

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

**SUBJECT:                    FINAL 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**

At its regular Board meeting on January 16, 2019, the Board approved Agenda Item G-1 (Phase II Disparity Study) and accepted the findings made by Miller 3 Consulting, Inc., in the 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 which the Board had authorized in February, 2013. The Study provided 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. Copies of the Phase II Disparity Study were provided to each Board member and it is available to the public for review at the Citizen's Information Office. It is also available at the following link : [http://oeo.dadeschools.net/disparity\\_study/pdfs/2019/DS\\_PII.pdf](http://oeo.dadeschools.net/disparity_study/pdfs/2019/DS_PII.pdf).

Additionally, 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 Board also authorized 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) to clarify that permanent United States residents may qualify for the Board's small/micro and M/WBE programs under this policy. This item requests that the Board approve these amendments.

The Notice of Intended Action was published in the *Miami Daily Business Review* on January 22, 2019, and posted in various places for public information and mailed to various organizations representing persons affected by the amended Policies and to individuals requesting notification. The time to request a hearing or protest the adoption of this amendment has elapsed.

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

**RECOMMENDED:**

That The School Board of Miami-Dade County, Florida, adopt the proposed amendments to School Board Policy 6320.02, *Small/Micro, Minority/Women-Owned, and Veteran Business Enterprise Programs*, and authorize the Superintendent to file the amended policy with The School Board of Miami-Dade County, Florida to be effective March 13, 2019.

## **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 M/WBE 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 12, 2019, 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.

# policy

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

FINANCES  
6320.02/page 1 of 53

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.

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 2 of 53

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.

# policy

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

FINANCES  
6320.02/page 3 of 53

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.

# policy

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

FINANCES  
6320.02/page 4 of 53

- 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.

# policy

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 Miller<sup>3</sup> Consulting, Inc. (M<sup>3</sup> 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)



# policy

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

FINANCES  
6320.02/page 6 of 53

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 | ~~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:

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 7 of 53

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

## 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

# policy

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

FINANCES  
6320.02/page 8 of 53

- 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;

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 9 of 53

- 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.

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 10 of 53

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;

# policy

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

FINANCES  
6320.02/page 11 of 53

- 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.

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 12 of 53

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.

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 13 of 53

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.



# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 14 of 53

- 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.

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 15 of 53

- 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.

# policy

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

FINANCES  
6320.02/page 16 of 53

- 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.

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 17 of 53

- 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.

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 18 of 53

- 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).

# policy

- 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

# policy

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

FINANCES  
6320.02/page 20 of 53

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 firms.

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.

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 21 of 53

- 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.



# policy

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

FINANCES  
6320.02/page 22 of 53

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*  
21   *Inclusion in Business Operations and Practices.*

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 23 of 53

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.

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 24 of 53

- 1                   2.     The business must have an actual place of business in the  
2                   Miami-Dade Metropolitan Statistical Area (Miami-Dade  
3                   County, Broward County, and Palm Beach County) for at  
4                   least one (1) year preceding the application and be registered  
5                   as a vendor with the District.
  
- 6                   3.     The business has been established for at least one (1) year or  
7                   the principals of the business have at least three (3) years of  
8                   relevant experience prior to forming or joining the business.
  
- 9                   4.     The business has an applicable local business tax receipt and  
10                  all required licenses.
  
- 11                  5.     An owner of the business must have the required professional  
12                  license(s).
  
- 13                  6.     The Board may honor a valid SBE and/or MBE Certification  
14                  granted by another agency if the agency's requirements are  
15                  consistent with the District's SBE/MBE certification criteria.  
16                  The Superintendent shall develop procedures to implement  
17                  this policy.
  
- 18                  7.     The owner of the business is a person born in the United  
19                  States, naturalized in the United States, or is a permanent  
20                  resident of the United States.
  
- 21                  B.     Additionally, the requirements for SBE/MBE Program eligibility  
22                  based on industry are:  
23
  
- 24                  1.     **Micro Business Enterprise**
  
- 25                  a.     **Professional Services A/E:** The annual gross revenue  
26                  averaged over the previous three (3) years shall not  
27                  exceed \$300,000 (Tier 1) or \$500,000 (Tier 2).  
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# policy

- 1 b. **Professional Services non-A/E:** The annual gross  
2 revenue averaged over the previous three (3) years  
3 shall not exceed \$300,000 (Tier 1) or \$1,000,000 (Tier  
4 2).
          - 5 c. **Goods and Services (Procurement Program):** The  
6 annual gross revenue averaged over the previous  
7 three (3) year period shall not exceed \$300,000 (Tier 1)  
8 or \$1,000,000 (Tier 2).
          - 9 d. **Construction and Construction-Related Specialty  
10 Trades:** The annual gross revenue averaged over the  
11 previous three (3) years shall not exceed \$300,000 (Tier  
12 1) or \$1,000,000 (Tier 2).
- 13 2. **Small Business Enterprise**
  - 14 a. **Professional Services A/E:** The annual gross revenue  
15 averaged over the previous three (3) years shall be  
16 greater than \$500,000 and not exceed \$1,000,000 (Tier  
17 1) or \$2,000,000 (Tier 2).
  - 18 b. **Professional Services non-A/E:** The annual gross  
19 revenue averaged over the previous three (3) years  
20 shall be greater than \$1,000,000 and not exceed  
21 \$2,000,000 (Tier 1) or \$4,000,000 (Tier 2).
  - 22 c. **Goods and Services (Procurement Program):** The  
23 annual gross revenue averaged over the previous  
24 three (3) year period shall be greater than \$1,000,000  
25 and not exceed \$2,000,000 (Tier 1) or \$4,000,000 (Tier  
26 2).

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

# policy

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

FINANCES  
6320.02/page 27 of 53

- 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.

## **Small/Micro Business Enterprise Program Graduation**

13  
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.

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 28 of 53

- 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.

# policy

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

FINANCES  
6320.02/page 29 of 53

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.
- 20
- 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).



# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 30 of 53

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.

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 31 of 53

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

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

9 a. An African American, a person having origins in any of  
10 the black racial groups of the African Diaspora,  
11 regardless of cultural origin. (The African Diaspora  
12 refers to the communities throughout the world that  
13 have resulted from the movement in historic times of  
14 people from Africa, predominantly to the Americas and  
15 among other areas around the globe. The term has  
16 been historically applied in particular to the  
17 descendants of west and central Africans between the  
18 16th and 19th centuries, with their largest populations  
19 in Brazil, the United States, and Haiti. For purposes of  
20 this category, African Diaspora populations include:  
21 African Americans, Black Caribbeans, and Black  
22 Canadians (descendants of west Africans brought to  
23 the United States, the Caribbean, and South America),  
24 Zanj (descendants from southeast Africa, primarily the  
25 Swahili coast, whose ancestors were brought to  
26 western Asia and other parts of Asia), and Siddis  
27 (descendants from southeast Africa, primarily the  
28 Swahili coast, whose ancestors were brought to the  
29 Indian subcontinent (Pakistan and Indian).)



# policy

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

FINANCES  
6320.02/page 33 of 53

- 1 For sole proprietorships, the \$5 million net worth  
2 requirement shall include both personal and business  
3 investments.
- 4 b. it is owned and controlled by at least fifty-one  
5 percent (51%) by a minority person/s who are  
6 members of an insular group that is of a specific racial,  
7 ethnic, or gender makeup or national origin which has  
8 been subjected historically to disparate treatment due  
9 to identification in and with that group resulting in an  
10 underrepresentation of commercial enterprises under  
11 the group's control, and whose management and daily  
12 operations are controlled by such persons.
- 13 A minority business enterprise may primarily involve  
14 the practice of a profession.
- 15 c. the business must have an actual place of business in  
16 the Metropolitan Statistical Area (Miami-Dade County,  
17 Broward County, and Palm Beach County, Florida) for  
18 at least one (1) year preceding the application and be  
19 registered as a vendor with the District.
- 20 d. the business has an applicable local business tax  
21 receipt and all required licenses.
- 22 e. an owner of the business must have the required  
23 professional license(s).

# policy

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

FINANCES  
6320.02/page 34 of 53

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

# policy

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

FINANCES  
6320.02/page 35 of 53

- 1 Documents that establish control include but are not  
2 limited to: corporate bylaws, operating agreements,  
3 partnership agreements, management agreements, or  
4 other agreements. Such documents should be free of  
5 restrictive language which dilutes a minority/woman  
6 owner(s)' control and prohibits him/her from making  
7 decisions.
- 8 1) The minority/woman owner(s) must submit  
9 documentation demonstrating control through  
10 the authority and responsibility to sign company  
11 checks, for all bank accounts, and letters of  
12 credit, negotiate contracts on behalf of the  
13 business, signature responsibility for insurance,  
14 bid bonds, and performance and payment  
15 bonds, negotiate bank transactions, and  
16 guarantee all instruments which indebt the  
17 business.
- 18 2) Unless a business is a franchise, agreements for  
19 contractual support services that usurp a  
20 minority/woman owner's authority to control a  
21 company are not allowed.
- 22 3) Minority/Women owners shall control or  
23 supervise the hiring, firing, and supervision of  
24 employees, and establishment of employment  
25 policies, wages, benefits, and other employment  
26 conditions.
- 27 4) Minority/Women owners shall have knowledge  
28 and control of all financial matters of the  
29 business.

# policy

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

FINANCES  
6320.02/page 36 of 53

- 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.

# policy

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

FINANCES  
6320.02/page 37 of 53

- 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.



# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 38 of 53

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.

# policy

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 and  
21 | Native-American businesses, including the use of contract-  
22 | specific subcontracting goals on selected contracts with  
23 | genuine opportunities for commercially useful subcontracting  
24 | 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 |

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 40 of 53

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.

# policy

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

FINANCES  
6320.02/page 41 of 53

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

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 42 of 53

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.~~

37

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 43 of 53

1

2 | **E. Periodic Review of Factual Predicate**

- 3 | 1. At least once every ~~four (4)~~three to five (3-5) years, the OEO  
4 | and Superintendent shall recommend a contract with an  
5 | independent disparity study consultant to the Board to  
6 | conduct an updated review of the factual predicate for the  
7 | District's M/WBE programs to determine whether there is  
8 | any ongoing need for the use of race- and gender-conscious  
9 | remedies.
- 10 | 2. Each successive disparity study update shall use  
11 | methodologies and data sources that are preferred or  
12 | consistent with the most recent controlling legal precedents.
- 13 | 3. Each successive disparity study update shall make specific  
14 | findings and recommendations regarding the ongoing need for  
15 | race- and gender- neutral and race- and gender-conscious  
16 | remedies for certain categories of contracts. Study  
17 | recommendations should also suggest appropriate  
18 | modifications to existing District procurement procedures,  
19 | S/MBE programs, and M/WBE programs to promote fair and  
20 | equitable participation in District contracting opportunities in  
21 | the most effective but least restrictive and least burdensome  
22 | manner.
- 23 | 4. In the event that the District determines that there is no  
24 | ongoing need for any race- and gender-conscious remedies,  
25 | the M/WBE programs shall be gradually phased out and  
26 | shall sunset within two (2) years after such determination is  
27 | made.

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 44 of 53

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.

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 45 of 53

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.



# policy

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

FINANCES  
6320.02/page 46 of 53

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.

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 47 of 53

- 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.

# policy

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

FINANCES  
6320.02/page 48 of 53

- 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.

# policy

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

FINANCES  
6320.02/page 49 of 53

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.

# policy

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

FINANCES  
6320.02/page 50 of 53

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;

# policy

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

FINANCES  
6320.02/page 51 of 53

- 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.

# policy

THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY

FINANCES  
6320.02/page 52 of 53

1 | **Small/~~Micro~~Minority 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, t~~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.

# policy

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

FINANCES  
6320.02/page 53 of 53

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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