

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

- SUBJECT:**
- 1) **ACCEPT THE PHASE II DISPARITY STUDY AND POLICY REVIEW CONDUCTED BY MILLER 3 CONSULTING, INC. FOCUSED ON GOODS/SUPPLIES, SERVICES AND MAINTENANCE COVERING JULY 1, 2012 THROUGH JUNE 30, 2015; AND**
 - 2) **INITIAL READING: PROPOSED AMENDMENT TO SCHOOL BOARD POLICY 6320.02, SMALL/MICRO, MINORITY/WOMEN-OWNED, AND VETERAN BUSINESS ENTERPRISE PROGRAMS**

COMMITTEE: FISCAL ACCOUNTABILITY AND GOVERNMENT RELATIONS

LINK TO STRATEGIC BLUEPRINT: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES

In February 2013, soon after the voters approved the General Obligation Bond to improve school facilities, the School Board authorized Phase I of a disparity study to analyze the utilization of minority women business enterprises (M/WBE) in the Board's procurement of capital construction and design and construction related professional services. As a result of that study completed in 2014, and a subsequent subcontractor disparity study completed in 2015, the Board amended its policy allowing gender and race-neutral participation by small and micro businesses in construction contracts to include certain gender and race-conscious measures in order to increase M/WBE participation.

On April 27, 2016, the Board authorized the Superintendent to contract with Miller 3 Consulting, Inc., to conduct a Phase II Disparity Study and Policy Review, that focused on goods/supplies, services, and maintenance and maintenance-related services contracts issued by the Board during the July 1, 2012 through June 30, 2015 period. The Study provides a strong basis in evidence that there are statistically significant disparities in the Board's utilization of ready, willing, and able M/WBEs in the following categories of contracts and business owners:

- Goods/Supplies (African-American, Asian-American, and Non-Minority Women),
- Services (African-American and Non-Minority Women), and
- Maintenance and Maintenance-Related Services (African-American, Asian-American, and Non-Minority Women).

In accordance with the United States Supreme Court ruling in the case of *City of Richmond v. J.A. Croson*, 109 S. Ct. 706 (1989), these findings provide direct evidence of past discrimination sufficient to support the use of gender and race-conscious means for addressing the disparities when it is apparent that use of race and gender neutral remedies alone may not be sufficient to

fully eliminate the effects of the discrimination. This item requests that the Board accept the findings of the Phase II Disparity Study. Copies of the Phase II Disparity Study will be provided to Board members under separate cover. It is available to the public for review at the Citizen's Information Office and it is also available at the following link : http://oeo.dadeschools.net/disparity_study/pdfs/2019/DS_PII.pdf.

Additionally, and based on these findings, and the determination that the Board has a compelling governmental interest to remedy the effects of identified discrimination in the procurement of these services, the item also requests authorization for the Superintendent to initiate rulemaking proceedings to amend Board Policy 6320.02, *Small/Micro, Minority/Women-Owned, and Veteran Business Enterprise Programs*, to: (1) allow certain narrowly-tailored gender and race conscious remedies for addressing the identified disparities only when it is apparent that the use of neutral means alone will likely be insufficient to remedy the effects of identified discrimination; (2) revise the title of the policy to *Small/Micro, Minority/Women, and Veteran Business Enterprise Programs*, to be consistent with similar terms throughout the policy; (3) update various other sections of the policy to be consistent with current law, and (4) the policy is proposed to be amended to clarify that permanent United States residents may qualify for the Board's small/micro and M/WBE programs under this policy.

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 School Board Policy 6320.02, *Small/Micro, Minority/Women-Owned, and Veteran Business Enterprise Programs*.

RECOMMENDED: That The School Board of Miami-Dade County, Florida:

1. Accept the Phase II Disparity Study & Policy Review conducted by Miller3 Consulting focused on Goods & Services and Maintenance covering July 1, 2012 through June 30, 2015 period; and
2. Authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend School Board Policy 6320.02, *Small/Micro, Minority/Women-Owned, and Veteran Business Enterprise Programs*.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on January 19, 2019, its intention to amend Board Policy 6320.02, *Small/Micro, Minority/Women-Owned, and Veteran Business Enterprise Programs*, at its meeting of March 13, 2019.

PURPOSE AND EFFECT: It is recommended that Board Policy 6320.02, *Small/Micro, Minority/Women-Owned, and Veteran Business Enterprise Programs*, be amended to incorporate the findings of the Phase II Disparity Study conducted by Miller 3 Consulting, Inc., and the District's response to the findings as well as to change the title of the policy to *Small/Micro, Minority/Women, and Veteran Business Enterprise Programs*.

SUMMARY: On April 27, 2016, the Board authorized the Superintendent to conduct a disparity study to analyze the utilization of minority and women business enterprises in Board goods/supplies, services, and maintenance and maintenance-related service contracts. The proposed policy amendments incorporate the findings of the Disparity Study and respond to the Study's conclusions by providing the authority to establish narrowly tailored race and gender conscious remedies for addressing the identified disparities in the Study. The title of the policy is also proposed to be amended to *Small/Micro, Minority/Women, and Veteran Business Enterprise Programs*. Lastly, the policy is proposed to be updated in various other sections of the policy to be consistent with current law, and it is proposed to be amended to clarify that permanent United States residents may qualify for the Board's small/micro and MWBE programs under this policy.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41 (1), (2); 1001.42 (12); 1001.43 (2), (10), F.S.

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 1001.41 (1), (2); 1001.42 (12); 1001.43 (2), (10), F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF March 13, 2019, 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 February 22, 2018, to the Superintendent, Room 912, at the same address.

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

COPIES OF THE PROPOSED AMENDED POLICY are available at cost to the public for inspection and copying in the Citizen Information Center, Room 102, 1450 N.E. Second Avenue, Miami, Florida 33132.

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1 SMALL/MICRO, MINORITY/WOMEN-OWNED, AND VETERAN BUSINESS
2 ENTERPRISE 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 businesses such as bond waivers, establishing insurance requirements that
20 provided appropriate protection but did not discourage M/WBE businesses from
21 competing for contracts, enhancing technical assistance programs, and increasing
22 outreach efforts to M/WBEs.

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1 | Phase I – Procurement of Construction, Design, and Construction Related
2 | Professional Services

3 |
4 | A. 2014 and 2015 Disparity Studies
5 |

6 | On November 21, 2012, the Board determined that a new disparity study would
7 | need to be conducted in order to determine whether it was appropriate to continue
8 | its M/WBE program. The Board repealed its Business Development and Assistance
9 | Program Policy with the understanding that it would develop a new M/WBE Program
10 | if supported by the results of a newly commissioned disparity study. At the same
11 | time, the Board approved the Small/Micro Business Enterprise (S/MBE) Program
12 | and the continuation of the M/WBE Certification Program to provide legally
13 | permissible race and gender-neutral participation by small and micro businesses in
14 | Board procurement of goods and services, construction, and professional services
15 | and to allow M/WBEs to participate in Board contracting as small and micro
16 | business enterprises while the study was being conducted. The program continued
17 | to certify M/WBEs, to include aspirational goals for M/WBEs in contracts, and to
18 | track and monitor the utilization of M/WBEs through the S/MBE Program.

19 | In February 2013, the Board contracted with MGT of America, a Tallahassee
20 | consulting firm, to conduct Phase I of a Comprehensive Disparity Study (Disparity
21 | Study) to provide data regarding the Board's design and construction-related
22 | professional services procurement activity and race- and gender-neutral remedial
23 | efforts for the study period between July 1, 2006 through June 30, 2012. The
24 | purpose of the Disparity Study was to analyze the utilization of minority and
25 | women-owned business enterprises (M/WBEs) in the Board's procurement of capital
26 | construction and design and construction related professional services to determine
27 | whether there was a strong evidentiary basis supporting consideration of an M/WBE
28 | program by the Board. The Disparity Study was accepted by the Board on
29 | November 19, 2014. In February 2015, the Board commissioned Euquant, Inc., to
30 | provide further disparity analysis of the Board's utilization of African-American
31 | subcontractors in construction (Subcontractor Disparity Study). The Subcontractor
32 | Disparity Study was accepted by the Board on September 9, 2015. The 2014
33 | Disparity Study and the 2015 Subcontractor Disparity Study are both incorporated
34 | by reference and made a part of this policy.

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

9
10 | **B. Findings**

11 | The 2014 Disparity Study and the subsequent 2015 Subcontractor Disparity Study
12 reported findings that within the relevant geographic market of the Metropolitan
13 Statistical Area (Miami/Broward/Palm Beach) there are statistically significant
14 disparities in the District's utilization of ready, willing, and able M/WBEs in the
15 following categories of contracts and business owners:

- 16 A. Prime Construction Contracts (African-American, Asian-American,
17 Native-American, and Non-Minority Women)
- 18 B. Construction Subcontracts (African-American, Asian-American, and
19 Native-American)
- 20 C. Prime Design and Construction-Related Professional Services
21 (African-American, Asian-American, Native-American, and
22 Non-Minority Women)
- 23 D. Design and Construction-Related Professional Services Subcontracts
24 (African-American, Asian-American, Native-American, and
25 Non-Minority Women)

26 | Other significant findings in the 2014 Disparity Study report include, but are not
27 limited to, the following:

- 28 A. Non-minority businesses received the majority of the public-sector
29 construction permits for prime contracts.

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- 1 B. Non-minority businesses received an even larger percentage of
2 construction building permits for private sector commercial
3 construction and subcontracts. MBE primes received only two
4 percent (2%) of building permits and certified non-minority
5 women-owned businesses received zero. Of the .27% of
6 subcontractors who received building permits, nearly all went to
7 Hispanic-American owned businesses.
- 8 C. There are significant disparities for entry into self-employment for
9 African-Americans, Hispanic Americans, Asian Americans, and
10 Non-minority Women.
- 11 D. There is a statistically significant positive relationship between the
12 probability of commercial bank loan denial and African American
13 business ownership. About fifteen percent (15%) of M/WBE loan
14 applicants reported being denied commercial bank loans, compared
15 to 64.7% of African American applicants, 21.6% of Hispanic
16 American applicants, 0% of Asian American-owned businesses, 0%
17 of Native American applicants, and twenty percent (20%) of
18 non-minority women applicants.
- 19 E. Interviews with District staff and M/WBE businesses identified
20 various discriminatory barriers affecting the relevant job market
21 including unequal access to bonding, finance, and insurance,
22 having to unfairly compete against large businesses in the selection
23 process, unnecessarily restrictive contract requirements, an
24 informal network that precluded M/WBE businesses from obtaining
25 work in the private sector, seldom or never being solicited where
26 there were no M/WBE goals, being dropped from a project after
27 being included to satisfy good faith effort requirements, contract
28 bundling, slow or non-payment by contractors, limited time to
29 prepare bid packages, difficulty obtaining notification of
30 contract/bid opportunities, and discriminatory experiences in
31 dealing with the District and prime contractors.

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1 F. The implementation of numerous race and gender-neutral
2 assistance efforts and programs throughout the relevant market
3 over the past two (2) decades have been unsuccessful in fully
4 eliminating these persistent and significant disparities in the
5 District's utilization of ready, willing and able M/WBE businesses.
6 The efforts have included technical assistance, loan guarantee
7 assistance, bonding assistance, business development assistance,
8 financial assistance, and mentoring programs.
9

10 **Phase II - Procurement of Goods/Supplies, Services, Maintenance and**
11 **Maintenance-Related Services**

12
13 **A. 2018 Disparity Study**
14

15 On May 11, 2016, the Board commissioned Miller³ Consulting, Inc. (M³ Consulting)
16 to conduct a Phase II Disparity Study for the study period between July 1, 2012
17 through June 30, 2015 (2018 Disparity Study). The purpose of the study was to
18 analyze the utilization of M/WBEs in Board procurement of goods/supplies,
19 services, maintenance and maintenance-related services (collectively defined as
20 "Goods and Services") contracts in the relevant geographic markets for such
21 purchases by the Board.

22 The 2018 Disparity Study was accepted by the Board on November 20, 2018. The
23 2018 Disparity Study, including findings and recommendations, is incorporated by
24 reference and made a part of this policy. The Study provides a strong evidentiary
25 basis that there are statistically significant disparities in the Board's utilization of
26 ready, willing, and able M/WBEs in the following categories of Goods and Services
27 contracts and business owners:

28 A. Goods & Supplies (African-American, Asian-American, and Non-Minority
29 Women)

30 B. Maintenance and Maintenance-Related Services (African-American, Asian-
31 American, and Non-Minority Women)

32 C. Services (African-American and Non-Minority Women)

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1 | Other findings in the 2018 Disparity Study report include, but are not limited to, the
2 | following:

3
4 | A. While capacity differences do not appear to be distinct in the size of the
5 | businesses based on revenues or full-time employees across the board for all
6 | race and gender or ethnicities, the constraints in capacities are more notable
7 | in terms of revenues, employees and business formation and factors related
8 | to the self-employment decision and earnings for African American
9 | businesses, more than for any other race, gender or ethnic groups where the
10 | results are mixed.

11 | D.B. Although non-M/WBEs have higher capacity in goods and supplies
12 | than M/WBEs as measured by number of employees or sales revenues, such
13 | differences are likely, in part, the consequence of the effects of marketplace
14 | discrimination upon M/WBE earnings. However, threshold analysis indicates
15 | that most Board contracts are sufficiently small that capacity differences of
16 | this magnitude would not materially affect the ability of small and M/WBE
17 | firms to perform them.

18 | B.C. In maintenance and maintenance-related services, although non-
19 | M/WBEs have higher capacity than M/WBEs as measured by number of
20 | employees or sales revenues, in part, such differences are likely the
21 | consequence of the negative effects of marketplace discrimination upon
22 | M/WBE earnings. However, threshold analysis indicates that most Board
23 | contracts are sufficiently small that capacity differences of this magnitude
24 | would not materially affect the ability of small and M/WBE firms to perform
25 | such contracts.

26
27 | E.D. Most MBEs and non-minority/women businesses started their
28 | businesses with less than \$10,000 at start-up. Few MBEs had \$10,000-
29 | \$25,000 at start-up, whereas white male-owned businesses experienced the
30 | reverse, with a majority starting with \$10,000-\$25,000.

31
32 | F.E. Anecdotal evidence presented in the Study further supports the
33 | inference of discrimination established by statistical disparities in M/WBE
34 | utilization in the District's Goods and Services contracts. Anecdotal evidence
35 | obtained from in-depth interviews and focus groups with small, minority, and
36 | women business owners and other business stakeholders identified a number
37 | of barriers and patterns of various forms of marketplace discrimination that
38 | appear to be adversely affecting M/WBEs in their efforts to engage in
39 | business with the Board, including, but not limited to, the following:

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- 1
- 2 1. Slow payment and non-payment by prime contractors;
- 3 2. Unfair competition with large companies;
- 4 3. Bundling of smaller contracts into single large contracts;
- 5 4. Unequal access to bidding opportunities;
- 6 5. Unnecessarily restrictive contract specifications; and
- 7 6. Stereotypical attitudes on the part of buyers and prospective clients.
- 8

Conclusion

9

10 ~~Together, these~~ The totality of the evidence provides a strong basis for the District
11 ~~and private sector disparities currently establish an inference of~~ Board to conclude
12 ~~that ongoing effects of marketplace discrimination that is~~ are adversely affecting the
13 ~~Board's utilization of ready, willing, and able minority- and women-owned~~
14 ~~businesses.~~

15 ~~Based upon the totality of the evidence entirety of the factual predicate that has~~
16 ~~been gathered and presented to the Board since 1990, the Board has concluded~~
17 ~~continues to find that there is a strong evidentiary basis establishing that the~~
18 ~~District has a compelling interest in remedying the ongoing effects of discrimination~~
19 ~~that is occurring in the broader relevant market and adversely affects~~ affecting the
20 ~~District's utilization of ready, willing and able minority- and women-owned~~
21 ~~businesses in District construction and construction-related,~~ professional services,
22 ~~contracts and goods and services contracts.~~ The Board also concludes that it needs
23 to take action to avoid becoming a passive participant in private sector
24 discrimination.

25 The Board has further concluded that race- and gender-neutral remedies, in and of
26 themselves, ~~may~~ are not likely to be sufficient to fully eliminate the effects of the
27 identified forms of discrimination, and that a narrowly tailored combination of race-
28 and gender-neutral and race and gender-conscious remedies are warranted.
29 Accordingly, this policy specifically authorizes the establishment of a narrowly
30 tailored combination of race and gender-neutral and race and gender-conscious
31 programs that address discrimination in the Board's procurement processes and
32 business operations.

General Policy

33
34

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- 1 A. The District shall resort to the use of race- and gender-conscious
2 means for addressing disparities only when it is apparent that the
3 use of neutral means alone will likely be insufficient to remedy the
4 effects of identified discrimination. The determination of when to
5 use race conscious measures will be made on a project-by-project or
6 contract-by-contract basis pursuant to this policy.
- 7 B. Having found that it has a compelling governmental interest to
8 remedy the effects of identified discrimination in the procurement of
9 construction and professional services, and goods and services
10 contracts, the Board directs and authorizes the Superintendent to
11 establish procedures and implement remedies that are consistent
12 with this policy and are narrowly tailored to the findings and
13 conclusions of the Disparity Study.
- 14 C. In addition, the Board shall take all necessary, reasonable, and legal
15 action to prevent discrimination and to ensure that all businesses,
16 including M/WBEs, are afforded the maximum equitable
17 opportunity to participate in the District's procurement process.
- 18 D. The District shall take all necessary and reasonable steps
19 permissible by law to ensure full equitable participation by M/WBEs
20 in the procurement of construction and professional services, and
21 goods and services for the District, including:
- 22 1. developing programs and services as described in this policy
23 that will achieve the Board's diversity objectives in business
24 practices and operations in a manner that is consistent with
25 this objective;

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- 1 2. publicizing and enforcing the Board's commercial
2 anti-discrimination provisions in Policy 6465 and Policy 6320
3 to ensure that District employees and companies doing
4 business with the Board do not discriminate in the
5 solicitation, selection, or treatment of subcontractors,
6 suppliers, vendors, or commercial customers on race, color,
7 ethnic or national origin, religion, marital status, disability,
8 genetic information, age, political beliefs, sexual orientation,
9 gender, gender identification, social and family background,
10 linguistic preference, pregnancy, and any other legally
11 prohibited basis;

- 12 3. developing additional Board policies, administrative
13 programs, procedures and affirmative procurement initiatives
14 consistent with Policy 6320.06 to directly address inequities
15 and disparities related to the underutilization of M/WBE
16 subcontractors on Board construction and professional
17 services, and goods and services contracts.projects;

- 18 4. ensuring that the Office of Economic Opportunity (OEO) is
19 included on all selection committees for bids, contracts and
20 professional services; and

21 The OEO shall review contract specifications to ensure that
22 they are not unnecessarily restricting the availability and
23 participation of S/MBEs, M/WBE, and VBE businesses in the
24 procurement and contracting process.

- 25 5. evaluating the levels of availability and utilization in of
26 S/MBE and M/WBE participation firms for District
27 purchases and adjusting the implementation of this policy
28 according to changing needs and circumstances to ensure
29 that appropriate utilization objectives are established and
30 maintained.

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

2 The OEO shall administer and implement the S/MBE, M/WBE, and Veteran
3 Business Enterprise (VBE) Programs including certification, outreach, technical
4 assistance, and compliance, and:

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

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

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

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

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

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

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

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- 1 H. establish administrative procedures to expeditiously resolve
2 monetary disputes and motivate prime contractors to make timely
3 payments;
- 4 I. establish a comprehensive contract reporting and monitoring system
5 to evaluate the effectiveness of these programs in increasing
6 contracting opportunities for small/micro, minority/women-owned,
7 and veteran businesses;
- 8 J. serve as chair of the Goal-Setting Committee and staff liaison to the
9 Small/Micro, Minority/Women-Owned, and Veteran Business
10 Enterprise Advisory Committee;
- 11 K. monitor, coordinate, and provide support for any disparity study
12 that may be conducted regarding minority/women-owned business
13 participation in Board procurement for construction, professional
14 A/E and non-A/E services, and goods and services;
- 15 L. develop and coordinate any recommendations as a result of any
16 such disparity study findings;
- 17 M. maintain, distribute, and publish a directory of certified SBE, MBE,
18 M/WBE, and VBE businesses;
- 19 N. report annually through the Superintendent to the Board regarding
20 the effectiveness of these programs; and
- 21 O. monitor local workforce goals as established by the Goal Setting
22 Committee for construction, professional services, and goods and
23 services; including initiatives through community based agreements
24 with reputable and reliable referral agencies.

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1 | **Small/Micro, Minority/Women-Owned, and Veteran Business Enterprise**
2 | **Advisory Committee**

3 | The Small/Micro, Minority/Women-Owned, and Veteran Business Enterprise
4 | Advisory Committee shall be established to:

- 5 A. provide guidance on the implementation of the S/MBE, M/WBE,
6 and VBE Programs and to promote the participation and use of
7 SBEs/MBEs, M/WBEs, and VBEs in all procurement activities of
8 the Board;
- 9 B. identify and evaluate issues related to economic opportunities within
10 the Board for S/MBE, M/WBE, and VBE;
- 11 C. provide recommendations to the Board to improve the S/MBE,
12 M/WBE, and VBE programs;
- 13 D. annually evaluate and report to the Board on the effectiveness of the
14 S/MBE, M/WBE, and VBE programs in increasing minority and
15 women owned business participation in the Board's procurement
16 process;
- 17 E. monitor any disparity study that may be conducted by the Board
18 and make recommendations based on the results of any such study.

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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 S/MBE, M/WBE, VBE, and majority business interest organizations, community
5 based organizations and local government entities which may include professional,
6 construction and trade, business, and socio-economic organizations. The Board and
7 Superintendent shall approve a list of representative organizations and the
8 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. Board members may appoint alternate members in accordance
13 with Policy 9140, *Citizen Advisory Committees*. All appointments must comply with
14 Policy 9140. The committee shall annually elect a chair and vice-chair, meet at least
15 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. **Actual Place of Business** - business whose physical office is
20 located in the relevant Metropolitan Statistical Area.
- 21 B. **Affirmative Procurement Initiatives (API)** - any procurement tool
22 to enhance contracting opportunities for S/MBE, M/WBE, and VBE
23 businesses including, but not limited to: bonding waivers, bid
24 incentives, sheltered market, mandatory subcontracting, competitive
25 business development demonstration projects, minority
26 distributorship development incentives, contracting, joint venture
27 and teaming incentives, and S/MBE, M/WBE, and VBE evaluation
28 preference points in the scoring of proposal evaluations.

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- 1 C. **Available or Availability** – to have, prior to bid submission, the
2 ability to provide goods or services under a contract by having
3 (a) reasonably estimated, uncommitted capacity; (b) all necessary
4 licenses, permits, registrations and certification, including S/MBE,
5 M/WBE, or VBE certification to provide the type of goods or services
6 being purchased under the contract; (c) ability to obtain reasonably
7 required financing/insurance that is consistent with normal
8 industry practice; and (d) ability to otherwise meet bid
9 specifications.
- 10 D. **Award** – final selection of a bidder or offer or for a specified
11 contract.
- 12 E. **Award Amount** – the dollar value of the contract when awarded.
- 13 F. **Bid** – quotation, proposal, letter of interest or offer by any bidder in
14 response to any kind of invitation, solicitation, request or public
15 announcement to submit such quotation, proposal, letter of interest
16 or offer for a contract.
- 17 G. **Bidder** – any person, partnership, corporation or other business
18 entity that submits a bid or proposal.
- 19 H. **Certification** – process by which the OEO determines that a
20 business meets the criteria for classification as a S/MBE, M/WBE,
21 and/or VBE.
- 22 I. **Certified Directory** - listing of certified S/MBEs, M/WBEs, and
23 VBEs.

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

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- 1 M. **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 businesses. 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 N. **Goal Setting Committee** – committee established by the
18 Superintendent that is chaired by the OEO and is responsible for
19 establishing S/MBE, M/WBE, and VBE 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.

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

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

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- 1 Q. **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 R. **Independently Owned, Managed, and Operated** – ownership of
8 an S/MBE, M/WBE, or VBE firm must be direct, independent, and
9 by individuals only. Business businesses 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 S. **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 T. **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).
- 28 U. **Metropolitan Statistical Area (MSA)** - geographical region within
29 the relevant geographic market of the Miami-Dade Metropolitan
30 Statistical Area (Miami-Dade/Broward/Palm Beach counties).

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- 1 V. **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 actual place of business in the MSA, for a period of at least one (1)
5 year immediately prior to the date of application for certification
6 under this section, (b) that had annual gross revenues not exceeding
7 the thresholds for a Micro-Business Enterprise as identified in this
8 policy for each industry, and (c) at least fifty-one percent (51%) of
9 the ownership of which is held by a person or persons who exercise
10 operational authority over the daily affairs of the business and have
11 the power to direct the management and policies and receive the
12 beneficial interests of the company. Representations regarding
13 average gross revenue and payroll are subject to audit. If a business
14 has not existed for three (3) years, the employment and gross
15 revenue limits shall be applied based upon the annual averages over
16 the course of the existence of the business.
- 17 W. **Minority/Women-Owned Business Enterprise (M/WBE)** - see the
18 definitions under the Minority/Women Business Enterprise Program
19 section of this policy.
- 20 X. **Points** - the quantitative assignment of value for specific evaluation
21 criteria in the vendor or consultant selection process.
- 22 Y. **Prime Contractor** - the vendor or contractor to whom a purchase
23 order or contract is awarded by the Board for purposes of providing
24 goods or services to the Board.
- 25 Z. **Professional Services** - those services within the scope of the
26 practice of architecture, professional engineering, landscape
27 architecture, or registered surveying and mapping, as defined by the
28 laws of the State, or those performed by any architect, professional
29 engineer, landscape architect, or registered surveyor and mapper in
30 connection with his/her professional employment or practice;
31 Professional Services A/E shall not include job order contracting
32 consultants, asbestos consultants, program management,
33 geotechnical, construction materials testing, and environmental
34 assessment services.
- 35 Professional services also includes services rendered by members of
36 a recognized profession or possessing a special skill. Such services

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- 1 are generally acquired to obtain information, advice, training, or
2 direct assistance.
- 3 AA. **Ready, Willing and Able** – any vendor who has registered an
4 interest in doing business with the Board and has the technical
5 expertise, training, and licenses to perform in accordance with the
6 contract document. S/MBEs, M/WBEs, and VBEs must also be
7 certified pursuant to this policy.
- 8 BB. **Responsible** – means that a firm is capable in all respects of fully
9 performing the contract requirements and has the integrity and
10 reliability to assure good faith performance.
- 11 CC. **Responsive** – description of a firm’s bid or proposal that conforms in
12 all material respects to the invitation to bid or request for proposal
13 and shall include compliance with S/MBE, M/WBE, and VBE
14 Program requirements.
- 15 DD. **School Board** – The School Board of Miami-Dade County, Florida,
16 which is the legal entity with authority to enter contracts on behalf
17 of the District school system under F.S. 1001.41(4).
- 18 EE. **Service-Disabled Veteran** - a veteran who is a permanent Florida
19 resident with a service-connected disability as determined by the
20 United States Department of Veteran Affairs or who has been
21 terminated from military service by reason of disability by the United
22 States Department of Defense.
- 23 FF. **Sheltered Market** – an affirmative procurement initiative designed
24 to set aside a Board contract/project exclusively among S/MBE,
25 M/WBE, and/or VBE businesses.
- 26 GG. **Significant Employee Presence** – no less than twenty-five
27 percent (25%) of a firm’s total number of employees are domiciled in
28 Miami-Dade County, Florida.
- 29 HH. **State Appropriated Funds** - all funds appropriated in the General
30 Appropriations Act, excluding Federal funds. This does not include
31 funds that derive from local sources, including but not limited to,
32 general obligation bond funds for capital construction or funds
33 raised through local capital outlay millage and local sales taxes.

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- 1 II. **Small Business Enterprise (SBE)** - 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 actual place of business in the MSA, for a period of at least one (1)
5 year immediately prior to the date of application for certification
6 under this section, (b) that had annual gross revenues not exceeding
7 the thresholds identified in this policy for each industry, and (c) at
8 least fifty-one percent (51%) of the ownership of which is held by a
9 person or persons who exercise operational authority over the daily
10 affairs of the business and have the power to direct the management
11 and policies and receive the beneficial interests of the company.
12 Representations regarding average gross revenue and payroll are
13 subject to audit. If a business has not existed for three (3) years,
14 the employment and gross revenue limits shall be applied based
15 upon the annual averages over the course of the existence of the
16 business.
- 17 JJ. **Spend Dollars** - dollars actually paid to prime and/or
18 subcontractors and vendors for Board contracted goods and/or
19 services.
- 20 KK. **Subcontractor** - any vendor or contractor that is providing goods or
21 services to a prime contractor in furtherance of the prime
22 contractor's performance under a contract or purchase order with
23 the Board.
- 24 LL. **Subcontractor Goal** - a proportion of a total contract value stated
25 as a percentage to be subcontracted to S/MBEs, M/WBEs, or VBEs
26 to perform a commercially useful function.
- 27 MM. **Suspension** - the temporary stoppage of an S/MBE, M/WBE, or
28 VBE firm's participation in the Board's contracting process for a
29 finite period of time.

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1 NN. ***Veteran Business Enterprise*** - the management and daily business
2 operations of which are controlled by one (1) or more wartime
3 veterans or service-disabled veterans or, for a service-disabled
4 veteran having a permanent and total disability, by the spouse or
5 permanent caregiver of the veteran. (F.S. 295.187)

6 **Application**

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

13 **Subcontractor Goals and Incentives**

14 Subcontractor goals may be applied to a contract based on estimates made prior to
15 bid advertisement of the quality, quantity, and type of subcontracting opportunities
16 provided by the contract and the availability of either S/MBEs, M/WBEs, or VBEs to
17 perform the work. The Superintendent may also develop affirmative initiatives
18 and/or incentive programs that can be applied to identified contracts in the
19 selection and contract award process to increase the utilization of S/MBE, M/WBE,
20 and VBE subcontractors pursuant to Policy 6320.06, *Diversity, Equity, and Inclusion*
21 *in Business Operations and Practices.*

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1 **Goal Setting Committee**

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

13 **Small/Micro Business Enterprise Program**

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

20 **Small/Micro Business Enterprise Eligibility and Certification**

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

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

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- b. **Professional Services non-A/E:** The annual gross revenue averaged over the previous three (3) years shall not exceed \$300,000 (Tier 1) or \$1,000,000 (Tier 2).
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- c. **Goods and Services (Procurement Program):** The annual gross revenue averaged over the previous three (3) year period shall not exceed \$300,000 (Tier 1) or \$1,000,000 (Tier 2).
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- d. **Construction and Construction-Related Specialty Trades:** The annual gross revenue averaged over the previous three (3) years shall not exceed \$300,000 (Tier 1) or \$1,000,000 (Tier 2).
- 13 2. **Small Business Enterprise**
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- a. **Professional Services A/E:** The annual gross revenue averaged over the previous three (3) years shall be greater than \$500,000 and not exceed \$1,000,000 (Tier 1) or \$2,000,000 (Tier 2).
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- b. **Professional Services non-A/E:** The annual gross revenue averaged over the previous three (3) years shall be greater than \$1,000,000 and not exceed \$2,000,000 (Tier 1) or \$4,000,000 (Tier 2).
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- c. **Goods and Services (Procurement Program):** The annual gross revenue averaged over the previous three (3) year period shall be greater than \$1,000,000 and not exceed \$2,000,000 (Tier 1) or \$4,000,000 (Tier 2).

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- 1 d. **Construction and Construction-Related Specialty**
2 **Trades:** The annual gross revenue averaged over the
3 previous three (3) years shall be greater than
4 \$1,000,000 and not exceed \$3,000,000 (Tier 1) or
5 \$6,000,000 (Tier 2).
- 6 C. The applicant shall submit a verified declaration that the
7 information provided for certification and re-certification online is
8 truthful and accurate. Any applicant who knowingly makes a false
9 statement on the application and/or in writing with the intent to
10 mislead the OEO and/or its representatives in the performance of
11 their official duties of reviewing and/or approving an application is
12 guilty of a second-degree misdemeanor under F.S. 837.06. In
13 addition, anyone who knowingly makes a false verified declaration is
14 guilty of perjury, a third-degree felony under F.S. 92.525.
- 15 D. Upon receipt of a certification or re-certification application, the
16 OEO shall review all enclosed forms, affidavits, and documentation
17 and determine whether the applicant satisfies the eligibility
18 requirements. The OEO shall send a letter to ineligible applicants
19 stating the basis for the denial of eligibility. Applicants may appeal
20 an ineligibility determined in accordance with this policy.
21 Applicants determined ineligible shall not be eligible to submit a new
22 application for at least one (1) year after the date of the notice of
23 denial of eligibility.
- 24 E. Applicants determined eligible to participate in the program shall
25 complete re-certification every three (3) years to the OEO for review
26 and continued certification. However, upon application for re-
27 certification, an SBE/MBE firm must be an independently owned
28 and operated business concern, and maintain its actual place of
29 business or have a significant employment presence in Miami-Dade
30 County in accordance with this policy. To qualify for re-certification,
31 a firm must comply with the thresholds established and published
32 in its *OEO Administrative Procedure Manual*.

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- 1 F. SBE/MBEs must notify the OEO within fifteen (15) business days of
2 any material changes to the company's ownership and/or
3 management of the firm. Any misrepresentation by a company of its
4 MBE/SBE status shall be grounds for termination of any contract
5 awarded based on the misrepresentation and subject to signatories
6 to any other penalties provided by law and/or Board policies.
- 7 G. In considering certification or re-certification status of any firm, the
8 OEO shall periodically conduct audits and inspect the office, job
9 site, records, and documents of the firm, and shall interview the
10 firm's employees, subcontractors, and vendors as reasonably
11 necessary to ensure that all eligibility standards are satisfied and
12 that the integrity of this program is maintained.

13 Small/Micro Business Enterprise Program Graduation

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

- 17 A. An SBE shall be permanently graduated after its three (3) fiscal year
18 average gross revenue exceeds \$6 million for construction and
19 construction-related specialty trades, \$4 million for goods and
20 services, \$2 million for professional services (architectural and
21 engineering), and \$4 million for professional services
22 (non-architectural and non-engineering).
- 23 B. When an MBE exceeds the eligibility certification thresholds, it
24 automatically graduates to the SBE criteria and restrictions.
- 25 C. If an SBE exceeds the size standards for the Small Business
26 Program during any fiscal year, it shall be allowed to complete any
27 pending contractual obligation(s), and its participation can be
28 counted in the goals.

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1 D. Upon graduation from the SBE/MBE program, the OEO shall
2 provide the SBE/MBE with written notice that includes the basis for
3 graduation.

4 **Small Business Enterprise/Micro Business Enterprise Program Suspension,**
5 **Certification Revocation, and/or Debarment**

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

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

18 **Small Business Enterprise/Micro Business Enterprise Certification Appeals**

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

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1 **Veteran Business Enterprise Program**

2 The Veteran Business Enterprise (VBE) Program is a race and gender neutral
3 program designed to benefit all veteran businesses (excluding non-profits). The OEO
4 shall certify VBE businesses in accordance with State guidelines and law. Vender
5 preferences for VBEs are governed by Policy 6320. In addition, the Superintendent
6 is authorized to develop and implement affirmative procurement initiatives to
7 increase participation by VBEs in all of the Board's procurement processes to the
8 extent allowed by law.

9 **Veteran Business Eligibility Criteria**

10 According to F.S. 295.187, VBE means an independently owned and operated
11 business that:

- 12 A. employs 200 or fewer permanent full-time employees;
- 13 B. together with its affiliates has a net worth of \$5 million or less or, if
14 a sole proprietorship, has a net worth of \$5 million or less including
15 both personal and business investments;
- 16 C. is organized to engage in commercial transactions;
- 17 D. is domiciled in this State; and,
- 18 E. is at least fifty-one percent (51%) owned and controlled by one (1) or
19 more veterans.
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- 21 F. the management and daily business operation is controlled by one
22 or more veterans or service-disabled veterans, or, for a service-
23 disabled veteran having a permanent and total disability, by the
24 spouse or permanent caregiver of the veteran.

25 The business must have an actual place of business in the MSA for at least one (1)
26 year preceding the application and be registered as a vendor with the District.

27 The business has an applicable local business tax receipt in the MSA and all
28 required licenses.

29 An owner of the business must have the required professional license(s).

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1 An owner of the business must submit a DD-214 form issued by the United States
2 Department of Veteran Affairs or the United States Department of Defense or
3 evidence of veteran status.

4 **Minority/Women Business Enterprise Program**

5 The Minority/Women Business Enterprise (M/WBE) Program is established to
6 enhance the bidding and selection opportunities for M/WBEs on certain contracts
7 and to address findings in the 2014 Disparity Study, ~~and~~ 2015 Subcontractor
8 Disparity Study, and the 2018 Disparity Study, pursuant to this policy and as
9 provided in Policy 6610 and Policy 6320.06.

10 A. **Terms and Definitions**

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

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

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

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- a. An African American, a person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin. (The African Diaspora refers to the communities throughout the world that have resulted from the movement in historic times of people from Africa, predominantly to the Americas and among other areas around the globe. The term has been historically applied in particular to the descendants of west and central Africans between the 16th and 19th centuries, with their largest populations in Brazil, the United States, and Haiti. For purposes of this category, African Diaspora populations include: African Americans, Black Caribbeans, and Black Canadians (descendants of west Africans brought to the United States, the Caribbean, and South America), Zanj (descendants from southeast Africa, primarily the Swahili coast, whose ancestors were brought to western Asia and other parts of Asia), and Siddis (descendants from southeast Africa, primarily the Swahili coast, whose ancestors were brought to the Indian subcontinent (Pakistan and Indian).)

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

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

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

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

d. the business has an applicable local business tax receipt and all required licenses.

e. an owner of the business must have the required professional license(s).

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2. Other factors in determining ownership that will be considered shall include, but are not limited to the following:
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- a. Whether minority/women owners are entitled to share in the profits of the business, through salaries, bonuses, profit sharing, dividends, and all other benefits, commensurate their ownership.
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- b. Whether minority/women owners share in all the risks of business, including, but not limited to, third party agreements, bonding and financial arrangements.
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- c. Ownership by a minority person does not include ownership that is the result of a transfer from a non-minority person to a minority person within a related immediate family group if the combined total net asset value of all members of such family group exceeds \$1 million. The term "related immediate family group" means one (1) or more children under sixteen (16) years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.
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- d. Minority/Women owners must also demonstrate control over the affairs, management, and operations of the business. The discretion of minority/women owners shall not be subject to any formal or informal restrictions (including, but not limited to, bylaw provisions, partnership agreements, trust agreements, or requirements for cumulative voting) that would impact or usurp the minority/women owners' managerial and operational discretion.

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

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

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

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

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

- 22 5. All certified M/WBEs will be included in the District's online
23 directory which will be regularly updated and available to
24 school sites.

- 25 6. M/WBEs must notify the OEO within fifteen (15) business
26 days, of any material changes to the company's ownership
27 and/or management of the firm. Any misrepresentation by a
28 company of its M/WBE status shall be grounds for
29 termination of any contract awarded based on the
30 misrepresentation. Violations may also subject the
31 signatories to any other statutory penalties and Board
32 policies.

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

26 Minority/Women Business Enterprise Certification Appeals

27 Applicants denied certification or recertification as an M/WBE may appeal to the
28 Superintendent or his/her designee. A written request to appeal must be received
29 by the Superintendent within fifteen (15) business days of the date of the written
30 notice. Timely appeals will be reviewed pursuant to procedures developed and
31 implemented by the Superintendent. The Superintendent shall make a
32 recommendation on the appeal to the Board which shall make the final
33 determination.

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1 **Industry Specific Programs**

2 Remedial programs for the purpose of eliminating the disparities in M/WBE contract
3 participation in District and private contracts caused by discrimination will be
4 developed and implemented. The following industry-specific programs are to be
5 established and implemented in a narrowly tailored manner consistent with the
6 factual predicate established in the 2014 Disparity Study, ~~and~~ the 2015
7 Subcontractor Disparity Study, and the 2018 Disparity Study, and consistent with
8 the terms of this policy.

9 A. **Construction Programs**

- 10 1. A Small/Micro Business Enterprise Program permitting the
11 use of ~~set-asides of~~ sheltered markets for small prime
12 contracts that are below competitive dollar thresholds for
13 bidding exclusively among certified S/MBE businesses and
14 also establishing mandatory subcontracting goals for the
15 participation of certified S/MBE subcontractors or those
16 construction contracts that are above the competitive bidding
17 threshold and that have commercially useful subcontract
18 opportunities.
- 19 2. A Minority/Women-Owned Business Enterprise Program
20 establishing ~~bid-preferences~~ Affirmative Procurement
21 Initiatives on certain construction and construction-related
22 contracts on behalf of certified M/WBE African-American,
23 Non-Minority Women Owned, Asian-American and Native-
24 American businesses, including the use of contract-specific
25 subcontracting goals on selected contracts with genuine
26 opportunities for commercially useful subcontracting
27 pursuant to this policy.

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1 | B. **Non-Professional Services Non A/E Program**

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

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

17 | A Minority/Women Business Enterprise Program establishing
18 | Affirmative Procurement Initiatives on certain professional
19 | services non-A/E contracts on behalf of certified M/WBE
20 | African-American, Non-Minority Women, Asian-American
21 | and Native-American businesses, including the use of
22 | contract-specific subcontracting goals on selected contracts
23 | with genuine opportunities for commercially useful
24 | subcontracting pursuant to this policy.

25 | C. **Professional Services A/E Program**

26 | 1. A Small/Micro Business Enterprise Program to establish ~~bid~~
27 | ~~preferences~~ Affirmative Procurement Initiatives, joint
28 | venture/teaming/partnerships incentives, and evaluation
29 | preferences on behalf of certified S/MBE businesses.
30 |

31 | 2. A Minority/Women Business Enterprise Program permitting
32 | the use of Affirmative Procurement Initiatives, including, but
33 | not limited to, sheltered markets, bid preferences, joint
34 | venture/teaming/partnership incentives, and evaluation
35 | preferences on construction-related professional services A/E
36 | contracts among certified M/WBE businesses that are owned
37 |

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1 by African-Americans, Asian-Americans, Native Americans
2 and Non-Minority Women and also establishing contract-
3 specific subcontracting goals for the participation of certified
4 M/WBE subcontractors on those construction-related
5 professional services A/E contracts that are above the
6 competitive bidding thresholds and that have commercially
7 useful subcontract opportunities.

8 | **D. General Goods and Services Procurement Programs**

9 1. A Small/Micro Business Enterprise Program permitting the
10 use of Affirmative Procurement Initiatives, including, but not
11 limited to, set-asides of sheltered markets for small prime
12 contracts that are below competitive dollar thresholds for
13 bidding exclusively among certified S/MBE businesses and
14 also establishing mandatory subcontracting goals for the
15 participation of certified S/MBE subcontractors on those
16 construction and goods and services contracts that are above
17 the competitive bidding threshold and that have commercially
18 useful subcontract opportunities.

19 2. ~~A Minority/Women Business Enterprise Program may be~~
20 ~~established if future studies establish disparities that may be~~
21 ~~legally addressed through such a program. If disparities are~~
22 ~~found, this policy will be amended to allow a legally~~
23 ~~permissible M/WBE program.~~

24 A Minority/Women Business Enterprise Program permitting
25 the use of Affirmative Procurement Initiatives on certain goods
26 and services contracts for certified M/WBE businesses that
27 are owned by African-Americans, Asian-Americans, and Non-
28 Minority Women, and also establishing contract-specific
29 subcontracting goals for the participation of certified M/WBE
30 subcontractors on those contracts that are above the
31 competitive bidding thresholds and that have commercially
32 useful subcontract opportunities.
33

34 **Administration**

35 The District will utilize various sources to conduct analysis on program data
36 including information from the Office of Facilities Capital Payment System, Job
37 Order Contracting System; Office of Financial Services District SAP system including
38 but not limited to purchasing card data, purchase order data; and the Online
39 Diversity Compliance System.

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1 A. **Availability Analysis**

2 1. Overall Availability – The measure of overall availability is
3 based on all the vendors and contractors that register in the
4 automated and mandatory centralized bidder registration
5 system. Such availability measurements shall be segmented
6 according to the proportion of business ownership by race,
7 gender, and size within appropriate industry codes.

8 2. S/MBE Availability – The proportion of overall availability of
9 the ready, willing, and able vendors that are certified as SBE
10 or MBE businesses within the S/MBE Program, categorized
11 by industry codes and relevant markets.

12 3. M/WBE Availability – The proportion of overall availability of
13 the ready, willing, and able vendors that are certified within
14 the M/WBE program, categorized by race, gender, industry
15 codes, and relevant market.

16 4. Race-Neutral S/MBE Contract Goals – Availability analysis
17 shall be used to set contract participation goals on an annual
18 basis and on a contract-specific basis. The contract
19 participation goals shall be set based on the relevant
20 measures of S/MBE availability as compared to all ready,
21 willing, and able vendors within the specific industry code of
22 the contract in the relevant market.

23 5. M/WBE Contract Goals – Availability analysis shall be used
24 whenever setting contract participation goals on an annual
25 basis or on a contract-specific basis. The contract
26 participation goals shall be set based on the relevant
27 measures of M/WBE availability as compared to all ready,
28 willing, and able vendors within the specific industry code of
29 the contract in the relevant market.

30 B. **Utilization Analysis**

31 The utilization analysis shall be based on the total dollar amount
32 paid in a given year to the vendors and contractors that were
33 registered in the automated and mandatory centralized bidder
34 registration system. This analysis reflects the proportion of contract
35 dollars that are spent, by industry code, and within S/MBE,
36 M/WBE, or VBE vendor categories, as compared to the total

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1 contract dollars spent with the overall vendor population within
2 those industries.

3 **C. Disparity Analysis**

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

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

19
20 **D. Remedy Analysis**

21
22 ~~1. If disparity is shown in the disparity analysis above, the District~~
23 ~~shall review the findings and recommendations from the 2014~~
24 ~~Disparity Study, the 2015 Subcontractor Disparity Study, isparity~~
25 ~~Study, or from the District's most recent independent disparity~~
26 ~~study to determine the most appropriate and effective remedies to~~
27 ~~apply to a given set of contracts to eliminate barriers and overcome~~
28 ~~the effects of various forms of discrimination identified through the~~
29 ~~2014 Disparity Study, the 2015 Subcontractor Disparity Study, the~~
30 ~~2018 Disparity Study, or any subsequent studies.~~

31
32 ~~2. In selecting a remedial approach for any given contract, the District~~
33 ~~shall seek to identify the remedy that is most likely to be effective in~~
34 ~~promoting fair and equitable contract participation by all segments~~
35 ~~of the relevant vendor population, yet does not impose any undue~~
36 ~~burden on innocent third parties.~~
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E. **Periodic Review of Factual Predicate**

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

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

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

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

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1 **Affirmative Procurement Initiatives**

2 The following Affirmative Procurement Initiatives may be used in awarding Board
3 contracts to S/MBEs, M/WBEs, or VBEs according to the industry-specific
4 programs identified in this policy. However, pursuant to State law and
5 Policy 6320.05, no local vendor or employment preference for S/MBEs, M/WBEs, or
6 VBEs may be applied to competitive solicitations for construction services in which
7 fifty percent (50%) or more of the cost will be paid from State-appropriated funds
8 which have been appropriated at the time of the competitive solicitation. The
9 solicitation documents for construction services in this event must disclose that no
10 SBE/MBE or M/WBE will be awarded based upon the State restriction regarding the
11 utilization of local 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 S/MBE, M/WBE, or VBE an opportunity to perform the contract
20 which the S/MBE, M/WBE, or VBE has shown itself otherwise
21 capable of performing. If the exemption is granted, neither the
22 Board, the District, or its officers and officials shall be personally
23 liable to 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 S/MBE, M/WBE, or VBE
29 subcontracting goals for the contract/project, ~~when that bidder's~~
30 ~~price does not exceed the lowest bidder's price by an amount greater~~
31 ~~than the dollar or percentage amount set by the Goal Setting~~
32 ~~Committee.~~

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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 S/MBE, M/WBE, or
5 VBE or a joint venture/teaming/partnership with an S/MBE,
6 M/WBE, or VBE partner in response to a request for proposal.

7 **Professional Services Evaluations**

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 S/MBE, M/WBE, or VBE
11 participation on the team or in subcontract participation.
12 Under this remedial approach, the maximum number of
13 evaluation points is available to an S/MBE, M/WBE, or VBE
14 proposer.

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

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- 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 S/MBEs, M/WBEs, or VBEs.
- 6 2. An S/MBE, M/WBE, or VBE prime contractor may not
7 subcontract more than forty-nine percent (49%) of the
8 contract value to a non-S/MBE, M/WBE, or VBE.
- 9 3. A prospective bidder on a Board contract shall submit the
10 name of the S/MBE, M/WBE, or VBE subcontractor or
11 subcontractors and describing both the percentage of
12 subcontracting by the S/MBE, M/WBE, or VBE and the work
13 to be performed by the S/MBE, M/WBE, or VBE. A bidder
14 may 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 S/MBEs, M/WBEs, or VBEs;
- 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 S/MBEs, M/WBEs, or
30 VBEs that are qualified and available to provide the
31 goods or services required.

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- 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 S/MBE, M/WBE, or VBE subcontracting goal
4 shall render its bid or proposal non-responsive.

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

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

- 19 D. **Sheltered Market:**

- 20 1. The OEO and GSC may select certain contracts for award to a
21 S/MBE, M/WBE, or VBE or a joint venture/teaming/
22 partnership agreement with a S/MBE, M/WBE, or VBE
23 through the Sheltered Market Program.

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

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

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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 S/MBE, M/WBE, or VBE subcontractors; or (3) good faith efforts to meet
8 the contract goal have proven unsuccessful. The department making an emergency
9 procurement shall consider the availability of S/MBEs, M/WBEs, or VBEs from
10 which to make the purchases. The Purchasing Director shall make available a
11 report of procurement activities, including at a minimum, project name, project
12 number, project description, awarded vendor, advertisement date, waivers, and
13 reasons for 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.

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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 S/MBE, M/WBE, and VBEs. Late-penalty interest payments will only be
13 made by the 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 S/MBEs,
16 M/WBEs, and VBEs. Prime vendors must have dispute resolution procedures in
17 place to 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 S/MBE, M/WBE, or
23 VBE 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;

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- 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 S/MBE, M/WBE, or VBE;

- 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 S/MBE, M/WBE, or VBE for purposes
12 of this 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.

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1 | **Small/MicroMinority Business Enterprise, Minority/Women Business**
2 | **Enterprise, and Veterans Business Enterprise Program Performance Review**

3 A. The OEO shall monitor the implementation of this policy and the
4 progress of these programs. On an annual basis, the OEO shall
5 report to the Superintendent and Board on the progress of achieving
6 the goals and objectives established for awards to certified S/MBE,
7 M/WBE, and VBE businesses, reporting both dollars awarded and
8 expended. In addition, the OEO shall annually report on the
9 progress in achieving the stated program objectives, including, but
10 not limited to, enhancing competition, establishing and building new
11 business capacity, and removing barriers to and eliminating
12 disparities in the utilization of available minority business
13 enterprises and women business enterprises on Board contracts.

14 B. The Board shall annually review these programs to determine
15 whether the various contracting procedures used to enhance
16 S/MBE, M/WBE, or VBE contract participation needs to be adjusted
17 or used more or less aggressively in future years to achieve the
18 stated program objectives.

19 | **Policy Review**

20 | ~~As required by F.S. 120.74,~~ The Board shall review and revise this policy as often as
21 | necessary to ensure that it complies with state and federal law, as well as other legal
22 | requirements such as applicable current standards of binding decisions of the
23 | Eleventh Circuit Court of Appeals and the United State Supreme Court. In addition,
24 | at least every three to five (3-5)(4) years, the Board will review the successes and
25 | failures of the M/WBE program and make a determination as to the need for a
26 | continuing M/WBE program.

27 | **Severability**

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

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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
5 F.S. 287.093
6 F.S. 607.11
7 F.S. 1001.41(2)
8 F.S. 1013.46(1)(b)

9 Revised 11/21/12
10 Revised 1/16/13
11 Revised 9/3/13
12 Revised 6/18/14
13 Revised 1/14/15
14 Revised 10/14/15
15 Revised 3/9/16
16 Revised 11/15/17
17 Revised 6/20/18

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