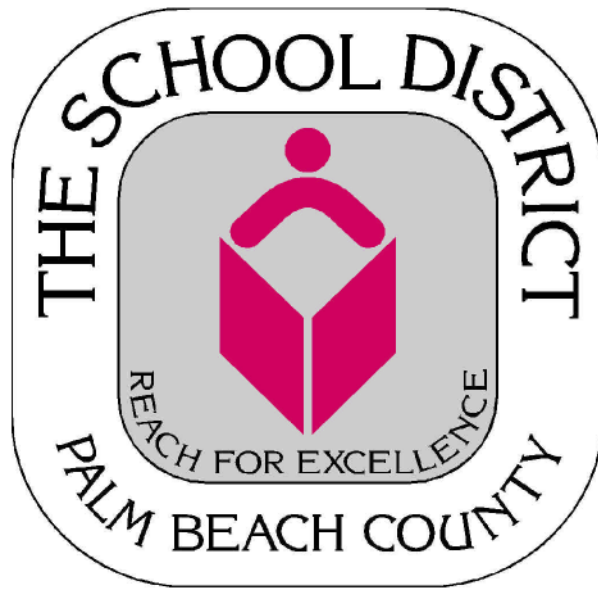


# **PROCEDURES MANUAL**



## **SBE and M/WBE Program Implementation by Industry**

**Office of Diversity in Business Practices**

School District of Palm Beach County

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## INTRODUCTION

On May 11, 2005, the School Board adopted Policy 6.143, "DIVERSITY AND EQUITABLE UTILIZATION IN BUSINESS," following a disparity study that indicated the need for a Policy authorizing the Board to remedy the present effects of discrimination in certain areas of contracting and procurement. Section (15) of that Policy provides:

Implementation by the Superintendent.-- Wherever this Policy mentions procedures to be established or implemented by the Superintendent, certain internal operational procedures and guidelines may be set forth in Bulletins where appropriate. *Other more formal procedures, when sufficiently developed and solidified, should be recommended to the Board, where appropriate, for adoption as Policy.*

Therefore, this SBE and M/WBE Program Implementation by Industry Procedures Manual will be incorporated by reference within Board Policy 6.143.

## **Overview of SBE and M/WBE Programs**

Board Policy 6.143 as adopted by the School Board on May 11, 2005, provided extensive policy direction for the School District to establish a “narrowly tailored combination of race- and gender-neutral and race- and gender-conscious remedies for the effects of discrimination in School Board contracts. Among these remedies were several neutral measures including the establishment of a Procurement Policy Workgroup to examine and propose modifications to the District’s procurement processes and practices; establishment of a Commercial Non-Discrimination Policy (subsequently adopted in Policy No. 6.144); establishment of an automated and mandatory Centralized Bidder Registration System for firms interested in selling goods and services to the District; establishment of business development assistance initiatives related to bonding waivers, insurance, and financial assistance; establishment of a debriefing procedure for losing bidders; establishment of a linked deposit program to encourage financial institutions that hold District funds to improve capital access and loan availability for SBEs and M/WBEs; establishment of procedures for advance review of contract specifications by ODBP to promote greater opportunities for SBE and M/WBE firms; establishment of a prompt payment policy; and establishment of a variety of industry-specific remedial programs for the purpose of eliminating the disparities in M/WBE contract participation in District contracts that have been caused by discrimination. Board Policy 6.143 further required that these assorted remedies be implemented in a narrowly tailored manner and that those remedies that are race- and gender-conscious, (such as the M/WBE Program) only be implemented in circumstances where it is apparent that the use of neutral means alone will likely be insufficient to remedy the effects of identified discrimination.

This Procedures Manual provides the procedures for the implementation of two of these industry-specific remedial programs: (a) the Small Business Enterprise (“SBE”) Program, and (b) the Minority / Women Business Enterprise (“M/WBE”) Program. In selecting which of these two remedial programs to apply to a given contract,, the District shall consider past experiences by the District and other entities within the Relevant Market Place with the use of neutral remedies for similar contracts, and prepare a written justification memorandum outlining the basis for its decision for application of the M/WBE Program to contracts within a given industry In keeping with Board Policy No. 6.143, the race- and gender-conscious M/WBE program procedures are only to be implemented in those industries where the effects of discrimination have been identified, and appear unlikely to be fully remedied through implementation of the SBE Program and other neutral means. Moreover, for those industries and contracts where the School District determines to apply the M/WBE Program, its application shall be limited to benefit only those gender and ethnic groups within those industries for which resulting disparities appear unlikely to be fully remedied by neutral means alone.

The SBE Program Procedures establish rules for the implementation of

various contract preferences to encourage greater use of Small Business Enterprises in School District contracts for construction, non-professional services, professional services, and general procurement. Among these preferences are the use of set-asides, mandatory subcontracting goals, bid preferences, evaluation preferences, and joint venture incentives. These SBE Program preferences may be applied to any contract in a manner consistent with these procedures at the discretion of the School District.

From time to time, the School District may amend this Procedures Manual or issue additional Procedures Manuals to provide rules for the implementation of other programs and policies authorized under Board Policy No. 6.143.

# **SBE Program Procedures**

## **SMALL BUSINESS ENTERPRISE PROGRAM**

1. **Purpose.**-- This procedure provides details and procedures for the School District of Palm Beach County Small Business Enterprise Program ("SBE program") authorized by Policy 6.143. The purpose of the SBE program is to increase participation and assist SBEs in the District's contracting and procurement activities in a race- and gender-neutral manner.
2. **Applicability.**-- Unless precluded by applicable law, the provisions of the SBE program shall apply to the procurement of construction-related services, non-professional services, professional services, and general procurement by the School District. Procurements subject to an SBE set-aside pursuant to the SBE program are not exempt from other requirements of Policy 6.143.
3. **Administration.**-- The Director of the Office of Diversity in Business Practices ("ODBP") is the Superintendent's designee to administer the SBE program. The Director's duties and responsibilities relative to the SBE program include, but are not limited to, the following:
  - a. ensuring that a representative of the ODBP is included on all selection committees for bids, contracts and professional services;
  - b. reviewing contract specifications to ensure that they are not unnecessarily restrictive to the availability and participation of SBEs;
  - c. providing information and assistance to SBEs to increase their ability to compete effectively for the award of District's business solicitations;
  - d. keeping SBEs apprised of opportunities for technical assistance and training;
  - e. monitoring the progress of the SBE program to ensure that SBEs have opportunities to participate in the District's procurement of goods and services;
  - f. serving as chairperson and coordinator of the Business Diversity Committee;
  - g. evaluating the levels of availability and utilization in SBE participation through the establishment and use of a centralized bidder registration system;
  - h. adjusting the implementation of this Procedure to account for changing needs and circumstances and to ensure that appropriate utilization

objectives are established and achieved;

- i. monitoring procurement data regarding goods and services that District departments have recommended for SBE set-asides; and
- j. providing reports to the School Board on at least an annual basis.

4. **Business Diversity Committee.**-- The Business Diversity Committee, as described in Policy 6.143(7) will recommend the annual goals for SBE utilization, consistent with Policy 6.143 based on the availability of SBE's that can participate in projected subcontracting opportunities.

- a. To determine overall availability, the Business Diversity Committee reviews the contractor list to identify contractors in the local market who are ready, willing, and able to perform on projects for which the District expects to solicit contractors or vendors in the coming year, and then the Business Diversity Committee identifies ready, willing, and able SBE contractors or potential subcontractors by using the District's Diversity Directory.
- b. The Committee will have the discretion on a contract-by-contract basis to establish mandatory subcontracting goals for the participation of certified SBE subcontractors on those general procurement contracts, nonprofessional services contracts, and construction contracts that are above the competitive bidding threshold and that have commercially useful subcontract opportunities, recognizing that some contracts will have significant subcontract opportunities, while others may not.

## 5. **Eligibility and Size Standards**

- a. To enjoy the benefits of preferences or set-asides in the SBE program, a firm must meet the District's eligibility standards incorporated in the definition of "small business enterprise"(SBE) in Policy 6.143(3) (nn), which requires that the business must be certified by the District as:
  - i. having received less than one million dollars (\$1 million) in contract payments from District projects or contracts in the fiscal year preceding the bid;
  - ii. having average annual gross sales that are less than fifty percent (50%) of the small business size standards as most recently defined by the U. S. Small Business Administration for the business firm's relevant industry; and
  - iii. having an average number of full-time employees over the last three years that is less than fifty percent (50%) of the small

business size standards as most recently defined by the U.S. Small Business Administration for the business firm's relevant industry. (As of this Procedure's adoption in 2006, the current standards were available at: <http://www.sba.gov/size/indexfaqg.html> and <http://www.sba.gov/size/sizetable2002.html>.)

- b. The principal place of business of the SBE must be in Palm Beach County, Broward County, and/or Miami-Dade County (i.e., the firm's headquarters must be located in Palm Beach County, Broward County, and/or Miami-Dade County, with either, a majority of the firm's gross revenues or sales derived there, or a majority of the firm's employees domiciled in these counties).
- c. The applicant business shall be independent (a free-standing business) and recognized as a separate entity for tax purposes. Businesses that share common ownership, space, employees, or other facilities, may be considered as a single business for this program without reference to tax status.
- d. The business must have been established and operational for a period of at least one (1) full year prior to the application.
- e. The business's address must include the street number, name of the street, suite number, if any, and correct zip code. A post office box is unacceptable without the physical street address.

**f. Revenues or Sales Size Standards**

- i. Professional Services.-- Any firm that has had average gross sales or revenues of greater than six million dollars (\$6 million) over the last three (3) years shall not be considered eligible to participate in the School District's SBE program for professional services.
- ii. Procurement Program.-- Any firm that has had average gross sales or revenues of greater than seven million dollars (\$7 million) over the last three (3) years shall not be considered eligible to participate in the School District's SBE program for procurement.
- iii. Construction Services.-- Any firm that has had average gross sales or revenues of greater than thirteen million dollars (\$13 million) over the last three (3) years shall not be considered eligible to participate in the School District's SBE program for construction.

6. **Application for SBE Certification**

- a. All applicants wishing to enjoy the benefits of the SBE program must apply for SBE certification by completing an SBE Application and Disclosure Affidavit, which can be obtained through the ODBP. The ODBP will provide application directions with the application. At a minimum, the ODBP shall require applicants to submit the following documentation with the Application and Disclosure Affidavit, as applicable to their business:
  - i. verification that the business is principally domiciled in Palm Beach County, Broward County, and/or Miami-Dade County (through documentation such as corporate filings, tax returns, sales receipts or contract documents, leases, utility bills, or occupational licenses);
  - ii. hold all required state/local licenses to perform the work for which certification is sought. Those companies that require a professional license to perform their line(s) of business should provide the name of license holder/individual qualifying agent;
  - iii. fictitious name certificate if applicable;
  - iv. prior three (3) years' federal tax returns, including all schedules;
  - v. last year's personal tax return of the president/owner(s) if in business less than three (3) years;
  - vi. last year's financial statement prepared by an independent CPA;
  - vii. résumé(s) of all the principal(s) and key staff; and
  - viii. IRS Form 941 and payroll records for the prior three (3) years (or for whatever period the firm has been in business if less than three (3) years).
- b. The ODBP shall advise the applicant, in writing, of any additional documentation deemed necessary to address items listed in the application. Failure to provide the additional requested documentation within 30 days shall cause the ODBP to deem the application abandoned.

7. **Application Review.--** The SBE certification application and supporting documents will be logged in as appropriate. A checklist of required documentation will be provided to applicants with the application form. Applications will not be processed until all documents are received.

- a. The application will be reviewed for completeness and accuracy. The ODBP will inform the applicant of any missing documentation within 30 days of receipt. Any applicant failing to submit the missing documentation within 30 days of the notice shall be deemed to have abandoned its application.
- b. Once an applicant has submitted the completed application and all

supporting documentation, the ODBP will complete certification review within 60 days.

- c. Documents not in English must be accompanied by a certified translation.
- d. References will be contacted and information verified by third parties, when appropriate.
- e. When deemed appropriate by the ODBP, a personal interview or site visit shall be conducted by the ODBP to discuss the documentation submitted and to verify the applicant meets the criteria.

**8. Approved Businesses**

- a. Applicants approved for certification will receive a certification letter stating the specialty area(s) of the business by mail. The certification will normally last for three (3) years, although the firm's eligibility for preferences or set-asides will be subject to the graduation provisions of section 17 below.
- b. Certified SBEs shall be listed as SBEs in the School District's Diversity Directory.
- c. If, during the certification period, an SBE experiences changes in ownership, employment, control or location, it shall be the SBE's responsibility to report said changes to the ODBP Director. Failure to report said changes may result in revocation of certification, or denial of re-certification for a period not to exceed one (1) year.

**9. Denial of Certification.--** Applicants denied certification shall be notified by certified mail. An applicant denied certification cannot reapply for certification for one calendar year from the denial date of the certification, but the applicant shall be informed of the right to seek reconsideration of the denial.

- a. If the applicant believes the ODBP's denial of the SBE-certification application may have been due to the ODBP's overlooking or misapprehending some aspect of its application, the applicant may file with the ODBP a written, signed, and dated request for reconsideration. The request shall be filed no later than fifteen (15) calendar days after the date of receipt of notice of denial of certification. The ODBP may extend the time for filing a request for reconsideration or waive the time limit for cause, specifying in writing the reason for so doing. Such request must be delivered to: Director, Office of Diversity in Business Practices, 3300 Forest Hill Boulevard, Suite A -106, West Palm Beach, Florida 33406.

- b. If a request for reconsideration is filed, an informal meeting will be held with the requestor and the ODBP Director. The meeting will be scheduled within thirty (30) days after the filing of the request for reconsideration. The ODBP Director may grant an applicant's written request for extension of this meeting time for cause.
  - i. At the meeting, the Director will consider only information which was available at the time of the application.
  - ii. The ODBP Director will provide written notice as to the outcome of the meeting within ten (10) days of the date of the meeting.
  - iii. If the ODBP Director decides the denial was correct, the applicant may request a hearing under the Administrative Procedure Act. If material facts are not in dispute, an informal hearing may be held under Fla. Stat. §§ 120.569 and 120.57(2) by a local volunteer attorney. If material facts are disputed, the hearing request will be referred to the state Division of Administrative Hearings (DOAH), and an administrative law judge will conduct a formal hearing under Fla. Stat. §§ 120.569 and 120.57(1) and issue a recommended order, which may be adopted by the School Board in the Board's final order. The Board's final order is final agency action subject to judicial review.

**10. Re-Certification**

- a. Certified SBEs are required to submit a re-certification and affidavit of their continued eligibility as an SBE every three years. The criteria for re-certification shall be the same as for certification (except that as a prerequisite to re-certification, each SBE that has been in operation for less than five (5) years must also provide proof of completion of a minimum of eight (8) hours of business training during the prior two years. The business course or training must be approved or accredited by the State of Florida or a recognized leading trade association; otherwise it will not be accepted. This requirement is to enhance the SBE's business potential; the small business owner or his/her designee must take the training.
- b. The ODBP may conduct site visits and/or review documents as often as deemed necessary by the ODBP to ensure continued compliance as an SBE. A company that fails to submit its affidavit of continued eligibility or other documentation requested by the ODBP will be denied re-certification.

- c. An applicant denied re-certification shall be notified by certified mail. The re-certification applicant may request reconsideration of a denial of re-certification within fifteen (15) calendar days after receipt of notice of denial. The procedures for requesting reconsideration and a hearing are the same as under subsections (9)(a) & (b) above.

11. **Reciprocal Application.**-- Businesses certified as SBEs by the Palm Beach County Small Business Assistance Program and/or other reciprocal partners shall be recognized as certified and eligible for participation in this program, unless the firm fails to meet any of the requirements or standards under section (5), above. In the event a conflict exists between a reciprocal certification and the School District's certification, the District's standards in section (5) above shall prevail.

12. **Decertification**

- a. The Board may revoke certification as an SBE if the business fails to maintain the qualifying characteristics upon which it was certified. If such decertification occurs, the business may reapply for certification one (1) year after receipt of the notice of revocation.
- b. If during the period of certification, the District receives written information that the SBE received certification improperly or that there has been such a substantial change in circumstances in the operation, ownership, control, or activities of the SBE that continued certification would be contrary to Policy 6.143 or this Procedure, the ODBP shall conduct an investigation of the allegations.
  - i. Nothing in this section shall prevent the ODBP from commencing an investigation regarding the legitimacy of a firm's SBE certification based upon information received independent of a third party's written request.
  - ii. The ODBP shall advise that the Superintendent recommend that the Board decertify the SBE during the term of its three-year certification if the investigation indicates any of the following conditions:
    - A. the SBE cannot be contacted at the last known address provided any forwarding address is not located in Palm Beach County, Broward County, or Miami-Dade County;
    - B. the SBE is no longer in business;
    - C. the SBE is no longer licensed to conduct the type of business for which it was certified;

- D. the SBE obtained its original certification and/or recertification through the use of a front or other false representation or deceit;
  - E. the SBE has experiences such a substantial change in ownership or control that continued certification would be contrary to Policy 6.143 or this Procedure; or
  - F. the SBE has been debarred under Policy 6.14 or Policy 6.143(9)(e) or section (15) of this Procedure. At the expiration of a debarment, the firm may reapply for certification.
- iii. The ODBP Director or designee shall notify the SBE by certified mail that the ODBP will advise the Superintendent to recommend decertification to the School Board.
- c. A business whose representative is discovered to have made any willful misstatement or deceptive or fraudulent statement or misrepresentation in connection with the business's application for SBE certification may, in addition to any other penalties, be denied certification or re-certification for a period not to exceed three (3) years. If the problem is discovered after certification, the certification may be revoked and the business may be debarred under Policy 6.14 or Policy 6.143(9)(e) or section (15) of this Procedure.
  - d. All SBEs are expected to perform all contract requirements as directed by the District. If an SBE fails to perform as required, the ODBP will advise that the Superintendent recommend revocation of the SBE's certification for one (1) year or until such time as the SBE can demonstrate the capacity to perform similar contracts.
  - e. The procedures for requesting reconsideration and a hearing are the same as under subsections (9)(a) & (b) above

### 13. SBE Program Incentives

- a. **Bid Preferences.**-- Specific goals for each project or contract may be adopted on a project-by-project or contract-by-contract basis prior to the bid, wherein (to the extent allowed by Florida law) the contract award shall be made to the lowest responsive, responsible bidder meeting the SBE subcontracting goals for the contract/project when that bidder's price does not exceed the lowest bidder's price by an amount greater than the dollar or percentage amount set by the Business Diversity Committee prior to the bid.
- b. **Evaluation Preferences.**-- In the selection process for the award of certain professional services contracts, the District may include as one

of its evaluation criteria the level of SBE participation on the team or in subcontract participation.

- i. A summary of any applicable SBE program procedures shall be plainly stated in each solicitation.
  - ii. A point system of evaluation will be used, wherein businesses submitting proposals to provide certain professional services to the District will be eligible to receive, on a sliding scale, a designated number of total possible points based upon their SBE status or level of SBE participation. The distribution of points allocated to the evaluation criteria shall be stated in the RFP
  - iii. Under this plan, SBE participation may be one of several criteria used to evaluate each proposal, and maximum points would be awarded when the proposer is a certified SBE. These provisions are not intended to be used to the exclusion of other provisions of this Procedure.
- c. **Internal Matchmaking.**-- Internal matchmaking programs will be carried out to promote SBE participation as described in Policy 6.1 43(5)(a)(ii), (5)(b)(ii), (5)(c)(ii), and (5)(d)(ii).
- d. **External Matchmaking.**-- External matchmaking programs for SBEs will be implemented as provided in Policy 6.143(5)(a)(iii), (5)(b)(iii), (5)(c)(iii), and (5)(d)(iii).
- e. **Joint Venture**-- The ODBP shall encourage, where economically feasible, establishment of joint ventures to ensure prime contracting opportunities for all businesses, including certified SBEs, on eligible projects. A joint venture may be considered a certified SBE for purposes of the award of a contract when at least one joint venture is an SBE and shall be responsible for a clearly-defined portion of the work to be performed, share in the ownership, control, management responsibilities, risks, and profits of the joint venture
- i. Based upon the scope of work and market availability, the Business Diversity Committee shall determine on a project-by project basis on all eligible projects valued over \$10,000,000.00 whether good faith efforts to enter into a joint venture shall be required for each project. On such projects in which good faith efforts to enter into a joint venture relationship is required, no bid shall be accepted unless submitted by a joint venture comprised of eligible bidders. The ODBP shall determine whether good faith efforts to enter into a joint venture have been adequately demonstrated based on a review of relevant facts, documents, and circumstances.

- ii. On such eligible projects in which good faith efforts to enter into a joint venture relationship is required, the joint venture member businesses must have different size status. SBE members of the joint venture must be certified as much as the ODBP and the joint venture team shall include in its bid submittal the SBE certification letter of each SBE joint venture member. A bid submitted by a joint venture with no SBE participation shall be deemed non-responsive and rejected.
- iii. As to each joint venture under this section, a written joint venture agreement must be completed by all parties, submitted to the State, and executed before a notary public, which clearly delineates the rights and responsibilities of each member or partner, complies with any requirements as set forth in bid documents or Otherwise, and provides that the joint venture shall continue for, at a minimum, the duration of the project.
- iv. The ODBP shall review and approve all contractual agreements regarding the terms and provisions of each joint venture relationship prior to the award of a contract on an eligible project to the joint venture, including agreements pertaining to:
  - 1. The initial capital investment of each venture partner;
  - 2. The proportional allocation of profits and losses to each venture partner;
  - 3. The sharing of the right to control the ownership and management of the joint venture;
  - 4. Actual participation of the venture partners on the project;
  - 5. The method of and responsibility for accounting;
  - 6. The method by which disputes are resolved, and
  - 7. Any additional or further information required by ODBP and Purchasing as set forth in bid documents or otherwise.
- v. Joint ventures may submit agreements for pre-approval no later than 30 calendar days prior to the date set for receipt of bids on an eligible project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an eligible project. A bid submitted by a joint venture that does not include a satisfactory written joint venture agreement in accordance with the requirements shall be deemed non-responsive and rejected.
- vi. The joint venture, and each member of the joint venture, shall provide the ODBP and Purchasing access to review all records pertaining to joint

venture agreements before and after the award of a contract in order to reasonably assess compliance.

- vii. The same process as required for certification of SBEs shall certify the joint venture, except that joint-venture certification shall be given only a bid-by-bid basis. A joint venture desiring SBE certification shall submit an application for approval prior to the bid opening or receipt of proposals for that particular project.
- viii. A joint venture may be considered a certified SBE for purposes of the award of a contract when at least one joint venture is an SBE and shall be responsible for a clearly defined portion of the work to be performed, share in the ownership, control, management responsibilities, risks, and profits of the joint venture.
- f. **Outreach Notification.--** The District shall solicit bids from responsible SBE bidders, and may do so by issuing public notice or advertisement as will acquaint bidders with the proposed solicitation, including newspaper ads where required by law. The solicitation shall contain a detailed description of the services sought, the time and date for the receipt of responses and of the public opening, and terms and conditions applicable to the procurement, including the criteria to be used in evaluating responsiveness and responsibility.
- g. **Bid Debriefing.--** Within two (2) weeks after posting of the bid award recommendation, bidders or proposers not selected on specific projects or contracts may request in writing a debriefing with ODBP to enable them to compete more effectively in the future. In response to requests, ODBP shall set a bid-debriefing meeting within three (3) weeks, if possible, after the first request. In the meeting, ODBP and appropriate District personnel shall discuss possible changes to their submissions that would make them more competitive in the future. ODBP will keep a record of bid-debriefing meetings and attendance.
- h. **Business Development Assistance.--** The ODBP, along with appropriate District, business, and community personnel, will seek to develop and implement loan initiatives, revolving working capital funds, contract financing, and arrangements for public venture capital funds, to the extent allowable by law and with the approval of the School Board.
- i. **Linked Deposit Program.—**The ODBP will seek to establishment a linked deposit program to encourage financial institutions that hold District funds to improve capital access and loan availability for SBEs.
- j. **Waiver of Bonding Requirements.--** Pursuant to Fla. Stat. § 255.05(1)(a), payment and performance bonds for School Board construction projects of \$200,000.00 or less may be waived on a contract-by-contract or project-by-project basis, and the Board or the District and its

officers or officials shall not be personally liable to any person suffering loss because of granting such exemption.

- i. The Business Diversity Committee shall review the nature, scope and complexity of each construction project to determine the appropriateness of waiving payment and performance bond requirements. The factors to be considered include, but are not limited to:
  - A. complexity of the construction project;
  - B. School Board experience with the type of construction project under review;
  - C. the risk of loss to the School District in the event of default, and exceptional risk factors; and
  - D. the recommendations of the user or soliciting departments.
- k. **De-Bundling.--** The ODBP will preview proposed contract bids in advance of their public dissemination to suggest ways in which contracts may be de-bundled or segmented into smaller units to provide for greater competition and opportunities for greater prime contract participation by SBE firms.
- l. **Adequate Time for Advertisement of Bids and Proposals.--** The School District will provide adequate time, as shown below, for the submission of formal bids and proposals to facilitate participation of SBEs on set-asides.
  - i. The standard advertisement period for an SBE set-aside construction project with an estimated value of \$100,000.00 or more shall be a minimum of twenty-one (21) calendar days.
  - ii. Advertisements for set-asides shall clearly state that bids will be accepted only from certified SBEs.
  - iii. Addenda issued less than five (5) days prior to a scheduled bid or proposal opening shall result in an extension of the bid opening in order to give the bidder five (5) days to address the addenda in the bid
  - iv. Bidding for commodities and contractual services that have been set-aside shall be advertised pursuant to procedures in the School District's Purchasing Manual.
- m. **Payment Assistance.--** When a certified SBE firm is awarded a project as a Prime Contractor, the School District may permit the issuance of joint checks to the extent allowed by law.
  - i. The joint check shall be payable to the SBE and its primary material

supplier, provided that the SBE has clearly indicated in its bid, and subsequently authorized in its contract, a desire to utilize this procedure and has specified the supplier in the bid.

- ii. The payment request shall clearly stipulate what materials or supplies are included and that the SBE has certified that those materials or supplies were received and used for the School District's projects. For tax purposes and the IRS Form 1099, the total amount of any joint payment shall be considered a payment to the SBE.
- iii. The utilization of this procedure by a small business shall not in any way be construed to create a contractual relationship between the School District and the SBE's supplier(s). It is intended solely for the benefit and assistance of the SBE.

n. **Set-Asides for Commodities Procurement and Non-Professional Services.--** The Business Diversity Committee may set aside procurements of commodities and non-professional services with an estimated cost from \$2,500 to \$25,000 for competition exclusively among certified SBEs. Such set-asides shall be economically feasible contracts that SBEs are capable of performing. In order to assure necessary competition, at least three (3) certified SBEs must be available and capable of providing the goods or non-professional services, or the contracts may not be set aside.

- i. The ODPB Director shall determine and advise the Group Policy Committee whether at least three (3) certified SBEs are available and capable of providing the respective goods or non-professional services for each proposed procurement contained in such reports.
- ii. Following a review of such reports and the Director determinations regarding the availability and capability of at least three (3) certified SBEs, the Committee shall determine which procurements will be set aside for certified SBEs, and whether the procurements set aside will be subject to payment and/or performance bond requirements. (The Committee shall also determine whether any proposed modifications to previously-approved set-asides of procurements of commodities and non-professional services are appropriate, and make any necessary modifications to such previously approved set-asides.)
- iii. If, in the judgment of the Director of Purchasing and the soliciting department, bids received for a procurement set aside pursuant to this subsection are deemed to be non-responsive, excessive, or unreasonable based upon the nature or purchase price of similar procurements in the market area, all bids shall be rejected and a new invitation for bids open to all bidders will be issued by the District. The Director of Purchasing shall notify the ODBP Director of such

rejection.

**o. Set-Asides for Professional Services**

- i. Unless precluded by applicable law, the Business Diversity Committee may set aside contracts for professional services, including, but not limited to, consulting services, with an estimated cost or \$25,000 or less for competition exclusively among certified SBEs. Such set-asides shall be economically feasible contracts that SBEs are capable of performing. In order to assure necessary competition, at least three (3) certified SBEs must be available and capable of providing the professional services to be solicited or the contract cannot be set aside.
- ii. On at least a quarterly basis, all user or soliciting departments shall submit a report to the Business Diversity Committee and the Purchasing Director containing all proposed procurements of professional services with an estimated cost of \$25,000 or less, and any proposed modifications to previously approved set-asides of procurements of professional services, together with the justifications for such modifications. The report shall also indicate which proposed procurements are recommended for a set-aside, together with the justifications for such recommendations, and, when applicable, recommend which proposed procurements should be subject to payment and/or performance bond requirements or a waiver from such requirements, together with the justifications for such recommendations.
- iii. If, in the judgment of the Business Diversity Committee, or the user or soliciting department, proposals received in response to a request for proposals for a procurement set aside pursuant hereto are deemed to be non-responsive, excessive, or unreasonable based upon the nature or cost of similar procurements in the market area, all proposals shall be rejected and a new RFP open to all proposers will be issued by the District

**p. Set-Asides for Construction**

- i. The Business Diversity Committee may set aside for bid only by certified SBEs any construction project with an estimated cost under the bid threshold in Policy 7.10. Such set-asides shall be economically feasible contracts that SBEs are capable of performing. In order to assure necessary competition, at least three (3) certified SBEs must be available and capable or performing the type or work within the scope of the respective construction project to be solicited.
- ii. By November 1 of each year, all user or soliciting departments that

undertake construction projects shall submit a report to the Business Diversity Committee and the ODBP Director containing all proposed construction projects for which contracts are anticipated to be awarded in the following fiscal year. The report shall also indicate which proposed construction projects are recommended for a set-aside, together with the justifications for such recommendations and, when applicable, recommend which proposed construction projects should be subject to payment and/or performance bond requirements or a waiver from such requirements, together with the justifications for such recommendations.

- iii. The ODBP Director shall determine and advise the Business Diversity Committee whether at least three (3) certified SBEs are available and capable of performing the type of work within the scope of each proposed construction project contained in such reports.
- iv. Following a review of such reports, the Business Diversity Committee shall determine which construction projects will be set aside for certified SBEs and whether the construction projects set aside will be subject to payment and/or performance bond requirements.
- v. If, in the judgment of the Business Diversity Committee or the user or soliciting department, bids received in response to an invitation for bids for a procurement set aside pursuant hereto are deemed to be non-responsive, excessive, or unreasonable based upon the nature or purchase price of similar procurements in the market area, all bids shall be rejected and a new invitation for bids open to all bidders will be issued by the District.
- vi. When necessary, all user or soliciting departments that undertake construction projects shall submit a report to the Business Diversity Committee and the Director of ODBP containing any proposed modifications to previously approved set asides of construction projects, together with the justifications for such modifications. (The Committee shall determine whether any proposed modifications to previously approved set-asides or construction projects are appropriate, and make any necessary modifications to such previously approved set-asides).

14. **Disqualification/Rejection of Bids/Proposals, and Debarment.**-- The School District reserves the right to reject any proposals from bidders who have previously failed to perform properly and who have done so by commission or omission of an act of such serious and compelling nature that the act indicates a serious lack of business integrity or honesty. Such acts include, but are not limited to:
- a. violating any applicable law, regulation, or contract provision relating

to the performance of obligations incurred pursuant to an agreement with a recipient under a School District contract;

- b. making or procuring to make any false statement or using deceit for the purpose of influencing in any way any action of the School District;
  - c. making false representations purposes of qualifying for SBE certification;
  - d. engaging in misconduct such as fraud, deceit, or other actions indicating serious lack of business integrity or honesty;
  - e. acting as, or knowingly making use of, a "front" company (i.e., a firm which is not in fact an SBE but poses as such in order to participate as an SBE in the District's program); or
  - f. violation of the Board's Commercial Nondiscrimination Policy 6.144.
15. **Debarment.** -- It is unlawful for any individual to intentionally and falsely represent any entity to be an SBE for the purpose of qualifying for bids, for contract awards, or for certification as such an SBE under the terms of this Procedure. Any person who violates this section shall cause a recommendation to be made to the Board for debarment of the firm's ability to conduct business with this District in accordance with Policy 6.14 or 6.143 for a period up to 36 months. Moreover, Fla. Stat. § 837.06 provides: "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083." Additionally, a firm's failure to comply with the contract may result in the drafting of a recommendation for suspension or debarment of the firms or individuals involved. Debarment of vendors by the School Board for activity contrary to this program will be carried out in accordance with Policy 6.14
16. **Breach of Contract.** -- Any contractor or firm which falsely represents to the District, pursuant to a contract, that it is an SBE or which represents that it will use the services or commodities of SBEs and subsequently does not do so, without prior written District approval, may be in breach of contract. The School Board may use all available remedies for breach of contract. In addition, all amounts paid to the contractor or firm under the contract intended for expenditure with SBEs may be forfeited and shall be recoverable by the District. Even if the School Board, at its sole discretion, may elect to waive such breach and available remedies, any such waiver does not constitute a waiver of rights for breach of any other provision of the contract.
17. **Graduation from the SBE Program.** -- Continued participation in the SBE Program will be contingent upon the SBE's ongoing

ability to satisfy the eligibility criteria for SBE status. An SBE shall not be eligible for continued participation in the program as a prime contractor or subcontractor if the business exceeds the eligibility and size standards set forth in section (5) above for three (3) consecutive years. This graduation provision includes SBEs that may still be certified by Palm Beach County Small Business Assistance Program; if those firms have exceeded the standards in section (5) above for three consecutive years, they are no longer eligible for the preferences, set-asides, or evaluation preferences other benefits of the District's SBE program, although they shall remain eligible for technical assistance and other forms of assistance not related to preferences or set-asides as stated in Policy 6.143(14). Any company that has exceeded the number of employees and/or gross revenues thresholds for SBEs averaged over 3 years will be graduated from the program.

18. **Data Collection and Program Monitoring.** -- The ODBP shall maintain a computerized monitoring system to assess the effectiveness of the SBE program. Pursuant to Policy 6.143(2)(e)(v), the Superintendent shall ensure that all senior-level staff performance evaluations include an indicator for SBE diversity objectives for procurement.
19. **Severability.**-- If any section, paragraph, sentence, clause, phrase, or word of this procedure is for any reason held by a Court of competent jurisdiction to be unconstitutional, unlawful, inoperative, or void, such holding shall not affect the remainder of this Procedure, which shall remain in full force and effect to the maximum practicable extent.
20. **Waiver of Bonding Requirements.**-- Pursuant to Fla. Stat. § 255.05(1)(a), payment and performance bonds for School Board construction projects of \$200,000.00 or less may be waived on a contract-by-contract or project-by-project basis, and the Board or the District and its officers or officials shall not be personally liable to any person suffering loss because of granting such exemption.
  - a. The Business Diversity Committee shall review the nature, scope and complexity of each construction project to determine the appropriateness of waiving payment and performance bond requirements. The factors to be considered include, but are not limited to:
    - i. complexity of the construction project;
    - ii. School Board experience with the type of construction project under review;

- iii. the risk of loss to the School District in the event of default, and exceptional risk factors; and
- iv. the recommendations of the user or soliciting departments.

## **21. Prompt Payment**

- a. Every contract let by the School Board for the performance of work shall contain a provision requiring the prime contractor to certify in writing on its invoices that all subcontractors, subconsultants, and suppliers have been (or will be) within ten days of the prime contractor's receipt of related progress payments. Each invoice shall identify the subcontractors, subconsultants, and suppliers by name and by amount owed that are to be paid under the invoice. To the extent there are disputes about performance and amounts owed, they should also be reported in writing. Failure by the prime contractor to comply with such prompt payment certification requirements shall preclude any further progress payments, and shall entitle the School Board to authorize future payments on the contract directly to subcontractors, subconsultants, and suppliers in order to ensure the timely completion of work without work stoppages and disruptions.
- b. During the duration of the contract and upon the completion of the contract, the District requests documentation to certify payment to subcontractors, subconsultants, or suppliers. Failure to provide this required documentation shall constitute breach of contract. This provision in no way creates any contractual relationship between any subcontractor, subconsultant, or supplier and the District, nor any liability for the District if the contractor fails to make timely payment to the subcontractor, subconsultant, or supplier.
- c. The School Board's payment to vendors is governed by Fla. Stat. §§ 218.73, 218.735, and 218.74. Any District department or school that has failed to acknowledge receipt of goods or services will be asked to research the status of the receipt of goods or services from vendors on a priority basis. To the extent possible, payment will be made within 30 days, but no later than 45 days after delivery, authorized inspection, and acceptance.

## **22. Retainage**

- 1. Where the cost of construction services identified in the contract is over \$200,000, the School District shall withhold ten percent (10%) of the payment from each progress payment made to the contractor. This 10% retainage shall continue until 50-percent completion of the construction services purchased under the contract.

- a. The term "50-percent completion" means the point at which the District has expended 50 percent of the total cost of the construction services purchased as identified in the contract together with all costs associated with existing change orders and other approved additions or modifications to the construction services provided for in the contract.
  - b. "Construction services" means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property.
  - c. "Contractor" means any person who contracts directly with the School Board to provide construction services.
2. After 50-percent completion, the District shall reduce to five percent (5%) the amount of retainage withheld from each subsequent progress payment made to the contractor. (After 50-percent completion, the contractor may also present a payment request for up to one-half of the retainage withheld by the District during the pre-50% portion, and this payment shall promptly be made unless there are grounds for withholding the payment under paragraphs (3)(b)(iii), (iv), or (v) below.)
3. Each contract for construction services shall provide for a list of items required rendering complete, satisfactory, and acceptable the contracted construction services for each building, structure, or phase of the project. Upon completing all the construction services purchased pursuant to the contract, including all items on the list, the contractor may submit a payment request for all remaining retainage withheld.
  - a. If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to the contract, the District may continue to withhold an amount not to exceed 15% percent of the total costs to complete such items (as estimated by the architect and accepted by the School District).
  - b. The District need not pay or process any payment request for the remaining retainage if:

- i. the contractor has, in whole or in part, failed to cooperate with the District in the development of the list described in section (3);
  - ii. the contractor has failed to perform its contractual responsibilities, if any, with regard to the development of the list;
  - iii. the remaining retainage is the subject of a good faith dispute;
  - iv. the remaining retainage is the subject of a claim brought pursuant to Fla. Stat. § 255.05; or
  - v. the remaining retainage is otherwise the subject of a claim or demand by the District or the contractor.
- c. Moreover, the final payment to the contractor shall not be made until:
- i. the construction project has been inspected by the architect or other person designated by the Board for that purpose;
  - ii. the architect or other person designated by the Board for that purpose has issued a written certificate that the project has been constructed (and completed) in accordance with the approved plans and specifications and approved change orders;
  - iii. the Board, acting on these recommendations, has accepted the project (and the Board hereby delegates to the Superintendent or designee the authority to accept the project on behalf of the Board);
  - iv. an Occupancy Certificate has been issued.

4. Implementation of this Policy shall also be consistent with the provisions of

Fla. Stat. § 21 8.735(8)(c)-(h) & (9) to the extent they are applicable.

- i. The following procedures shall apply to construction projects under \$200,000 for which payment and performance bond requirements have been waived:
  - A. Ten percent (10%) of each approved request for payment by the SBE prime contractor shall be retained by the District until fifty percent (50%) completion of the construction project, after

which the retained amount shall be reduced to five percent (5%) of each approved request for payment until the construction project has been completed.

- B. With each invoice, the SBE shall provide a written, verified statement, in a form acceptable to the ODBP Director and the soliciting department, showing in detail all amounts then due and unpaid by the SBE, or its subcontractors, to all laborers, workmen, and mechanics employed by the SBE under the contract, for daily or weekly wages, or to other persons for materials, equipment or supplies delivered to the site of the work, during the period covered by the invoice.
- C. Prior to final payment, the SBE shall submit to the District a sworn affidavit that all of the invoices it received for labor, services, materials and subcontractors have been paid and that there are no suits pending in connection with the work provided under the contract. The SBE shall submit waivers from all material suppliers and subcontractors attesting that they have no claims against the SBE resulting from completion of the work provided under the contract for the construction project.
- D. The waiver of payment and/or performance bonds does not waive the requirement of a bid bond. All Board requirements regarding the posting of a bid bond or other acceptable bid security shall remain in force.
- E. SBEs selected for construction project set-asides shall perform at least fifty-one percent (51%) including the construction management services on the construction management contract. On all other bids and jobs the SBE shall perform at least fifty-one percent (51 %) of the work with its own manpower, resources, and equipment.

## M/WBE Program Procedures

### MINORITY/WOMEN BUSINESS ENTERPRISE PROGRAM PROCEDURES

1. **Purpose.**-- This Procedure complements, and is incorporated by reference in, 6.143, Diversity and Equitable Utilization in Business, by establishing specific procedures to implement Policy 6.143 to promote all firms including minority- or woman-owned and –controlled enterprises (M/WBEs) having an equitable opportunity to compete for contracts for provision of goods and services needed by the School District.
  - a. The School Board recognizes that the school system impacts the economic viability of the community, thereby affecting students, employees, parents, and other residents of the county. It is the policy of the School Board to ensure that opportunities for participation in the economic resources of the District are afforded to all, including M/WBEs and small business enterprises (SBEs).
  - b. The overall aim of the Board’s policy is to promote equitable, non-discriminatory award and administration of contracts with the Board and to promote a business environment in which all segments of the business community, including small, minority, and women-owned businesses, can compete fairly. This Procedure shall be interpreted and implemented consistent with Policy 6.143 and current legal standards.
2. **Program Administration.** -- Pursuant to Policy 6.143(11), the Superintendent has overall responsibility for administering the Diversity in Business Program. The Superintendent hereby delegates a portion of this responsibility to the Chief Operating Officer and the Office of Diversity in Business Practices (ODBP). The ODBP shall be responsible for developing, managing, and implementing the Diversity Business-Program on a day-to-day basis.
3. **District Implementation.** -- Pursuant to Policy 6.143(12), the ODBP shall take all necessary and reasonable steps permissible by law to ensure that M/WBEs have the maximum equitable opportunity to participate in the District’s purchasing processes. The ODBP will utilize internal and external monitoring and reporting as the methods of implementation.
  - a. **Internal Implementation.** -- At a minimum, the ODBP will implement the following internal measures:

- i. employ sufficient staff with the necessary qualifications and responsibility to implement an effective program to foster diversity in business practices within the District;
- ii. analyze and monitor the progress of the program and provide recommendations;
- iii. provide diversity training to School District employees on M/WBE issues as appropriate;
- iv. analyze M/WBEs availability to provide the products or services identified for contracting at either the prime or subcontract levels;
- v. assist M/WBEs to register and be ready to compete;
- vi. maintain a computerized listing of certified M/WBEs and coordinate the integration of it into the District's business-software platform for bidder availability, accounts payable systems and databases for all prime contractors and subcontractors, by industry, by ethnicity, and gender of business ownership;
- vii. coordinate the Business Diversity Committee for M/WBE procurement participation in professional services, nonprofessional services, and construction contracting, and recommend and assist in meeting the established goals as part of the committee;
- viii. obtain notification from the Purchasing Director of all competitive contracting opportunities within the District;
- ix. obtain from the Purchasing, Program Management, and Maintenance and Plant Operation Departments detailed instructions on job/project performance requirements;
- x. encourage de-bundling of purchases and contracts into smaller units, areas, or quantities (except in new school construction), where feasible and likely to increase M/WBE participation without substantial adverse fiscal impact to the District;
- xi. when appropriate, encourage limiting the use of multi-year contracts and renewal provisions in contracts so as not to inhibit M/WBE participation;
- xii. ensure that bids/proposals, specifications, and plans are written in a manner that does not unreasonably limit M/WBE participation. The inclusion of proprietary specifications should be avoided without the establishment of a particular need;
- xiii. collaborate with the Purchasing Director to ensure adequate time is provided for the submission of bids/proposals to facilitate the

participation of M/WBEs; and

- xiv. recommend and assist in setting delivery schedules that do not discourage M/WBE participation.

**b. External Implementation.--** At a minimum, the ODBP will implement the following external measures:

- i. draw upon services and assistance provided by the Small Business Administration and other agencies in locating available M/WBEs and encouraging the development of such businesses;
- ii. use the services of available community and contractor groups and local, state, or federal offices that provide assistance in the recruitment of M/WBEs for public-sector contracts;
- iii. serve as liaison with economic development organizations and agencies working in support of economic development in the minority community;
- iv. promote the District's Business-Diversity program with marketing and outreach;
- v. coordinate and participate in training seminars to inform potential bidders/proposers/vendors of the business opportunities available;
- vi. advertise bid notices in the M/WBE trade associations' newsletters, major local or regional newspapers, and minority-and women-focused media;
- vii. disseminate contract opportunity information via a telephone bid hotline or e-mail alerts;
- viii. provide M/WBEs with adequate information about plans, specifications, and requirements of District contracts;
- ix. schedule pre-bid or pre-proposal meetings, where appropriate, to inform potential contractors of M/WBE requirements and other bid/proposal requirements, and encourage M/WBEs to attend the pre-bid conferences;
- x. coordinate with the Purchasing Department to offer instructions and clarify bid/proposal specifications, procurement policy, procedures, and general bidding requirements;
- xi. provide information and assistance on certification procedures, subcontracting practices, and bonding requirements to M/WBEs;
- xii. where applicable, provide referrals and technical assistance for

obtaining bonding, lines of credit and insurance;

- xiii. maintain and provide access to a diversity directory for prime contractors to use in identifying subcontractors and materials suppliers;
  - xiv. maintain a file of successful bid/proposal documents from past procurements and permit M/WBEs to review and evaluate such documents;
  - xv. when requested or at the discretion of the Board, conduct debriefing sessions on awarded contracts to explain why bids/proposals may have been unsuccessful; and
  - xvi. provide technical assistance to majority firms that receive in excess of 51% of their funding from the School District, to establish a program to increase M/WBE participation.
- c. **Conducting Business-Development Assistance Initiatives.--** The ODBP will seek to assist M/WBEs in developing their businesses through activities such as:
- i. investigating the possibility of the District using owner-controlled insurance plans or self-insurance that will cover all contractors as they work on individual District projects;
  - ii. establishing a mentor–protégé program where majority businesses and other appropriate organizations will “adopt,” advise, and assist M/WBE and SBE firms on overcoming weaknesses and becoming more efficient and effective in operating their businesses with the objective of increased revenue and expansion of firm operations;
  - iii. serving as a one-stop center providing bid information, training, and technical assistance for M/WBE and SBE firms; and
  - iv. seeking lending institutions, including those owned by minorities and women, for a possible linked-deposit system to encourage financial institutions that hold District funds to improve capital access and loan availability for SBEs and M/WBEs.
- d. **Monitoring and Reporting.--** The ODBP will implement the following measures to monitor the Business-Diversity Program and issue relevant reports:
- i. monitor and maintain records sufficient for verification of good faith efforts and results achieved to maximize equitable M/WBE participation;
  - ii. monitor and evaluate program performance and compliance including, but not be limited to, review of previous work records for

the District, contacting references, and investigating complaints made against a contractor by District staff;

- iii. collect data, maintain information, and generate reports to provide guidance to staff and report goal attainment to the Board. These reports will be used to reflect progress and adherence to the program standards of Policy 6.143;
- iv. assist the Superintendent in evaluating key administrators' ability to assist in achieving the M/WBE participation goals;
- v. continue to investigate race- and gender-neutral alternatives to reduce barriers to participation by M/WBEs wishing to do business with the School District; and
- vi. prepare other reports as required by Policy 6.143 or section (21) of this Procedure.

#### 4. **M/WBE Certification Standards**

- a. **Size Standards.** -- As stated in Policy 6.143(3)(x)(i), one qualification for M/WBE certification is that the firm:
  - i. with the exception of manufacturing and wholesaling firms identified in 4(b) below, employs not more than 200 permanent full-time employees, and has, together with its affiliates, gross sales of not more than five million dollars (\$5 million) averaged over the last three consecutive years; or
  - ii. has a Small Business Administration 8(a) certification and is located in the State of Florida. All financial statements shall be submitted to SDPBC for review of net worth of the applicant business owners.
- b. Employee size standards shall vary by industry as follows:
  - Manufacturing: Maximum number of employees may not exceed 1500;
  - Wholesaling: Maximum number of employees may not exceed 500;
- c. **Revenues or Sales Size Standards**

- i. Professional Services.-- Any firm that has had average gross sales or revenues of greater than two million dollars (\$2 million) over the last three (3) years shall not be considered eligible to participate in the School District's M/WBE program for professional services.
- ii. Procurement Program.-- Any firm that has had average gross sales or revenues of greater than three million dollars (\$3 million) over the last three (3) years shall not be considered eligible to participate in the School District's M/WBE program for procurement.
- iii. Construction Services.-- Any firm that has had average gross sales or revenues of greater than seven million dollars (\$7 million) over the last three (3) years shall not be considered eligible to participate in the School District's M/WBE program for construction.

d. **Ownership and Control Standards.**—M/WBE is defined as a minority-owned business enterprise or women-owned business enterprises or a designated combination of minority and women-owned business enterprises in a specified industry that:

- 1. Satisfies the size standards of this procedure; and
- 2. Has minority and/or women owners that own at least 51% of the business, and exercise daily management, and control of the business; and
- 3. Is domiciled in the Palm Beach County, Miami-Dade County, or Broward County metropolitan statistical areas (MSA), or is domiciled in the State of Florida and can demonstrate that it routinely bids on and/or performs contracts in Palm Beach County; and
- 4. Is lawfully organized to engage in commercial transactions.

e. **Ownership**

- i. In determining minority or woman ownership of the business as defined in Policy 6.143(3)(w), (x), & (z), the contribution of capital or expertise by the minority and women to acquire his/her interest

in the firm shall be real and substantial. Examples of insufficient contributions include, but are not limited to: a promise to contribute capital; a note payable to the firm or its owners who are not minorities or women; or mere participation as an employee, rather than as an owner.

- ii. An M/WBE that has had a transfer of ownership or control from a non-minority (who maintains any interest in the business) to a minority or women, shall not be considered for certification until one (1) year after the transfer.

f. **Control**

- 1. All minority or women business owners seeking M/WBE certification subsequent to the adoption of this Procedure shall be at the time of application the qualifier/licensor of the firm for which they are seeking certification (and all minority/woman owners of currently-certified firms for which they are not the license holder shall be required to become the license holder to qualify the firm as a minority/woman-owned entity within three years subsequent to the adoption of this Procedure). Failure to obtain any required business or professional license to qualify the firm as a certified M/WBE will result in the denial or revocation of certification.
- 2. The minority or women owners must have operational and managerial control of the business as defined in Policy 6.143(3)(k). The primary considerations in determining operational control and the extent to which the minorities or women actually operate the business will vary based upon the specific nature of the industry to which the business belongs. Accordingly, in order to clarify the level of operational involvement and managerial control of the minority or women owners to be deemed an M/WBE, the following examples are set forth but are not all-inclusive:
  - i. the minority or woman should be able to demonstrate that basic decisions pertaining to the daily operation of the business are independently made;
  - ii. the minority or woman should have some experience in the industry for which certification is sought sufficient to make knowledgeable decisions about the course and conduct of the business,
  - iii. the minority or woman must have technical competence in, and a working knowledge of the technical requirements of, the industry for which certification is sought;
  - iv. the minority or woman must have the demonstrable ability to make independent and unilateral business decisions needed

to guide the future and destiny of the business;

- v. corporate by-law, operating agreements, partnership agreements, or other agreements should be free of restrictive language, super-majority language, or negative control provisions which dilute or undermine the authority of the minority or women business owners, thus preventing them from making those decisions which affect the destiny of the business; and
- vi. the minority or woman-owned business should be able to clearly show, through production of documents, the areas of control such as, but not limited to:
  - 1. authority and responsibility to sign payroll checks and letters of credit;
  - 2. authority for negotiations and signature responsibility for insurance and/or bonds; and
  - 3. authority for negotiations and/or signature services.

- 3. Where the actual management of the firm is contracted out to individuals other than the owner, those persons will be considered as controlling the business. The firm shall not be considered an M/WBE within the meaning of this program if owners who are not minorities or women are disproportionately responsible for the operation of the firm.

g. **Independent Structure.--** As a requirement for eligibility for M/WBE certification, the applicant firm must be an independent business. Recognition of the business as a separate legal entity for tax or corporate purposes is not necessarily sufficient for recognition as an M/WBE. In determining whether a potential M/WBE is an independent business, the ODBP shall consider all relevant factors such as, but not limited to, the date the business was established, the adequacy of its resources for the type of work specified, and the degree to which financial, equipment leasing, and other relationships with non-minority firms vary from established industry practices, and the technical credentials and historical experience of the owner and staff.

- 5. **Application Procedures.--** All applicants wishing to be certified as M/WBEs and receive the benefits of this program must apply for M/WBE certification by completing the M/WBE Certification Application (PBSD 1179), available from the ODBP with the following contact information: Director, Office of Diversity in Business Practices, 3300 Forest Hill Blvd., Suite A-106, West Palm Beach, Florida, 33406-5813. Phone: (561) 434-8508; Fax: (561) 434-7405; Web site: [www.palmbeachschools.org/mwbe](http://www.palmbeachschools.org/mwbe). The ODBP will provide certification directions, which will be attached to the M/WBE certification application. The scope and nature of the information may vary as necessary

to document the legitimacy of the applicant firm. Failure to provide all of the required information may be grounds for the rejection of the application. At a minimum, applicants must submit the following documentation (in addition to the M/WBE Certification Application), as appropriate for their business:

**a. Corporations**

- i. the number of permanent, full-time employees;
- ii. a list of the corporation's current full-time and part-time employees by length of service;
- iii. proof of minority/woman status as defined in Policy 6.143(3)(w), e.g., copy of birth certificate, drivers license, and/or other required documentation;
- iv. articles of incorporation, including date filed with the State, and any subsequent amendments;
- v. corporate by-laws;
- vi. minutes of the first corporate organizational meeting;
- vii. prior three years' financial statement prepared by an independent CPA or accountant. If in business less than three (3) years, a personal tax return shall be required;
- viii. proof of any certification by the Small Business Administration (8(a) certification, if any);
- ix. prior three years' federal corporate tax returns including all schedules;
- x. résumés of principals and management personnel of business showing education, training, professional licensure, and employment with dates;
- xi. stock transfer agreement(s);
- xii. hold all required state/local license(s) to perform the work for which certification is sought. Those companies that require a professional license to perform their line(s) of business should provide the name of the license holder/individual qualifying agent;
- xiii. copies of last three months company payroll;
- xiv. copies of the company's distribution of profits for the previous year;
- xv. copies of third party agreements such as rental and lease agreements management agreements, or purchase agreements;
- xvi. copies of stock certificates issued;

- xvii. proof of stock purchase; and
- xviii. stock ledger.

**b. Partnerships**

- i. the number of permanent full-time employees;
- ii. a list of the partnership's current full-time and part-time employees by length of service;
- iii. proof of minority/woman status as defined in Policy 6.143(3)(w), e.g., copy of birth certificate, driver's license, and/or other required documentation;
- iv. partnership agreement;
- v. prior two years' financial statements prepared by an independent CPA or accountant (if in business less than two (2) years, a personal tax returned shall be required);
- vi. documentation of certification by Small Business Administration (8(a) certification, if any);
- vii. prior two years' federal tax returns including all schedules;
- viii. résumés of all partners and management personnel showing education, training, professional licensure, and employment with dates;
- ix. hold all required state/local license(s) to perform the work which certification is sought. Those companies that require a professional license to perform their line(s) of business should provide the name of the license holder/individual qualifying agent licenses;
- x. buyout rights agreement;
- xi. profit-sharing agreement;
- xii. copies of last three months' partnership payroll;
- xiii. proof of capital invested;
- xiv. copies of the partnership's distribution of profits for the previous year; and
- xv. copies of third-party agreements such as rental and lease agreements, management agreements, or purchase agreements.

**c. Sole Proprietorships**

- i. license(s) to do business in Palm Beach County and any other necessary licenses;

- ii. fictitious name registration if applicable;
- iii. owner and management personnel résumés;
- iv. prior two years' federal tax returns including all schedules;
- v. documentation of the amount of both personal and business investments, pursuant to Policy 6.143(3)(x)(i) (and current Small Business Administration 8(a) certification, if any);
- vi. the number of permanent full-time employees;
- vii. a list of current full-time and part-time employees by length of service; and
- viii. proof of minority/woman status as defined in Policy 6.143(3)(w), e.g., copies of birth certificate, driver's license, or other required documentation.

**d. Limited Liability Companies**

- i. the number of permanent full-time employees;
- ii. list of the company's current full-time and part-time employees by length of service;  
  
proof of minority/woman-owned status as defined in Policy 6.143(3)(w), e.g., copy of birth certificate, drivers license, or other records;
- iv. articles of organization, including date approved by State, and any subsequent amendments;
- v. operating agreement;
- vi. prior three years' financial statement prepared by an independent CPA or accountant. If in business less than three (3) years, a personal tax returned shall be required;
- vii. documentation of net worth (and current Small Business Administration 8(a) certification, if any);
- viii. prior three years' federal tax returns including all schedules;
- ix. resumes of principals and management personnel of business showing education, training, professional licensure, and employment with dates;
- x. hold all required state/local licenses to perform the work for which certification is sought. Those companies that require a professional license to perform their line(s) of business should provide the name of license holder/individual agent;

- xi. minutes of first organizational meeting;
  - xii. interest certificates;
  - xiii. copies of last three months' company payroll;
  - xiv. copies of the company's distribution of profits for the previous year;  
and
  - xv. copies of third-party agreements such as rental and lease agreements, management agreements, or purchase agreements.
- e. **Joint Ventures.--** The same process as required for certification of M/WBEs shall certify the joint venture, except that joint-venture certification shall given only on a bid-by-bid basis. A joint venture desiring M/WBE certification shall submit an application for approval prior to the bid opening or receipt of proposals for that particular project. Please see SBE procedures Page 5 for further information.

6. **Application Review.--** The M/WBE certification application and supporting documentation will be logged in as appropriate. A list of required documentation will be provided with the application. Applications will not be processed until all documents are received.

- a. The ODBP will inform the applicant of any missing documentation. Any applicant failing to submit the documentation within 30 days of the notice shall be deemed to have abandoned its application. Documents not in English shall be submitted to ODBP with a certified translation.
- b. Once an applicant has submitted the completed M/WBE application and all supporting documentation, certification review will be completed within 60 days.
- c. The application will be reviewed for completeness and accuracy. References will be contacted and information will be verified by third parties, when appropriate. If deemed appropriate by the ODBP, a personal interview or site visit will be conducted by the ODBP to discuss the documentation submitted and verify whether the M/WBE applicant meets the criteria established under Policy 6.143 and this Procedure.

## 7. Certification

- a. Only M/WBE firms certified by the School District's ODBP shall be recognized as certified and eligible for participation in the program
- b. Approved applicants will receive a certification letter stating the certification area(s) of the business. Approved vendors will be certified for three years. Certified M/WBEs shall be listed in the diversity directory.

Annual questionnaires shall be provided to all vendors to ascertain the current status of their firms.

- c. If there is a change in ownership interest and/or control, the M/WBE must notify the ODBP within 30 days of the change. Supporting documentation may be required for continued certification.
- d. The ODBP shall have the right to take the following actions with regard to certified M/WBEs:
  - i. make site visits to verify operational control;
  - ii. require the submission of annual questionnaires regarding the status of the firm;
  - iii. investigate and advise the Superintendent to recommend to the Board the suspension or revocation of certification for cause under section (10) below or debarment under section (18) below; or
  - iv. graduate the firm from the M/WBE program pursuant to section (19) below.

8. **Denial of Certification.**-- Applicants denied certification shall be notified by certified mail. An applicant denied certification cannot reapply for certification for one calendar year from the denial date for reconsideration of certification, but the applicant shall be informed of the right to seek reconsideration of the denial.

- a. If the applicant believes the ODBP's denial of the M/WBE-certification application may have been due to the ODBP's overlooking or misapprehending some aspect of its application, the applicant may file with the ODBP a written, signed, and dated request for reconsideration. The request shall be filed no later than fifteen (15) calendar days after the date of receipt of notice of denial of certification. The ODBP may extend the time for filing or waive the time limit if in the interests of justice, specifying in writing the reason for so doing. Such request must be delivered to: Director, Office of Diversity in Business Practices, 3300 Forest Hill Boulevard, Suite A -106, West Palm Beach, Florida 33406.
- b. If a request for reconsideration is filed, an informal meeting will be held with the requestor and the ODBP Director. The meeting will be scheduled within thirty (30) days after the filing of the request for reconsideration. The ODBP Director may grant an applicant's written

request for extension of this meeting time if in the interests of justice.

- i. At the meeting, the Director will consider only information which was available at the time of the application.
- ii. The ODBP Director will provide written notice as to the outcome of the meeting within ten (10) days of the date of the meeting.
- iii. If the ODBD Director decides the denial was correct, the applicant may request a hearing under the Administrative Procedure Act. If material facts are not in dispute, an informal hearing may be held under Fla. Stat. §§ 120.569 and 120.57(2) by a local volunteer attorney. If material facts are disputed, the hearing request will be referred to the state Division of Administrative Hearings (DOAH), and an administrative law judge will conduct a formal hearing under Fla. Stat. §§ 120.569 and 120.57(1) and issue a recommended order, which may be adopted by the School Board in the Board's final order. The Board's final order is final agency action subject to judicial review.

## **9. Re-Certification**

- a. Certified M/WBEs are required to submit a re-certification application and affidavit of their continued eligibility as an M/WBE every three years. The criteria for re-certification shall be the same as for certification. The ODBP may conduct site visits and/or review documents to ensure continued compliance as an M/WBE. A company that fails to submit its affidavit of continued eligibility or other documentation requested by the ODBP will be recommended for decertification.
- b. An applicant denied re-certification shall be notified by certified mail. The re-certification applicant may request reconsideration of a denial of re-certification within fifteen (15) calendar days after receipt of notice of denial. The procedures for requesting reconsideration and a hearing are the same as under subsections (8)(a) & (b) above.

10. **Decertification.**-- If during the period of certification, the District receives written information that the M/WBE received certification improperly or that there has been such a substantial change in circumstances in the operation, ownership, control, or activities of the M/WBE that continued certification would be contrary to Policy 6.143 or this Procedure, the ODBP shall conduct an investigation of the allegations.

- a. Nothing in this section shall prevent the ODBP from commencing an investigation regarding the legitimacy of a firm's M/WBE certification based upon information received independent of a third parties written

request.

- b. The ODBP shall decertify the M/WBE during the term of its three-year certification if the investigation indicates any of the following conditions:
  - i. the M/WBE cannot be contacted at the last known address;
  - ii. the M/WBE is no longer in business;
  - iii. the M/WBE is no longer licensed to conduct the type of business for which it was certified;
  - iv. the M/WBE obtained its original certification and/or recertification through the use of a front or other false representation or deceit;
  - v. the M/WBE has experienced such a substantial change in ownership or control that continued certification would be contrary to Policy 6.143 or this Procedure; or
  - vi. the M/WBE has been debarred under Policy 6.14 or Policy 6.143(9)(e) or section (19) of this SBE Procedure. At the expiration of a debarment, the firm may reapply for certification.
- c. The Director of the ODBP or designee shall notify the M/WBE by certified mail that the ODBP will advise the Superintendent to recommend decertification to the School Board. The procedures for requesting reconsideration and a hearing are the same as under subsections (8)(a) & (b) above.

11. **Industry Specific Remedial Programs.--** As set forth in Policy 6.143(5), remedies have been developed and narrowly tailored in Policy 6.143 after identification, in a disparity study, of underutilization of at least one protected group in each of these four programs: construction, nonprofessional services, professional services, and procurement.

**a. Construction Programs**

- i. The appropriate School District departments shall provide the Director of ODBP with a current copy of the Board's adopted capital-outlay plans, budget information, educational specifications, and other related and relevant materials.
- ii. The Director of ODBP and the Business Diversity Committee will review specifications to discuss the scope and potential for M/WBE participation.
- iii. Large contracts will be reduced where possible, based on an evaluation (by the Director of ODBP and appropriate staff) of the following criteria:

- A. the degree of complexity of the project's design;
  - B. the extent of the need for M/WBE participation within a specific type of specialty or a particular project;
  - C. the extent to which annual M/WBE goals are being met; and
  - D. the potential costs/benefits of reducing the project.
- iv. When Facilities Management determines realization of a project, timely notice shall be given to ODBP and the Business Diversity Committee.
  - v. The Business Diversity Committee will project participation goals and program components for construction contracts under Policy 6.143(5)(a)(iv) (which permits bid preferences on certain construction contracts on behalf of certified M/WBE African American-owned construction firms including the use of contract-specific subcontracting goals on selected contracts with genuine opportunities for commercially useful subcontracting). The recommendation will be sent to the Chief of Facilities Management and the department responsible for the RFP or other solicitation. Facilities Management and the responsible department may accept the projected goals or request a change in goals or components in writing.
  - vi. The RFP or other solicitation (and bid specifications, where appropriate) shall contain M/WBE obligations. If the project or components of the project are designated "bid preference" and/or "set-aside," it will be noted in the RFP or other solicitation or bid specifications.
  - vii. In order to enhance M/WBE participation in construction projects, RFP's and other relevant information will be noticed or advertised in minority publications and other media outlets, community organizations and organizations assisting M/WBE and SBEs, and standard media outlets.
  - viii. In response to the findings of the DJMA 2004 study, the District will implement an SBE set-aside and subcontracting-goals program under Policy 6.143(5)(a)(i), and an internal matchmaking program and an external matchmaking program under Policy 6.143(5)(a)(ii) & (iii) to enhance opportunities for participation by M/WBE and SBE construction firms.
  - ix. The ODBP Director, Program Management Director, and other appropriate District personnel will monitor compliance with the requirements through the life of the contract. One component of the monitoring process will be to require all principal parties (i.e.

prime contractors or consultants) on School Board projects and contracts to adhere to a monthly reporting requirement. The monthly report shall include the following information:

- A. the individual M/WBE monthly payment;
  - B. the cumulative M/WBE monthly payment;
  - C. percentage of total contract; and
  - D. percentage of overall contract completion.
- x. The ODBP will generate a monthly cumulative report based on the dollar amounts paid to subcontractors, consultants, joint ventures, or M/WBE prime contractors.
  - xi. The M/WBE Office will submit quarterly and annual expenditure reports for construction activities to the School Board and the Superintendent. It will provide an analysis of payments received by race and gender as compared to the total awards. The activities will be reflected by expenditures.

**b. Nonprofessional Services Program**

- i. The specifications established for services should be such that they do not impede participation by M/WBEs, unless such specifications are necessary to protect the interests of the School Board.
- ii. Large projects should be reduced when possible. The ODBP Director together with the Business Diversity Committee will review and evaluate large single projects, prior to solicitation, to determine the feasibility of reducing the size of such contracts. The methodology used for subdividing the contracts should be tailored to the unique factors present in each situation. Examples of some options are listed below:
  - A. the term of a contract may be shortened to reduce the quantity of services required and the risk of guaranteeing fees over a longer time period;
  - B. work to be performed may be grouped according to geographic location and placed on separate contracts; and/or
  - C. the scope of a large contract may be divided into two separate contracts prior to solicitation, e.g., unrelated scopes of work to be performed or portions not requiring completion by a single contractor may be placed on separate contracts.
- iii. In response to the findings of the DJMA 2004 study, the District will

implement the following programs to enhance opportunities for participation by M/WBE and SBE nonprofessional services firms:

- A. an SBE program as set forth in Policy 6.143(5)(b)(i);
- B. an internal matchmaking program for M/WBE and SBE nonprofessional service firms pursuant to Policy 6.143(5)(b)(ii);
- C. an external matchmaking program for M/WBE and SBE nonprofessional service firms under Policy 6.143(5)(b)(iii); and
- D. an M/WBE set-aside program, as set forth in Policy 6.143(5)(b)(iv), of small prime contracts under the competitive-bidding dollar threshold for bidding exclusively among certified M/WBE Hispanic-owned and -controlled firms. In selecting contracts suitable for a set-aside, the ODBP will consider the availability, number, capacity and capabilities of potential eligible bidders, the type of work required by the contract, and the estimated dollar amount of the contract. A joint venture between a Hispanic firm and a non-M/WBE firm is eligible to compete in a set aside if the Hispanic firm is certified by the School District and qualifies under the criteria listed for joint ventures. Hispanic firms bidding as prime contractors shall perform at least fifty-one percent (51%) of the project with their own work force.

**c. Professional Services**

- i. The District will provide contracting opportunities for facilities-related professional services (architecture, professional engineering, landscape architecture, registered surveying and mapping, and, as applicable, design-criteria services and design-build services) under Fla. Stat. § 287.055, the "Consultant's Competitive Negotiation Act," which requires in § 287.055(4)(b) that one of the factors the District should consider in determining whether a firm is "qualified" is whether a firm is a certified minority business enterprise.
- ii. To the extent consistent with Policies 6.143(8) and the DJMA 2004 study, the District will set M/WBE goals on the solicitation of other professional services not covered by Fla. Stat. § 287.055. A summary of ODBP program procedures will be included in each solicitation.

In response to the findings of the DJMA 2004 study, the District will implement the following programs for participation by M/WBE and SBE professional services firms:

- A. an SBE program under Policy 6.143(5)(c)(i);
- B. an internal matchmaking program for M/WBE and SBE professional services pursuant to Policy 6.1 43(5)(c)(ii);
- C. an external matchmaking program for M/WBE and SBE professional services firms under Policy 6.143(5)(c)(iii); and
- D. an M/WBE program, pursuant to Policy 6.143(5)(c)(iv), permitting the use of bid preferences, joint-venture incentives, and evaluation preferences among certified M/WBE firms that are owned and controlled by African Americans, Hispanic Americans, Native Americans, and women and also establishing contract-specific subcontracting goals for the participation of certified M/WBE subcontractors (African Americans, Hispanic Americans, Native Americans, and women) on those professional services contracts that are above the competitive bidding threshold and that have commercially useful subcontract opportunities.

**d. General Procurement Programs**

- i. The specifications established for goods and services should be such that they do not preclude bidding by M/WBEs. An exception is noted when the specifications are necessary to protect the interest of the School Board. Vendors are invited to bid on the "standard brands" cited as acceptable products by the Purchasing Department or on those the vendor believes to be equivalent according to the specifications. The acceptability of items quoted on the vendor's bid, other than those specified, shall rest with the School Board.
- ii. Vendors are invited to bid on the "standard brands" cited as acceptable products by the Purchasing Department or on those the vendor believes to be equivalent according to the specifications. The acceptability of items quoted on the vendor's bid, other than those specified, shall rest with the School District.
- iii. The ODBP, Purchasing Department, and appropriate staff and consultants will recommend procedures to the Superintendent relating to proprietary specifications. The group will develop a list of goods/materials, which appear to be proprietary, and meet with originating users to develop generic language in order to eliminate proprietary specifications and promote greater vendor competition and participation.
- iv. In order to emphasize the acceptability of brand name substitution for generic products of comparable or superior quality, ODBP and Purchasing will review bid documents and special conditions to

develop and strengthen the language pertaining to generic brand substitution.

- v. ODBP and Purchasing will complete a list of sole source items to determine the feasibility of the use of "or equal" products. Network forums should be conducted with manufacturers to assist M/WBEs with distributorships, wholesalers, and dealerships.
- vi. Large single contracts shall be reduced when possible. The ODBP Director together with the Business Diversity Committee will review and evaluate large single contracts prior to bid, to determine the feasibility of reducing such contracts to smaller prime contracts. Such prime contracts may then be bid either as open to all bidders, or as subject to a set-aside for Asian American and Native American M/WBEs if small prime contracts are below the competitive bidding dollar thresholds. The methodology used for subdividing the contracts can be tailored to the unique factors present in each situation. The options include, but are not limited to:
  - A. the full quantity of a given item(s) on a large contract may be placed on a separate contract for bidding;
  - B. a partial quantity of a given item(s) on a large contract may be placed on a separate contract for bidding; or
  - C. the term of a contract may be shortened which results in the reduction of quantities required and reduction of the risk inherent in guaranteeing prices over a longer period of time;
- vii. In response to the findings of the DJMA 2004 study, the District will implement the following programs to enhance opportunities for participation by M/WBE and SBE general procurement firms:
  - A. an SBE program under Policy 6.143(5)(d)(i);
  - B. an internal matchmaking program for SBE and M/WBE general procurement firms under Policy 6.143(5)(d)(ii);
  - C. an external matchmaking program for SBE and M/WBE general procurement firms under Policy 6.143(5)(d)(iii); and
  - D. an M/WBE program under Policy 6.143(5)(d)(iv) permitting the use of set asides of small prime contracts that are below competitive bidding dollar thresholds for bidding exclusively among certified M/WBE firms that are owned by Asian Americans and Native Americans, and also establishing contract-specific subcontracting goals for the participation of certified M/WBE subcontractors on those general

procurement contracts that are above the competitive bidding threshold and that have commercially useful subcontract opportunities. In selecting contracts suitable for a set-aside, the ODBP will consider the availability, number, capacity and capabilities of potential eligible bidders, the type of work required by the contract, and the estimated dollar amount of the contract. Asian or Native American firms bidding as prime contractors shall perform at least fifty-one percent (51%) of the project with their own work force. A joint venture between an Asian or Native American firm and a non-M/WBE firm is eligible to compete in a set aside if the Asian or Native American firm is certified by the School District as a joint venture for that particular bid.

## 12. Other Methods of Promoting Equitable M/WBE Participation

### a. Quotes

- i. Encouraging M/WBE Quotes.-- The Purchasing Department will seek to allow as many vendors as possible to compete in providing goods and services to the District and to increase M/WBE participation, particularly for purchases under the current bid threshold, by requiring that effort be made by purchasing agents to obtain quotes from all certified M/WBEs within a particular commodity area for purchases under the bid threshold amount.
  - A. Purchases up to \$10,000 shall be carried out using District purchasing practices under Policy 6.14(1) that may include, but are not limited to, telephone quotes.
  - B. Between \$10,000 and \$25,000, as provided in Policy 6.14(2)(a), competitive quotes shall be requested from three (3) or more sources for commodities and contractual services when requisitioning any item or group of similar items exceeding ten thousand dollars (\$10,000) except as exempted by State Board of Education Rule 6A-1 .012 or other applicable laws. These quotes may take the form of written quotes, documented telephone quotes, fax quotes, or informal bids to be opened upon receipt. When possible, a minimum of one (1) quote should be requested from currently certified M/WBE vendors. (This provision is not intended to conflict with other options available under Policy 6.14(2)(c).)
  - C. Above \$25,000, as provided in Policy 6.14(2)(b), bids/proposals shall be requested from three (3) or more sources for commodities and contractual services when requisitioning any item or group of similar items exceeding twenty-five thousand dollars (\$25,000) or as otherwise set by

the threshold amount in Fla. Stat. § 287.017 for Category Two, except as exempt by State Board of Education Rule 6A-1.012 or other applicable laws. (This provision is not intended to conflict with other options available under Policy 6.14(2)(c).) The ODBP shall review and approve contractual services to ensure fair and equitable participation of all eligible providers for the School District.

- ii. Identical Prices.-- When identical prices are received as two (2) or more vendors' quotes (and other factors are equal), preference shall be given to the following in the order listed, as applicable:
  - A. the Palm Beach County School District certified M/WBE vendor;
  - B. the Palm Beach County vendor, other than the District certified M/WBE vendor;
  - C. the Broward or Miami-Dade certified M/WBE vendor;
  - D. the Broward or Miami-Dade County vendor, other than the certified M/WBE vendor;
  - E. the Florida vendor who is a certified M/WBE vendor;
  - F. the Florida vendor, other than a certified M/WBE vendor;
  - G. the certified M/WBE vendor, who because of lower prices, receives a larger dollar award for other items; or
  - H. the non-M/WBE vendor, who because of lower prices, receives a larger dollar award for other items.

**b. RFPs for Contracts of an Unusual Nature.**-- A Request for Proposals shall be used for solicitations for professional services of an unusual nature and when quality is paramount and unique to price. The following procedure shall be implemented if a request for proposal is deemed necessary and the contract is valued at \$15,000 or more:

- i. the Business Diversity Committee will review the RFP to determine whether M/WBE evaluation preferences will be applied;
- ii. advertisements shall include the use of major ethnic publications and organizations; and
- iii. School Board approval of the contract is required pursuant to Policy 6.14(1).

**c. Prompt Payment Policy**

- i. Contractors shall deliver a proper invoice to the designated School

District payment office. The designated payment office will log the receipt date of each invoice and send it to the department that received the goods, property or services from the contractor, for review and verification of the contractor's performance in accordance with the contract. Contractors with contracts which provide for payment at specific dates or intervals shall also be required to provide a proper invoice which certifies that the obligations required under such contract have been performed prior to such date(s) or during such interval(s), and review and verification of the work of these contractors will take place upon receipt of such proper invoice; payment shall be made in accordance with the terms of the contract.

ii. The prompt-payment schedule under a School District contract is as follows:

A. Payment will be made by the School District within the time required by Fla. Stat. § 218.735 (for construction services) or 218.74(2) (for goods or services other than construction), after receipt of a proper invoice.

B. For contracts that provide for payment at one or more specific dates or intervals, payment will be made in accordance with the terms of such contracts after receipt of proper invoice.

C. Pursuant to Fla. Stat. §§ 218.735, 218.74, and 218.76, payments may be delayed due to defects or improprieties, but any undisputed amount will be paid timely.

iii.

Pursuant to Fla. Stat. § 218.735(6), when a contractor receives payment from the District for labor, services, or materials furnished by subcontractors or suppliers hired by the contractor, the contractor shall remit payment due to those subcontractors and suppliers within ten (10) days after the contractor's receipt of payment. When a subcontractor receives payment from a contractor for labor, services, or materials furnished by subcontractors or suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers within seven (7) days after the subcontractor's receipt of payment.

iv. Retainage will be determined by Policy 7.23, implementing Fla. Stat. § 218.735(7)-(9), in accordance with the Construction Documents. To the extent allowed by § 218.735, the District may consider satisfactory demonstration of the bidder's compliance with the M/WBE requirements as determined by the District's contract compliance administrator.

13. **Business Diversity Committee.** -- The Business Diversity Committee described in Policy 6.143(7) will work closely with District personnel to ensure that Policy 6.143 is properly executed. The committee may call upon any District department or any local, regional, state, or federal government for information or advice in the performance of its work.

- a. Duties and Functions.-- The committee's responsibilities shall include:
- i. establishing M/WBE and SBE program participation goals;
  - ii. examining and proposing modifications to the District's procurement processes;
  - iii. examining the merits of centralized vs. decentralized purchasing and the effects on M/WBE utilization;
  - iv. examining the consistency or inconsistency of standards applied in developing contract specifications;
  - v. reviewing the equitable utilization of construction managers at risk, including M/WBE and SBE firms;
  - vi. reviewing policies and practices affecting small-dollar purchases, use of blanket purchase orders, and contract bundling;
  - vii. examining any policies and practices that may adversely affect the utilization of small, minority, and women-owned firms District's contracts;
  - viii. studying and evaluating the necessity for further Board Policies or guidelines regarding equitable M/WBE participation;
  - ix. assisting in planning for, and participating in, education and training for M/WBEs;
  - x. researching and recommending to the Superintendent race- and gender-neutral alternatives that will improve program activities and assist M/WBEs;
  - xi. when requested by the ODPB director, reviewing circumstances surrounding M/WBE vendor concerns and discussing with the ODBP Director potential debarment or de-certification recommendations;
  - xii. receiving and, where necessary, analyzing, information concerning the presence of discrimination in bidding and contracting and recommending to the Superintendent further steps to alleviate such discrimination; and
  - xiii. serving as a liaison between the School District, the community,

industry organizations, trade associations, Chambers of Commerce, and M/WBEs.

- b. Procedure.-- The committee shall select a chair and vice-chair, who shall serve one-year terms. The ODBP is responsible for scheduling and convening committee meetings. Agenda items, minutes, meeting places, and committee reports shall be coordinated through the ODBP. The committee will function in accordance with Robert's Rules of Order, Newly Revised, allowing each committee member one vote. The committee should generally meet at least twice a month.

14. **Project or Contract Goals.**-- All District expenditures shall be consistent with Policy 6.143. The District's overall M/WBE goals shall encourage awarding an equitable amount of the District total procurement budget to ready, willing, and able certified M/WBE's, provided that such awards do not violate state or federal law.

- a. Availability analysis shall be used when setting contract participation goals on an annual basis or on a contract-specific basis pursuant to Policy 6.143(6)(a). Annual goals shall not be routinely applied to specific contracts absent an independent availability analysis that demonstrates they are appropriate for application to a specific contract.
- b. Beyond the race- and gender-conscious programs, it is intended that the race- and gender-neutral program will be sufficient to achieve the remaining portions of the goal of equitable utilization of M/WBE firms. Subcontractors that are suppliers, deliverymen, or third-tier vendors will not be counted in the calculation of the M/WBE construction contract goal. However, those dollars that are awarded and paid to M/WBE firms that are attributable to the SBE program or other race- and gender-neutral means will still be recorded and reported by ODBP as that portion of M/WBE annual goals attained through race- and gender-neutral means.
- c. The Purchasing Department will identify projects and contracts under the District's current bid threshold, and those contracts and projects (including professional services contracts and construction contracts) will not have goals established, at the discretion of the Business Diversity Committee. Equitable participation by minorities and women is, however, strongly encouraged on all projects.
- d. Annual reviews will facilitate adjustments of the categorical goals, and the determining factors for this adjustment shall be: the annual review of the District's achievement of goals in the preceding year; and the fluctuation in the availability reviews conducted by ODBP.
- e. Project and/or contract goals will be set forth for M/WBEs on an annual basis and are considered to be targets, not quotas, set to achieve

participation levels commensurate with available ready, willing, and able businesses. The goals shall pertain to the following areas as applicable: Construction, Nonprofessional Services, Professional Services, and general Procurement (goods, commodities, and materials). In setting project or contract goals, the following factors shall be considered:

- i. the type of work required by the contract to be let;
  - ii. the subcontracting opportunities for M/WBEs, including normal overhead and support ancillary services to be let, and the number of certified M/WBEs available;
  - iii. the past and current experience of the District in meeting its goals through race- and gender-neutral and race-and gender conscious means; and
  - iv. special circumstances relating to the project including, but not limited to, scheduling constraints, construction requirements, and federal grant goal requirements.
- f. To assist the Business Diversity Committee, the Office of Diversity in Business Practices will review the scope of work, determine the availability of M/WBE-certified prime contractors and subcontractors qualified to do the work; identify the various components by industry code, race, and gender; and submit a recommended goal to the Business Diversity Committee.
- g. The Purchasing Department applies the goals to the full monetary value of the contract, and the goals are also reflected in the amount spent on subcontracts.

15. **Required Contract Provisions.--** The following provisions should be included in the body of any applicable contract with the School Board for the provision of goods, services, or construction:

- a. a provision indicating that this Procedure (as part of Policy 6.143) is incorporated by reference and the contractor's failure to comply with any of its requirements will be considered a breach of contract;
- b. a provision prohibiting any agreement between the contractor and an M/WBE where the M/WBE would promise not to provide subcontracting quotes to other bidders or potential bidders;
- c. the requirement of maintaining and submitting to the District all relevant records and information necessary to document compliance with this Procedure (as part of Policy 6.143) and a provision stating the right of the District to inspect such records;

- d. the understanding that the same level and percentage of M/WBE participation shall exist in any and all amendments or change orders which increase or decrease in the dollar value of the proposed service, projects, or products where possible; and
- e. a requirement that the contractor shall comply with the proportionate dollar-amount goals throughout the term of the contract, such that when plans are made in proposals or bids for the use of M/WBE subcontractors, a M/WBE which for any reason no longer remains associated with the contract shall be replaced with another certified M/WBE unless the District grants written approval to the contrary.

**16. Contract Solicitation and Award.** -- The Purchasing Director shall solicit bids or proposals, as applicable, from responsible bidders or proposers and shall issue public notice to acquaint bidders or proposers with the solicitation when required by law. The following procedures apply in addition to procedures set forth in Policy 6.143(9) and Policy 6.14.

- a. The Purchasing Director shall cause public notice or advertisement of the solicitation to be given a reasonable period of time prior to the public opening or the place, date and time at which responses are due as set forth in the solicitation by posting public notice on a bulletin board located in the Purchasing Department and as otherwise appropriate, such as via the Web, in accordance with Policies 6.14 and 6.143.
- b. The solicitation shall contain a detailed description of the services sought, the time and date for the receipt of responses and the public opening, and all contractual terms and conditions applicable to the procurement, including the criteria to be used in evaluating responsiveness and responsibility.
- c. A summary of any applicable SBE or M/WBE Program procedures shall be plainly stated in each solicitation. For contractual services, an evaluation committee to determine the recipient of the contract award recommendation will use a point system of evaluation. Businesses submitting proposals to provide professional services to the District will be eligible to receive, on a sliding scale, a designated number of the total possible points based upon their SBE or M/WBE participation.
- d. The distribution of points allocated to the evaluation criteria and the total points assigned specifically to M/WBE participation shall be stated in the RFP. (Points for M/WBE participation may vary depending on other criteria to be included in the RFP). Other criteria pertaining to M/WBEs may be recommended by the Business Diversity Committee provided that the criteria is predetermined and all firms seeking contracts are made aware of the criteria, in writing.
- e. The solicitation shall contain a description of any renewal(s)

contemplated and shall require a response to include a price for each renewal year for which the contract may be renewed. Criteria that are not set forth in the solicitation may not be used in evaluating responses, except for consideration of the proposed total cost for each renewal year (which shall be a factor in evaluating responses). Renewals shall be contingent upon satisfactory performance evaluations by the department in question, in accordance with the objectively-measurable evaluation criteria or factors set forth in the solicitation, and shall be subject to approval by the appropriate designee and to the availability of funds.

- f. Awards shall be made with reasonable promptness by written notification to the responsive, responsible bidder or proposer. Written notification will also be given to each unsuccessful bidder or proposer. A person who is adversely affected may protest the decision or intended decision in accordance with Policy 6.14(4).
- g. The ODBP shall provide its evaluation of bids as it relates to M/WBEs to the department responsible for letting the contract.
- h. When evaluating competitive bids/quotes for award in which the apparent low bidder is determined to be non-responsive to the ODBP requirements, the contract shall be awarded to the lowest responsive and responsible bidder who fulfills the ODBP requirements.
- i. Within two (2) weeks after contract award, bidders or proposers not selected on specific projects or contracts may request in writing a debriefing with ODBP to enable them to compete more effectively in the future. In response to requests, ODBP shall set a bid-debriefing meeting within 4 weeks after contract approval. In the meeting, ODBP and appropriate District personnel shall discuss possible changes to their submissions that would make them more competitive in the future. ODBP will keep a record of bid-debriefing meetings and attendance.
- j. Contract re-bids will occur when an existing bid is recommended for re-bid instead of renewal. The Purchasing Department will inform the ODBP of contract renewals and re-bids. The ODBP shall provide the Purchasing Department with minority availability where M/WBE vendors had not been utilized.

17. **Compliance and Good Faith Efforts.**-- Contractors submitting bids or proposals to provide goods and services to the District shall exercise good-faith efforts to comply with the participation goals for the contract as established under this program. Any act or omission by the District shall not relieve the contractor of this responsibility. The District reserves the right to reject any bid or proposal deemed non-responsive for failing to meet these requirements (and the Board also reserves the right to reject any proposals from bidders who have previously failed to perform properly under a contract

with the Board, whether by omission or by commission of an act of such serious and compelling nature that the act indicates a serious lack of business integrity or honesty).

- a. Bidders or proposers shall provide the District with all documentation required in the invitation to bid or RFP regarding M/WBE participation and good faith efforts. The documents shall include a list of all subcontractors, including certified M/WBE subcontractors, who will be used on the contract.
- b. The contractor's bid or proposal must include evidence of good faith efforts to achieve the goals. The District shall consider, at a minimum, the following criteria in determining good faith efforts (although this list is not intended to be exclusive or exhaustive, and the District will look not only at the different kinds of efforts the contractor has made, but also at the quality, quantity, intensity, and timeliness of those efforts):
  - i. attendance at the pre-bid conference, if held;
  - ii. the specific work the contractor intended to subcontract;
  - iii. whether and when the contractor provided written notice to all certified M/WBEs listed as District M/WBEs who perform the type of work to be subcontracted, and their level of interest in the contract and obtaining information for the review and inspection of contract plans and specifications;
  - iv. whether the contractor selected feasible portions of work to be performed by M/WBEs including, where appropriate, de-bundling contracts or combining elements of work into feasible units (the ability of the contractor to perform the work with its own workforce will not in itself excuse a contractor from making positive efforts to meet contract goals);
  - v. whether the contractor has utilized M/WBE subcontractors on other District contracts within the past six months;
  - vi. whether the contractor advertised in general circulation, trade association, and/or minority/women- or small-business-focused media concerning the subcontracting opportunities;
  - vii. whether the contractor followed up initial solicitations of interest by contacting M/WBE to determine with certainty whether the M/WBEs were interested;
  - viii. whether the contractor provided interested M/WBEs assistance in reviewing the contract plans and specifications;
  - ix. whether the contractor offered to assist interested M/WBE firms in

obtaining required bonding, lines of credit, or insurance if such assistance was necessary;

- x. whether the contractor effectively used the services of available minority/women community organizations, minority/women contract groups or local, state, and federal M/WBE assistance offices, and other organizations that provide assistance in the recruitment and placement of M/WBEs;
  - xi. whether the prime contractor or vendor is actively participating in a mentoring program, which will contribute to the development of M/WBE contractors or vendors;
  - xii. whether the contractor considered all quotes received from M/WBEs (and the contractor shall provide an explanation of why the M/WBE quotes were not accepted for use in the contract. Receipt of a lower quote from a non-M/WBE or non-SBE will not in itself excuse a contractor from making positive efforts to meet contract goals);
  - xiii. whether the contractor negotiated in good faith with interested M/WBEs, not rejecting M/WBEs as unqualified without sound reasons based on a thorough investigation of their capabilities; and
  - xiv. whether the contractor's efforts were merely pro forma and, given all relevant circumstances, could not reasonably be expected to provide sufficient M/WBE participation to meet the goals.
- c. The department responsible for letting the contract shall forward the contract documents relative to M/WBE participation to the ODBP within the time prescribed in the document, which time shall not exceed 31 business days after bid/proposal opening and must be prior to commencement of the contract/project.
  - d. If an M/WBE subcontractor listed in contractor's bid or proposal becomes decertified after submission of bids or proposals, but prior to the award of the contract, the ODBP shall require the contractor to attain the M/WBE goal with another certified M/WBE within a specific reasonable time frame.
  - e. If an M/WBE subcontractor for any reason no longer remains associated with the contract after award of the contract, that M/WBE shall be replaced with another certified M/WBE unless the District grants written approval to the contrary.

## **18. Noncompliance and Debarment**

- a. It is unlawful for any person to falsely represent any entity as an M/WBE for purposes of qualifying for certification as an M/WBE under

this Procedure (which is incorporated by reference in Policy 6.143). Any person who makes such false representations shall cause the Superintendent to recommend that the Board debar the business from conducting business with the District for a period up to 36 months in accordance with Policy 6.14. Moreover, Fla. Stat. § 837.06 provides: "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

- b. Any contractor or firm which falsely represents to the District, pursuant to a contract, that it is a M/WBE firm or which represents that it will use the services or commodities of M/WBE firms and subsequently does not do so, without prior written District approval, may be in breach of contract. The School Board may use all available remedies for breach of contract. In addition, all amounts paid to the contractor or firm under the contract intended for expenditure with M/WBEs may be forfeited and shall be recoverable by the District. Even if the School Board, at its sole discretion, may elect to waive such breach and available remedies, any such waiver does not constitute a waiver of rights for breach of any other provision of the contract.
- c. Any contractor's noncompliance with the M/WBE aspects of the contract may result in the drafting of a recommendation for debarment of the firms or individuals involved. Debarment of vendors by the School Board for activity contrary to this program will be carried out in accordance with Policy 6.14 for reasons such as (but not limited to) any of the following:
  - i. the violation of any applicable law, regulation, or contract provision relating to the performance of obligations incurred pursuant to a contract with the School Board;
  - ii. making any false statement or using deceit for the purpose of influencing in any way any action of the School District;  
  
falsely representing the business as an MBE or WBE for purposes of qualifying for certification as an MBE or WBE under a program designed to assist M/WBEs in the receipt of contracts with the Board for the provision of goods or services;
  - iv. misrepresentations or misconduct involving fraud, deceit, or other actions indicating serious lack of business integrity or honesty with respect to the eligibility of firms to participate as M/WBEs; or
  - v. acting as or knowingly making use of a "front" company as defined in Policy 6.143(3)(s).

**19. Graduation from the M/WBE Program.--** Ongoing participation in the

Business-Diversity Program will be dependent upon the M/WBE's ongoing need for the preferences and other services extended to M/WBEs under Policy 6.143. If those firms have exceeded the School District's size thresholds, they are no longer eligible for the preferences (although they shall remain eligible for technical assistance, and other forms of assistance not related to bid preferences or evaluation preferences; and the utilization of graduated M/WBE firms shall continue to be tracked and counted towards attainment of the District's annual M/WBE participation goals, as stated in Policy 6.143(14). Firms that have graduated from the M/WBE program will be ineligible to apply for the same category or any other category for certification. Even if the firm might still be eligible for the District's SBE program, an M/WBE firm shall be graduated from the District's M/WBE program if it no longer complies with the requisite employee and revenue size standards, or no longer complies with the ownership and control standards set forth in Section 4 of these procedures.

- a. employs more than 200 permanent full-time employees or has business owners with a collective personal net worth of over five million dollars (\$5 million) (which includes both personal and business investments in the case of a sole proprietorship), unless the firm, based in this state, has a current Small Business Administration 8(a) certification; or
- b. exceeds the revenues or average gross sales or revenues for the appropriate business category set forth in Section (4)(c), above.

**20. Reporting.** -- The ODBP will provide the following reports to the Board:

- a. reports and recommendations on at least an annual basis regarding suggestions for policy changes regarding the M/WBE program. This report shall be generated within 90 days subsequent to the Division of Financial Management's completing the annual fiscal-year close out of the School District records;
- b. a program evaluation analysis every four years to assess the success of the District's diversity-in-business program and whether disparity continues to exist in individual industry codes;
- c. a disparity study update report prepared by an independent consultant every four years;
- d. a unified annual report of M/WBE procurement activities. The report will record and report data by ethnic/gender group and by construction, nonprofessional, professional, and general procurement categories for all dollars awarded and expended by the District (the reporting system is designed to document efforts undertaken by the School District to inform, assist, encourage, and solicit M/WBE participation in procurement activities and to report contracts awarded. The reporting system, based on non-salaried expenditures regardless of specialty, is a method for tracking dollar expenditures to M/WBEs as vendors, prime contractors, subcontractors, or consultants and will allow for continuing comparisons between actual expenditures to date and annual goals by

M/WBE category. This report may be prepared in part from the Board agenda items for recommendations for award to M/WBE vendors, contractors, and consultants. The report also provides an analysis, by race, gender and ethnicity, as compared to the total awards.);

- e. an annual report of an accurate accounting of each purchasing agent's activities relative to the vendors they have contacted for purchases of \$10,000 and under, and a periodic analysis of a rotating vendor process for purchases of \$10,000 and under (and the rotation list to be utilized by purchasing agents will be reviewed and updated monthly, and periodic monitoring will be performed to ensure rotation of vendors); and
  - f. an annual diversity directory, specific to each purchasing area, with addenda as appropriate, for the Purchasing Department. An annual diversity directory will be provided (such as via electronic means) to all offices, departments, and school sites to facilitate the utilization of M/WBE firms.
21. **Policy Review.** -- This Procedure shall be reviewed and revised as often as necessary to ensure that it complies with current legal requirements, such as applicable current standards of binding decisions of the Eleventh Circuit Court of Appeals and the United States Supreme Court. Moreover, at least every fourth year, the Board will review the successes and failures of the M/WBE program under Policy 6.143 and make a determination as to the need for a continuing M/WBE program.
22. **Severability.** -- If any section, paragraph, sentence, clause, phrase, or word of this Procedure is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Procedure, which shall remain in full force and effect.

