policy amendments provide that a contractor disciplined under this policy may request a hearing in front of the Division of Administrative Hearings (DOAH) to challenge a CDRC recommendation. Final disciplinary determinations are made by the Board. Policy 6320.04 is also proposed to be renamed from *Contractor Debarment Procedures* to *Contractor Discipline*.

Policy 6334, *Pre-Qualification of Contractors for Educational Facilities Construction*, is proposed to be amended to update office names and titles, cross-reference the Contractor Disciplinary Review Committee and clarify responsibilities of certain other committees and employees. The policy amendments cross-reference Policy 6320.04 regarding disciplinary action against contractors.

In addition, an amendment to Policy 6320.02, *Small/Micro And Minority/Women-Owned Business Enterprise Programs*, is proposed in order to correct inconsistencies between this policy and the procedures developed to implement the policy related to ownership criteria for certification as a small/micro business enterprise and a minority/women-owned enterprise.

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

Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Policies 6320, *Purchasing*, 6320.04, *Contractor Debarment Procedures*, 6334, *Pre-Qualification of Contractors for Educational Facilities Construction*; and Policy 6320.02, *Small/Micro And Minority/Women-Owned Business Enterprise Programs*.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Policies 6320, *Purchasing*, 6320.04, *Contractor Debarment Procedures*, and 6334, *Pre-Qualification of Contractors for Educational Facilities Construction*, and Policy 6320.02, *Small/Micro And Minority/Women-Owned Business Enterprise Programs*.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on February 3, 2016, its intention to amend Board Policies 6320, *Purchasing*, 6320.04, *Contractor Debarment Procedures*, and 6334, *Pre-Qualification of Contractors for Educational Facilities Construction*, and 6320.02, *Small/Micro And Minority/Women-Owned Business Enterprise Programs*, at its meeting of March 9, 2016.

PURPOSE AND EFFECT: Policy 6320, *Purchasing*, is proposed to be amended to add commonly used definitions, streamline purchasing procedures, reformat for easier public access, provide more specific procedural guidance for staff and departments responsible for procurement of certain types of purchases, and cross-reference recently adopted anti-discrimination and local preference and vendor policy provisions.

Under the proposed amendments to 6320.04, *Contractor Debarment Procedures*, the Contractor Debarment Committee will be revised, renamed the Contractor Disciplinary Review Committee (CDRC), and its responsibilities and authority are specified and enhanced. The CDRC may also recommend other disciplinary action or sanctions including revocation of a prequalification certificate or SBE/MWBE eligibility or suspend a contractor that violates any Board policy. The policy amendments provide that a contractor disciplined under this policy may request a hearing in front of the Division of Administrative Hearings (DOAH) to challenge a CDRC recommendation. Final disciplinary determinations are made by the Board. Policy 6320.04 is proposed to be renamed from *Contractor Debarment Procedures* to *Contractor Discipline*.

Policy 6334, *Pre-Qualification of Contractors for Educational Facilities Construction*, is proposed to be amended to update office names and titles, cross-reference the Contractor Disciplinary Review Committee and clarify responsibilities of certain other committees and employees. In addition, the required 100% performance and payment security bond on bids over \$300,000 will be lowered to \$200,000. The policy amendments cross-reference Policy 6320.04 regarding disciplinary action.

An amendment to Policy 6320.02, *Small/Micro And Minority/Women-Owned Business Enterprise Programs*, is proposed in order to correct an inconsistency related to ownership between the certification qualifications for a small/micro business enterprise and a minority/women-owned enterprise.

SUMMARY: In accordance with its statutory responsibilities, the School Board is required to review and update its policies as often as necessary to reflect statutory requirements and current practices. The proposed amendments strengthen the Board's authority to enforce its diversity policies in construction contracting and subcontracting by providing that failure to comply with the Board's commercial anti-discrimination policies will result in disciplinary action. In addition, these policies are proposed to be amended to update the Board's procedures and policies regarding contractor discipline, clarify procurement procedures, provide due process for disciplined contractors, and make other technical changes.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41 (1) (2), (4), 1001.42 (11), 1001.43 (2), (10), F.S.

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 120.569, 120.57, 255.0991, 255.099, 286.0113(2)(b)(1), 1001.41 (1), (2), (4), 1001.42 (6), (25), 1001.43 (2), F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF March 9, 2016, 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 March 1, 2016, 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

PURCHASING

2 All procurement of supplies, materials, equipment, and services paid for from county
3 school funds shall be the responsibility of the procurement department under the
4 general supervision of the Chief Procurement Officer and shall be made in
5 accordance with all applicable State statutes, Florida State Board of Education
6 Rules, School Board policies, and administrative procedures.

7 No person may make any purchase with Board funds unless authorized to do so by
8 Board policy or by administrative directive, or manuals approved by the
9 Superintendent.

10 The agency designated for making purchases with Board funds is the Board's
11 Procurement Management Services.

12 Payment for any unauthorized purchase may be the responsibility of the person
13 placing the order.

14 **Definitions**

15 A. **Competitive Solicitation** - purchasing made through the issuance
16 of an invitation to bid, request for proposals and invitation to
17 negotiate.

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

21 C. **Cooperative Purchasing**- action taken when two or more entities
22 combine their requirements to obtain advantages of volume
23 purchases including administrative savings and other benefits.
24 Cooperative procurement efforts may result in contracts that other
25 entities may “piggyback.”

26 D. **Invitation to Bid** - a written solicitation for competitive sealed bids
27 used when the Board is capable of specifically defining the scope of
28 work for which a contractual service is required or when the Board
29 is capable of establishing precise specifications defining the actual
30 commodity or group of commodities required.

31
32 E. **Invitation to Negotiate**- a written solicitation for competitive sealed
33 replies to select one or more vendors with which to negotiate for the
34 procurement of commodities or contractual services used when the

Board determines that negotiations may be necessary to receive the best value.

F. **Originating Department** - the Department requesting informal and/or formal solicitation. This Department is responsible for the product and/or services sought and for monitoring vendor performance.

G. **PCARDS** - a payment method in which school district requisitioners purchase directly from a vendor using a credit card; a pre-established credit limit is generally established for each card issued.

H. **Proposer**- vendors submitting bids or responses to a competitive solicitation.

I. **Request for Information** - a non-binding method whereby a jurisdiction publishes via newspaper, internet, or direct mail its need for input from interested parties for an upcoming solicitation. A procurement practice used to obtain comments, feedback or reactions from potential suppliers (contractors) prior to issuing of a solicitation. Generally price or cost is not required. Feedback may include best practices, industry standards, technology issues, etc.

J. **Request for Proposals**- a written solicitation for competitive sealed proposals used when it is not practicable for the Board to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the Board is requesting that a responsible vendor propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document.

K. **State Appropriated Funds**- funds appropriated in the Florida General Appropriations Act, excluding federal funds; does not include general obligation bond funds for capital construction or funds raised through local capital outlay millage.

L. **Vendor File** - accumulated record of a vendor maintained by Procurement Management Services, including information on the vendor's relationship with the School Board, application for inclusion on the bidder's list, record of performance under contracts, and correspondence.

Purchase Approval and Competitive Bidding Process Requirements

Responsibilities

**THE SCHOOL BOARD OF
MIAMI-DADE COUNTY**

1 The Superintendent shall be responsible for the procurement of supplies, materials,
2 equipment, and services paid for from Board funds. The several schools,
3 departments and agencies of the District under the jurisdiction of the Board shall
4 purchase their materials or commodities through ~~the Division of Procurement~~
5 Management Services, the Board's official purchasing agency. All purchases shall
6 comply with law, rules, regulations and Board policies. The Superintendent may
7 approve or reject purchase requisitions when the total amount does not exceed
8 \$50,000 or the current threshold set by statute. Purchases in excess of \$50,000 or
9 current threshold set by statute shall be approved by the Board except for those
10 delineated below:

11 A. The Superintendent may be authorized to purchase commodities or
12 contractual services where the total amount does not exceed an
13 amount prescribed by the Board, and does not exceed the applicable
14 appropriation in the District budget. The Superintendent may also
15 be authorized to purchase commodities or is exempt by statute or
16 Florida Administrative Code, or contractual services under
17 Department of Management Services State term contracts.
18 ~~Assistants functioning under the Superintendent's direction may be~~
19 ~~authorized~~The Superintendent may authorize designated staff to
20 perform these purchasing tasks.

B. ~~In each school district in which~~Where the purchasing agent for any
public agency is authorized by law to make purchases for the benefit
of other governmental agencies within the county, the Board shall
have the option to purchase under the current contracts as
established for these public agencies at or below the stated unit
price, if the purchase is economically advantageous to the Board,
and the items purchased conform to the standards and
specifications prescribed by the Superintendent.

21 C. As required by F.S. 1001.42(12)(j), the Board shall receive and
22 consider available prices according to the rules of the Department of
23 Management Services, Division of Purchasing. The Board may use
24 prices established by the Division of Purchasing through its State
25 purchasing agreement price schedule. If Board policy provides for
26 purchasing under this State purchasing program, the conditions for
27 use shall be those imposed on State agencies.

28 D. In lieu of requesting competitive solicitations from three (3) or more
29 sources, the Board may make purchases at or below the specified
30 prices from contracts awarded by other city or county governmental
31 agencies, other school boards, community colleges, Federal
32 agencies, the public or governmental agencies of any state, or from
33 State university system cooperative bid agreements, when the
34 proposer awarded a contract by another entity permits purchases by
35 a school board on the same terms, conditions, and prices (or below

1 such prices) awarded in the contract, and the purchases are
2 economically advantageous to the Board.

3 E. Except as authorized by law or rule, competitive solicitations shall
4 be requested from three (3) or more sources for any authorized
5 commodities or contractual services exceeding \$50,000.

6 F. The requirement for requesting competitive solicitations for
7 commodities or contractual services from three (3) or more sources
8 is waived pursuant to F.S. 1010.04(4)(a), for:

9
10 1. the purchase by the Board of professional services which
11 shall include artistic services, academic program reviews,
12 lectures by individuals, auditing services not subject to
13 F.S. 218.391, legal services, including attorney, paralegal,
14 expert witness, court reporting, appraisal or mediator
15 services; and health services involving examination,
16 diagnosis, treatment, prevention, medical consultation or
17 administration; and

18
19 2. the purchase by the Board of educational services and
20 copyrighted materials including educational tests, textbooks,
21 printed instructional materials, computer software, films,
22 filmstrips, videotapes, DVDs, disc or tape recordings, digital
23 recordings, or similar audio-visual materials, and for library
24 and reference books, and printed library cards where these
25 materials are purchased directly from the producer or
26 publisher, the owner of the copyright, an exclusive agent with
27 the State, a governmental agency or a recognized educational
28 institution.

29
30 G. The Board shall have the authority to reject any or all proposals
31 submitted in response to any competitive solicitation and to request
32 new proposals or purchase the required commodities or contractual
33 services in any other manner authorized by this section.

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35 ~~H. Regarding invitations to bid, the Board may accept the proposal of~~
36 ~~the lowest responsive, responsible proposer. Alternatively, the~~
37 ~~Board may also award contracts to the lowest responsive,~~
38 ~~responsible bidder as the primary awardee of a contract and to the~~
39 ~~next lowest responsive, responsible bidder(s) as alternate awardees~~
40 ~~from whom commodities or contractual services would be purchased~~
41 ~~should the primary awardee become unable to provide all of the~~
42 ~~commodities or contractual services required by the Board during~~
43 ~~the term of the contract. Multiple awards to the lowest responsive~~
44 ~~and responsible bidders are permitted when multiple awards are~~
45 ~~clearly allowed by the bid solicitation documents.~~

~~I. Regarding requests for proposals, the Board may award contracts to one (1) or more responsive, responsible proposers in accordance with the selection criteria published in the request for proposal. The Board is not required to request proposals for purchases made from contracts of the Department of Management Services.~~

JH. The purchase of food products except milk, required for the School Food Service Program and other ancillary food operations are exempt from the bid requirements pursuant to State Board of Education Rule F.A.C. 6A-7.0411(2)(i)2.

KI. Additional exemptions authorized under certain conditions:

The requirements for requesting competitive solicitations and making purchases for commodities and contractual services are waived pursuant to F.S. 1010.04(4)(a), when the following conditions have been met by the Board:

1. competitive solicitations have been requested in the manner prescribed by this rule, and
2. the Board has made a finding that no valid or acceptable firm proposal has been received within the prescribed time.

When such a finding has been officially made, the Board may enter into negotiations with suppliers of such commodities and contractual services and shall have the authority to execute contracts with such vendors under the terms and conditions the Board determines are in its best interests.

If fewer than two (2) responsive proposals for commodity or contractual services are received, the Board may negotiate the best terms and conditions or decide to reject all proposals. The Board shall document the reasons that negotiating terms and conditions with the sole proposer is in the best interest of the School District in lieu of soliciting new proposals.

LJ. Commodities or contractual services available from a single source may be exempted from the competitive solicitation requirements. When the Board believes that commodities or contractual services are available only from a single source, the Board shall electronically or otherwise publicly post a description of the commodities or contractual services for a period of at least seven (7) business days. The description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. If it is determined in writing by the Board, after reviewing any information received from prospective vendors, that the commodities or contractual services

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1 are available only from a single source, the Board shall provide
2 notice of its intended decision to enter a single source contract in
3 the manner specified in F.S. 120.57(3), and may negotiate the best
4 terms and conditions with the single source vendor.

5 | **MK.** The Board may dispense with requirements for competitive
6 solicitations for the emergency purchase of commodities or
7 contractual services when the Superintendent determines in writing
8 that an immediate danger to the public health, safety, or welfare or
9 other substantial loss to the School District requires emergency
10 action. After the Superintendent makes such a written
11 determination, the Board may procure commodities or contractual
12 services necessitated by the immediate danger, without requesting
13 competitive solicitations. However, such an emergency purchase
14 shall be made by obtaining pricing information from at least two (2)
15 prospective vendors, which must be retained in the contract file,
16 unless the Superintendent determines in writing that the time
17 required to obtain pricing information will increase the immediate
18 danger to the public health, safety, or welfare or other substantial
19 loss to the District.

20 | **NL.** A contract for commodities or contractual services may be awarded
21 without competitive solicitations if State or Federal law, a grant or a
22 State or Federal agency contract prescribes with whom the Board
23 must contract or if the rate of payment is established during the
24 appropriations process.

25 | **OM.** A contract for regulated utilities or government-franchised services
26 may be awarded without competitive solicitations.

27 | **PN.** As much as practicable, all purchases shall be based on contracts,
28 purchasing card systems, electronic procurements or purchase
29 orders.

30 | **OO.** The Board, when acquiring, whether by purchase, lease, lease with
31 option to purchase, rental or otherwise, information technology, as
32 defined in F.S. 282.0041(15), may make acquisitions through the
33 competitive solicitation process or by direct negotiation and contract
34 with a vendor or supplier, as fits the needs of the School District as
35 determined by the Board.

36 | **RP.** Except as otherwise required by statute, the Board, when
37 purchasing insurance, entering risk management programs, or
38 contracting with third party administrators, may use the competitive
39 solicitation process or direct negotiations and contract.

1 | **SQ.** Emergency purchases made and approved by the Superintendent or
2 | the Superintendent's designated representative. The Superintendent
3 | will report all emergency purchases to the Board, as soon as
4 | possible.

5 | When an emergency arises, circumstances contributing to such an
6 | emergency shall be communicated to the proper department or
7 | agency of the Board, which in turn will notify Procurement
8 | Management, requesting the emergency purchase.

9 | A requisition for an emergency purchase shall be accompanied by
10 | the appropriate Emergency Purchase Request Form, explaining the
11 | circumstances creating the emergency and clarifying that immediate
12 | action is required to protect the Board's interests. Emergency
13 | purchases are divided into two (2) categories as follows:

14 | 1. Emergency Purchase Request (Form B FM-3739) estimated
15 | expenditure \$50,000 and under requires the signature of the
16 | initiating administrator, recommended by Director or above
17 | and approval by the Assistant Superintendent or above.

18 | 2. Emergency Purchase Request (Form A FM-2333) estimated
19 | expenditure over \$50,000 requires the signature of the
20 | initiating administrator, recommended by the Assistant
21 | Superintendent or above, or his/her designee(s) and approval
22 | by Superintendent or designee. Emergency purchases over
23 | \$50,000 shall be reported to the Board.

24 | **FR.** Competitive bidding is waived for purchases of maintenance and/or
25 | service contracts, on various types of technical equipment, that are
26 | offered and/or supplied only by the original manufacturer or its
27 | representative, or that are required to maintain the integrity of the
28 | manufacturer's warranty, or that are part of the manufacturer's
29 | rental/lease/lease purchase agreements terms and conditions.

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- 1 S. Non-Purchase Order Invoice Funds Reservation Purchases are
2 purchases for goods and services, expenditures, fund transfers, etc.,
3 where a professional service contract is not required, or a bid is in
4 place and that are not appropriate for normal competitive
5 purchasing procedures. Only the expenditures listed below will be
6 authorized and processed as Non-Purchase Order Invoice Funds
7 Reservation Purchases. Non-Purchase Order Invoice Funds
8 Reservation purchases require the same financial authorization and
9 approval process as purchase requisitions and shopping carts.
10 Those purchases for goods and services, expenditures, fund
11 transfers, etc., that are authorized for Non-Purchase Order Invoice
12 Funds Reservation Purchases are limited to include various types of
13 fund advances, services, reimbursements and purchases, and/or
14 payment for goods and services, which are not appropriate for
15 normal competitive purchasing procedures:
- 16 1. ~~Additional Contracted Services~~additional services where a
17 professional service contract is not required or there is no bid
18 in place (polygraph, ~~court reporting~~/transcribing, etc.)
- 19 2. ~~Admission Fees~~employee related admission/registration fees
20 to workshops and conferences that are not expensed to Out of
21 County Travel (All Out of County Travel must be entered
22 through and approved by the Travel System process)
- 23 ~~3. Association Fees, Professional Association Dues and Charges~~
24 ~~Distribution of Funds Athletic Programs, Vending Machine~~
25 ~~Commissions~~
4. ~~Facilities Fees, Rentals/Leases~~
- 26 3. association fees, professional association dues, academy
27 certification requirements and district membership to
28 organizations
- 29 4. internal distribution of funds to school athletic programs,
30 vending machine commissions, diplomas, and Utilities
31 including monthly savings programs
- 32 5. District rental/lease of facilities
- 33 6. all utility charges, service and, connection charges and fees
- 34 7. graduation program fees for Graduation Exercises (non-
35 employees, union charges, etc.), including facility rental,
- 36 including monthly savings programs
- 37

- 1 equipment requirements, foliage rental, non-employees, and
- 2 union charges
- 3 ~~6. Field Trips~~
- 4 ~~7. Tickets~~
- 5 ~~8. Advance Registration~~
- 6 ~~9. Hotel Accommodations~~
- 7 ~~10. Groceries and Supplies for Home Economics Classes~~
- 8 ~~11. Insurance Policies Reimbursements~~
- 9 ~~12. Legal Settlement Payments and bonds~~
- 10 ~~13. License Fees and Agreements~~
- 11 ~~14. Media Advertising (newspaper, radio, television, etc.)~~
- 12 ~~15. Media Programs, Refreshments, Reimbursement Grant~~
- 13 ~~Funds~~
- 14 ~~16. Permit Fees~~
- 15 ~~17. Petty Cash Replenishment~~
- 16 ~~18. Postage Requisitions~~
- 17 ~~19. Property Loss Payment~~
- 18 ~~20. Registration Fees~~
- 19 ~~21. State Fees~~
- 20 8. student related field trips that are not handled through a tour
- 21 company or travel agency, tickets and admissions to parks,
- 22 registration fees for competitions, and hotel accomodations
- 23 9. groceries and supplies for educational use in altenative
- 24 programs or academic requirements
- 25 10. insurance policies payments/reimbursements, state fees
- 26 (retirement, unemployment compensation, etc.), tax related
- 27 payments, legal settlement payments and bonds, license fees
and agreements, permit fees, property loss payment

1 11. media advertising (newspaper, radio, television, banners,
2 brochures, pamphlets, etc.)

3 ~~22. Tax Related Payments~~

4 ~~23. Toll Charges~~

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6 12. grant authorized workshop reimbursements including
7 refreshments

8 13. petty cash replenishment

9 14. postage requisitions

10 15. toll charges for Transportation, Maintenance,
11 Stores authorized District departments

12 16. travel reimbursement for non-employees

13 **Competitive Bidding Requirement**

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15 A. Written or Electronic Quotations (Request for Quotes)

16 For each purchase of \$50,000 or less and over the minimum
17 quotation threshold established by Procurement Management
18 Services, staff shall obtain written, telephone, or electronic
19 quotations from three (3) or more sources. If possible, vendors
20 contacted shall include M/WBE vendor participation. If only
21 one (1) of those sources respond with prices, two (2)
22 additional sources, if available, may be contacted for pricing,
23 including, if possible, an M/WBE vendor. If no additional
24 prices are obtained from those sources, the award shall be
25 made to the vendor who submitted the lowest and best price
26 quotation. If all three (3) of the vendors first contacted for
27 prices respond with valid price quotations, the award shall be
28 made to the vendor who submitted the lowest price quotation
29 meeting the bid specifications, with no additional requests
30 from other vendors required.

31 Quotations obtained shall be attached to or included with the
32 purchase order by written notations or electronic reference
33 indicating quotation prices and sources, certification by signature,
34 or facsimile. The requisition shall be approved for purchase as
35 authorized by the Superintendent. All internal fund purchases shall
36 comply with Policy 6610.

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38 B. Invitation to Bid

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1. The Board may accept the proposal of the lowest responsive, responsible proposer. Alternatively, the Board may award contracts to the lowest responsive, responsible bidder as the primary awardee of a contract and to the next lowest responsive, responsible bidder(s) as alternate awardee(s) from whom commodities or contractual services would be purchased should the primary awardee become unable to provide all of the commodities or contractual services required by the Board during the term of the contract. Multiple awards to the lowest responsive and responsible bidders are permitted when multiple awards are clearly allowed by the bid solicitation documents.

2. When the determination is made that a bid is appropriate, the performance specifications and standard requirements shall be stated in detail and shall be furnished to Procurement Management Services. After review, Procurement Management Services shall issue the Invitation for Bids, including all general and special conditions, and evaluate the bids submitted. The requirements for solicitation and review of bids by the Goal Setting Committee (GSC) shall be followed in all cases. Board approval is required for contracts recommended for award.

3. For each purchase of more than \$50,000, bids shall be requested from three (3) or more sources. Notices of bids shall be electronically posted or may be sent to all vendors on the active vendor mailing list for that category of goods or services. This list shall include all minority/women business enterprises (M/WBE) vendors, identified by the Board in accordance with Policy 6320.02, for that particular category of goods or services, as well as organizations involved in assisting M/WBEs. Notices of bids shall be advertised in one (1) or more major, local newspapers or electronically posted at least seven (7) days prior to the bid opening date. This may include, as necessary, major newspapers having circulation representative of the various relevant minority classifications or electronic posting. Tabulations of current bids shall be retained in bid files and shall be available for reference. Standard bid forms used shall be those approved by the Superintendent and the Board Attorney's Office.

C. Development of Specifications, Determination of Quantities
and Standardization of Supplies and Equipment

1. To achieve both quality control and the price
advantages of quantity purchasing, the administration
shall:

(i) establish specifications for goods and
services as needed;

(ii) identify several existing, commercially
available "standard brands" that meet the
specifications acceptable as examples; and

(iii) invite vendors to bid on the standard brands
identified or their equivalent.

2. All bid quantities and specifications shall be
transmitted to Procurement Management Services by the
originating department in writing. The originating
department shall also certify to Procurement Management
Services, in writing, that the specifications for an existing
bid (to be rebid) are still appropriate before issuance of
the bid. Specifications originated by Procurement
Management Services shall follow similar certification
procedures.

3. All increases to quantities specified in an existing
term bid requiring a supplemental bid award shall be
requested in writing by the originating department,
countersigned by an administrator reporting directly to
the Superintendent and identifying the reason why the
increase in quantities was unavoidable. If an adequate
reason cannot be identified, then the corrective action to
be taken by the originating department to prevent a
future underestimate of quantities shall be described. A
similar procedure will be followed for term bids originated
by Procurement Management Services.

4. All changes to specifications for an existing bid (to
be rebid) or similar bid shall be identified in writing,
including the reason for the change, by the originating
department or Procurement Management Services if it is
the originator.

5. The Chief Procurement Officer of Procurement
Management Services shall identify specifications which
appear to limit the bidding process to a single vendor. In

1 the event that the Chief Procurement Officer has
2 identified such a set of specifications, the originating
3 department shall be required to justify in writing the
4 specifications which appear to favor a single vendor. This
5 documentation shall be countersigned by an
6 administrator reporting directly to the Superintendent.

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8 D. Request for Proposals (RFP)
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10 The Board may award contracts to one (1) or more responsive,
11 responsible proposers in accordance with the selection criteria
12 published in the request for proposal. The Board is not required to
13 request proposals for purchases made from contracts of the
14 Department of Management Services.

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16 The RFP shall be used when the purposes and uses for which the
17 commodity, group of commodities, or contractual service being sought
18 can be specifically defined and the agency is capable of identifying
19 necessary deliverables. Various combinations or versions of
20 commodities or contractual services may be proposed by a responsive
21 vendor to meet the specifications of the solicitation document. A
22 written solicitation includes a solicitation that is electronically posted.

23 The following process shall be followed for an RFP:

24 1. For contracts estimated to be more than \$50,000
25 annually:

26 ~~1-~~ (a) Prior to issuing the RFP and in accordance with Board
27 Policy 6320.02, the Goal Setting Committee shall review the RFP
28 to determine Small Business Enterprise (SBE), Micro Business
29 Enterprise (MBE), Minority/Women Business Enterprise
30 (M/WBE) participation in the project.

31
32 (b) The RFP shall be advertised to solicit maximum vendor
33 participation. To enhance M/WBE participation,
34 advertisements must be published and announced in major
35 publications that serve minority communities.

36 ~~B2.~~ For contracts estimated to cost less than \$50,000
37 annually:

38 ~~1(a)-~~ There must be evidence that at least three (3)
39 vendors were contacted in writing, and if possible, at least
40 one (1) of these vendors shall be a M/WBE.

41 2(b). If only one (1) potential vendor is known, an
42 advertisement shall be placed in an appropriate publication

1 that is widely distributed. If no responses are received, the
2 contract can be developed with the one (1) known vendor in
3 accordance with other established procedures.

4 3. The RFP shall include an implementation schedule consisting of
5 the following:

6 (a). Goal Setting Committee meetings,

7 (b) mailing/posting date,

8 (c). pre-proposal conference (if required),

9
10 (d) opening date and time evaluation criteria,

11 (e). interview schedule (if required)

12 (f) award process

13
14 4. The evaluation criteria shall include, but are not limited to:

15 (a). conformance to the proposal requirements experience,

16 (b). past performance,

17 (c). price,

18 (d). M/WBE participation, and

19 (e). other instructions specific to RFP.

E. Invitation to Negotiate

The Invitation to Negotiate (ITN) shall be used when a written solicitation obtains competitive sealed proposals and the evaluation committee recommends selecting one or more vendors with which to negotiate for the procurement of commodities or contractual services and when the Board determines that negotiations may be necessary to receive the best value.

Invitations to Negotiate shall follow the process noted above for RFPs.

F. Evaluation Committee Meetings

1. The Committee shall consist of at least: (1) two (2) individuals from the originating department; however, not more than one (1) of these individuals can be from the requesting department bureau; (2) two (2) individuals from outside the requesting department; (3) one (1) individual from the Office of Economic Opportunity; and (4) one (1) individual from Procurement Management Services (non-voting). Additional members may be appointed at the discretion of the Superintendent. The Committee shall to the extent possible, be ethnically and gender representative.
2. These meetings are subject to Chapter 286, F.S., except for meetings in which the vendors will be making oral presentations and answering questions as part of the solicitation process which shall be closed to the public in accordance with subsection 286.0113(2)(b)(1), F.S.
3. When committees are established to evaluate a RFP, the Procurement Management Services staff will conduct the meetings, and ensure that: (1) minutes are recorded, and (2) proper documentation and records of committee actions are maintained.

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1 4. The evaluation committee's written recommendation must
2 include the following for inclusion in the master file within
3 Procurement Management Services:

4 a. clear objective of the RFP,

5 b. identification of the committee members,

6 c. committee meeting dates and brief synopsis of the
7 general discussion,

8 d. dates of any oral interviews,

9 e. name and location of the offeror(s);

10 f. evaluation criteria;

11 g. explanation of the basis for selection;

12 h. recommendation of acceptance of the offeror(s)
13 proposal

14 i. committee member votes

15
16
17 G. When the Committee evaluation process is complete,
18 the Superintendent will forward the recommendations
19 to the Board for approval before any contract will be
20 issued.

21
22
23 H. The following exceptions to this rule apply:

24
25 1. Contracts for legal services by the Board Attorney
26 and the attorneys supervised by the Board Attorney,
27 contracted third-party claims administration, nonpublic
28 school placements and other services/goods for which
29 selection procedures are provided by State statute, State
30 Board Rule or other Board policy.

31 2. The Professional Services Contract Committee
32 (PSCC) may consider requests for exceptions. The
33 Committee shall be comprised of three (3) representatives
34 from Senior Staff, two (2) representatives from Education
35 and Curriculum, one (1) representative from the Goal
36 Setting Committee, one (1) representative from the Office
37 of Economic Opportunity (OEO), and nonvoting

1 representatives, from Procurement Management Services,
2 School Board Attorney's Office, and Management and
3 Compliance Audits. Exceptions may be granted for sole
4 source contracts, contractors having specific expertise, or
5 as otherwise determined by the Committee to be in the
6 best interest of the Board. For contracts with an annual
7 estimated cost of more than \$50,000, exceptions
8 recommended by the Committee must be approved by the
9 Board.

10
11 I. RFP and Professional Service Contracts:

12 1. Professional service is any type of personal service to the
13 District which requires as a condition precedent to the
14 rendering of such service:

15 A. the obtaining of a license or other legal
16 authorization; or

17 B. work which can only be performed by one who has
18 achieved a high level of training and proficiency in the
19 work to be performed.

20
21 Where the contract is estimated to cost less than \$50,000, but more than the
22 threshold established for quotations, and an exception for the procedure
23 outlined above is sought, the contract is not required to be submitted to the
24 Board for approval if the Committee has granted an exception pursuant to
25 this policy.

26 The Board may make further exceptions on a case-by-case basis upon
27 recommendation of the Superintendent.

28
29 **Purchase Requisitions**

30 District schools, departments, and agencies shall initiate a properly executed
31 purchase requisition, containing authorized approvals of the originating
32 administrator, principal, department or agency head, for the purchase of any and all
33 items desired, except where small purchases, transactions not in excess of
34 \$3,000.00 per requisition, and market difficulties, make the cost of some purchases
35 in this manner economically unsound. In those instances, administrative directives
36 or operating manuals may be issued, when deemed necessary, containing the
37 procedures to economically perform the purchasing function within the controls
38 required and authority provided by Florida statute, Florida Board of Education
39 Administrative Rules and Board policies.

40 Split requisitions, to bypass the approval requirements and/or the bidding process,
41 are specifically forbidden.

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1 Requisitions must contain the appropriate authorized approvals as prescribed by
2 administrative procedures for the SAP system.

3 **Protests**

4 A bidder who wishes to file a bid protest, must file such notice and follow procedures
5 prescribed by F.S. 120.57(3) and Policy 0133, for resolution.

6 **Protest of Specifications**

7 Any notice of protest of the specifications contained in an Invitation to Bid (ITB) or
8 Request for Proposal (RFP) shall be filed in ~~writing with the Clerk of The School~~
9 ~~Board of Miami Dade County, Florida, who shall maintain offices in the School~~
10 ~~Board Administration Building.~~ accordance with Board Policy 0133. For a protest of
11 the specifications contained in an Invitation to Bid (ITB) or in a Request for
12 Proposals (RFP), the Notice of Protest shall be filed in writing within seventy-two (72)
13 hours after the posting of a solicitation. The Formal Written Protest shall be filed
14 within ten (10) calendar days after the date the notice of protest is filed. Failure to
15 file a Notice of Protest or failure to file a Formal Written Protest shall constitute a
16 waiver of proceedings under this rule. The Formal Written Protest shall state with
17 particularity the facts and law upon which the protest is based. Saturdays,
18 Sundays, and legal holidays shall be excluded in the computation of the seventy-two
19 (72) hour time period provided by this paragraph.

20 **Posting the Bond**

21 The protesting party shall post a bond in a form consistent with F.A.C.
22 Rule 28-110.005(2). A notice of decision or intended decision shall contain this
23 statement: "Failure to file a protest within the time prescribed in F.S. 120.57(3), or
24 failure to post the bond or other security required by law within the time allowed for
25 filing a bond shall constitute a waiver of proceeding under F.S. Chapter 120."

26 A. Bond: Commodities (Other than Lease of Space) and Contractual
27 Services (Including Professional Services and Insurance) – Pursuant
28 to F.S. 287.042(2)(c), any person who files an action protesting a
29 decision or intended decision pertaining to a solicitation or contract
30 award shall post with the Board, at the time of filing the formal
31 written protest, a bond secured by an acceptable surety company in
32 Florida, payable to The School Board of Miami-Dade County,
33 Florida, in an amount equal to one percent (1%) of the District's
34 estimate of the dollar value of the proposed contract.

35 1. The District shall provide the estimated contract amount to
36 the protestor within seventy-two (72) hours (excluding
37 Saturdays, Sundays, and holidays when the District
38 administrative office is closed) after the filing of the Notice of
39 Protest. The estimated contract amount is not subject to
40 protest under this policy or F.S. 120.57(3). In lieu of a bond,

1 the Board may accept a cashier's check or money order in the
2 amount of the bond.

3 2. The bond shall be conditioned upon the payment of all costs
4 and charges which may be levied against the protestor in the
5 administrative hearing in which the action is brought and in
6 any subsequent appellate court proceeding.

7 3. Pursuant to F.S. 287.042(2)(c), if, the Board prevails in the
8 administrative hearing process and any appellate court
9 proceedings, it shall be entitled to recover all costs and
10 charges which are included in the final order or judgment,
11 excluding attorneys' fees. Upon payment of such costs and
12 charges by the person protesting the decision or intended
13 decision or contract award, the bond, cashier's check or
14 money order shall be returned to the protestor. If the
15 protestor prevails, the protestor may recover from the Board
16 the costs and charges which are included in the final order or
17 judgment, excluding attorneys' fees.

18 B. Bond: Competitive Bids for Lease of Space -- Pursuant to
19 F.S. 255.25(3)(c), any person who files an action protesting a
20 decision or intended decision pertaining to a competitive bid for
21 space to be leased by the Board shall post with the Board, at the
22 time of filing the formal written protest, a bond payable to the Board
23 in an amount equal to one percent (1%) of the estimated total rental
24 of the basic lease period or \$5,000, whichever is greater. The bond
25 shall be conditioned upon the payment of all costs which may be
26 levied against him/her in the administrative hearing in which the
27 action is brought and in any subsequent appellate court proceeding.
28 If the Board prevails in the administrative hearing process and any
29 appellate court proceedings, it shall recover all costs and charges,
30 which are included in the final order or judgment, excluding
31 attorneys' fees. Upon payment of such costs and charges by the
32 person protesting the award, the bond shall be returned to him/her.
33 If the person protesting the award prevails, the bond shall be
34 returned to that person and s/he shall recover from the Board the
35 costs and charges which are included in the final order or judgment,
36 excluding attorneys' fees.

37 C. Bond: Construction Purchasing - Construction purchasing is
38 separately governed by Board policy, and persons protesting
39 competitive procurement related to educational facilities shall be
40 required to post a bond in the amount specified in F.S. 255.0516,
41 which also governs recovery of fees and costs including attorneys'
42 fees.

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1 D. Staying the Procurement Process – Upon timely receipt of the formal
2 written protest petition, and posting of the bond, the solicitation or
3 contract award process shall be stayed until the protest is resolved
4 by final agency action, unless the Board sets forth, in writing,
5 particular facts and circumstances which require the continuance of
6 the solicitation or contract award process in order to avoid an
7 immediate and serious danger to the public health, safety, and
8 welfare.

9 ~~The Formal Written Protest will be reviewed by Procurement Management Services~~
10 ~~who will offer the protesting bidder the opportunity to meet and discuss the merits~~
11 ~~of the protest. If the protest is not resolved, the matter may be referred for~~
12 ~~proceedings pursuant to F.S. 120.569 and 120.57. Petitions for hearing on protests~~
13 ~~pursuant to F.S. 120.569 and 120.57 must be filed according to Board policy on~~
14 ~~adjudicatory proceedings.~~

1 **Protest of Bid Award**

2 Any letters of protest of an intended award may be filed in writing with the Clerk of
3 the Board who shall maintain offices in the Board Administration Building.

4 Any person who is adversely affected by the agency decision or intended decision,
5 shall file with the agency a Notice of Protest in writing within seventy-two (72) hours
6 after the posting of the bid tabulation or after receipt of the notice of the agency
7 decision or intended decision and shall file a Formal Written Protest within ten (10)
8 calendar days after filing the Notice of Protest. The protesting bidder shall also be
9 required to post a bond, consistent with this rule. Failure to file a Notice of Protest
10 or failure to file a Formal Written Protest shall constitute a waiver of proceedings
11 under F.S. Chapter 120.57. The formal written protest shall state with particularity
12 the facts and law upon which the protest is based. Saturdays, Sundays, and legal
13 holidays shall be excluded in the computation of the seventy-two (72) hour time
14 period provided by this paragraph.

15 The Formal Written Protest will be reviewed by Procurement Management Services,
16 who will offer the protesting bidder the opportunity to meet and discuss the merits
17 of the protest. If the protest is not resolved, the matter may be referred for
18 proceedings, pursuant to F.S. 120.569 and 120.57. Petitions for hearing on protests
19 pursuant to F.S. 120.569 and 120.57 must be filed in accordance with Board policy
20 | [0133](#) on [adjudicatory quasi-judicial](#) proceedings.

21 **Receiving and Opening of Bids**

22 The Superintendent, or an administrator designated by the Superintendent, shall
23 designate the time and place for receiving and opening of bids.

24 A. Bids are to be submitted to Procurement Management Services or
25 electronically up to the time and on the date specified in the bid
26 documents. Bids received after the date and hour specified in the
27 Bidder Qualification Form will not be considered.

28 B. The following persons shall participate in the bid opening function:

29 1. The District Director, Procurement Management [Services](#), or
30 an administrator designated by the District Director shall
31 serve as chairperson.

- 1 2. A person designated by the District Director, Procurement
2 Management, to record the minutes of the bid opening, and
3 such minutes shall be reported to the Board at the next
4 regularly scheduled Board meeting.
- 5 3. The Executive Director, Project and Contract Management, or
6 an administrator designated by the Executive Director.
- 7 4. Those additional administrators and support staff required
8 for the efficient handling of this procedure.
- 9 C. All construction bids shall be opened and tabulated prior to bids
10 being released by the recording secretary.
- 11 D. All purchasing bids will be recorded at the time they are received,
12 showing the bid number, bid title, and the names of the bidders
13 submitting bid forms. The record shall be made prior to the release
14 of the bid material by the recording secretary.

15 The above guidelines for receiving bids do not apply to the awarding of bids at Board
16 meetings.

17 **The Recording or Tabulation of Purchasing Bids**

18 The names of bidders, the prices submitted, and such other pertinent data, will be
19 electronically available or entered on a tabulation sheet by Procurement
20 Management Services. This information shall be available as set forth in
21 F.S. 119.07.

22 **Rejection of Bids**

23 The right to reject any and all bids is reserved by the Board and such reservation
24 shall be indicated in all advertising and invitations. When bids are rejected and the
25 project or requirement is not abandoned, new bids may be issued. Bids which
26 contain any alterations or erasures may be rejected. Bids will be rejected for good
27 and sufficient cause, such as faulty specifications, excessive cost, and abandonment
28 of the requirements, insufficient funds, or other irregularities. Bids may be rejected
29 for failure by the bidder to comply with any requirement stated in the bid document,
30 the bid proposal form or any attachments which become part of the bid.

1 **Irregular or Deviating Bids**

2 In the event that Procurement Management Services wishes to make a
3 recommendation of an award of a bid to a bidder who has deviated from
4 specifications, or in which there is any irregularity, the report recommending such
5 an award should contain in detail: the manner in which the bid deviates from the
6 specifications or is irregular, the reasons for the recommendation of the award, and
7 approval by the Board Attorney.

8 **Award Recommendation**

9 Notice of Intended Action will be posted on the District's website for Procurement
10 bids no later than the Friday preceding the week when the award is scheduled to be
11 made by the Board or Superintendent.

12 **Official Award Date**

13 Awards become official when made, unless otherwise specified in the award
14 recommendation.

15 **Contract Renewals**

16 The Board shall have the authority to award bids and reject any or all bids. The
17 Superintendent shall have the authority to exercise, in subsequent years, any
18 renewal options included in a bid solicitation, provided terms and conditions are
19 favorable for the School District and subject to the availability of funds.

20 **Legal Basis for Procedures**

21 The procedures for the purchase of commodities and services, and construction of
22 facilities for the District shall comply with the Florida statutes and the Florida
23 Administrative Code.

24 **Bidding**

25 It is the policy of the Board that the Superintendent shall be responsible for
26 estimating needs for items in common use and making quantity purchases. All
27 items, or group of related items that cost in excess of the amount defined in
28 F.A.C. 6A-1.012(6), shall be purchased based on competitive bids, except as
29 otherwise authorized by Florida statutes and/or Florida Administrative Code.

1 **Competitive Bidding Requirements**

2
3 Definitions

4 A. ~~The term “competitive solicitation” includes purchasing made~~
5 ~~through the issuance of an Invitation to Bid, Request for Proposals~~
6 ~~and Invitation to Negotiate. Competitive solicitations are not~~
7 ~~required for purchases made through the pool purchase provisions~~
8 ~~of F.S. 1006.27.~~

9 B. ~~“Invitation to Bid” is a written solicitation for competitive sealed~~
10 ~~bids. The Invitation to Bid is used when the Board is capable of~~
11 ~~specifically defining the scope of work for which a contractual~~
12 ~~service is required or when the Board is capable of establishing~~
13 ~~precise specifications defining the actual commodity or group of~~
14 ~~commodities required.~~

15 C. ~~“Invitation to Negotiate” is a written solicitation for competitive~~
16 ~~sealed replies to select one or more vendors with which to negotiate~~
17 ~~for the procurement of commodities or contractual services. The~~
18 ~~Invitation to Negotiate is used when the Board determines that~~
19 ~~negotiations may be necessary for it to receive the best value.~~

20 D. ~~“Request for Proposals” shall be defined for the purposes of this rule~~
21 ~~as a written solicitation for competitive sealed proposals. The~~
22 ~~Request for Proposals is used when it is not practicable for the~~
23 ~~Board to specifically define the scope of work for which the~~
24 ~~commodity, group of commodities, or contractual service is required~~
25 ~~and when the Board is requesting that a responsible vendor propose~~
26 ~~a commodity, group of commodities, or contractual service to meet~~
27 ~~the specifications of the solicitation document.~~

28 E. ~~The term “proposer” includes those vendors submitting bids or~~
29 ~~responses to a competitive solicitation.~~

30
31 ~~The major consideration given to bid evaluations is lowest price meeting~~
32 ~~specifications.~~

33 ~~When the determination is made that a bid is appropriate, the performance~~
34 ~~specifications and standards requirements shall be spelled out in detail and shall be~~
35 ~~furnished to Procurement Management. After review, Procurement Management~~
36 ~~shall issue the Invitation for Bids, including all general and special conditions, and~~
37 ~~evaluate the bids submitted. The requirements for solicitation and review of bids by~~
38 ~~the Goal Setting Committee (GSC) shall be followed in all cases. Board approval is~~
39 ~~required for contracts recommended for award.~~

~~For each purchase of more than \$50,000, bids shall be requested from three (3) or more sources. Notices of bids shall be electronically posted or may be sent to all vendors on the active vendor mailing list for that category of goods or services. This list shall include all minority/women vendors identified with the Board for that particular category of goods or services, as well as organizations involved in assisting M/WBE firms, by posting and disseminating information regarding available contracts. Notices of bids shall be advertised in one (1) or more major, local newspapers or electronically posted at least seven (7) days prior to the bid opening date. This may include, as necessary, major newspapers having circulation representative of the various relevant minority classifications or electronic posting. Tabulations of current bids shall be retained in bid files and shall be available for reference. Standard bid forms used shall be as approved by the Superintendent and the Board Attorney.~~

~~A. Written, Telephone, or Electronic Quotations~~

~~For each purchase of \$50,000 or less and over the minimum quotation threshold established by Procurement Management, staff shall obtain written, telephone, or electronic quotations from three (3) or more sources. If possible, vendors contacted shall include M/WBE vendor participation. If only one (1) of those sources respond with prices, two (2) additional sources, if available, may be contacted for pricing, including, if possible, an M/WBE vendor. If no additional prices are obtained from those sources, the award shall be made to the lowest and best price quotation. If all three (3) of the vendors first contacted for prices respond with valid price quotations, the award shall be made to the lowest price quotation meeting specifications, with no additional requests from other vendors required.~~

~~Quotations obtained shall be attached to the purchase order by written notations or electronic reference indicating prices and sources thereof, and certification of same by signature, electronic signature, or facsimile. The requisition shall be approved for purchase as authorized by the Superintendent.~~

~~B. Schools making internal fund purchases shall comply with Policy 6610.~~

~~**Quantity Purchasing Development of Specifications, Determination of Quantities and Standardization of Supplies and Equipment**~~

~~A. To help achieve both quality control and the price advantages of quantity purchasing, the administration is directed to:~~

- ~~1. set specifications for goods and services as needed;~~

1 ~~2. cite several existing, commercially available "standard~~
2 ~~brands" that meet those specifications acceptably as~~
3 ~~examples; and~~

4 ~~3. invite vendors to bid on those examples, or equal ones, which~~
5 ~~the vendors believe to be acceptable according to the~~
6 ~~specifications.~~

7 ~~B. All bid quantities and specifications shall be transmitted to the~~
8 ~~Division of Procurement Management by the originating department,~~
9 ~~in writing. The originating department shall also certify to the~~
10 ~~Division of Procurement Management, in writing, that the~~
11 ~~specifications for an existing bid (to be rebid) are still appropriate~~
12 ~~before issuance of the bid. If the specifications are originated by the~~
13 ~~Division of Procurement Management, it shall follow similar~~
14 ~~certification procedures.~~

15 ~~C. All increases to quantities specified in an existing term bid requiring~~
16 ~~a supplemental bid award shall be requested in writing by the~~
17 ~~originating department, countersigned by an administrator reporting~~
18 ~~directly to the Superintendent identifying the reason why the~~
19 ~~increase in quantities was unavoidable. If an adequate reason~~
20 ~~cannot be identified, then the corrective action to be taken by the~~
21 ~~originating department to prevent a future underestimate of~~
22 ~~quantities shall be described. A similar procedure will be followed~~
23 ~~for term bids originated by the Division of Procurement~~
24 ~~Management.~~

25 ~~D. All changes to specifications for an existing bid (to be rebid) or~~
26 ~~similar bid shall be identified in writing, including the reason for the~~
27 ~~change, by the originating department or the Division of~~
28 ~~Procurement Management, if originator.~~

29 ~~E. The District Director, Division of Procurement Management, shall~~
30 ~~initiate procedures to assure the identification of specifications~~
31 ~~which appear to limit the bidding process to a single vendor. In the~~
32 ~~event that the District Director has identified such a set of~~
33 ~~specifications, the originating department shall be required to justify~~
34 ~~in writing, those specifications which appear to favor a single~~
35 ~~vendor. This documentation shall be countersigned by an~~
36 ~~administrator reporting directly to the Superintendent.~~

37 **~~Request For Proposals and Professional Services Contracts~~**

38 ~~2. For purposes of this rule, professional service is any type~~
39 ~~of personal service to the District which requires as a~~
40 ~~condition precedent to the rendering of such service;~~

~~A. the obtaining of a license or other legal authorization; or~~

~~B. work which can only be performed by one who has achieved a high level of training and proficiency in the work to be performed.~~

Request for Proposals

~~The Request for Proposal shall be used when seeking to contract for professional services, and when it is not practicable for the agency to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the agency is requesting that a responsible vendor proposed a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document. A written solicitation includes a solicitation that is electronically posted.~~

~~The following process shall be followed for the Request for Proposal:~~

~~A. If the cost of the contract is estimated to be more than \$50,000 annually:~~

~~1. The evaluation committee shall be specified in the Request for Proposal. The committee shall consist of at least: (1) two (2) individuals from the originating bureau/office, however, not more than one (1) of these individuals can be from the requesting department; (2) two (2) individuals from outside the bureau/office; (3) one (1) individual from the Office of Economic Opportunity; and (4) one (1) individual from Procurement Management Services (non voting). Additional members may be appointed at the discretion of the Superintendent or his/her designee. The committee shall to the extent possible, be ethnically and gender representative.~~

~~2. The Goal Setting Committee shall review the Request for Proposal to determine Small Business Enterprise (SBE), Micro Business Enterprise (MBE), Minority/Women Business Enterprise (M/WBE) participation in the project, prior to issuing the Request for Proposals.~~

~~3. The Request for Proposal shall be advertised to solicit maximum vendor participation. To enhance Minority/Women Business Enterprise (M/WBE) participation, it is recommended that all advertisements be published and announced in major ethnic publications and organizations, as outlined in applicable Board policies.~~

~~4. Board approval of recommendations by the evaluation committee shall be obtained after the evaluation process is completed and prior to the issuance of the contract.~~

~~B. If the contract is estimated to cost less than \$50,000 annually:~~

~~1. There must be evidence that at least three (3) vendors were contacted in writing, and if possible, at least one (1) of these vendors shall be a Minority/Women Business Enterprise.~~

~~2. If only one (1) potential vendor is known, an advertisement shall be placed in an appropriate publication that is widely distributed. If no responses are received, the contract can be developed with the one (1) known vendor, in accordance with other established procedures.~~

~~C. The Request for Proposal shall include an implementation schedule consisting of the following:~~

~~1. Goal Setting Committee~~

~~2. Mailing/Posting Date~~

~~3. Pre Proposal Conference (if required)~~

~~4. Opening Date and Time Evaluation Criteria~~

~~5. Interview Schedule (if required) Award Process~~

~~D. The evaluation criteria which shall serve as the basis for recommendations by the evaluation committee shall include, but are not limited to:~~

~~1. Conformance to the Proposal Requirements Experience~~

~~2. Past Performance~~

~~3. Price~~

~~4. M/WBE Participation~~

~~5. Other Instructions~~

1 ~~E. Evaluation Committee Meetings~~

2 ~~1. When committees are established to evaluate Request for~~
3 ~~Proposals, the originating department (chairperson) will~~
4 ~~conduct the meetings, and ensure that: (1) minutes are~~
5 ~~recorded; and (2) proper documentation and records of~~
6 ~~committee actions are maintained. A copy of the minutes~~
7 ~~shall be forwarded to Procurement Management Services for~~
8 ~~inclusion in the master file.~~

9 ~~2. Subsequent to required oral interviews, and discussions, the~~
10 ~~evaluation committee will evaluate proposers and prepare a~~
11 ~~recommendation. The written recommendation and all other~~
12 ~~pertinent documentation shall be forwarded by the chair of~~
13 ~~the evaluation committee to Procurement Management~~
14 ~~Services.~~

15 ~~3. The evaluation committee's written recommendation must~~
16 ~~include the following for inclusion in the master file within~~
17 ~~Procurement Management Services:~~

18 ~~a. Clear Objective of the Request for Proposal~~

19 ~~b. Identification of the Committee Members~~

20 ~~c. Dates of Committee Meetings and a Brief Synopsis of~~
21 ~~the General Discussion~~

22 ~~d. Dates of the Oral Interviews, if any~~

23 ~~e. Name and Location of the Offeror(s)~~

24 ~~f. The Evaluation Criteria~~

25 ~~g. An Explanation for the Basis of Selection~~

26 ~~h. Recommendation of Acceptance of the Offeror(s)~~
27 ~~Proposal~~

28 ~~i. Votes of Committee Members~~

~~F. The following exclusions to this rule apply:~~

~~1. Contracts for legal services by the Board Attorney and the attorneys supervised by the Board Attorney, contracted third party claims administration, nonpublic school placements and other services/goods for which selection procedures are provided by State statute, State Board Rule or other Board policy.~~

~~2. The Professional Services Contract Committee shall be comprised of three (3) representatives from Senior Staff, two (2) representatives from Education and Curriculum, one (1) representative from the Goal Setting Committee, one (1) representative from the Office of Economic Opportunity (OEO), and nonvoting representatives, from Procurement Management Services, office of Board Attorney, and Management and Compliance Audits shall meet to consider requests for further exceptions to this rule. Such exceptions may be granted in the case of sole sources, contractors having specific expertise or as otherwise determined by the committee to be in the best interest of the Board. Exceptions recommended by the committee will be submitted to the Board for approval for contracts with an annual estimated cost of more than \$50,000.~~

~~In instances where the contract is estimated to cost less than \$50,000, but more than the threshold established for quotations, and an exception for the procedure outlined above is sought, the contract does not have to be submitted to the Board for approval if the committee has granted an exception pursuant to this policy.~~

~~The Board may make further exceptions to this policy on a case-by-case basis.~~

Identical Prices/Points --Priorities for Award

When identical prices/points are received from two (2) or more vendors/firms and all other factors are equal, priority for award shall be given to vendors/firms in the following sequence:

- A. A business that certifies that it has implemented a drug-free work place program shall be given preference in accordance with the provisions of F.S. 287.087;
- B. Local vendor as defined by Board Policy 6320.05;
- C. Certified service-disabled Veteran business;

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- 1 D. A certified Minority/Women Business Enterprise vendor;
- 2 E. The Miami-Dade County SBE/Micro/Minority/Women Business
3 Enterprise vendor;
- 4 F. The Broward, Palm Beach or Monroe County
5 SBE/Micro/Minority/Women Business Enterprise vendor;
- 6 G. The Broward, Palm Beach or Monroe County vendor, other than the
7 SBE/Micro/Minority/Women Business Enterprise vendor;
- 8 H. The Florida vendor who is a SBE/Micro/Minority/Women Business
9 Enterprise vendor;
- 10 I. The Florida vendor, other than a Minority/Women Business
11 Enterprise vendor;
- 12 J. The Minority/Women Business Enterprise vendor, who, because of
13 lower prices, receives a larger dollar award for other items; and
- 14 K. The SBE/Micro/non-Minority/Women Business Enterprise vendor,
15 who, because of lower prices, receives a larger dollar award for other
16 items.

17 In accordance with Florida law, local preference shall not be applied to competitive
18 solicitations for construction services in which 50 percent or more of the cost will be
19 paid from state-appropriated funds which have been appropriated at the time of the
20 competitive solicitation. The solicitation documents for construction services in this
21 event must disclose that no local preference consideration will be applied.
22

23 If application of the above criteria does not indicate a priority for award or cannot be
24 applied by law, Board administration shall determine if the award is capable of being
25 split, and, if the vendors will agree to split the award. If the award cannot be split,
26 or the vendors do not agree to split the award, the award will be decided by the toss
27 of a coin. The toss of a coin shall be held publicly, with the tie low bid vendors
28 invited to be present as witnesses and participants. A staff member from the
29 Division of Procurement Management will preside over the coin toss and a member
30 from Internal Audits will observe.

31
32 **Vendor Preference for Certified Service-Disabled Veteran Business Enterprises**

33 ~~The Board adopts the relevant portions of “The Florida Service Disabled Veteran~~
34 ~~Business Enterprise Opportunity Act,” F.S. 295.187, which provides a vendor~~
35 ~~preference in favor of~~ certified service disabled veteran businesses. ~~The State,~~
36 ~~through its Department of Management Services, will develop a certification~~
37 ~~procedure in accordance with Board Policy 6320.02 and state law.~~
38

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1 In assessing priorities for award, when identical prices are received from two (2) or
2 more vendors and all other factors are equal, priority for award shall be given to a
3 certified service-disabled veteran business enterprise as defined by F.S. 295.187-
4 and Policy 6320.02. In the event there are two (2) or more certified-disabled veteran
5 business enterprises entitled to the preference, then the award shall be given to the
6 business having the smallest net worth.

7 The vendor preference for certified service-disabled veteran businesses shall be
8 subordinate only to the vendor preference for businesses implementing a drug-free
9 workplace.

10 ~~In adopting a major tenet of the Veterans Entrepreneurship and Small Business~~
11 ~~Development Act of 1999, (Public Law 106-50), which applies to Federal agencies,~~
12 ~~the Board~~The Board's goal for participation by service disabled veteran business
13 enterprises shall be established at three percent (3%) of the total value of all prime
14 contract/subcontract awards for each fiscal year.

15 ~~To the extent that this policy is inconsistent with the provisions of any other Board~~
16 ~~policy, the provisions of this policy shall supersede.~~

17 **Performance and Payment Security, ~~Declining a Bid Award~~, Default and**
18 **Bonding Company Qualifications**

19 A. Performance Security on Construction Bids and Awards

20 1. Bid bond of five percent (5%) of the total bid amount is
21 required.

22 2. In order to encourage participation in construction,
23 remodeling, and renovation projects by small, woman owned,
24 and minority owned businesses, at the option of the Board,
25 no bid security or performance or payment bond shall be
26 required for bids in an amount less than \$200,000.

27 3. Bid awards exceeding \$200,000 require a 100% performance
28 and payment security of the award amount. For construction
29 projects costing \$200,000 or more, the accepted bidder must
30 deliver performance and payment bonds equal to the contract
31 price, no later than twenty (20) days after the date of award of
32 the contract or Approval of the Guaranteed Maximum Price
33 (GMP) Amendment by the Board. Bonds must be issued by
34 surety companies admitted to do business in the State of
35 Florida and listed in the Federal Register of the U.S.
36 Department of Treasury for Surety Companies Acceptable on
37 Federal Bonds.

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1 Bid security shall be a certified check, cashier's check,
2 Treasurer's check, bank draft, or bid bond acceptable to the
3 Board in a form and manner that is acceptable to the Board.

4 Should the accepted bidder ~~refuse to enter into the contract~~
5 ~~or~~ fail to furnish performance and materials and payment
6 bonds, the amount of the bid security may be forfeited to the
7 District.

8 B. Performance Security on Awards Other than Construction

- 9 1. Bid awards of \$200,000 or less shall be exempt from
10 performance and payment security.
- 11 2. Performance security shall not be required unless otherwise
12 defined in the bid specification. Performance security shall
13 equal 100% of the award amount.

C Bonding Company Qualifications

14 Bonds shall be written through a reputable and responsible surety
15 bond agency licensed to do business in the State of Florida and with
16 a surety company or corporation meeting both of the following
17 specifications:

18 1. Awards Greater than \$500,000

19 a. A minimum rating in the latest revision of Best's
20 Insurance Reports of:

21	Contract Amount	Minimum Rating by
22		A.M. Best
23	\$200,000.00 to	
24	\$5,000,000	A, No Minimum Class
25	\$5,000,000.01 to	
26	\$10,000,000	A, Class IV
27	\$10,000,000.01 or more	A, Class V

28 b. Current certificate of authority as acceptable surety on
29 Federal Bonds in accordance with the latest edition of
30 the United States Treasury Department Circular 570
31 entitled "Companies Holding Certificates of Authority
32 as Acceptable Sureties on Federal Bonds and as
33 Acceptable Reinsuring Companies" and shall be

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1 accepted for an amount not exceeding the underwriting
2 limitation thereon.

3 2. Awards of \$500,000 or less

4 Bonds shall be written with a surety company or corporation
5 meeting the qualifications as set forth in Paragraph A.2 above
6 or the qualifications set forth in F.S. 287.0935.

7 **Default by Vendor**

8 A bidder who declines an award shall either (1) pay liquidated damages of five
9 percent (5%) of the unit price bid times the quantity, or \$10, whichever is greater, or
10 (2) lose eligibility to transact new business with the Board for a period of
11 fourteen (14) months from the date the Board acts on the withdrawn bid.

12 A bidder who accepts an award but fails to perform shall either (1) pay liquidated
13 damages of ten percent (10%) of the unit price of the item(s) awarded times the
14 quantity when no purchase order has been issued, ten percent (10%) of the
15 purchase order when a purchase order has been issued or \$100, whichever is
16 greater, or (2) lose eligibility to transact new business with the Board for a period of
17 fourteen (14) months from date of termination of award by the Board. The
18 ineligibility shall be applicable to the principals individually and the entity, as well
19 as any other firm in which a principal of a defaulting firm is a principal. If an
20 awardee fails to pay the liquidated damages within fifteen (15) days after it is
21 invoked, the awardee shall lose eligibility to transact new business with the Board
22 for a period of fourteen (14) months from the date of termination of award by the
23 Board. Bidders that are determined ineligible may request a hearing pursuant to
24 | F.S. 120.57, ~~Bylaw~~Board Policy 0133-0120. The Board reserves the right to waive
25 liquidated damages/loss of eligibility.

26 Reinstatement of vendors losing eligibility to transact new business with the Board
27 | will not be automatic and will be subject to review by the ~~Contractor's Responsibility~~
28 | ~~Committee~~Contractor Disciplinary Review Committee (CDRC) as defined in Board
29 | Policy 6320.04. Vendors will be required to submit a request for reinstatement
30 including, but not limited to, information as to their status as a responsible vendor
31 and what steps have been taken to avoid such a situation which caused their
32 | suspension as a District vendor. ~~Procurement Management Services~~The CDRC will
33 notify the Board of all vendors denied reinstatement, and the reasons for denial.

34 | "Principal"~~is~~ defined as an officer of a corporation, partner of a partnership, sole
35 proprietor of a sole proprietorship, trustee of a trust, or any other person with
36 similar supervisory functions with respect to any legally organized entity.

37 |
38 | Vendor suspension shall be governed by, and in accordance with Board Policy
39 | 6320.04.

1 **Signatures of Superintendent and Designees**

2 The Board authorizes the use of signatures of the Superintendent and his/her
3 designees on behalf of the Board on all contracts, agreements and documents where
4 a signature of the Chair is not required by law or regulation of the Department of
5 Education. All contracts, agreements and documents must be based upon
6 approvals previously adopted and spread upon the minutes of the Board, unless
7 exempted by Board policy.

8 **Purchasing Principles**

9 Employees shall be guided by the following principles and standards adopted by the
10 National Association of Purchasing Management:

- 11 A. Consider, first, the interest of his/her company (the Board) in all
12 transactions and to carry out and believe in its established policies.
- 13 B. Be receptive to competent counsel from his/her colleagues and to be
14 guided by such counsel without impairing the dignity and
15 responsibility of his/her office.
- 16 C. Buy without prejudice, seeking to obtain the maximum ultimate
17 value for each dollar of expenditure.
- 18 D. Strive consistently for knowledge of the materials and processes of
19 manufacture, and to establish practical methods for the conduct of
20 his/her office.
- 21 E. Subscribe to and work for honesty and truth in buying and selling,
22 and to denounce all forms and manifestations of commercial
23 bribery.
- 24 F. Accord a prompt and courteous reception, so far as conditions will
25 permit, to all who call on a legitimate business mission.
- 26 G. Respect his/her obligations and to require that obligations to
27 him/her and to his/her concern be respected, consistent with good
28 business practice.
- 29 H. Avoid sharp practice.
- 30 I. Counsel and assist fellow purchasing agents in the performance of
31 their duties, whenever occasion permits.

1 J. Cooperate with all organizations and individuals engaged in
2 activities designed to enhance the development and standing of
3 purchasing.
4

5 Ethics training on ethical standards that are no lower than those prescribed by the
6 State shall be provided to all employees involved in procurement activities for the
7 Board.
8

9 **Commercial Anti-Discrimination Program**

10
11 ~~A. Pursuant to Policy 6465, it is the policy of the Board to promote full~~
12 ~~and equal business opportunities for all persons doing business~~
13 ~~with the District by increasing the purchase of goods and services~~
14 ~~from small businesses within the area of Miami Dade County.~~

15 ~~B. Discrimination against businesses based on sex, race, color, ethnic~~
16 ~~or national origin, religion, marital status, disability, genetic~~
17 ~~information, age, political beliefs, sexual orientation, gender, gender~~
18 ~~identification, social and family background, linguistic preference,~~
19 ~~pregnancy, and any other legally prohibited basis, is strictly~~
20 ~~prohibited. No person shall be denied the benefit of, or otherwise~~
21 ~~discriminated against, on the grounds of sex, race, color, ethnic or~~
22 ~~national origin, religion, marital status, disability, genetic~~
23 ~~information, age, political beliefs, sexual orientation, gender, gender~~
24 ~~identification, social and family background, linguistic preference,~~
25 ~~pregnancy, and any other legally prohibited basis, in connection~~
26 ~~with the award and/or performance of contracts or modification of a~~
27 ~~contract between a vendor or contractor and the Board which~~
28 ~~contract is paid for, in whole or in part, with monetary~~
29 ~~appropriations by the Board.~~

30 ~~C. The objective of the Commercial Nondiscrimination Program is to~~
31 ~~promote and encourage full and open competition in the District,~~
32 ~~procurement and purchasing; encourage all District personnel~~
33 ~~involved with procurement and contracting activities to maintain~~
34 ~~good faith efforts and appropriate purchasing procedures; to protect~~
35 ~~the Board from becoming a passive participant in any unlawful~~
36 ~~discrimination; and to otherwise spur economic development in the~~
37 ~~public and private sectors of the local economy.~~

1 | ~~D.~~—Complaints alleging discrimination ~~may~~against any commercial enterprise
2 | doing business with the School Board must be filed ~~pursuant to~~ and will be
3 | investigated and addressed in accordance with Board Policy_6465.

4 | F.S. 119.07, 120.569, 120.57, 120.57(3), 255.0516, 255.0991, 255.099,
5 | 255.25(3)(c), 282.041(15)
6 | F.S. 286.0113(2)(b)(1), 287.017, 287.042(2)(c), 287.056, 1001.41(1)(2),
7 | 1001.42(12)(j), 1001.42(26)
8 | F.S. 1001.43(10), 1006.27, 1010.04(2), ~~1010.04(4)(a)~~
9 | F.A.C. 6A-1.012, 6A-1.091, 6A-7.0411(2)(i), 28-110.005(2)

10 | Revised 8/7/13
11 | Revised 11/19/14

12 | © **NEOLA 2010**

1 | CONTRACTOR DEBARMENT PROCEDURES DISCIPLINE

This policy governs debarment, suspension and other disciplinary action that may be taken by the School Board against contractors that violate law and Board policies.

The School Board shall solicit offers from, award contracts to, and consent only to subcontracts with responsible contractors. Contractors may be suspended and/or debarred from doing business with the Board or otherwise disciplined. Suspension and debarment are serious sanctions that may only be imposed when it is in the best interest of the Board and to protect the public.

The Superintendent is authorized to develop and implement disciplinary procedures that comply with state and federal laws, ordinances, codes, regulations and this policy.

2 | **Definitions**

- 3
4 | A. **Affiliates** - business concerns, organizations, or individuals that directly or indirectly, (a) either control or have the power to control the other, or (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized by a debarred entity, individual, or affiliate following the debarment of a contractor that has the same or similar management, ownership, or principal employees as the contractor that was debarred or suspended.

B. **Civil Judgment** a judgment or finding of a civil offense by any court of competent jurisdiction.

C. **Contractor** any individual or other legal entity that:

1. submits offers for or is awarded, or reasonably may be expected to submit offers for, or to be awarded, directly or indirectly (e.g., through an affiliate), a Board contract for construction or for procurement of goods or services including professional services; or
2. conducts business, or reasonably may be expected to conduct business, with the Board as an agent, surety, representative, or subcontractor (at any tier) of another contractor;
3. the terms “vendor” and “consultant” have the same meaning as “contractor.” “Subconsultant” has the same meaning as “subcontractor.”

D. **Contractor Disciplinary Review Committee (CDRC)**- committee responsible for recommending suspension and/or debarment to the Board

E. **Conviction** - a judgment or conviction of a criminal offense, either a felony or misdemeanor, by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

F. **Debarment**- action taken by the Board to exclude a contractor or subcontractor from Board contracting and Board approved subcontracting for a reasonable, specified period.

G. **Indictment** - indictment for a criminal offense. An “information” or other filing by competent authority charging a criminal offense shall be considered and have the same effect as an indictment.

H. **Legal Proceeding** - any civil judicial proceeding to which the Board is a party or any criminal proceeding. The term includes appeals from such proceedings.

I. **Preponderance of the Evidence** - proof by information that compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

J. **Recommending Department** — department seeking disciplinary action against a contractor.

1 K. **Revocation** - action taken to revoke a contractor's
2 prequalification certificate and/or SMBE/MWBE status.

3
4 L. **Substantial Evidence** - evidence that a reasonable mind could
5 accept as adequate to support a conclusion. It is defined as
6 "more than a scintilla but less than preponderance," and
7 consists of "such relevant evidence as a reasonable person would
8 accept as adequate to support a conclusion."
9

10 M. **Suspension** - action taken to temporarily exclude a contractor
11 or subcontractor from contracting or subcontracting with the
12 Board for a reasonable, specified period.

13 **Contractor Disciplinary Review Committee**

14
15 The Contractor Disciplinary Review Committee (CDRC) is responsible for
16 recommending sanction(s) to the Board. The recommending department head will
17 forward the Committee's decision to the Superintendent who shall forward it to the
18 Board for ratification. The department head is responsible for presenting evidence to
19 the CDRC in support of the disciplinary sanction(s) the department is seeking.
20

21 The CDRC shall be composed of individuals from District offices and community
22 organizations, and/or their designees. New voting members shall be appointed or
23 selected every two (2) calendar years. The Superintendent shall solicit and appoint
24 the organizational and community representatives.
25

26 The CDRC shall be composed of the following voting members, or designee:

- 27 1. Two (2) community representatives, appointed by the Superintendent, to
28 serve for a two (2) year period
- 29 2. Chief Financial Officer, Financial Services
- 30 3. Senior Design and Construction Officer, Office of School Facilities
- 31 4. Deputy Superintendent, School Operations
- 32 5. Chief Facilities Officer, Office of School Facilities
- 33 6. Assistant Superintendent, Procurement Management Services
- 34 7. Inspections Officer, District Inspections, Operations and Emergency
35 Management
- 36 8. Office of Economic Opportunity
37

38 All members of the CDRC must disclose any conflicts or potential conflicts of
39 interest, and may not vote on any matter upon which there is an actual or potential
40 conflict.
41

42 The CDRC reviews recommendations and may impose the following sanctions:

- 43 • revoke a prequalified contractor's Prequalification Certificate;
- 44 • suspend a contractor in violation of any Board Policy;
- 45 • revoke a firm's SBE/MWBE eligibility;
- 46 • reinstate a vendor that was suspended or found to be in default;

- debar a contractor; and/or
- reduce previously imposed sanction periods.

Grounds for Sanctions

- 1) The Office of Economic Opportunity (OEO) may recommend to the CDRC that a firm's SBE/MBE/MWBE status be revoked if the firm or company:
 - a. fails to perform a commercially useful function under a contract; and/or
 - b. allows its SBE/MBE/MWBE status to be fraudulently used for the benefit of a non-SBE/MBE/MWBE firm or the owners of a non-SBE/MBE/MWBE firm to provide the non-SBE/MBE /MWBE firm or firm owners benefits from Affirmative Procurement Initiatives under Policy 6320.02 for which the non-SBE/MBE/MWBE firm and its owners would not otherwise be entitled.
- 2) The OEO may recommend to the CDRC that a Contractor's Prequalification Certificate be revoked and/or that a Contractor be suspended if the Contractor:
 - a. is declared delinquent in accordance with Board Policy 6334.
 - b. includes inaccurate or misleading statements in the Contractor Prequalification Application ("Statement of Contractor's Qualification").
 - c. is declared in default by the Board.
 - d. is adjudged to be bankrupt.
 - e. performs unsatisfactory work for which the Board has recovered liquidated damages in legal action against the contractor.
 - f. fails to comply with the Construction Contract Prompt Payment Law (F.S. 715.12).
 - g. has a suspended or revoked license.
 - h. no longer meets the uniform prequalification criteria established in Board Policy 6334.
 - i. willfully falsifies, conceals or covers up by a trick, scheme or device, a material fact or makes any false, fictitious or fraudulent statements or representations, or makes use of any false writing or document
 - j. fraudulently obtains, attempts to obtain or aid another person fraudulently obtaining, or attempting to obtain public monies to which the person is not entitled;
 - k. fails to cooperate with any investigation of violations of this policy or any Board Policy;

- 1 l. fraudulently obtains, retains or attempt to obtain, or aid another in
2 fraudulently obtaining, retaining, or attempting to obtain or retain
3 certification status as an SBE/MBE/MWBE under Policy 6320.02;
- 4 m. willfully obstructs, impedes or attempts to obstruct or impede any
5 authorized official or employee who is investigating the qualifications of
6 a business entity that has requested certification as an SMBE or
7 M/WBE in accordance with Policy 6320.02;
- 8 n. makes false statements to any entity that any other entity is or is not
9 certified as an SMBE or M/WBE.

10
11 3) The Recommending Department may request that CDRC suspend a company
12 and/or person's eligibility from doing business with the Board if the company
13 or person:

- 14 a. has committed any of the violations listed above;
- 15 b. violates any provision of any agreement that company and/or person
16 entered into with the District;
- 17 c. has ever been suspended or debarred in any other district;:
- 18 d. fails to disclose any information that that company and/or person has
19 a continuing obligation to disclose;:
- 20 e. refuses to cooperate with an investigation related to a violation of any
21 Board Policy; or has violated the Board's business ethics and anti-
22 discrimination policies.

23
24 4) Debarment

25
26 a. The CRDC shall recommend debarment when another
27 duly authorized agency or governmental entity, the Board's
28 Chief Auditor, the Office of the Inspector General, or Miami-
29 Dade Schools Police, investigates and submits a written report
30 to the CDRC requesting that the CDRC debar a company and/or
31 person from doing business with the Board where a Contractor
32 has a conviction or civil judgment for:

- 33 1. committing fraud or a criminal offense in connection with
34 obtaining, attempting to obtain, performing, or making a
35 claim upon any public entity contract or subcontract, or a
36 contract or subcontract funded in whole or in part with
37 public funds;
- 38 1-2. violating federal or state antitrust statutes relating to the
39 submission of offers;
- 40 3. violating any Federal or State law regarding immigration,
41 minimum wage or any other applicable employment
42 related law;

4. committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property
5. committing any other payment or performance related offense that seriously and directly affects the completion of one (1) or more contracts or the performance of the completed building, or project, or the delivery of goods and services; or
6. filing a lawsuit against the Board that a court determines to be frivolous or filed in bad faith

b. The CDRC may recommend debarment of a contractor based upon a preponderance of the evidence for:

1. defaulting on, or breaching and failing to cure the breach of a Board contract or subcontract, or a contract or subcontract funded in whole or in part by Board funds, such as by willful and or negligent failure to perform in accordance with the terms of one (1) or more contracts; or the failure to perform, or unsatisfactory performance of one (1) or more contracts;
2. any other cause of a serious or compelling nature that affects the responsibility of a Board contractor or subcontractor to perform Board work; and
3. violation of any Board Policy including, but not limited to Board Policies 6460, Business Code of Ethics and 6465, Commercial Anti-Discrimination in Business Operations and Practices.

The CRDC may, in the best interest of the Board and for protection of the public, debar a contractor for any of the causes and using the procedures in this Board policy. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred. The seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.

Application

- The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, agent, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or

acquiescence. The contractor's acceptance of the benefits derived from the conduct may be evidence of such knowledge, approval or acquiescence.

- The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.
- The fraudulent, criminal or other seriously improper conduct of any subcontractor associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the subcontractor's performance of duties for or on behalf of the contractor and the contractor had knowledge of, approved of, or acquiesced in this conduct. The contractor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct may be evidence of such knowledge, approval or acquiescence.

1
2 **Procedure for Sanctions**
3

4 1) At the request of the Recommending Department, the CDRC shall convene and
5 consider the Department's recommendation for sanctions. The Recommending
6 Department shall:

- 7 a) convene and serve as staff to the Committee; and
8 b) coordinate the CDRC hearing.

9 2) The Recommending Department, on behalf of the CDRC, shall issue a notice of
10 proposed sanctions by certified mail, return receipt requested, or hand delivery,
11 and fax, advising the contractor and any specifically named affiliates that:

- 12 a) sanctions are being considered;
13 b) the reasons and causes for the recommended sanctions in terms sufficient to
14 put the contractor on notice of the conduct or transaction(s) upon which it is
15 based;
16 c) that a hearing shall be conducted before the CDRC on a date and time not
17 less than (20) days after service of the notice;
18 d) that the contractor may be represented by an attorney, present documentary
19 evidence and verbal testimony, and cross-examine witnesses presented by the
20 Recommending Department; and
21 e) the potential effect of the recommended sanctions.

22
23 3) Defenses

1 a) The Contractor or subcontractor may reply to the notice of sanctions with a
2 list of the defenses, to the Recommending Department, which the contractor
3 intends to present within (14) days of receipt of the notice.
4

5 4) Discovery

6 a) All parties may request public records under Chapter 119, F.S.
7

8 5) Evidence

9 a) Hearsay evidence shall be admissible at the hearing but shall not form the
10 sole basis of any determination of sanctions.
11

12 6) Procedure for Recording Hearing

13 a) The hearing shall be transcribed and recorded by a court reporter and at the
14 expense of the Board. Copies of the transcript shall be furnished at the
15 expense and request of the requesting party.
16

17 7) Contractor Disciplinary Review Committee Decision

18 a) Evidentiary Standard

19 i) The CDRC decision to recommend one of the following sanctions must be
20 supported by substantial evidence:

21 (1) revocation of a prequalified contractor's Prequalification Certificate;

22 (2) suspend a contractor in violation of any Board Policy;

23 (3) revocation of a firm's SBE/MWBE eligibility; and

24 (4) -reinstatement of a vendor that was suspended or found to be in
25 default

26 ii) The CDRC decision to debar a contractor must be supported by a
27 preponderance of the evidence that the contractor a violation of stated in
28 this policy. [MM1]

29 (1) In actions based upon a criminal conviction or civil judgment, or in
30 which there is no genuine dispute over material facts, the CRDC shall
31 make a decision on the basis of all the undisputed material
32 information in the record, including any undisputed material
33 information submitted by the contractor.

34 (2) Where actions are based on disputed evidence, the CRDC shall decide
35 what weight to attach to evidence of record, judge the credibility of
36 witnesses, and base its decision on the preponderance of the evidence
37 standard.
38

39 b) In the event that the contractor fails (1) to appear at the debarment hearing or
40 (2) to present competent proof under oath through persons with knowledge of
41 the contractor's performance, the contractor shall be presumed to be non-
42 responsive, non-responsible and subject to sanctions.
43

44 c) The CRDC's decision shall be based on the vote of a majority of the members
45 of the Committee and made within twenty (20) days after conclusion of the
46 hearing, unless the deadline is extended for good cause.
47

1 d) The CDRC's decision and findings shall be in writing and shall include the
2 committee's factual findings, the principal causes of debarment as
3 enumerated in this Board policy, identification of the contractor or
4 subcontractor and all affiliates affected by the decision, and the specific term,
5 including the duration, of the debarment.
6

7 **8) Notice of CDRC Decision and Administrative Review**

8 a) If the CDRC decides to recommend sanctions, the Recommending
9 Department shall give the contractor or subcontractor and any affiliates
10 involved, written notice by certified mail, return receipt requested, or hand
11 deliver, within twenty (20) days of the decision, specifying the reasons for
12 debarment and including a copy of the Committee's written decision, stating
13 the period of debarment including effective dates; and advising that the
14 debarment covers all Board contracts, and subcontracts requiring Board
15 consent, for construction and goods or services, including professional
16 services, and that the Superintendent will recommend debarment to the
17 Board

i) A decision by the CRDC to recommend sanctions may be appealed
pursuant to F.S.120.57, to the Division of Administrative Hearings and
Policy 0133.

(1) The Contractor will have fifteen (15) days from the date of receipt of
written notice to file a petition in accordance with the process provided
in Policy 0133, Quasi-Judicial.

(a) Failure to file a petition within the fifteen (15) day period will be
considered a waiver of the contractor's right to appeal and the
CDRC's recommendation for sanctions will be submitted to the
Board for final approval.

(2) After receipt of the recommended order from the hearing officer and
before the recommended order is submitted to the Board, either party
may submit written exceptions to the hearing officer's recommended
order within fifteen (15) calendar days of the date of the recommended
order.

ii) Recommended orders will be considered in accordance with Policy 0133.

b) The Superintendent is authorized to suspend all pending work orders,
contracts, and/or assignments during the interim period between the Notice
of CDRC Decision and final Board Action.

18 **Sanction Period**

19 The CDRC shall recommend a period of up to 18 months for a suspension and/or
20 revocation and a period of up to 3 years for a debarment depending upon the
21 severity of the offense

22 **Reinstatement**

23 Following the suspension, revocation or debarment period, the contractor may
24 request that CDRC reinstate the contractor's status with the Board. The contractor's
25 written request must be submitted to the department that originally recommended
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1 sanctions and it is the responsibility of that department to convene the CDRC for the
2 purpose of considering reinstatement.

3
4 **Reduction of Sanction Period**

5
6 The CRDC may reduce the sanction period, upon the contractor's written request to
7 the Recommending Department, for the following reasons:

- 8 1) newly discovered material evidence;
9 2) reversal of the conviction or civil judgment upon which the debarment was
10 based;
11 3) bona fide change in ownership or management
12 4) elimination of other causes for which the debarment was imposed; or
13 5) Other good cause shown that the CDRC deems appropriate and in the best
14 interest of the Board as determined by the CRDC.

15
16 The contractor's written request shall include the reasons for requesting a reduction
17 of the sanction period. The CDRC shall have thirty (30) days from receipt of such
18 request to submit a written response. The decision of the CDRC regarding a request
19 made under this subsection is final.

Effects of Sanctions

1) Current Contracts/Work

- a) All proposed Board contracts for construction, or the procurement of goods
and services, including professional services, shall reference this policy and
specify that debarment, revocation of a contractor's prequalification
certificate, or suspension of a contractor, may constitute grounds for
termination of any existing Board contract.
- b) Current Board contracts may not be renewed or otherwise extended or
consent given to subcontract with suspended, revoked, or debarred
contractors, unless the Superintendent, in order to avoid an immediate and
serious danger to the public health, safety or welfare, determines that an
emergency exists that justifies the renewal or extension, or approves an
extension due to delay or for reasons beyond the contractor's control, and
such action is approved by the Board at its next regularly scheduled meeting.
- c) The debarment shall take effect according to the notice provided by the
Superintendent pursuant to Notice of Contractor Disciplinary Committee's
Decision except that if a continuing contract or subcontract is in existence at
the time the contractor was debarred, the debarment period shall begin upon
the conclusion of the contract, absent termination and in the interim the
debarred contractor shall not enter into any Board contracts.
- d) Current Board contracts may not be renewed or otherwise extended or
consent given to subcontracts with debarred contractors, unless the
Superintendent, in order to avoid an immediate and serious danger to the

public health, safety or welfare, determines that an emergency exists that justifies the renewal or extension, or for an approved extension due to delay or time extension for reasons beyond the contractor's control, and such action is approved by the Board.

2) Future Contracts/Work

- a) Contractors whose prequalification certificates have been suspended or revoked are excluded from receiving contracts, and no District department shall solicit offers from, award contracts to, or consent to subcontract with these contractors, unless the Superintendent, in order to avoid an immediate and serious danger to the public health, safety or welfare, determines that an emergency exists that justifies such action, and obtains approval from the Board at its next regularly scheduled meeting.
- b) No further work shall be awarded to a contractor whose prequalification certificate has been suspended or revoked in connection with a term or miscellaneous construction contract, or a term or miscellaneous contract for services, including professional services, or similar contract, where the work is divided into separate discrete groups and the Board's refusal or denial of further work under the contract will not result in a breach of such contract.
- c) No further work shall be awarded to a debarred contractor in connection with a continuing or miscellaneous construction contract, or a continuing or miscellaneous contract for goods or services, including professional services, or similar contract, where the work is divided into separate discrete groups and the Board's refusal or denial of further work under the contract will not result in a breach of such contract.

3) Subcontract Restrictions

- a) When a contractor whose prequalification certificate has been suspended or revoked is proposed as a subcontractor on a Board project, the department shall not consent to subcontract with such contractor unless the Superintendent, in order to avoid an immediate and serious danger to the public health, safety or welfare, determines that an emergency exists that justifies such consent and the Board approves such decision at its next regularly scheduled meeting.
- b) When a debarred contractor is proposed as a subcontractor for any subcontract, the department shall not consent to a subcontract with such contractor unless the Superintendent, in order to avoid an immediate and serious danger to the public health, safety or welfare, determines that an emergency exists that justifies such consent and the Board approves the decision.
 - i) The Board shall not be responsible for any increases in project costs or other expenses incurred by a contractor as a result of the Board's rejection of a proposed subcontractor, provided that the subcontractor was debarred prior to bid opening or opening of proposals.

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4) Other Considerations

- 1 a) Debarred contractors are excluded from receiving contracts, and departments
2 of the Board shall not solicit offers from, award contracts to, or consent to
3 subcontracts with these contractors, unless the Superintendent, in order to
4 avoid an immediate and serious danger to the public health, safety or welfare,
5 determines that an emergency exists that justifies such action, and obtains
6 approval from the Board. Debarred contractors are also excluded from
7 conducting business with the Board as agents, representatives, partners and
8 associates of other contractors, subcontractors or individual sureties.
- b) A contractor's debarment shall apply to all Board contracts or subcontracts
 for construction and for the procurement of goods or services, including
 professional services.
- c) Debarment constitutes debarment of all officers, principals, directors,
 shareholders owning or controlling ten percent (10%) or more of the stock,
 partners, qualifiers, divisions or other organizational elements of the debarred
 contractor, unless the decision to debar is limited by its terms to specific
 divisions, organizational elements, or commodities. The Committee's decision
 includes any existing affiliates of the contractor, if they are (1) specifically
 named and (2) given written notice of the proposed debarment and an
 opportunity to respond. Future affiliates, associates or employees of the
 contractor are subject to a pre-existing debarment decision.

9 **Suspended and Revoked and/or Debarred Contractors List**

10 The Office of Procurement Management Services shall maintain and disseminate
11 information on contractors who have been suspended, debarred, or whose
12 prequalification certification has been revoked, as follows:

- 13 1) compile and maintain a current consolidated list of all contractors that have
14 been declared delinquent which shall be available for public inspection and
15 dissemination;
16 2) revise and distribute the list and issue supplements to the Board, the
17 Superintendent, and to all District departments;
18 3) maintain records relating to each declaration of delinquency, suspension,
19 revocation, and debarment, in accordance with mandated retention schedules;
20 4) establish procedures to provide for the effective use of the list including internal
21 distribution to ensure that departments do not solicit offers from or recommend
22 awarding contracts to contractors that are on the list; and
23 5) respond to inquiries concerning contractors that are listed.

24 The Suspended, Revoked, and/or Debarred Contractors List shall include the
25 following information:

- 26 1) name and address of all suspended, revoked, and debarred contractors;:

- 1 2) license or registration number for the contractors whose prequalification
- 2 certificate has been suspended or revoked;
- 3 3) company's qualifying agent's name;
- 4 4) cause for suspending or revoking a contractor's prequalification certificate or as
- 5 required by other statutory or regulatory authority, and/or the cause for the
- 6 debarment action;
- 7 5) effects of the suspension, revocation, or debarment;
- 8 6) effective dates of the suspension, revocation, or debarment; and
- 9 7) name of the office that is responsible for maintaining the list of debarred
- 10 contractors and subcontractors

11 **Purpose of Debarment**

- 12 A. ~~The School Board solicits offers from, awards contracts to, and~~
- 13 ~~consents only to subcontracts with responsible contractors. To~~
- 14 ~~effectuate this policy, contractors may be debarred from doing~~
- 15 ~~business with the Board.~~
- 16 B. ~~This sanction shall be imposed only when it is in the best interest of~~
- 17 ~~the Board and for protection of the public, and not for punishment.~~
- 18 ~~Debarment must comply with this Board policy.~~
- 19 C. ~~Debarment is an additional remedy, not a substitute, for the~~
- 20 ~~evaluation of the responsibility of Board bidders and contractors,~~
- 21 ~~and the rejection of Board bidders or the termination of contractors~~
- 22 ~~based on findings of non-responsiveness and non-responsibility on a~~
- 23 ~~case-by-case basis.~~

24 **Definitions**

- 25 A. ~~Affiliates mean business concerns, organizations, or individuals that~~
- 26 ~~directly or indirectly, (a) either control or have the power to control~~
- 27 ~~the other, or (b) a third party controls or has the power to control~~
- 28 ~~both. Indicia of control include, but are not limited to, interlocking~~
- 29 ~~management or ownership, identity of interests among family~~
- 30 ~~members, shared facilities and equipment, common use of~~
- 31 ~~employees, or a business entity organized by a debarred entity,~~
- 32 ~~individual, or affiliate following the debarment of a contractor that~~
- 33 ~~has the same or similar management, ownership, or principal~~
- 34 ~~employees as the contractor that was debarred or suspended.~~
- 35 B. ~~Civil judgment means a judgment or finding of a civil offense by any~~
- 36 ~~court of competent jurisdiction.~~

1 C. ~~Contractor means any individual or other legal entity that:~~

2 1. ~~submits offers for or is awarded, or reasonably may be~~
3 ~~expected to submit offers for, or to be awarded, directly or~~
4 ~~indirectly (e.g., through an affiliate), a Board contract for~~
5 ~~construction or for procurement of goods or services~~
6 ~~including professional services; or~~

7 2. ~~conducts business, or reasonably may be expected to conduct~~
8 ~~business, with the Board as an agent, surety, representative,~~
9 ~~or subcontractor (at any tier) of another contractor;~~

10 3. ~~for the purposes of this section, the terms "vendor" and~~
11 ~~"consultant" have the same meaning as "contractor."~~
12 ~~"Subconsultant" has the same meaning as "subcontractor."~~

13 D. ~~Conviction means a judgment or conviction of a criminal offense,~~
14 ~~either a felony or misdemeanor, by any court of competent~~
15 ~~jurisdiction, whether entered upon a verdict or a plea, and includes~~
16 ~~a conviction entered upon a plea of nolo contendere.~~

17 E. ~~Debarment means the action taken to exclude a contractor or~~
18 ~~subcontractor from Board contracting and Board approved~~
19 ~~subcontracting for a reasonable, specified period, as provided in~~
20 ~~Period of Debarment, below.~~

21 F. ~~Debarment Committee is the body responsible for imposing~~
22 ~~debarment for the Board.~~

23 G. ~~Indictment means indictment for a criminal offense. An information~~
24 ~~or other filing by competent authority charging a criminal offense~~
25 ~~shall be given the same effect as an indictment.~~

26 H. ~~Legal proceeding means any civil judicial proceeding to which the~~
27 ~~Board is a party or any criminal proceeding. The term includes~~
28 ~~appeals from such proceedings.~~

29 I. ~~List of debarred contractors means a list compiled, maintained and~~
30 ~~distributed by the Department of A/E Selection, Negotiations &~~
31 ~~Contractor Prequalifications ("Department") that includes the names~~
32 ~~of contractors debarred.~~

1 J. ~~Preponderance of the evidence means proof by information that~~
2 ~~compared with that opposing it, leads to the conclusion that the fact~~
3 ~~at issue is more probably true than not.~~

4 K. ~~Superintendent means the Board's Superintendent.~~

5 L. ~~Days mean calendar days.~~

6 **List of Debarred Contractors**

7 A. ~~The Department shall implement this policy and:~~

8 1. ~~compile and maintain a current consolidated list ("List") of all~~
9 ~~contractors and subcontractors that are debarred by the~~
10 ~~Board, and the list shall be public record and made available~~
11 ~~for public inspection and dissemination;~~

12 2. ~~revise and distribute the list and issue supplements, to the~~
13 ~~Board, the Superintendent and to all Board departments;~~

14 3. ~~maintain records relating to each debarment according to~~
15 ~~internal retention procedures;~~

16 4. ~~establish procedures to provide for the effective use of the list,~~
17 ~~including its internal distribution to ensure that departments~~
18 ~~do not solicit offers from, award contracts to, or consent to~~
19 ~~subcontract with contractors on the list; and~~

20 5. ~~respond to inquiries concerning contractors and~~
21 ~~subcontractors that are listed as debarred from doing~~
22 ~~business with the Board.~~

23 B. ~~The list of debarred contractors and subcontractors shall indicate~~
24 ~~the:~~

25 1. ~~name and address of all debarred contractors and~~
26 ~~subcontractors in alphabetical order;~~

27 2. ~~name and telephone number of the department and the~~
28 ~~contact person that recommended initiation of the debarment~~
29 ~~action;~~

- 1 3. ~~cause for the debarment action;~~
- 2 4. ~~effect of the debarment;~~
- 3 5. ~~beginning and termination date of the debarment;~~
- 4 6. ~~contractor's certificate of competency, license or registration~~
5 ~~number, when applicable;~~
- 6 7. ~~qualifier of the contractor, when applicable; and~~
- 7 8. ~~name of the office that is responsible for maintaining the list~~
8 ~~of debarred contractors and subcontractors.~~

9 **Effects of Debarment**

10 ~~Debarred contractors are excluded from receiving contracts, and departments of the~~
11 ~~Board shall not solicit offers from, award contracts to, or consent to subcontracts~~
12 ~~with these contractors, unless the Superintendent, in order to avoid an immediate~~
13 ~~and serious danger to the public health, safety or welfare, determines that an~~
14 ~~emergency exists that justifies such action, and obtains approval from the Board.~~
15 ~~Debarred contractors are also excluded from conducting business with the Board as~~
16 ~~agents, representatives, partners and associates of other contractors, subcontractors~~
17 ~~or individual sureties.~~

18 **Continuation of Current Contracts**

- 19 A. ~~All proposed Board contracts for construction, or the procurement of~~
20 ~~goods and services, including professional services, shall reference~~
21 ~~this policy and specify that debarment may constitute grounds for~~
22 ~~termination of any existing Board contract.~~
- 23 B. ~~The debarment shall take effect according to the notice provided by~~
24 ~~the Superintendent pursuant to Notice of Debarment Committee's~~
25 ~~Decision except that if a continuing contract or subcontract is in~~
26 ~~existence at the time the contractor was debarred, the debarment~~
27 ~~period shall begin upon the conclusion of the contract, absent~~
28 ~~termination and in the interim the debarred contractor shall not~~
29 ~~enter into any Board contracts.~~

1 C. ~~Current Board contracts may not be renewed or otherwise extended~~
2 ~~or consent given to subcontracts with debarred contractors, unless~~
3 ~~the Superintendent, in order to avoid an immediate and serious~~
4 ~~danger to the public health, safety or welfare, determines that an~~
5 ~~emergency exists that justifies the renewal or extension, or for an~~
6 ~~approved extension due to delay or time extension for reasons~~
7 ~~beyond the contractor's control, and such action is approved by the~~
8 ~~Board.~~

9 D. ~~No further work shall be awarded to a debarred contractor in~~
10 ~~connection with a continuing or miscellaneous construction~~
11 ~~contract, or a continuing or miscellaneous contract for goods or~~
12 ~~services, including professional services, or similar contract, where~~
13 ~~the work is divided into separate discrete groups and the Board's~~
14 ~~refusal or denial of further work under the contract will not result in~~
15 ~~a breach of such contract.~~

16 **Restrictions on Subcontracting**

17 A. ~~When a debarred contractor is proposed as a subcontractor for any~~
18 ~~subcontract, the department shall not consent to a subcontract with~~
19 ~~such contractor unless the Superintendent, in order to avoid an~~
20 ~~immediate and serious danger to the public health, safety or welfare,~~
21 ~~determines that an emergency exists that justifies such consent,~~
22 ~~and the Board approves the decision.~~

23 B. ~~The Board shall not be responsible for any increases in project costs~~
24 ~~or other expenses incurred by a contractor as a result of the Board's~~
25 ~~rejection of a proposed subcontractor, provided that the~~
26 ~~subcontractor was debarred prior to bid opening or opening of~~
27 ~~proposals.~~

28 **Debarment**

29 A. ~~The debarment procedures shall comply with applicable laws,~~
30 ~~statutes, ordinances, codes and policies, at the State and Federal~~
31 ~~level.~~

1 B. ~~The Debarment Committee may, in the best interest of the Board~~
2 ~~and for protection of the public, debar a contractor for any of the~~
3 ~~causes and using the procedures in this Board policy. The existence~~
4 ~~of a cause for debarment, however, does not necessarily require that~~
5 ~~the contractor be debarred. The seriousness of the contractor's acts~~
6 ~~or omissions and any mitigating factors should be considered in~~
7 ~~making any debarment decision.~~

8 C. ~~Debarment constitutes debarment of all officers, principals,~~
9 ~~directors, shareholders owning or controlling ten percent (10%) or~~
10 ~~more of the stock, partners, qualifiers, divisions or other~~
11 ~~organizational elements of the debarred contractor, unless the~~
12 ~~decision to debar is limited by its terms to specific divisions,~~
13 ~~organizational elements, or commodities. The Committee's decision~~
14 ~~includes any existing affiliates of the contractor, if they are~~
15 ~~(1) specifically named and (2) given written notice of the proposed~~
16 ~~debarment and an opportunity to respond. Future affiliates,~~
17 ~~associates or employees of the contractor are subject to a~~
18 ~~pre-existing debarment decision.~~

19 D. ~~A contractor's debarment shall apply to all Board contracts or~~
20 ~~subcontracts for construction and for the procurement of goods or~~
21 ~~services, including professional services.~~

22 **Causes for Debarment**

23 A. ~~The Committee may debar a contractor for a conviction or civil~~
24 ~~judgment for:~~

25 1. ~~commission of a fraud or a criminal offense in connection~~
26 ~~with obtaining, attempting to obtain, performing, or making a~~
27 ~~claim upon any public entity contract or subcontract, or a~~
28 ~~contract or subcontract funded in whole or in part with~~
29 ~~public funds;~~

30 2. ~~violation of Federal or State antitrust statutes relating to the~~
31 ~~submission of offers;~~

32 3. ~~violation of any Federal or State law regarding immigration,~~
33 ~~minimum wage or any other applicable employment related~~
34 ~~law;~~

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~~4. commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;~~

~~5. commission of any other payment or performance related offense that seriously and directly affects the completion of one (1) or more contracts or the performance of the completed building, or project, or the delivery of goods and services; and~~

~~6. filing a lawsuit against the Board that a court determines to be frivolous or filed in bad faith.~~

~~B. The Committee may debar a contractor, based upon a preponderance of the evidence for:~~

~~1. defaulting or breaching and failing to cure on a Board contract or subcontract, or a contract or subcontract funded in whole or in part by Board funds, such as willful and or negligent failure to perform in accordance with the terms of one (1) or more contracts; or the failure to perform, or unsatisfactory performance of one (1) or more contracts;~~

~~2. violating a Board policy that lists debarment as a potential penalty; and~~

~~3. any other cause of a serious or compelling nature that it affects the responsibility of a Board contractor or subcontractor in performing Board work.~~

1 **Debarment Procedures**

2 A. Investigation and Referral

3 1. If a matter has not been investigated by another duly
4 authorized agency or governmental entity, then the
5 Superintendent, or designee, shall designate the Office of
6 Management and Compliance Audits, the Office of the
7 Inspector General, or School Police to promptly investigate
8 and prepare written reports concerning a proposed
9 debarment, and prepare written requests to the Department
10 for the debarment of contractors that may be subject to any
11 of the causes listed above. The investigating office will
12 present evidence that supports the proposed debarment to
13 the Committee.

14 2. The Department shall:

- 15 a. convene and serve as staff to the Committee, and;
16 b. coordinate the debarment hearing.

17 3. The Committee shall consist of the following individuals, or
18 their designees:

- 19 a. one (1) community representative appointed by the
20 Superintendent, to serve for a two (2) year period
21 b. Chief Financial Officer, Financial Services
22 c. Senior Design and Construction Officer, Office of
23 School Facilities
24 d. Deputy Superintendent, School Operations
25 e. Chief Facilities Officer, Office of School Facilities
26 f. Assistant Superintendent, Procurement Management
27 g. Inspections Officer, District Inspections, Operations
28 and Emergency Management

1 B. ~~Notice of Proposed Debarment~~

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3 ~~The Department, on behalf of the Committee, shall issue a notice of~~
4 ~~proposed debarment by certified mail, return receipt requested, or~~
5 ~~hand delivered, and fax, advising the contractor and any specifically~~
6 ~~named affiliates that:~~

7 1. ~~debarment is being considered;~~

8 2. ~~the reasons and causes for the proposed debarment in terms~~
9 ~~sufficient to put the contractor on notice of the conduct or~~
10 ~~transaction(s) upon which it is based;~~

11 3. ~~that a hearing shall be conducted before the Committee on a~~
12 ~~date and time not less than twenty (20) days after service of~~
13 ~~the notice;~~

14 4. ~~that the contractor may be represented by an attorney,~~
15 ~~present documentary evidence, and verbal testimony, and~~
16 ~~cross-examine witnesses presented against it; and~~

17 5. ~~the potential effect of an actual debarment.~~

18 C. ~~Contractor or Subcontractor Defense~~

19
20 ~~The contractor or subcontractor shall reply to the notice of~~
21 ~~debarment with a list of the defenses, to the Office of Compliance~~
22 ~~and Business Services, which the contractor intends to present at~~
23 ~~the hearing, within fourteen (14) days of receipt of the notice.~~

24 D. ~~Discovery~~

25
26 ~~All parties may make a public records request under F.S.~~
27 ~~Chapter 119.~~

28 E. ~~Evidence~~

29
30 ~~Hearsay evidence shall be admissible at the hearing, but shall not~~
31 ~~form the sole basis for initiating a debarment procedure or the sole~~
32 ~~basis of any determination of debarment.~~

1 F. — Procedure for Recording Hearing
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3 The hearing shall be transcribed and recorded by use of a court
4 reporter and at the expense of the Board. Copies of the transcript
5 shall be furnished at the expense and request of the requesting
6 party.

7 **Debarment Committee Decision**

8 A. — Committee Actions

9 1. — In actions based upon a criminal conviction or civil judgment,
10 or in which there is no genuine dispute over material facts,
11 the Committee shall make a decision on the basis of all the
12 undisputed material information in the record, including any
13 undisputed material information submitted by the contractor.

14 2. — Where actions are based on disputed evidence, the Committee
15 shall decide what weight to attach to evidence of record, judge
16 the credibility of witnesses, and base its decision on the
17 preponderance of the evidence standard.

18 B. — In the event that the contractor fails (1) to appear at the debarment
19 hearing or (2) to present competent proof under affirmation of oath
20 through persons with knowledge of the contractor's performance,
21 the contractor shall be presumed to be non responsive and
22 non responsible and subject to debarment.

23 C. — The Committee's decision shall be based on the vote of a majority of
24 the members of the Committee. The Committee's decision shall be
25 made within twenty (20) days after conclusion of the hearing, unless
26 the committee extends this period for good cause.

27 D. — The Committee's decision and findings shall be in writing and shall
28 include the committee's factual findings, the principal causes of
29 debarment as enumerated in this Board policy, identification of the
30 contractor or subcontractor and all affiliates affected by the
31 decision, and the specific term, including the duration, of the
32 debarment.

1 **Notice of Debarment Committee's Decision**

2 A. ~~If the Committee decides to recommend debarment, the Department~~
3 ~~shall give the contractor or subcontractor and any affiliates involved~~
4 ~~written notice by certified mail, return receipt requested, or hand~~
5 ~~delivered, within twenty (20) days of the decision, specifying the~~
6 ~~reasons for debarment and including a copy of the Committee's~~
7 ~~written decision, stating the period of debarment including effective~~
8 ~~dates; and advising that the debarment covers all Board contracts,~~
9 ~~and subcontracts requiring Board consent for construction and for~~
10 ~~the procurement of goods or services, including professional~~
11 ~~services, and the debarment will be recommended for action by the~~
12 ~~Board, through the Superintendent.~~

13 B. ~~If debarment is not recommended by the Committee, the~~
14 ~~Department shall notify the contractor or subcontractor and any~~
15 ~~affiliates involved, by certified mail, return receipt requested, or~~
16 ~~hand delivered, within twenty (20) days of the decision.~~

17 C. ~~All decisions of the Committee shall be final and shall be effective on~~
18 ~~the date of Board approval. A recommendation by the Committee to~~
19 ~~debar may be appealed pursuant to F.S. 120.57.~~

20 **Period of Debarment**

21 A. ~~The period that debarment is imposed shall be in accordance with~~
22 ~~the guidelines. Debarment shall be for a period commensurate with~~
23 ~~the seriousness of the cause(s), and where applicable, within the~~
24 ~~guidelines set forth below, but in no event shall exceed three (3)~~
25 ~~years.~~

26 B. ~~The following guidelines in the period of debarment shall apply~~
27 ~~except where the Committee determines that there are mitigating or~~
28 ~~aggravating circumstances that justify deviation:~~

29 1. ~~for commission of an offense as described in Cause for~~
30 ~~Debarment A. 1., three (3) years;~~

31 2. ~~for commission of an offense as described in Cause for~~
32 ~~Debarment A. 2., three (3) years;~~

- 1 3. ~~for commission of an offense as described in Cause for~~
2 ~~Debarment A. 3., three (3) years;~~
- 3 4. ~~for commission of an offense as described in Cause for~~
4 ~~Debarment A. 4., three (3) years;~~
- 5 5. ~~for commission of an offense as described in Cause for~~
6 ~~Debarment A. 5., up to three (3) years;~~
- 7 6. ~~for commission of an offense as described in Cause for~~
8 ~~Debarment A. 6., up to three (3) years;~~
- 9 7. ~~for commission of an offense as described in Cause for~~
10 ~~Debarment B. 1. or 2., up to three (3) years;~~
- 11 8. ~~for commission of an offense as described in Cause for~~
12 ~~Debarment B. 3., up to three (3) years.~~
- 13 C. ~~The period of debarment may be reduced, upon the contractor's~~
14 ~~written request to the Department for the following reasons:~~
- 15 1. ~~newly discovered material evidence;~~
- 16 2. ~~reversal of the conviction or civil judgment upon which the~~
17 ~~debarment was based;~~
- 18 3. ~~bona fide change in ownership or management;~~
- 19 4. ~~elimination of other causes for which the debarment was~~
20 ~~imposed; or~~
- 21 5. ~~other good cause shown that the Committee deems~~
22 ~~appropriate and in the best interest of the Board as~~
23 ~~documented by the Committee.~~
- 24 D. ~~The debarred contractor's written request shall contain the reasons~~
25 ~~for requesting a reduction in the debarment period. The Committee~~
26 ~~shall have thirty (30) days from receipt of such request to submit a~~
27 ~~written response, thereto. The decision of the Committee regarding~~
28 ~~a request made under this subsection is final.~~

1 **Scope of Debarment**

2 A. ~~The fraudulent, criminal or other seriously improper conduct of any~~
3 ~~officer, director, shareholder, partner, agent, employee, or other~~
4 ~~individual associated with a contractor may be imputed to the~~
5 ~~contractor when the conduct occurred in connection with the~~
6 ~~individual's performance of duties for or on behalf of the contractor,~~
7 ~~or with the contractor's knowledge, approval, or acquiescence. The~~
8 ~~contractor's acceptance of the benefits derived from the conduct~~
9 ~~may be evidence of such knowledge, approval or acquiescence.~~

10 B. ~~The fraudulent, criminal, or other seriously improper conduct of a~~
11 ~~contractor may be imputed to any officer, director, shareholder,~~
12 ~~partner, employee, or other individual associated with the contractor~~
13 ~~who participated in, knew of, or had reason to know of the~~
14 ~~contractor's conduct.~~

15 C. ~~The fraudulent, criminal or other seriously improper conduct of any~~
16 ~~subcontractor associated with a contractor may be imputed to the~~
17 ~~contractor when the conduct occurred in connection with the~~
18 ~~subcontractor's performance of duties for or on behalf of the~~
19 ~~contractor and the contractor had knowledge of, approved of, or~~
20 ~~acquiesced in this conduct. The contractor's acceptance of benefits~~
21 ~~derived from the conduct shall be evidence of such knowledge,~~
22 ~~approval or acquiescence.~~

23 D. ~~The fraudulent, criminal, or other seriously improper conduct of~~
24 ~~one (1) contractor participating in a joint venture or similar~~
25 ~~arrangement may be imputed to other participating contractors if~~
26 ~~the conduct occurred for or on behalf of the joint venture or similar~~
27 ~~arrangement, or with the knowledge, approval, or acquiescence of~~
28 ~~these contractors. Acceptance of the benefits derived from the~~
29 ~~conduct may be evidence of such knowledge, approval or~~
30 ~~acquiescence.~~

31 F.S. 287.133, 1001.41(1)(2), 1001.42(25), 1001.43(10)

1 PREQUALIFICATION OF CONTRACTORS FOR
2 EDUCATIONAL FACILITIES CONSTRUCTION

3 A. Introduction

4 F.S. 1013.46, Section 423 of the Florida Building Code, and State
5 Requirements for Educational Facilities (SREF), ~~(2007 SREF)~~ require
6 school boards to prequalify contractors as eligible to bid on
7 construction or capital improvement projects. This policy
8 establishes procedures and criteria for prequalifying responsible
9 contractors on school construction projects for the School Board. It
10 does not restrict competition, prevent the submission of a bid, or
11 prohibit the consideration of a bid submitted by a prequalified
12 contractor, nor does the rule supersede the Board's
13 Minority/Women Business Development Program.

14 B. Definitions

- 15 1. District Administrator - ~~District Director, Department of A/E~~
16 ~~Selection, Negotiations—Contractor Prequalification Office of~~
17 Economic Opportunity (OEO) Economic Development Officer
18 or designee.
- 19 2. Affiliate - business concerns, organizations, or individuals
20 that directly or indirectly, (a) is controlled by another entity or
21 either controls or has the power to control the other, or (b) a
22 third party controls or has the power to control both. Indicia
23 of control include, but are not limited to, interlocking
24 management or ownership, identity of interests among family
25 members, shared facilities and equipment, common use of
26 employees, or a business entity that has been organized by a
27 delinquent entity, individual, or affiliate, following a
28 contractor being declared delinquent that has the same or
29 similar management, ownership, or principal employees as
30 the delinquent contractor.
- 31 3. Construction Contractor - the company that is qualified by a
32 contractor, or the qualifier who holds a contractor's license.

- 1 4. Contractor - the person, firm, or corporation that is
2 authorized to do business in the State of Florida and that is
3 properly licensed or registered for the work to be performed
4 with whom a contract may be made for the performance of
5 Board work.
- 6 5. Contractor Disciplinary Review Committee (CDRC) – the
7 committee established under Policy 6320.04, Contractor
8 Discipline, that is responsible for making recommendations
9 for contractor suspension, prequalification certificate
10 suspension and revocation, debarment, and other disciplinary
11 actions. } Revised
12
- 13 56. Contractor Prequalification Appeals Committee (CPAC) - the
14 committee established under this policy that is responsible
15 for hearing all appeal requests from companies that are
16 denied contractor prequalification, ~~or deemed delinquent and~~
17 ~~results in contractors' certificates being suspended or~~
18 ~~revoked.~~
- 19 67. Contractor Prequalification Review Committee (CPRC) - the
20 committee established under this policy that is responsible
21 for reviewing and evaluating Contractor Prequalification
22 Applications determining the eligibility, thereof, and
23 recommending that contractors be prequalified, or not, to bid
24 on construction projects of a particular scope, ~~and~~ type, and
25 with a dollar value. value that does not exceed a certain dollar
26 volume.
- 27 78. Joint Venture - an association of two (2) or more business
28 entities to carry out a single business enterprise for the
29 purpose of combining their property, capital, efforts, skills,
30 and knowledge into a single entity.
- 31 89. Statement of Contractor's Qualification - the Contractor
32 Prequalification Application.
- 33 910. Surety Letter of Intent - a statement from a surety, certifying
34 the surety will issue a bond to a contractor for projects that
35 are valued up to the limits for which the company is seeking
36 contractor prequalification.

37 C. Responsibilities and Duties

1 The duties and responsibilities of District staff, ~~and organizations,~~
2 and committees, as stated in the Procedures Manual which is
3 incorporated by reference into this policy, as it relates to contractor
4 prequalification are as follows:

- 5 1. The Superintendent is authorized and directed to execute,
6 and to establish such administrative procedures, as
7 necessary, ~~or to~~ carry out the Board's policies regarding
8 contractor prequalification.
- 9 2. The District Administrator is responsible for the overall
10 implementation, reporting, and monitoring of contractor
11 prequalification activities, as well as serving as staff to the
12 CPAC and CPRC.
- 13 3. The Contractor Prequalification Administrator is responsible
14 for obtaining complete Contractor Prequalification
15 Applications, and all other information that is deemed
16 necessary to determine whether an applicant meets the
17 criteria for eligibility as set forth in SREF Chapter 4.1 and
18 relevant Board Policy. is eligible for contractor
19 prequalification.
- 20 21 4. The Contractor Prequalification Review Committee (CPRC) is
22 responsible for evaluating applications for contractor
23 prequalification and then recommending acceptance or
24 rejection. The CPRC shall review completed new applications,
25 renewal application requests for single bid limit revisions and
26 adjustments to aggregate bid limits. The District
27 Administrator will forward the committee's decision to the
28 Superintendent, who shall forward it to the Board for
29 ratification. The Board shall act upon the recommendation to
30 accept or reject a company's application within sixty (60) days
31 after a complete application is received by the District, and all
32 deliberation will be captured in minutes or by audio recording
33 and will be transmitted to the Board and Superintendent and
34 made available to all other interested parties, as requested.
35 The CPRC will recommend that companies be prequalified to
36 bid projects of a particular type, dollar value, and scope. The
37 committee shall be composed of individuals from District
38 offices and outside organizations, and/or their designees.
39 Voting members shall be rotated every two (2) calendar years,
40 and resumes for organizational representatives will be
41 collected as directed by the Superintendent. The CPRC shall
42 select one (1) of its members to serve as chair for a period of
43 two (2) years. The chair shall not serve more than two
44 consecutive years. When there is a tie vote among the voting
45 members, the OEO representative shall non-voting member

1 | ~~shall~~ cast a vote and break the tie. The CPRC shall be
2 | composed of the following or their designee:

- 3 | a. one (1) representative from the construction industry
4 | or an architectural/engineering organization that are
5 | not, currently or have not within the past five (5) years,
6 | contracted with the Board;
- 7 | b. one (1) representative from PTA/PTSA;
- 8 | c. one (1) representative from the community-at-large,
9 | appointed by the Superintendent;
- 10 | d. one (1) representative from Facilities Operations,
11 | Maintenance;
- 12 | e. one (1) representative from School Operations;
- 13 | f. two (2) representatives from Office of School Facilities;
14 | and
- 15 | g. one (1) representative from the Office of Management
16 | and Compliance Audits (non-voting); and
- 17 | h. one(1) representative from the Office of Procurement
18 | Management Services (non-voting).

20 | ~~The Superintendent shall appoint one (1) of the members to~~
21 | ~~serve as chair.~~

22 | 5. Contractor Prequalification Appeals Committee (CPAC) is
23 | responsible for hearing all appeals from contractors that are
24 | denied contractor prequalification certification by the CPRC.
25 | The CPAC is authorized to recommend that the Board uphold
26 | or overturn a decision to deny a company's prequalification,
27 | after a hearing and upon consideration of the applicant's
28 | application and any supporting documents. The CPAC shall
29 | be composed of individuals from the following District offices,
30 | and organizations as selected by the Superintendent, or their
31 | designees:

- 32 | a. one (1) representative from a construction or an
33 | architectural engineering organization that is not
34 | currently nor has within the past five (5) years
35 | contracted with the Board, and who is not currently
36 | serving as a member or designee on the CPRC;

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- 1 |
2 | b. one (1) representative from the Office of
 Superintendent;
3 c. Deputy Superintendent, School Operations;
4 d. Chief Financial Officer, Financial Services;

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1 e. Inspections Officer, District Inspections, Operations
2 and Emergency Management; and

3 f. Chief Auditor, Office of Management and Compliance
4 Audits (non-voting).

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

11 **Contractor Prequalification Criteria**

12 A. Prequalified contractors must be capable of fulfilling specific project
13 requirements for bonding, insurance, staffing and completion dates.
14 No bid, proposal, or submittal for a school construction project shall
15 be accepted from a contractor that does not have a valid contractor
16 prequalification certificate nor shall any bid, proposal, or submittal
17 be accepted from a contractor whose prequalification certificate has
18 been revoked or suspended. The contractor prequalification criteria
19 apply to all applicants, regardless of the size, scope, or type of
20 projects for which they seek certification to bid.

21 B. Each entity, whether a company, joint venture, or person that
22 requests prequalification certification must submit a completed
23 Contractor Prequalification Application. Pursuant to School Board
24 policy on performance and payment security, declining a bid award,
25 and bonding company qualifications, ~~and in accordance with the~~
26 ~~current applicable Florida law~~ 100% performance and payment
27 security is required in accordance with Florida statute. on bids over
28 \$300,000. The disciplines for contractor prequalification shall be
29 provided by the District Administrator. All construction service
30 contractors shall be prequalified by the Board on the basis of the
31 following criteria:

32 1. Proof that the contractor holds a valid Florida contractor's
33 license, as defined by the Florida Department of Business and
34 Professional Regulation, that authorizes the contractor to
35 supervise the work within the scope of a construction project.
36 If a state license does not exist for a particular discipline, a
37 local license may be considered depending on the discipline
38 being considered.

- 1 2. Evidence that the applicant has financial resources to start
2 up and follow through on projects and to respond to damages
3 in case of default. Evidence must be provided in the form of
4 written verification of bonding capacity that equals or exceeds
5 the amount of any project for which the contractor seeks
6 prequalification. The written verification must be submitted
7 by a licensed surety company that is rated excellent “A-” “A-”
8 or better in the current A.M. Best Guide, or as may be
9 amended by Florida statute and/or SREF. The surety must
10 be qualified to do business within the State of Florida and the
11 A.M. Best rating must be included on the Surety Letter of
12 Intent. In the absence of such written verification, the Board
13 may require any applicant to submit an audited financial
14 statements, for a reporting period that ended not more than
15 twelve (12) months prior to the date of the company’s
16 application date, to validate its (applicant’s) financial ability to
17 perform a project(s) and to respond to damages in the event of
18 default.
- 19 3. Evidence of experience with construction techniques, trade
20 standards, quality workmanship, project scheduling, cost
21 control, management of projects, and building codes for
22 similar projects as shown by the successful completion of at
23 least two (2) projects, within the past five (5) years, that are
24 similar to the size or scope of the largest project that the
25 company is requesting prequalification to bid. For the
26 purpose of determining experience for an applicant company,
27 the experience of the company or that of the applicant
28 company’s primary or secondary qualifier, may be considered,
29 so long as the applicant presents evidence of successful
30 completion of two (2) projects as described herein.
- 31 4. Evidence of satisfactory resolution of claims and litigation
32 that was initiated by or against the contractor which was
33 asserted on a project of the same or similar size within the
34 five (5) years preceding the submission of the application.
35 Any claim against a contractor shall be deemed to have been
36 satisfactorily resolved if final judgment is rendered in favor of
37 the contractor or any final judgment rendered against the
38 contractor is satisfied within ninety (90) days of the date the
39 judgment becomes final.

5. Type of work for which the contractor is licensed.
6. The contractor's application for prequalification shall in all respects meet the requirements set forth in Subsection 4.1(a) of SREF, and as may be amended.
7. A contractor that has been denied Contractor Prequalification Certification may not re-apply for a period of six (6) months after the written notice of denial.

Application Requirements

- A. Each entity that requests prequalification certification must do so by submitting a complete Contractor Prequalification Application ("Statement of Contractor's Qualifications").
- B. When two (2) or more prequalified contractors wish to combine their assets for a specific project, they each must be prequalified and must file an Affidavit of Joint Venture on a Board-prescribed form and meet any and all other requirements, pursuant to Florida statutes for joint ventures. Prequalification certificates will be issued to joint ventures for a specific project once they have complied with all requirements for prequalification. The District Administrator may consider teaming agreements as referenced in the Procedure Manual.
- C. The following information shall be included in Contractor Prequalification Applications:
 1. Information that demonstrates the applicant's competence, past performance, experience, financial resources, and capability, including a Public Entity Crime Statement and references.
 2. Evidence that the contractor has the financial ability to successfully complete Board construction work of a particular scope and complexity. In order to demonstrate that the company is financially capable of successfully completing Board work, applicants ~~may~~ shall provide either:
 - a. ~~an~~ audited financial statements on the company that includes an income statement, balance sheet, statement of cash flows, and all schedules and notes, for a reporting period that ended not more than twelve

(12) months prior to the date of the company's application date; or

b. a Surety Letter of Intent to verify that in the event the contractor successfully bids Board work the surety will issue the contractor a performance and payment bond for the work.

The maximum bid limits for a prequalified contractor will be determined by the contractor's bonding capacity or ten (10) times the contractor's net quick assets as determined from the contractor's audited financial statements.

3. Information about the organization, ownership, and management of the applicant company.

4. Information regarding all state and local licenses that are held by the applicant company.

5. Information related to projects that the applicant company has completed within the past five (5) years. The information shall include, but not limited to, project dates, delivery methods, locations, construction costs, scope, contract and actual completion dates as well, as whether there were delays and whether liquidated damages were assessed against the applicant.

6. Information that demonstrates that the applicant company has the insurance that is required to perform Board work, including current worker's compensation as well as public liability and property damage insurance.

7. Information regarding all claims and/or litigation to which the company has been a party for the past five (5) years, including an explanation of each. Claims or litigation that were or have been initiated by the contractor to protect the contractor's legal rights shall not be used as a basis for rejecting the contractor's application, unless the contractor was not the prevailing party.

8. A notarized affidavit that attests to the completeness and accuracy of the information that is included in a Contractor Prequalification Application. The affidavit shall be attested to and signed by an authorized officer, owner, or agent of the company, as appropriate, and shall be notarized.

1 | 9. In the event the ~~office~~-OEO finds an application is incomplete
2 or that it contains inaccurate or inadequate information, the
3 office shall request in writing that the company provide the
4 information within ten (10) working days and the company
5 must comply with the request or the company's application
6 will be denied.

7 10. Pursuant to F.S. 287.133(2)(a), a person or affiliate who has
8 been placed on the convicted vendor list, following a
9 conviction for a public entity crime may not submit a bid,
10 proposal, or reply on a contract to provide any goods and
11 services to a public entity; may not submit a bid, proposal, or
12 reply on a contract with a public entity for the construction or
13 repair of a public building or public work; may not submit
14 bids, proposals, or replies on leases of real property to a
15 public entity; may not be awarded or perform work as a
16 contractor, supplier, subcontractor, or consultant under a
17 contract with any public entity; and may not transact
18 business with any public entity in excess of the threshold
19 amount provided in F.S. 287.017, for Category Two for a
20 period of thirty-six (36) months following from the date of
21 being placed on the convicted vendor list.

22 11. Prequalified Contractors shall notify the Contractor
23 Prequalification Administrator within fifteen (15) days and
24 provide a notarized statement whenever a change occurs in
25 ownership, management or the financial conditions of the
26 company. Failure to comply or any misrepresentation(s) shall
27 be grounds for revoking the company's prequalification
28 certificate or subject the company to any other penalties that
29 are provided for in Board policies.

30 **Application Review Process**

31 Specific details (dates, print screens, etc.) regarding information that is collected
32 through the application review verification process will be noted in/or attached to
33 each applicant's file. In addition, reports, memoranda, and other documentation
34 (including, but not limited to litigation/claims reports and project evaluations) will
35 also be maintained in each applicant's file.

1 **Certificates**

2 The Board shall issue contractors that are granted contractor prequalification
3 certification and renewal certificates that are valid for one (1) year or that are project
4 specific. Contractor Prequalification Certificates shall include:

5 A. A statement that a contractor is authorized to bid for projects during
6 a specific time period.

7 B. A statement establishing the maximum dollar values (single and
8 aggregate) of work that a contractor will be permitted to have under
9 contract with the Board at any one time.

10 C. A statement establishing the maximum dollar value of each
11 individual project that a contractor will be permitted to have under
12 contract with the Board at any one time. The M-DCPS single bid
13 limit maximum value of each project may be up to twice the value
14 of the largest project that was previously completed or written
15 verification of bonding capacity equal to the single limit. ~~but~~ This
16 shall not exceed the contractor's aggregate bonding capacity or ten
17 (10) times the net quick assets.

18 D. A statement establishing the type of work that a contractor will be
19 permitted to provide.

20 E. The expiration date of the contractor's prequalification certificate.

21 **Contractor Prequalification Certification Renewal**

22 A. Application of the Renewal Process

23 1. The contractor prequalification renewal process is to
24 substantiate whether a prequalified contractor remains
25 eligible to bid on Board construction projects. A prequalified
26 contractor may apply to renew its certification if its
27 certification is current, and no significant changes have
28 occurred in the control, management, or ownership of the
29 company. A contractor, whose certificate has expired, must
30 re-apply, (as if the contractor had not been prequalified by
31 the Board). The contractor prequalification renewal process
32 does not apply to certificates that are issued for a specific
33 project.

1 2. The Superintendent may renew prequalified contractor's
2 certifications. Eligible contractors will be issued a renewal
3 certificate valid for one (1) year.

4 B. Prequalification Renewal Notice

5 1. At least forty-five (45) days before prequalification certificates
6 expire the Contractor Prequalification Administrator will
7 notify contractors of imminent expirations and of the need to
8 renew their certification. As provided for in F.S. 120.60(4)
9 Licensing, when a prequalified contractor makes timely and
10 sufficient application for the renewal of a prequalification
11 certificate, the existing certificate shall not expire until the
12 contractor's application for renewal has been finally acted
13 upon. If a renewal application is submitted after the
14 expiration date, the applicant must submit a new application.

15 2. A contractor who has been declared delinquent and its
16 certification has been suspended or revoked, shall not apply
17 for renewal during the suspension or the revocation period.

18 C. Renewal Form and Documentation

19 In order for contractors to renew their prequalification certificates,
20 contractors shall submit the following:

- 21 1. A Contractor Prequalification Renewal Application.
- 22 2. Financial statements or written verification of bonding
23 capacity shall be updated, annually. Failure to submit a
24 current audited financial statement or verification of bonding
25 capacity, after at least thirty (30) days written notice by the
26 District ~~administrator~~ Administrator shall automatically
27 revoke a contractor's prequalification certificate.

1 D. Requesting Changes to Prequalification Status
2

3 The Board may allow prequalified contractors to request the revision
4 of their prequalification status at any time that they believe the
5 dollar volume of work under contract, or the size and complexity of
6 projects should be increased if experience, staff size, staff
7 qualifications, and other pertinent data justify the action. All single
8 bid limit increases~~revisions~~ require Board approval. When there are
9 changes to the aggregate bid limit (increase or decrease), this change
10 shall be disclosed to the Board.

11 **Delinquency**

12 A. A District administrator, project manager, architect, his/her
13 supervisor, or the project architect/engineer, with the approval of at
14 least the Chief Facilities Officer (or his/her designee) may, for cause,
15 recommend initiating delinquency proceedings against a contractor,
16 that may result in the suspension or revocation of the contractor's
17 prequalification certificate. The request may be made at anytime
18 and must be in writing to the District administrator. Upon receipt of
19 a recommendation, the District administrator will forward the
20 request and supporting information to the CPRC. Should the
21 committee determine that there is sufficient evidence to support
22 declaring a contractor delinquent, it will recommend that the
23 Superintendent declare the contractor delinquent pursuant to
24 F.S. Chapter 1013.

25 B. Information indicating that a contractor who has been prequalified
26 is delinquent as described below may be presented at a hearing
27 before the CPRC. Once information on the issue of delinquency is
28 presented by District Administration~~or~~, the contractor will have an
29 opportunity to respond. Upon conclusion of the hearing, the CPRC
30 will render a decision on the issue of delinquency by finding one of
31 the following:

- 32 1. that a preponderance of the evidence supports a finding of
33 delinquency;
- 34 2. that the evidence is insufficient to declare the contractor
35 delinquent; or
- 36 3. that the contractor was not delinquent.

37 C. The decision to declare a contractor delinquent may only be made by
38 the Superintendent and must be ratified by the Board at its next
39 regular meeting following such decision by the Superintendent.
40 Should a contractor be determined to be delinquent, after notice and
41 an opportunity to a fair (due process) hearing, the Contractor

1 Prequalification Administrator shall notify the contractor and the
2 contractor's surety, in writing, that the contractor is disqualified
3 from bidding work with the Board as long as the delinquent status
4 exists. A delinquent condition may be determined to be in effect
5 when one (1) or more of the following conditions occur without
6 justifiable cause:

- 7 1. Substantial or repeated failure to comply with contract
8 documents after written notice of such non-compliance.
- 9 2. Substantial or repeated failure to provide qualified
10 supervision and coordination of subcontractors' work after
11 written notice of such failure.
- 12 3. Substantial deviation from project time schedules after
13 written notice of non-compliance.
- 14 4. Substantial or repeated failure to pay subcontractors after the
15 Board has paid the contractor for the work performed by the
16 subcontractors and in accordance with approved requisitions
17 for payment.
- 18 5. Substantial or repeated failure to provide quality
19 workmanship that is compatible with trade standards for the
20 community (industry), after written notice of such failure.
- 21 6. Substantial or repeated failure to comply with warranty
22 requirements of previous contracts after written notice of
23 such failure.
- 24 7. Failure to maintain the required insurance coverage after
25 written notice of such failure.

26 D. In order to support a decision to recommend that a contractor be
27 declared delinquent or that the CPRC recommend suspending or
28 revoking a contractor's prequalification certification due to
29 delinquency, the CPRC will be provided information regarding the
30 contractor's performance. The information will be collected by
31 School Facilities from various departments, and may include, but
32 not be limited to, the following:

- 33 1. Any pertinent inspection and plan reviews that were
34 performed either internally and/or externally.
- 35 2. Any pertinent punch list.

- 1 3. Information related to a contractor's failure to meet
2 schedules.

- 3 4. Information related to a contractor's failure to meet quality
4 standards, as determined by the District's system for
5 evaluating construction quality.

- 6 5. Information related to a contractor's failure to comply with
7 contractual requirements, including warranty issues.

- 8 6. Fully executed and completed evaluations.

9
10
11 **Suspension or Revocation**

12 The Board may, for good cause, suspend a contractor for a specified period of time
13 or revoke the contractor's prequalification certificate in accordance with Policy
14 6320.04. Suspension or revocation of a contractor's prequalification certificate will
15 render a contractor ineligible to bid future work. ~~Causes for suspending or revoking~~
16 ~~a contractor's prequalification certificate shall include, but not limited to, one or~~
17 ~~more of the following:~~

18
19 ~~A. The contractor includes inaccurate or misleading statements in the~~
20 ~~Contractor Prequalification Application ("Statement of Contractor's Qualification").~~

21
22 ~~B. The contractor is declared in default by the Board.~~

23
24 ~~C. The contractor is adjudged to be bankrupt.~~

25
26 ~~D. The contractor's performance, in connection with contract work, becomes~~
27 ~~unsatisfactory to the Board based on the Board asserting and recovering liquidated~~
28 ~~damages in an action against the contractor.~~

29
30 ~~E. The contractor's payment record, in connection with the contract work,~~
31 ~~becomes unsatisfactory to the Board based on the contractor's failure to comply with~~
32 ~~the Construction Contract Prompt Payment Law (F.S. 715.12).~~

33
34 ~~F. The contractor becomes delinquent on a construction project pursuant to~~
35 ~~Delinquency above.~~

36
37 ~~G. The contractor's license is suspended or revoked.~~

38
39 ~~H. The contractor no longer meets the uniform prequalification criteria~~
40 ~~established in Contractor Prequalification Criteria above.~~

41
42 **Appeal**
43

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~~A contractor whose application has been rejected/denied or whose prequalification certificate has been suspended or revoked by the Board will be notified of the Board's decision, in writing, by return receipt requested, or any acceptable form of electronic transmission. The notice will include a summary of the facts upon which the denial, delinquency, suspension, or revocation is based and a statement of appeal rights. The contractor shall be given the benefit of reconsideration and appeal as follows:~~

~~A. The aggrieved contractor may, within ten (10) calendar days after receiving written notification of such action, request reconsideration in writing. The contractor may submit additional information at the time of the appeal. The written request should be mailed, certified return receipt requested, to the Clerk of the Board, Miami Dade County Public Schools, 1450 N. E. Second Avenue, Miami, Florida 33132. Failure to timely file a written request for reconsideration appealing the rejection or denial of an application for prequalification or the suspension or revocation of a certificate shall constitute a waiver of a right to appeal the Board's decision. All appeals submitted pursuant to this section will be heard by the CPAC. The committee will submit a Recommended Order for the Board's consideration.~~

~~B. The Board shall act upon a contractor's request within thirty (30) calendar days after the filing and shall notify the contractor of its action to adhere to, modify, or reverse its original action. The Board may require additional information to justify the reconsideration.~~

~~C. An applicant that is denied prequalification, or that has been declared delinquent and whose prequalification certification has been suspended or revoked is entitled to an administrative hearing, pursuant to F.S. 120.569 and F.S. 120.57. A hearing may be requested in writing in accordance with Board policy on adjudicatory proceedings. This provision supersedes and governs over any contrary provision in this rule.~~

~~D. If the applicant fails to submit a written request for an appeal, within the prescribed deadline, following receipt of the Notice of Denial, the denial shall be conclusive and the applicant shall be deemed to have waived its right to appeal the Board's decision.~~

Effects of Suspension and Revocation

A. Future Contracts

~~Contractors whose prequalification certificates have been suspended or revoked are excluded from receiving contracts, and no District department shall solicit offers from, award contracts to, or consent to subcontract with these contractors, unless the Superintendent, in order to avoid an immediate and serious danger to the public health, safety or welfare, determines that an emergency exists that justifies such action, and obtains approval from the Board, at its next regularly scheduled meeting.~~

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~~B. Current Contracts~~

~~1. All proposed Board contracts for construction, shall reference this Board rule and that delinquency may constitute grounds for rendering a contractor ineligible to bid if the Board suspends or revokes a contractor's prequalification certification.~~

~~2. Current Board contracts may not be renewed or otherwise extended or consent given to subcontract with suspended or revoked contractors, unless the Superintendent, in order to avoid an immediate and serious danger to the public health, safety or welfare, determines that an emergency exists that justifies the renewal or extension, or approves an extension due to delay or for reasons beyond the contractor's control, and such action is approved by the Board at its next regularly scheduled meeting.~~

~~3. No further work shall be awarded to a contractor whose prequalification certificate has been suspended or revoked in connection with a term or miscellaneous construction contract, or a term or miscellaneous contract for services, including professional services, or similar contract, where the work is divided into separate discrete groups and the Board's refusal or denial of further work under the contract will not result in a breach of such contract.~~

~~C. Subcontracting Restrictions~~

~~When a contractor whose prequalification certificate has been suspended or revoked is proposed as a subcontractor on a Board project, the department shall not consent to subcontract with such contractor unless the Superintendent, in order to avoid an immediate and serious danger to the public health, safety or welfare, determines that an emergency exists that justifies such consent, and the Board approves such decision at its next regularly scheduled meeting.~~

Suspended and Revoked Contractors List

~~A. The Department of A/E Selection, Negotiations & Contractor Prequalification is charged with the following as it relates to maintaining and disseminating information on contractors whose prequalification certification have been revoked or suspended.~~

~~1. compiling and maintaining a current consolidated list ("List") of all contractors that have been declared delinquent which shall be available for public inspection and dissemination at the Contractor Prequalification Administrator's Office;~~

1
2 ~~2. — revising and distributing the list and issuing supplements to the Board, the~~
3 ~~Superintendent, and to all District departments;~~

4
5 ~~3. — maintaining records relating to each declaration of delinquency, suspension,~~
6 ~~and revocation, in accordance with mandated retention schedules;~~

7
8 ~~4. — establishing procedures to provide for the effective use of the list including~~
9 ~~the internal distribution, thereof, to ensure that departments do not solicit offers~~
10 ~~from or recommend awarding contracts to contractors that are on the list, and~~

11
12 ~~5. — responding to inquiries concerning contractors that are listed on the~~
13 ~~Suspended and Revoked Contractors List.~~

14
15 ~~B. — The Suspended and Revoked Contractors List shall include the following~~
16 ~~information:~~

17
18 ~~1. — The name and address of all suspended and revoked contractors.~~

19
20 ~~2. — The license or registration number for the contractors whose prequalification~~
21 ~~certificate has been suspended or revoked.~~

22
23 ~~3. — The company's qualifying agent's name.~~

24
25 ~~4. — The cause for suspending or revoking a contractor's prequalification~~
26 ~~certificate or as required by other statutory or regulatory authority.~~

27
28 ~~5. — The effects of the suspension or revocation.~~

29
30 ~~6. — The effective dates of the suspension or revocation.~~

31 F.S. 120.569, 120.57, 287.017, 287.133(2)(a), 489.105(3)(4)(5)(6)(7)(11)

32 F.S. 489.113, 489.522, 715.12, 1001.41(1)(2), 1001.42(25), 1001.43(10)

33 F.S. 1013.46

34 F.A.C. Chapter 6-2

35 Section 4.1(5) and 4.1, SREF (2007)

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 in an effort to eliminate disparities in the utilization of
19 M/WBE firms such as bond waivers, establishing insurance requirements that
20 provided appropriate protection but did not discourage M/WBE firms from
21 competing for contracts, enhancing technical assistance programs, and increasing
22 outreach efforts to M/WBEs.

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

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

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

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

- 28 A. Prime Construction Contracts (African-American, Asian-American,
29 Native-American, and Non-Minority Women)
- 30 B. Construction Subcontracts (African-American, Asian-American, and
31 Native-American)

1 C. Prime Design and Construction-Related Professional Services
2 (African-American, Asian-American, Native-American, and
3 Non-Minority Women)

4 D. Design and Construction-Related Professional Services Subcontracts
5 (African-American, Asian-American, Native-American, and
6 Non-Minority Women)

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

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

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

18 C. There are significant disparities for entry into self-employment for
19 African-Americans, Hispanic Americans, Asian Americans, and
20 Non-minority Women.

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

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

14 F. The implementation of numerous race and gender-neutral
15 assistance efforts and programs throughout the relevant market
16 over the past two (2) decades have been unsuccessful in eliminating
17 these persistent and significant disparities in the District's ready,
18 willing and able M/WBE firms. The efforts have included technical
19 assistance, loan guarantee assistance, bonding assistance, business
20 development assistance, financial assistance, and mentoring
21 programs.

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

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

1 The Board has further concluded that race- and gender-neutral remedies, in and of
2 themselves, may not be sufficient to eliminate the effects of the identified forms of
3 discrimination, and that a narrowly tailored combination of race- and
4 gender-neutral and race and gender-conscious remedies are warranted.
5 Accordingly, this policy specifically authorizes the establishment of a narrowly
6 tailored combination of race and gender-neutral and race and gender-conscious
7 programs that address discrimination in the Board's procurement processes and
8 business operations.

9 **General Policy**

- 10 A. The District shall resort to the use of race- and gender-conscious
11 means for addressing disparities only when it is apparent that the
12 use of neutral means alone will likely be insufficient to remedy the
13 effects of identified discrimination. The determination of when to
14 use race conscious measures will be made on a project-by-project or
15 contract-by-contract basis pursuant to this policy.
- 16 B. Having found that it has a compelling governmental interest to
17 remedy the effects of identified discrimination in the procurement of
18 construction and professional services contracts, the Board directs
19 and authorizes the Superintendent to establish procedures and
20 implement remedies that are consistent with this policy and are
21 narrowly tailored to the findings and conclusions of the Disparity
22 Study.
- 23 C. In addition, the Board shall take all necessary, reasonable, and legal
24 action to prevent discrimination and to ensure that all businesses,
25 including M/WBEs, are afforded the maximum equitable
26 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 the Board's commercial
10 anti-discrimination provisions in Policy 6465 and Policy 6320
11 to ensure that District employees and companies doing
12 business with the Board do not discriminate in the
13 solicitation, selection, or treatment of subcontractors,
14 suppliers, vendors, or commercial customers on race, color,
15 ethnic or national origin, religion, marital status, disability,
16 genetic information, age, political beliefs, sexual orientation,
17 gender, gender identification, social and family background,
18 linguistic preference, pregnancy, and any other legally
19 prohibited basis;
- 20 3. developing additional Board policies, administrative
21 programs, procedures and affirmative procurement initiatives
22 consistent with Policy 6320.06 to directly address inequities
23 and disparities related to the underutilization of M/WBE
24 subcontractors on Board construction projects;
- 25 4. 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 SMBEs and M/WBE firms in the procurement
31 and contracting process.

- 1 5. evaluating the levels of availability and utilization in SMBE
2 and M/WBE participation and adjusting the implementation
3 of this policy according to changing needs and circumstances
4 to ensure that appropriate utilization objectives are
5 established and maintained.

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

7 The OEO shall administer and implement the SMBE and M/WBE Business
8 Enterprise Program including certification, technical assistance, and compliance,
9 and:

- 10 A. enforce the Board’s commercial anti-discrimination Policy 6465 in
11 the award of contracts for construction projects, procurement of
12 goods and services, and professional services and implement the
13 measures developed pursuant to Policy 6320.06 to increase
14 diversity, equity and inclusion in business practices and operations;
- 15 B. provide maximum legally permissible opportunities for SMBEs and
16 M/WBEs to participate in the award and performance of all Board
17 contracts, including construction, professional services including
18 A/E and non-A/E, and goods and services;
- 19 C. monitor, track, and certify small/micro businesses and
20 minority/women business enterprises;
- 21 D. to develop procedures and processes to enforce compliance with this
22 policy for all Board vendors, including construction, professional
23 A/E and non-A/E services, and goods and services and when
24 applicable, to recommend appropriate sanctions;
- 25 E. develop and implement necessary administrative procedures to fully
26 implement these programs;

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

- 1 O. monitor local workforce development initiatives and/or goals
2 through community based agreements with reputable and reliable
3 referral agencies for Board construction, professional A/E and
4 non-A/E services, and goods and services.

5 **Small/Micro and Minority/Women-Owned Business Enterprise Advisory**
6 **Committee**

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

- 9 A. provide guidance on the implementation of the SMBE and MWBE
10 Programs and to promote the participation and use of SBEs/MBEs
11 and M/WBEs in all procurement activities of the Board;
- 12 B. identify and evaluate issues related to economic opportunities within
13 the Board for small, micro and minority/women owned businesses;
- 14 C. provide recommendations to the Board to improve the SMBE/MWBE
15 programs;
- 16 D. annually evaluate and report to the Board on the effectiveness of the
17 SMBE/MWBE programs in increasing minority and women owned
18 business participation in the Board's procurement process;
- 19 E. monitor any disparity study that may be conducted by the Board
20 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.

- 1 C. **Award** – final selection of a bidder or offer or for a specified
2 contract.
- 3 D. **Award Amount** – the dollar value of the contract when awarded.
- 4 E. **Bid** – quotation, proposal, letter of interest or offer by any bidder in
5 response to any kind of invitation, solicitation, request or public
6 announcement to submit such quotation, proposal, letter of interest
7 or offer for a contract.
- 8 F. **Bidder** – any person, partnership, corporation or other business
9 entity that submits a bid or proposal.
- 10 G. **Certification** – process by which the OEO determines that a
11 business meets the criteria for classification as a small/micro
12 business enterprise and/or a minority/women-owned business
13 enterprise.

- 1 H. **Commercially Useful Function** – an SMBE or M/WBE performs a
2 commercially useful function when it is responsible for execution of
3 the work of the contract and is carrying out its responsibilities by
4 actually performing, managing, and supervising the work involved.
5 To perform a commercially useful function, the SMBE or M/WBE
6 must also be responsible for negotiating the price of contract
7 materials and supplies, determining the quantity and quality of
8 materials, ordering and installing materials if applicable, and paying
9 for the materials. To determine whether an SMBE or M/WBE is
10 performing a commercially useful function, an evaluation must be
11 performed of the amount of work subcontracted, normal industry
12 practices, whether the amount the SMBE or M/WBE is to be paid
13 under the contract is commensurate with the work it is actually
14 performing and the SMBE or M/WBE credit claimed for its
15 performance of the work, and other relevant factors. Specifically, an
16 SMBE or M/WBE does not perform a commercially useful function if
17 its role is limited to that of an extra participant in a transaction,
18 contract, or project through which funds are passed in order to
19 obtain the appearance of meaningful and useful SMBE or M/WBE
20 participation, when in similar transactions in which SMBE or
21 M/WBE firms do not participate, there is no such role performed.
- 22 I. **Construction Services and Specialty Trades** - means all labor,
23 services, and materials provided in connection with the
24 construction, alteration, repair, demolition, reconstruction, or any
25 other improvements to real property.
- 26 J. **Contract** – an agreement for purchase of goods or services,
27 including professional services and construction. It does not
28 include agreements to purchase, lease, or rent real property, or a
29 grant, license, permit, franchise, or concession.

- 1 K. **Goal** – The annual or contract-specific goals for contract
2 participation that express the anticipated level or proportion of
3 contract dollars in a given time frame that would be expected to be
4 received by a particular segment of the total population of Ready,
5 Willing, and Able (RWA) firms. These goals are based upon
6 availability analysis derived from a database established by the OEO
7 and Purchasing. Upon completion of availability analysis, such
8 goals for specific contract participation may, under certain
9 circumstances, be set and narrowly tailored by race, gender, and
10 industry codes. Annual goals are intended as an administrative
11 guide only to assist the District in its annual policy review to
12 determine whether the use of more aggressive or less aggressive
13 remedies are warranted in the future. Annual goals shall not be
14 routinely applied to specific contracts absent independent
15 availability analysis demonstrating that they are appropriate for
16 application to a specific contract.
- 17 L. **Goal Setting Committee** – committee established by the
18 Superintendent that is chaired by the OEO and is responsible for
19 establishing SDBE and M/WBE Program goals and selecting
20 appropriate Affirmative Procurement Initiatives for application to
21 specific Board contracts based upon industry categories, vendor
22 availability, and project-specific characteristics.

- 1 M. **Good Faith Efforts** – documentation of the bidder’s intent to
2 comply with SMBE and M/WBE Program goals and procedures,
3 including, but not limited to the following: (1) documentation within
4 a bid submission or proposal reflecting the bidder’s commitment to
5 comply with program goals as established by the Goal Setting
6 Committee for a particular contract; or (2) documentation of efforts
7 made towards achieving the program goals, including but not
8 limited to, timely posting of SMBE or M/WBE subcontract
9 opportunities on the Board web site; solicitations of bids from all
10 qualified SME or M/WBE firms listed in OEO’s directory of certified
11 firms; correspondence from qualified SMBE or M/WBE firms
12 documenting their unavailability to perform SMBE or M/WBE
13 contracts; documentation of efforts to subdivide work into smaller
14 quantities for subcontracting purposes to SMBE or M/WBE firms;
15 documentation of efforts to assist SMBE and M/WBE firms with
16 obtaining financing, bonding, or insurance required by the bidder;
17 and documentation of consultations with trade associations and
18 consultants that represent the interests of small and local
19 businesses in order to identify qualified and available SMBE and
20 M/WBE subcontractors.
- 21 N. **Goods and Services** - all items, supplies, materials, and general
22 support services, except consulting services and infrastructure
23 projects, which may be needed in the transaction of public business
24 or in the pursuit of any government undertaking, project, or activity.
25 The term refers to, among other subjects, equipment, furniture,
26 food, information technology, materials for construction, or personal
27 property, or any kind, including non-personal or contractual
28 services such as the repair and maintenance of equipment and
29 furniture. It also refers to trucking, hauling, janitorial, security, and
30 related services as well as procurement of material and supplies
31 provided by the procuring entity for such services. The term
32 "related" shall include but not be limited to, lease or purchase of
33 office space, media advertisements, health maintenance services,
34 and other services essential to the operation of the procuring entity.

- 1 O. **Gross Revenue** – all revenue in whatever form received or accrued
2 from whatever source, including sales of products or services,
3 interest, dividends, rents, royalties, fees or commissions, reduced by
4 returns and allowances. Gross revenue does not include proceeds
5 from sales of capital assets, and investments, proceeds from
6 transaction between a firm and its domestic and foreign affiliates.
- 7 P. **Independently Owned, Managed, and Operated** – ownership of
8 an SMBE or M/WBE firm must be direct, independent, and by
9 individuals only. Business firms that are owned by other
10 businesses or by the principals or owners of other businesses that
11 cannot themselves qualify under the eligibility requirements shall
12 not be eligible to participate in the program. The day-to-day
13 management of the firm must also be direct and independent of the
14 influence of any other businesses that cannot themselves qualify
15 under the eligibility requirements.
- 16 Q. **Industry Categories** – procurement groupings of Board contracts
17 for administering the Affirmative Procurement Initiatives that shall
18 include construction, professional services, and goods and services
19 procurement. Industry categories may also be referred to as
20 “business categories.”
- 21 R. **Joint Venture** - an association of two (2) or more persons or
22 businesses under a contract conducting a single business enterprise
23 in which they combine capital, efforts, skills, knowledge and/or
24 property and share profits and losses equally. A joint venture
25 composed of qualified business organizations is itself a separate and
26 distinct organization that must be qualified according to Board
27 policies and F.S. 489.119(2)(c).

- 1 S. **Micro-Business Enterprise (MBE)** - any contractor, subcontractor,
2 manufacturer or service company (a) that has been doing business
3 under the same ownership or management and has maintained its
4 principal place of business in Miami-Dade County, Florida, for a
5 period of at least one (1) year immediately prior to the date of
6 application for certification under this section, (b) that had annual
7 gross revenues not exceeding the thresholds for a Micro-Business
8 Enterprise as identified in this policy for each industry, and (c) at
9 least fifty-one percent (51%) of the ownership of which is held by a
10 person or persons who exercise operational authority over the daily
11 affairs of the business and have the power to direct the management
12 and policies and receive the beneficial interests of the company.
13 Representations regarding average gross revenue and payroll are
14 subject to audit. If a business has not existed for three (3) years,
15 the employment and gross revenue limits shall be applied based
16 upon the annual averages over the course of the existence of the
17 business.
- 18 T. **Minority/Women-Owned Business Enterprise (M/WBE)** – see the
19 definitions under the Minority/Women Business Enterprise Program
20 section of this policy.
- 21 U. **Points** – the quantitative assignment of value for specific evaluation
22 criteria in the vendor or consultant selection process.
- 23 V. **Prime Contractor** – the vendor or contractor to whom a purchase
24 order or contract is awarded by the Board for purposes of providing
25 goods or services to the Board.

- 1 W. **Professional Services** - those services within the scope of the
2 practice of architecture, professional engineering, landscape
3 architecture, or registered surveying and mapping, as defined by the
4 laws of the State, or those performed by any architect, professional
5 engineer, landscape architect, or registered surveyor and mapper in
6 connection with his/her professional employment or practice;
7 Professional Services A/E shall not include job order contracting
8 consultants, asbestos consultants, program management,
9 geotechnical, construction materials testing, and environmental
10 assessment services.
- 11 Professional services also includes services rendered by members of
12 a recognized profession or possessing a special skill. Such services
13 are generally acquired to obtain information, advice, training, or
14 direct assistance.
- 15 X. **Ready, Willing and Able** – any vendor who has registered an
16 interest in doing business with the Board and has the technical
17 expertise, training, and licenses to perform in accordance with the
18 contract document. SBEs and M/WBEs must also be certified
19 pursuant to this policy.
- 20 Y. **Responsible** – means that a firm is capable in all respects of fully
21 performing the contract requirements and has the integrity and
22 reliability to assure good faith performance.
- 23 Z. **Responsive** – description of a firm’s bid or proposal that conforms in
24 all material respects to the invitation to bid or request for proposal
25 and shall include compliance with SBE Program requirements.
- 26 AA. **School Board** – The School Board of Miami-Dade County, Florida,
27 which is the legal entity with authority to enter contracts on behalf
28 of the District school system under F.S. 1001.41(4).

- 1 BB. **Service-Disabled Veteran** - a veteran who is a permanent Florida
2 resident with a service-connected disability as determined by the
3 United States Department of Veteran Affairs or who has been
4 terminated from military service by reason of disability by the United
5 States Department of Defense.
- 6 CC. **Sheltered Market** – an affirmative procurement initiative designed
7 to set aside a Board contract bid for bidding or selection exclusively
8 among SMBE/M/WBE firms.
- 9 DD. **Significant Employee Presence** – no less than twenty-five
10 percent (25%) of a firm’s total number of employees are domiciled in
11 Miami-Dade County, Florida.
- 12 EE. **SMBE or M/WBE Directory** - listing of certified SMBEs and
13 M/WBEs.
- 14 FF. **State Appropriated Funds** - all funds appropriated in the General
15 Appropriations Act, excluding Federal funds. This does not include
16 funds that derive from local sources, including but not limited to,
17 general obligation bond funds for capital construction or funds
18 raised through local capital outlay millage and local sales taxes.
- 19 GG. **Small Business Enterprise (SBE)** - any contractor, subcontractor,
20 manufacturer or service company (a) that has been doing business
21 under the same ownership or management and has maintained its
22 principal place of business in Miami-Dade County, Florida, for a
23 period of at least one (1) year immediately prior to the date of
24 application for certification under this section, (b) that had annual
25 gross revenues not exceeding the thresholds identified in this policy
26 for each industry, and (c) at least fifty-one percent (51%) of the
27 ownership of which is held by a person or persons who exercise
28 operational authority over the daily affairs of the business and have
29 the power to direct the management and policies and receive the
30 beneficial interests of the company. Representations regarding
31 average gross revenue and payroll are subject to audit. If a business
32 has not existed for three (3) years, the employment and gross
33 revenue limits shall be applied based upon the annual averages over
34 the course of the existence of the business.

1 HH. **Spend Dollars** – dollars actually paid to prime and/or
2 subcontractors and vendors for Board contracted goods and/or
3 services.

4 II. **Subcontractor** – any vendor or contractor that is providing goods or
5 services to a prime contractor in furtherance of the prime
6 contractor’s performance under a contract or purchase order with
7 the Board.

8 JJ. **Subcontractor Goal** – a proportion of a total contract value stated
9 as a percentage to be subcontracted to SMBEs or M/WBEs to
10 perform a commercially useful function.

11 KK. **Suspension** – the temporary stoppage of an SBE or M/WBE firm’s
12 participation in the Board’s contracting process for a finite period of
13 time.

14 **Application**

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

21 **Subcontractor Goals and Incentives**

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

1 **Goal Setting Committee**

2 The Superintendent shall create and staff a Goal Setting Committee (GSC) to
3 establish SMBE and M/WBE Program goals and select appropriate incentives to
4 apply to specific contracts based upon industry categories, vendor availability, and
5 project-specific characteristics. The Superintendent shall determine the size of the
6 GSC that is to be chaired by the OEO who shall serve as a voting member. The
7 Superintendent shall also appoint the remaining members of the GSC from the
8 Board's procurement personnel and other Board departments affected by this
9 program. The GSC shall meet as often as it determines necessary, but not less than
10 twice annually, to develop the goal setting methodologies to be implemented by the
11 OEO on a project-by-project or contract-by-contract basis, and monitor and support
12 the implementation of this policy.

13 **Small/Micro Business Enterprise Program**

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

20 **SMBE Eligibility and Certification**

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

26 1. Is an independently owned and operated business that is not
27 dominant in its field of operation and is performing a
28 commercially useful function.

- 1 2. The business must have an actual place of business in
2 Miami-Dade County for at least one (1) year preceding the
3 application and be registered as a vendor with the District.
- 4 3. The business has been established for at least one (1) year or
5 the principals of the business have at least three (3) years of
6 relevant experience prior to forming or joining the business.
- 7 4. The business has a local business tax receipt and all required
8 professional licenses, contractor qualifier licenses, and/or
9 Certificate of Competency.
- 10 | 5. The owner of the business ~~and/or qualifier~~ must have the
11 required professional license(s) and contractor qualification
12 license.
- 13 6. The Board may honor a valid Small Business Enterprise
14 Certification and/or Micro Business Enterprise Certification
15 granted by another agency if the agency's requirements are
16 consistent with the District's SBE/MBE certification criteria.
17 The Superintendent shall develop procedures to implement
18 this policy.
- 19 B. Additionally, the requirements for SBE/MBE Program eligibility
20 based on industry are:
- 21 1. **Micro Business Enterprise**
- 22 a. **Professional Services A/E:** The annual gross revenue
23 averaged over the previous three (3) years shall not
24 exceed \$500,000.
- 25 b. **Professional Services non-A/E:** The annual gross
26 revenue averaged over the previous three (3) years
27 shall not exceed \$1,000,000.

- 1 c. **Goods and Services (Procurement Program):** The
2 annual gross revenue averaged over the previous
3 three (3) year period shall not exceed \$1,000,000.
- 4 d. **Construction and Construction-Related Specialty**
5 **Trades:** The annual gross revenue averaged over the
6 previous three (3) years shall not exceed \$1,000,000.
- 7 2. **Small Business Enterprise**
- 8 a. **Professional Services A/E:** The annual gross revenue
9 averaged over the previous three (3) years shall be
10 greater than \$500,000 and not exceed \$1,000,000 (Tier
11 1) or \$2,000,000 (Tier 2).
- 12 b. **Professional Services non-A/E:** The annual gross
13 revenue averaged over the previous three (3) years
14 shall be greater than \$1,000,000 and not exceed
15 \$2,000,000 (Tier 1) or \$4,000,000 (Tier 2).
- 16 c. **Goods and Services (Procurement Program):** The
17 annual gross revenue averaged over the previous
18 three (3) year period shall be greater than \$1,000,000
19 and not exceed \$2,000,000 (Tier 1) or \$4,000,000 (Tier
20 2).
- 21 d. **Construction and Construction-Related Specialty**
22 **Trades:** The annual gross revenue averaged over the
23 previous three (3) years shall be greater than
24 \$1,000,000 and not exceed \$3,000,000 (Tier 1) or
25 \$6,000,000 (Tier 2).

- 1 C. The applicant shall submit a verified declaration that the
2 information provided for certification and re-certification is truthful
3 and accurate. Any applicant who knowingly makes a false
4 statement on the application and/or in writing with the intent to
5 mislead the OEO and/or its representatives in the performance of
6 their official duties of reviewing and/or approving an application is
7 guilty of a second degree misdemeanor under F.S. 837.06. In
8 addition, anyone who knowingly makes a false verified declaration is
9 guilty of perjury, a third degree felony under F.S. 92.525.
- 10 D. Upon receipt of a certification or re-certification application, the
11 OEO shall review all enclosed forms, affidavits, and documentation
12 and determine whether the applicant satisfies the eligibility
13 requirements. The OEO shall send a letter to ineligible applicants
14 stating the basis for the denial of eligibility. Applicants may appeal
15 an ineligibility determined in accordance with this policy.
16 Applicants determined ineligible shall not be eligible to submit a new
17 application for at least one (1) year after the date of the notice of
18 denial of eligibility.
- 19 E. Applicants determined eligible to participate in the program shall
20 complete re-certification every three (3) years to the OEO for review
21 and continued certification. However, upon application for re-
22 certification, an SBE/MBE firm must be an independently owned
23 and operated business concern, and maintain its principal place of
24 business or have a significant employment presence in Miami-Dade
25 County in accordance with this policy. To qualify for re-certification,
26 a firm must comply with the thresholds established and published
27 in its *OEO Procedure Manual*.
- 28 F. SBE/MBEs must notify the OEO within fifteen (15) business days of
29 any material changes to the company's ownership and/or
30 management of the firm. Any misrepresentation by a company of its
31 MBE/SBE status shall be grounds for termination of any contract
32 awarded based on the misrepresentation and subject to signatories
33 to any other penalties provided by law and/or Board policies.

- 1 G. In considering certification or re-certification status of any firm, the
2 OEO shall periodically conduct audits and inspect the office, job
3 site, records, and documents of the firm, and shall interview the
4 firm's employees, subcontractors, and vendors as reasonably
5 necessary to ensure that all eligibility standards are satisfied and
6 that the integrity of this program is maintained.

7 **SME/MBE Program Graduation**

8 A bidder may not count towards its SBE/MBE participation the amount
9 subcontracted to an SBE/MBE firm that has graduated from the SBE/MBE program
10 as follows:

- 11 A. An SBE shall be permanently graduated after its three (3) fiscal year
12 average gross revenue exceeds \$9 million for construction and
13 construction-related specialty trades, \$7 million for goods and
14 services, \$5 million for professional services (architectural and
15 engineering), and \$7 million for professional services
16 (non-architectural and non-engineering).
- 17 B. When an MBE exceeds the eligibility certification thresholds, it
18 automatically graduates and is subject to the small business criteria
19 and restrictions.
- 20 C. If an SBE exceeds the size standards for the Small Business
21 Program during any fiscal year, it shall be allowed to complete any
22 pending contractual obligation(s), and its participation can be
23 counted in the goals.
- 24 D. Upon graduation from the SBE/MBE program, the OEO shall
25 provide the SBE/MBE with written notice that includes the basis for
26 graduation.

1 **SBE/MBE Program Suspension, Certification Revocation, and/or Debarment**

2 A. The OEO may revoke SBE/MBE eligibility if it fails to perform a
3 commercially useful function under a contract, or if it allows its
4 SBE/MBE status to be fraudulently used for the benefit of a
5 non-SBE/MBE firm or the owners of a non-SBE/MBE firm so as to
6 provide the non-SBE/MBE firm or firm owners benefits from
7 Affirmative Procurement Initiatives for which the non-SBE/MBE
8 firm and its owners would not otherwise be entitled.

9 B. Upon suspension from the SBE/MBE program, the OEO shall
10 provide written notice to the SBE/MBE including specific findings
11 constituting the basis for suspension, certification revocation,
12 and/or debarment. The notice must also provide the applicable
13 sanctions and the process to appeal the decision.

14 **SBE/MBE Certification Appeals**

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

22 **Service Disabled Veteran Enterprise Program**

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

1 **Minority/Women Business Enterprise Program**

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

7 A. **Terms and Definitions**

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

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

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

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

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

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

- 1 2. **Minority Person** - is a person born or naturalized in the
2 United States. Resident aliens and holders of permanent
3 visas are not considered to be citizens. The following groups
4 are considered:
- 5 a. An African American, a person having origins in any of
6 the black racial groups of the African Diaspora,
7 regardless of cultural origin.
- 8 b. A Hispanic American, a person of Spanish or
9 Portuguese culture with origins in Spain, Portugal,
10 Mexico, South America, Central America, or the
11 Caribbean, regardless of race.
- 12 c. An Asian American, a person having origins of the Far
13 East, Southeast Asia, the Indian Subcontinent, or the
14 Pacific Islands, including the Hawaiian Islands before
15 1778.
- 16 d. A Native American, a person who has origins in any of
17 the Indian Tribes of North America before 1835, upon
18 presentation of proper documentation as established
19 by rule of the Department of Management Services.
- 20 e. An American born or naturalized woman.

- 1 c. the business must have an actual place of business in
2 the Miami-Dade Metropolitan Statistical Area
3 (Miami-Dade County, Broward County, and Palm
4 Beach County, Florida) for at least one (1) year
5 preceding the application and be registered as a vendor
6 with the District.
- 7 d. the business has an occupational license and all
8 required professional licenses and/or contractor
9 qualifier licenses.
- 10 e. the owner of the business must have the required
11 professional license(s) and contractor qualification
12 license.
- 13 2. Other factors in determining ownership that will be
14 considered shall include, but are not limited to the following:
- 15 a. Whether minority/women owners are entitled to share
16 in the profits of the business, through salaries,
17 bonuses, profit sharing, dividends, and all other
18 benefits, commensurate their ownership.
- 19 b. Whether minority/women owners share in all the risks
20 of business, including, but not limited to, third party
21 agreements, bonding and financial arrangements.
- 22 c. Ownership by a minority person does not include
23 ownership that is the result of a transfer from a
24 non-minority person to a minority person within a
25 related immediate family group if the combined total
26 net asset value of all members of such family group
27 exceeds \$1 million. The term "related immediate
28 family group" means one (1) or more children under
29 sixteen (16) years of age and a parent of such children
30 or the spouse of such parent residing in the same
31 house or living unit.

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

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

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

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

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- 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.
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- 4) Minority/Women owners shall have knowledge and control of all financial matters of the business.
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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 the OEO and/or its representatives in the performance of their official duties of reviewing and/or approving an application is guilty of a second degree misdemeanor under 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.
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4. 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.
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5. All certified M/WBEs will be included in the District's M/WBE Directory which will be regularly updated and provided to school sites.

- 1 6. M/WBEs must notify the OEO within fifteen (15) business
2 days, of any material changes to the company's ownership
3 and/or management of the firm. Any misrepresentation by a
4 company of its M/WBE status shall be grounds for
5 termination of any contract awarded based on the
6 misrepresentation. Violations may also subject the
7 signatories to any other statutory penalties and Board
8 policies.
- 9 7. M/WBE certification shall be valid for a three (3) year period.
10 Certified M/WBEs shall not request a change in their
11 minority/woman designation, to another minority designation
12 during the certification period, unless changes are due to
13 extenuating circumstances.
- 14 8. The Board may honor a valid minority business certification
15 granted by another agency if the agency's requirements are
16 consistent with the District's M/WBE certification criteria.
17 The Superintendent may develop procedures to implement
18 this policy.
- 19 9. An M/WBE must apply for recertification at least thirty (30)
20 days prior to the certification expiration. A Board M/WBE
21 Recertification Form may be submitted only if an M/WBE's
22 certificate has not expired and no material changes have
23 occurred in the ownership and control of the M/WBE. If
24 certification has expired, the M/WBE must submit a new
25 application.
- 26 10. An M/WBE may be decertified if the firm no longer meets the
27 certification requirements; for failure to comply with the
28 Board's M/WBE policies and procedures regarding requests
29 for information or documents pertaining to ownership,
30 control, or operation of the business; failure to submit a
31 complete M/WBE Recertification Application; debarment; or
32 by written request from the firm's minority/women owners for
33 voluntary removal from the M/WBE Directory.

1 **M/WBE Certification Appeals**

2 Applicants denied certification or recertification as an M/WBE may appeal to the
3 Superintendent or his/her designee. A written request to appeal must be received
4 by the Superintendent within fifteen (15) business days of the date of the written
5 notice. Timely appeals will be reviewed pursuant to procedures developed and
6 implemented by the Superintendent. The Superintendent shall make a
7 recommendation on the appeal to the Board which shall make the final
8 determination.

9 **Industry Specific Programs**

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

16 A. **Construction Programs**

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

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

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

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

10 2. A Minority/Women Business Enterprise Program for
11 non-professional services contracts may be established if
12 future studies establish disparities that may be legally
13 addressed through such a program. If disparities are found,
14 this policy will be amended to allow a legally permissible
15 M/WBE program.

16 C. **Professional Services Program**

17 1. A Small/Micro Business Enterprise Program to establish bid
18 preferences, joint venture incentives, and evaluation
19 preferences on behalf of certified SMBE firms.

20 2. A Minority/Women Business Enterprise Program permitting
21 the use of bid preferences, joint venture incentives, and
22 evaluation preferences on construction-related professional
23 services contracts among certified M/WBE firms that are
24 owned by African-Americans, Asian-Americans, Native
25 Americans and Non-Minority Women and also establishing
26 contract-specific subcontracting goals for the participation of
27 certified M/WBE subcontractors on those
28 construction-related professional services contracts that are
29 above the competitive bidding thresholds and that have
30 commercially useful subcontract opportunities.

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

19 **B. Utilization Analysis**

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

1 C. **Disparity Analysis**

2 1. The disparity analysis shall be based on the eighty
3 percent (80%) statistical significance rule adopted under
4 *Croson v. Richmond*, which is defined as two (2) standard
5 deviations between utilization and availability. Utilization of
6 RWA M/WBE firms that is eighty percent (80%) or less of the
7 level of availability or M/WBE firms in a particular market is
8 considered statistically significant under-utilization.
9 Utilization that is above 100% of the level of availability is
10 considered over-utilization.

11 2. Statistically significant underutilization creates an inference
12 of discrimination, and in combination with other factors,
13 permits consideration of the use of narrowly tailored race-
14 and gender-conscious remedies to ameliorate the effects of
15 such discrimination.

16 D. **Remedy Analysis**

17 1. If disparity is shown in the disparity analysis above, the
18 District shall review the findings and recommendations from
19 the 2014 Disparity Study, the 2015 Subcontractor Disparity
20 Study, or from the District's most recent independent
21 disparity study to determine the most appropriate and
22 effective remedies to apply to a given set of contracts to
23 eliminate barriers and overcome the effects of various forms
24 of discrimination identified through the 2014 Disparity Study,
25 the 2015 Subcontractor Disparity Study, or any subsequent
26 studies.

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

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

2 1. At least once every four (4) years, the OEO and
3 Superintendent shall recommend a contract with an
4 independent disparity study consultant to the Board to
5 conduct an updated review of the factual predicate for the
6 District's M/WBE programs to determine whether there is
7 any ongoing need for the use of race- and gender-conscious
8 remedies.

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

12 3. Each successive disparity study update shall make specific
13 findings and recommendations regarding the ongoing need for
14 race- and gender- neutral and race- and gender-conscious
15 remedies for certain categories of contracts. Study
16 recommendations should also suggest appropriate
17 modifications to existing District procurement procedures,
18 SMBE programs, and M/WBE programs to promote fair and
19 equitable participation in District contracting opportunities in
20 the most effective but least restrictive and least burdensome
21 manner.

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

1 **Affirmative Procurement Initiatives**

2 The following Affirmative Procurement Initiatives may be used in awarding Board
3 contracts to SBE/MBEs or M/WBEs according to the industry-specific programs
4 identified in this policy. However, pursuant to State law and Policy 6320.05, no
5 local vendor or employment preference for SBE/MBEs or M/WBEs may be applied
6 to competitive solicitations for construction services in which fifty percent (50%) or
7 more of the cost will be paid from State-appropriated funds which have been
8 appropriated at the time of the competitive solicitation. The solicitation documents
9 for construction services in this event must disclose that no SBE/MBE or M/WBE
10 will be awarded based upon the State restriction regarding the utilization of local
11 vendor preference.

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

24 B. **Bid Preferences:**

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

1 ***Evaluation Preference*** – In ranking and evaluating proposals for
2 “best value” contracts in which factors other than price are relevant
3 to the selection process, the Board may award up to twenty
4 percent (20%) of the total points available to a SMBE or M/WBE or a
5 joint venture with an SMBE or M/WBE partner in response to a
6 request for proposal.

7 **Professional Services Evaluation**

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

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

1 C. **Mandatory Subcontracting:**

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

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

9 3. A prospective bidder on a Board contract shall submit at the
10 time of bid Form S providing the name of the SMBE or MWBE
11 subcontractor or subcontractors and describing both the
12 percentage of subcontracting by the SMBE or MWBE and the
13 work to be performed by the SMBE or M/WBE. A bidder may
14 request a full or partial waiver of this mandatory
15 subcontracting requirement from the OEO for good cause by
16 submitting the Unavailability Certification Form to the OEO
17 prior to bid opening. Under no circumstances shall a waiver
18 of a mandatory subcontracting requirement be granted
19 without submission of adequate documentation of good faith
20 efforts by the bidder and careful review by the OEO. The
21 OEO shall determine a waiver request upon the following
22 criteria:

23 a. whether the requestor of the waiver has made good
24 faith efforts to subcontract with qualified and available
25 SMBEs or M/WBEs;

26 b. whether subcontracting would be inappropriate and/or
27 not provide a “commercially useful function” under the
28 circumstances of the contract; or

29 c. whether there are no certified SMBEs or M/WBEs that
30 are qualified and available to provide the goods or
31 services required.

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

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

6 **Contract Solicitation and Award**

- 7 A. The OEO shall preview all solicitations for construction,
8 procurement, and professional services prior to public dissemination
9 for compliance with the objectives stated in this policy and to ensure
10 that bid specifications do not unnecessarily restrict the ability of
11 SMBE and M/WBE firms to compete and bid. All District award
12 recommendations shall bear the review signature of the OEO
13 Director.
- 14 B. Disqualification/Rejection – The District and Board may reject any
15 proposals from bidders who have previously failed to perform
16 properly and who have done so by commission or omission of an act
17 of such serious and compelling nature that the act indicates a
18 serious lack of business integrity or honesty.
- 19 C. Contract Compliance – As the Superintendent’s designee, the OEO
20 will establish procedures for monitoring and evaluating program
21 performance and compliance.
- 22 D. The District and Board may reject any proposal deemed
23 non-responsive for failing to meet the diversity requirements.
- 24 E. A firm’s failure to comply with the contract may constitute a
25 violation of the anti-discrimination provisions of Policy 6465 and
26 result in suspension or debarment pursuant to Policy 6320.04.

1 **Pre-Award Waiver**

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

14 **Fair Subcontracting Practices**

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

1 **Prompt Payment**

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

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

18 **Violations and Sanctions**

- 19 A. Violations of this policy, include but are not limited to:
- 20 1. fraudulently obtain, retain, or attempt to obtain, or aid
21 another in fraudulently obtaining, retaining, or attempting to
22 obtain or retain certification status as an SDBE or M/WBE
23 for purposes of this policy;
 - 24 2. willfully falsify, conceal or cover up by a trick, scheme or
25 device, a material fact or make any false, fictitious or
26 fraudulent statements or representations, or make use of any
27 false writing or document, knowing it contains any false,
28 fictitious, or fraudulent statements or entry pursuant to this
29 policy;

- 1 3. willfully obstruct, impede, or attempt to obstruct or impede
2 any authorized official or employee who is investigating the
3 qualifications of a business entity that has requested
4 certification as an SMBE or M/WBE;
- 5 4. fraudulently obtain, attempt to obtain or aid another person
6 fraudulently obtaining, or attempting to obtain public monies
7 to which the person is not entitled under this policy;
- 8 5. failing to cooperate in any investigation of violations of this
9 policy or Policy 6465;
- 10 6. making false statements to any entity that any other entity is
11 or is not certified as an SMBE or M/WBE for purposes of this
12 policy.
- 13 B. Sanctions – Any person or business entity that violates this policy
14 shall be subject to suspension, contract cancellation, or debarment
15 pursuant to Policy 6320 and Policy 6320.04 and any other penalty
16 provided by law.
- 17 C. The Superintendent shall apply appropriate sanctions for violations
18 of this policy upon recommendation of the OEO.

19 **Anti-Discrimination Complaints**

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

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

- 2 A. The OEO shall monitor the implementation of this policy and the
3 progress of these programs. On an annual basis, the OEO shall
4 report to the Superintendent and Board on the progress of achieving
5 the goals and objectives established for awards to certified SMBE
6 and M/WBE firms, reporting both dollars awarded and expended.
7 In addition, the OEO shall annually report on the progress in
8 achieving the stated program objectives, including, but not limited
9 to, enhancing competition, establishing and building new business
10 capacity, and removing barriers to and eliminating disparities in the
11 utilization of available minority business enterprises and women
12 business enterprises on Board contracts.
- 13 B. The Board shall annually review these programs to determine
14 whether the various contracting procedures used to enhance SMBE
15 or M/WBE contract participation needs to be adjusted or used more
16 or less aggressively in future years to achieve the stated program
17 objectives.

18 **Policy Review**

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

25 **Severability**

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

1 **Statutory Citations**

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

4 F.S. 218.735, 287.093, 607.11, 1001.41(2), 1013.46(1)(b)

5 Revised 11/21/12

6 Revised 1/16/13

7 Revised 9/3/13

8 Revised 6/18/14

9 Revised 1/14/15

10 Revised 10/14/15

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