

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

**SUBJECT:**            **INITIAL READING: PROPOSED AMENDMENTS TO SCHOOL BOARD POLICY 6320.02, SMALL/MICRO, MINORITY/WOMEN, AND VETERAN BUSINESS ENTERPRISE PROGRAMS, AND BOARD POLICY 6320, PURCHASING**

**COMMITTEE:**        **FISCAL ACCOUNTABILITY & GOVERNMENT RELATIONS**

**LINK TO STRATEGIC PLAN:**            **EFFECTIVE & SUSTAINABLE OPERATIONAL PRACTICES**

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

On April 27, 2016, the Board authorized the Superintendent to contract with Miller3 Consulting, Inc., to conduct a Phase II Disparity Study and Policy Review, that focused on goods/supplies, services, and maintenance and maintenance-related services contracts issued by the Board during the July 1, 2012 through June 30, 2015 period. The Study provided a strong basis in evidence that there are statistically significant disparities in the Board's utilization of ready, willing, and able M/WBEs of contracts and business owners.

On May 8, 2019, the Board authorized the Superintendent to contract with Miller3 Consulting, Inc., to conduct the 2020 Comprehensive Disparity Study and Policy Review on contracts issued by the Board during the period of July 1, 2012 through June 30, 2018. The Comprehensive Study identified significant areas of improvement in the utilization of ready, willing, and able M/WBEs in the areas of Professional Services, Architecture/Engineering (A/E), Construction, and Construction Related Services for African-Americans. However, disparities continue to exist in the following areas (\*Indicates statistically significant disparity was found):

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- Architecture & Engineering (Asian-American\* and Non-Minority Women\*)
- Construction & Construction-Related Services (Asian-American, Native American, and Non-Minority Women\*)
- Maintenance & Maintenance-Related Services (African-American,\* Asian-American,\* and Non-Minority Women\*)
- Procurement Services (African-American\* and Non-Minority Women)
- Procurement Goods & Supplies (African-American\* and Non-Minority Women\*)

In accordance with the United States Supreme Court ruling in the case of *City of Richmond v. J.A. Croson*, 109 S. Ct. 706 (1989), these findings provide direct evidence of past discrimination sufficient to support the use of gender-conscious and race-conscious means for addressing the disparities when it is apparent that use of race-neutral and gender-neutral remedies alone may not be sufficient to fully eliminate the effects of the discrimination. This item requests that the Board accept the findings of the 2020 Comprehensive Disparity Study. Copies of the 2020 Comprehensive Disparity Study will be provided to Board members under separate cover. It is available to the public for review at the Citizen's Information Office and it is also available at the following link: <http://attachmentManagerFiles.dadeschools.net/getFile.ashx?id=BxD1~!7J~!qcaAjkBGmSEawByCEHOPFfzq5Dm1HYK1jtvwycpN6d4BxsH9ThMBsJJgh~!NYNL3xK7z6pfOew419PA==&app=AttachmentManager>.

Based on the study's findings and the determination that the Board has a compelling governmental interest to remedy the effects of identified discrimination in the procurement of these services, the item also requests authorization for the Superintendent to initiate rulemaking proceedings to amend Board Policy 6320.02, *Small/Micro, Minority/Women, and Veteran Business Enterprise Programs*, to: (1) allow certain narrowly-tailored gender-conscious and race-conscious remedies for addressing the identified disparities only when it is apparent that the use of gender-neutral and race-neutral means alone will likely be insufficient to remedy the effects of identified discrimination; (2) update various sections of the policy to be consistent with current law, and (3) amend the policy to include language on the continual M/WBE compliance monitoring of subcontracting initiatives of prime contractors for a specified period of time. On August 25, 2021, the findings of the disparity study were presented to the Board at a Disparity Study Workshop.

Additionally, Policy 6320, *Purchasing*, is recommended for revision to align the policy language with Policy 6320.02. In addition, revisions align the policy with current law and practice. Specifically, a prior rule permitting food and nutrition items to be exempted from competitive solicitation has been repealed by the Department of Agriculture and the corresponding language in Board policy is recommended for deletion. Additionally, the policy includes a revision to require competitive solicitation for computer applications and software purchases that are not content based for student instruction and exceed \$5,000,000.00 per contract.

These policy amendments were drafted in collaboration with, and reviewed by, the Superintendent, Cabinet, and District staff.

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

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

1. Accept the 2020 Comprehensive Disparity Study and Policy Review conducted by Miller3 Consulting focused on all areas of procurement covering the July 1, 2012 through June 30, 2018 period;
2. Authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend School Board Policy 6320.02, *Small/Micro, Minority/Women-Owned, and Veteran Business Enterprise Programs*; and
3. Authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend School Board Policy 6320, *Purchasing*.

## NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on September 9, 2021, its intention to amend Board Policy 6320.02, *Small/Micro, Minority/Women-Owned, and Veteran Business Enterprise Programs*, and Board Policy 6320, *Purchasing*, at its meeting of October 20, 2021.

PURPOSE AND EFFECT: Board Policy 6320.02, *Small/Micro, Minority/Women-Owned, and Veteran Business Enterprise Programs*, is recommended for amendment to incorporate the findings of the 2020 Disparity Study and the District's response to the findings. Policy 6320, *Purchasing*, is recommended for revision to align the policy language with current law and practice related to competitive solicitation.

SUMMARY: On May 8, 2019, the Board authorized the Superintendent to contract with Miller3 Consulting, Inc., to conduct the 2020 Comprehensive Disparity Study and Policy Review on contracts issued by the Board during the period of July 1, 2012 through June 30, 2018. The Comprehensive Study identified significant areas of improvement in the utilization of ready, willing, and able M/WBEs in the areas of Professional Services, Architecture/Engineering (A/E), Construction, and Construction Related Services for African-Americans. However, disparities continue to exist in the following areas (\*Indicates statistically significant disparity was found): Architecture & Engineering (Asian-American\* and Non-Minority Women\*); Construction & Construction-Related Services (Asian-American, Native American, and Non-Minority Women\*); Maintenance & Maintenance-Related Services (African-American,\* Asian-American,\* and Non-Minority Women\*); Procurement Services (African-American\* and Non-Minority Women); Procurement Goods & Supplies (African-American\* and Non-Minority Women\*). Amendments to Board Policy 6320.02, *Small/Micro, Minority/Women, and Veteran Business Enterprise Programs*, are proposed to: (1) allow certain narrowly-tailored gender-conscious and race-conscious remedies for addressing the identified disparities only when it is apparent that the use of gender-neutral and race-neutral means alone will likely be insufficient to remedy the effects of identified discrimination; (2) update various sections of the policy to be consistent with current law, and (3) amend the policy to include language on the continual M/WBE compliance monitoring of subcontracting initiatives of prime contractors for a specified period of time. Board Policy 6320, *Purchasing*, is recommended for an amendment to conform the policy to the repeal of a prior Department of Agriculture rule permitting food and nutrition items to be exempted from competitive solicitation. Additionally, the policy includes a revision to require competitive solicitation for computer applications and software purchases that are not content-based and exceed \$5,000,000.00 per contract.

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SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41 (1), (2); 1001.42(12), (16); 1001.43 (2), (10), F.S.

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 1001.43(2), (6); 287.055; 287.057; 595.404, 1013.46(1)(c), F.S.; Fla. Admin. Code r. 5P-2.002.

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF October 20, 2021, which begins at 1:00 p.m., in the School Board Auditorium, 1450 N.E. Second Avenue, Miami, Florida 33132. Persons requesting such a hearing or who wish to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided in Section 120.54(1), F.S., must do so in writing by October 5, 2021, to the Superintendent, Room 912, at the same address.

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

COPIES OF THE PROPOSED AMENDED POLICY are available at cost to the public for inspection and copying in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.



Book	Policy Manual
Section	September 9, 2021 - <u>Initial</u> Reading
Title	SMALL/MICRO, MINORITY/WOMEN, AND VETERAN BUSINESS ENTERPRISE PROGRAMS
Code	6320.02
Status	<u>Initial</u> Reading
Adopted	May 11, 2011
Last Revised	March 13, 2019

## 6320.02 - SMALL/MICRO, MINORITY/WOMEN, AND VETERAN BUSINESS ENTERPRISE PROGRAMS

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

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

### I. Phase I - Procurement of Construction, Design, and Construction Related Professional Services

#### A. 2014 and 2015 Disparity Studies

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

In February 2013, the Board contracted with MGT of America, a Tallahassee consulting firm, to conduct Phase I of a Comprehensive Disparity Study (Disparity Study) to provide data regarding the Board's

design and construction-related professional services procurement activity and race- and gender-neutral remedial efforts for the study period between July 1, 2006 through June 30, 2012. The purpose of the Disparity Study was to analyze the utilization of minority and women-owned business enterprises (M/WBEs) in the Board's procurement of capital construction and design and construction related professional services to determine whether there was a strong evidentiary basis supporting consideration of an M/WBE program by the Board. The Disparity Study was accepted by the Board on November 19, 2014. In February 2015, the Board commissioned Euquant, Inc., to provide further disparity analysis of the Board's utilization of African-American subcontractors in construction (Subcontractor Disparity Study). The Subcontractor Disparity Study was accepted by the Board on September 9, 2015. The 2014 Disparity Study and the 2015 Subcontractor Disparity Study are both incorporated by reference and made a part of this policy.

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

## **B. Findings**

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

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

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

1. Non-minority businesses received the majority of the public-sector construction permits for prime contracts.
2. Non-minority businesses received an even larger percentage of construction building permits for private sector commercial construction and subcontracts. MBE primes received only two percent (2%) of building permits and certified non-minority women-owned businesses received zero. Of the .27% of subcontractors who received building permits, nearly all went to Hispanic-American owned businesses.
3. There are significant disparities for entry into self-employment for African-Americans, Hispanic Americans, Asian Americans, and Non-minority Women.
4. There is a statistically significant positive relationship between the probability of commercial bank loan denial and African American business ownership. About fifteen percent (15%) of M/WBE loan applicants reported being denied commercial bank loans, compared to 64.7% of African American applicants, 21.6% of Hispanic American applicants, 0% of Asian American-owned businesses, 0% of Native American applicants, and twenty percent (20%) of non-minority women applicants.

5. Interviews with District staff and M/WBE businesses identified various discriminatory barriers affecting the relevant job market including unequal access to bonding, finance, and insurance, having to unfairly compete against large businesses in the selection process, unnecessarily restrictive contract requirements, an informal network that precluded M/WBE businesses from obtaining work in the private sector, seldom or never being solicited where there were no M/WBE goals, being dropped from a project after being included to satisfy good faith effort requirements, contract bundling, slow or non-payment by contractors, limited time to prepare bid packages, difficulty obtaining notification of contract/bid opportunities, and discriminatory experiences in dealing with the District and prime contractors.
6. The implementation of numerous race and gender-neutral assistance efforts and programs throughout the relevant market over the past two (2) decades have been unsuccessful in fully eliminating these persistent and significant disparities in the District's utilization of ready, willing and able M/WBE businesses. The efforts have included technical assistance, loan guarantee assistance, bonding assistance, business development assistance, financial assistance, and mentoring programs.

## **II. Phase II - Procurement of Goods/Supplies, Services, Maintenance and Maintenance-Related Services**

### **A. 2018 Disparity Study**

On May 11, 2016, the Board commissioned Miller3 Consulting, Inc. (M<sup>3</sup> Consulting) to conduct a Phase II Disparity Study for the study period between July 1, 2012 through June 30, 2015 (2018 Disparity Study). The purpose of the study was to analyze the utilization of M/WBEs in Board procurement of goods/supplies, services, maintenance and maintenance-related services (collectively defined as "Goods and Services") contracts in the relevant geographic markets for such purchases by the Board.

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

1. Goods & Supplies (African-American, Asian-American, and Non- Minority Women)
2. Maintenance and Maintenance-Related Services (African- American, Asian-American, and Non-Minority Women)
3. Services (African-American and Non-Minority Women)

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

1. While capacity differences do not appear to be distinct in the size of the businesses based on revenues or full-time employees across the board for all race and gender or ethnicities, the constraints in capacities are more notable in terms of revenues, employees and business formation and factors related to the self- employment decision and earnings for African American businesses, more than for any other race, gender or ethnic groups where the results are mixed.
2. Although non-M/WBEs have higher capacity in goods and supplies than M/WBEs as measured by number of employees or sales revenues, such differences are likely, in part, the consequence of the effects of marketplace discrimination upon M/WBE earnings. However, threshold analysis indicates that most Board contracts are sufficiently small that capacity differences of this magnitude would not materially affect the ability of small and M/WBE firms to perform them.
3. In maintenance and maintenance-related services, although non-M/WBEs have higher capacity than M/WBEs as measured by number of employees or sales revenues, in part, such differences are likely the consequence of the negative effects of marketplace discrimination upon M/WBE earnings. However, threshold analysis indicates that most Board contracts are sufficiently small

that capacity differences of this magnitude would not materially affect the ability of small and M/WBE firms to perform such contracts.

4. Most MBEs and non-minority/women businesses started their businesses with less than \$10,000 at start-up. Few MBEs had \$10,000 - \$25,000 at start-up, whereas white male-owned businesses experienced the reverse, with a majority starting with \$10,000 - \$25,000.
5. Anecdotal evidence presented in the Study further supports the inference of discrimination established by statistical disparities in M/WBE utilization in the District's Goods and Services contracts. Anecdotal evidence obtained from in-depth interviews and focus groups with small, minority, and women business owners and other business stakeholders identified a number of barriers and patterns of various forms of marketplace discrimination that appear to be adversely affecting M/WBEs in their efforts to engage in business with the Board, including, but not limited to, the following:
  - a. slow payment and non-payment by prime contractors;
  - b. unfair competition with large companies;
  - c. bundling of smaller contracts into single large contracts;
  - d. unequal access to bidding opportunities;
  - e. unnecessarily restrictive contract specifications; and
  - f. stereotypical attitudes on the part of buyers and prospective clients.

## B. Conclusion

The totality of the evidence provides a strong basis for the Board to conclude that ongoing effects of marketplace discrimination are adversely affecting the Board's utilization of ready, willing, and able minority- and women-owned businesses.

Based upon the entirety of the factual predicate that has been gathered and presented to the Board since 1990, the Board continues to find that the District has a compelling interest in remedying the ongoing effects of discrimination that is occurring in the broader relevant market and adversely affecting the District's utilization of ready, willing and able minority- and women-owned businesses in District construction and construction-related, professional services, and goods and services contracts. The Board also concludes that it needs to take action to avoid becoming a passive participant in private sector discrimination.

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

## III. 2020 Disparity Study

On May 8, 2019, M<sup>3</sup> Consulting was again commissioned to conduct a Comprehensive Disparity Study (2020 Disparity Study). The purpose of the study was to determine if there is evidence showing that there is disparity among ready, willing, and able M/WBEs in Architecture and Engineering, Construction and Construction-Related Services, Maintenance and Maintenance-Related Services, Services, and Goods & Supplies procurement and contracts issued by the School Board. The study period covers July 1, 2012 to June 30, 2018.



Based on the statistical findings in the disparity study, the utilization of qualified firms as reflected by the percentage of contracts or purchase orders awarded, appear to be less inclusive than warranted, when compared to the availability of ready, willing and able firms (RWA<sup>SM</sup>). Thus, M<sup>3</sup> Consulting draws an inference of discrimination against the following race, ethnicity, and gender groups (\*Indicates statistically significant disparity was found):

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Architecture & Engineering (Asian-American\* and Non-Minority Women\*)

Construction & Construction-Related Services (Asian-American, Native American, and Non-Minority Women\*)

Maintenance & Maintenance-Related Services (African-American\*, Asian-American\*, and Non-Minority Women\*)

Procurement Services (African-American\* and Non-Minority Women)

Procurement Goods & Supplies (African-American\* and Non-Minority Women\*)

Other findings in the 2020 Disparity Study report include, but are not limited to, the following:

A. Capacity differences do not appear to be distinct in the size of the firms based on revenues or full-time employees across the board for all races/genders or ethnicities. The constraints in capacities are more notable in terms of revenues, employees and business formation and factors related to the self-employment decision and earnings for African-American owned firms, more so than for any other races/genders/ethnic groups wherein the results are mixed.

B. Limits on transparency on the various systems have not been integrated to maximize organizational and operational transparency. Based on interviews, the various departments continue to operate in silos, thus further limiting organizational transparency. This lack of transparency impacts real-time decision-making at senior levels and reduces collaboration among departments and schools, as it relates to including M/WBEs in M-DCPS opportunities.

C. Prequalification of contractors, as required by the State of Florida, and the need of an M/WBE certification can have an exclusionary impact on M/WBE participation and limit the level of competition on M-DCPS opportunities. Pre-qualification may reduce the number of firms that can bid on M-DCPS opportunities at the prime level. This requirement also reduces the number of firms available in the various trade categories, further exacerbating issues of low M/WBE availability. Stringent M/WBE certification requirements can reduce the pool of available M/WBEs even further. While some agency certifications are accepted, M-DCPS has not yet created broad interlocal certification agreements with other public sector jurisdictions, such as Broward Schools, Palm Beach Schools, South Florida Minority Supplier Development Council and Florida DOT.

D. Capacity building is limited to the construction under the bond, and because most construction under the bond has been executed, the opportunity to conduct capacity building initiatives have lapsed.

E. Anecdotal analysis data illustrated the barriers that may exist for minority and women business owners. The barriers include:

1. streamlining the certification and prequalification process;

2. lack of prompt payment process by Facilities for prime contractors; collaboration difficulty of school and department staff; and

3. lack of notification of bid award and feedback; and

4. projects are too large for small firms.

However, the participants of the analysis stated that operations improved since the appointment of the new OEO Assistant Superintendent for Equity and Diversity.

F. Marketplace analysis examined the M/WBE participation levels in private and other public sectors. The demographics and labor force in the Miami-Ft. Lauderdale-Palm Beach MSA are as follows:

Hispanic-American (42.82%) (Construction, Professional Services)

Hispanic-American Women (19.4%) (Support Services)

African-American (20%) (Construction, Professional Services)

African-American Women (10.3%) (Support Services)

Asian-American (2.35%) (No labor force identified)

The largest percentage of business license data comparison in the private and public sector is in Construction at 4.62%.

The totality of the evidence provides a strong basis for the Board to conclude that ongoing effects of marketplace discrimination are adversely affecting the Board's utilization of ready, willing, and able minority- and women-owned businesses.

G. Race-neutral and gender-neutral programs within the Tri-County Area have made some progress in improving M/WBEs and SMBEs management skills, access to capital, and greater exposure to the larger business community. M/WBEs and SMBEs still face some difficulty in gaining access to public and private sector contracting opportunities.

The results of the program review and interviews reveal that, while race-neutral and gender-neutral efforts may have contributed in some degree to increased capacity and participation in contract awards, race-neutral and gender-neutral programs alone have not been fully effective in increasing availability, capacity or utilization of M/WBEs or eliminating disparity.

Given this result, the provision of management, finance and technical assistance via race-neutral and gender-neutral programs, in and of itself, does not appear to adequately address all issues and barriers faced by M/WBEs in the Tri-County area.

It is the Board's intent to continue to serve the small business community in a fair and equitable manner through policy revisions that help curtail and remedy business practice discrimination impacting minority-owned and women-owned businesses. The 2020 and prior Disparity Studies continue to find that ongoing effects of discrimination are occurring in the broader relevant market and adversely affecting the District's utilization of ready, willing and able minority-owned and women-owned firms in construction and construction-related, professional services, and goods and services contracts.

Accordingly, this policy specifically authorizes the establishment of a narrowly tailored combination of race-neutral and gender-neutral and race-conscious and gender-conscious programs that address discrimination in the Board's procurement processes and business operations. District purchasing activities suggest that M/WBEs continue to have some difficulties obtaining significant contracts with M-DCPS. Policy changes implemented will allow M-DCPS to rely upon race-conscious and gender-conscious means when necessary to address ongoing hindrances to eliminate disparities, while also addressing M/WBE participation through race-neutral and gender-neutral efforts. The economic and statistical utilization analyses could serve as part of the policy and procedure-making decisions needed to ensure enhanced and legally defensible M/WBE participation in M-DCPS purchasing processes and opportunities.

#### **IV. General Policy**

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

- B. Having found that it has a compelling governmental interest to remedy the effects of identified discrimination in the procurement of construction and professional services and goods and services contracts, the Board directs and authorizes the Superintendent to establish procedures and implement remedies that are consistent with this policy and are narrowly tailored to the findings and conclusions of the Disparity Study.
- C. In addition, the Board shall take all necessary, reasonable, and legal action to prevent discrimination and to ensure that all businesses, including M/WBEs, are afforded the maximum equitable opportunity to participate in the District's procurement process.
- D. The District shall take all necessary and reasonable steps permissible by law to ensure full equitable participation by M/WBEs in the procurement of construction and professional services, and goods and services for the District, including:
  - 1. developing programs and services as described in this policy that will achieve the Board's diversity objectives in business practices and operations in a manner that is consistent with this objective;
  - 2. publicizing and enforcing the Board's commercial anti-discrimination provisions in Policy 6465 and Policy 6320 to ensure that District employees and companies doing business with the Board do not discriminate in the solicitation, selection, or treatment of subcontractors, suppliers, vendors, or commercial customers on race, color, ethnic or national origin, religion, marital status, disability, genetic information, age, political beliefs, sexual orientation, gender, gender identification, social and family background, linguistic preference, pregnancy, and any other legally prohibited basis;
  - 3. developing additional Board policies, administrative programs, procedures and affirmative procurement initiatives consistent with Policy 6320.06 to directly address inequities and disparities related to the underutilization of M/WBE subcontractors on Board construction and professional services, and goods and services contracts;
  - 4. ensuring that the Office of Economic Opportunity (OEO) is included on all selection committees for bids, contracts and professional services; and
 

The OEO shall review contract specifications to ensure that they are not unnecessarily restricting the availability and participation of S/MBEs, M/WBE, and VBE businesses in the procurement and contracting process.
  - 5. evaluating the levels of availability and utilization of S/MBE and M/WBE firms for District purchases and adjusting the implementation of this policy according to changing needs and circumstances to ensure that appropriate utilization objectives are established and maintained.

**V. Office of Economic Opportunity (OEO)**

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

- A. enforce the Board's commercial anti-discrimination Policy 6465 in the award of contracts for construction projects, procurement of goods and services, and professional services and implement the measures developed pursuant to Policy 6320.06 to increase diversity, equity and inclusion in business practices and operations;
- B. provide maximum legally permissible opportunities for S/MBEs, M/WBEs, and VBEs to participate in the award and performance of all Board contracts, including construction, professional services including A/E and non-A/E, and goods and services;
- C. monitor, track, and certify small/micro businesses, minority/women business, and veteran business enterprises;

- D. develop procedures and processes to enforce compliance with this policy for all Board vendors, including construction, professional A/E and non-A/E services, goods and services, and when applicable, to recommend appropriate sanctions;
- E. develop and implement necessary administrative procedures to fully implement these programs;
- F. establish insurance requirements which, although providing appropriate protection, are not more restrictive than necessary to protect the public's interest;
- G. establish economic incentives that encourage the waiver of bonds, and enhance the bonding technical assistance program;
- H. establish administrative procedures to expeditiously resolve monetary disputes and motivate prime contractors to make timely payments;
- I. establish a comprehensive contract reporting and monitoring system to evaluate the effectiveness of these programs in increasing contracting opportunities for small/micro, minority/women-owned, and veteran businesses;
- J. serve as chair of the Goal-Setting Committee and staff liaison to the Small/Micro, Minority/Women, and Veteran Business Enterprise Advisory Committee;
- K. monitor, coordinate, and provide support for any disparity study that may be conducted regarding minority/women business participation in Board procurement for construction, professional A/E and non-A/E services, and goods and services;
- L. develop and coordinate any recommendations as a result of any such disparity study findings;
- M. maintain, distribute, and publish a directory of certified SBE, MBE, M/WBE, and VBE businesses;
- N. report annually through the Superintendent to the Board regarding the effectiveness of these programs; and
- O. monitor local workforce goals as established by the Goal Setting Committee for construction, professional services, and goods and services; including initiatives through community based agreements with reputable and reliable referral agencies.

#### **VI. Small/Micro, Minority/Women, and Veteran Business Enterprise Advisory Committee**

The Small/Micro, Minority/Women, and Veteran Business Enterprise Advisory Committee shall be established to:

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

The Board and Superintendent shall each appoint a community member who is not employed by the Board and does not have any direct or indirect business relationship with the Board. The committee shall have representation from local S/MBE, M/WBE, VBE, and majority business interest organizations, community based organizations and local government entities which may include professional, construction and trade,

business, and socio-economic organizations. The Board and Superintendent shall approve a list of representative organizations and the Superintendent shall appoint a member nominated by each recommended organization from their membership. The term of each Board appointee shall be coterminous with the appointing Board member and the term of the Superintendent's appointees shall be at the will and discretion of the Superintendent. Board members may appoint alternate members in accordance with Policy 9140, Citizen Advisory Committees. All appointments must comply with Policy 9140. The committee shall annually elect a chair and vice-chair, meet at least six (6) times per year, and be governed by the latest edition of *Robert's Rules of Order*. The committee may adopt bylaws, to be recommended by the Superintendent to the Board for approval, to facilitate the operation of the committee.

## **VII. Terms and Definitions**

- A. **Actual Place of Business** - business whose physical office is located in the relevant Metropolitan Statistical Area.
- B. **Affirmative Procurement Initiatives (API)** – any procurement tool to enhance contracting opportunities for S/MBE, M/WBE, and VBE businesses including, but not limited to: bonding waivers, sheltered market, mandatory subcontracting, competitive business development demonstration projects, minority distributorship development incentives, contracting, joint venture and teaming incentives, and S/MBE, M/WBE, and VBE evaluation preference points in the scoring of proposal evaluations.
- C. **Available or Availability** – to have, prior to bid submission, the ability to provide goods or services under a contract by having (a) reasonably estimated, uncommitted capacity; (b) all necessary licenses, permits, registrations and certification, including S/MBE, M/WBE, or VBE certification to provide the type of goods or services being purchased under the contract; (c) ability to obtain reasonably required financing/insurance that is consistent with normal industry practice; and (d) ability to otherwise meet bid specifications.
- D. **Award** – final selection of a bidder or offer or for a specified contract.
- E. **Award Amount** – the dollar value of the contract when awarded.
- F. **Bid** – quotation, proposal, letter of interest or offer by any bidder in response to any kind of invitation, solicitation, request or public announcement to submit such quotation, proposal, letter of interest or offer for a contract.
- G. **Bidder** – any person, partnership, corporation or other business entity that submits a bid or proposal.
- H. **Bundling – the consolidation of two or more procurement requirements for goods and services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business.**

~~H. I.~~ **Certification** – process by which the OEO determines that a business meets the criteria for classification as a S/MBE, M/WBE, and/or VBE.

~~H. J.~~ **Certified Directory** - listing of certified S/MBEs, M/WBEs, and VBEs.

~~H. K.~~ **Commercially Useful Function** – an S/MBE, M/WBE, or VBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the S/MBE, M/WBE, or VBE must also be responsible for negotiating the price of contract materials and supplies, determining the quantity and quality of materials, ordering and installing materials if applicable, and paying for the materials. To determine whether an S/MBE, M/WBE, or VBE is performing a commercially useful function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/MBE, M/WBE, or VBE is to be paid under the contract is commensurate with the work it is actually performing and the S/MBE, M/WBE, or VBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/MBE, M/WBE, or VBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are

passed in order to obtain the appearance of meaningful and useful S/MBE, M/WBE, or VBE participation, when in similar transactions in which S/MBE, M/WBE, or VBE businesses do not participate, there is no such role performed.

**K. L. Construction Services and Specialty Trades** - means all labor, services, and materials provided in connection with the construction, renovation, alteration, repair, demolition, reconstruction, or any other improvements to real property.

**L. M. Contract** – an agreement for purchase of goods or services, including professional services and construction. It does not include agreements to purchase, lease, or rent real property, or a grant, license, permit, franchise, or concession.

**M. N. Goal** – The annual or contract-specific goals for contract participation that express the anticipated level or proportion of contract dollars in a given time frame that would be expected to be received by a particular segment of the total population of Ready, Willing, and Able businesses. These goals are based upon availability analysis derived from a database established by the OEO and Purchasing. Upon completion of availability analysis, such goals for specific contract participation may, under certain circumstances, be set and narrowly tailored by race, gender, and industry codes. Annual goals are intended as an administrative guide only to assist the District in its annual policy review to determine whether the use of more aggressive or less aggressive remedies are warranted in the future. Annual goals shall not be routinely applied to specific contracts absent independent availability analysis demonstrating that they are appropriate for application to a specific contract.

**N. O. Goal Setting Committee** – committee established by the Superintendent that is chaired by the OEO and is responsible for establishing S/MBE, M/WBE, and VBE Program goals and selecting appropriate Affirmative Procurement Initiatives for application to specific Board contracts based upon industry categories, vendor availability, and project-specific characteristics.

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

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

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

**R. S. Independently Owned, Managed, and Operated** – ownership of an S/MBE, M/WBE, or VBE firm must be direct, independent, and by individuals only. Business businesses that are owned by other businesses or by the principals or owners of other businesses that cannot themselves qualify under the eligibility requirements shall not be eligible to participate in the program. The day-to-day management of the firm must also be direct and independent of the influence of any other businesses that cannot themselves qualify under the eligibility requirements.

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

**T. U. Joint Venture** - an association of two (2) or more persons or businesses under a contract conducting a single business enterprise in which they combine capital, efforts, skills, knowledge and/or property and share profits and losses equally. A joint venture composed of qualified business organizations is itself a separate and distinct organization that must be qualified according to Board policies and F.S. 489.119(2)(c).

**U. V. Metropolitan Statistical Area (MSA)** - geographical region within the relevant geographic market of the Miami-Dade Metropolitan Statistical Area (Miami-Dade/Broward/Palm Beach counties).

**V. W. Micro-Business Enterprise (MBE)** - any contractor, subcontractor, manufacturer or service company (a) that has been doing business under the same ownership or management and has maintained its actual place of business in the MSA, for a period of at least one (1) year immediately prior to the date of application for certification under this section, (b) that had annual gross revenues not exceeding the thresholds for a Micro-Business Enterprise as identified in this policy for each industry, and (c) at least fifty-one percent (51%) of the ownership of which is held by a person or persons who exercise operational authority over the daily affairs of the business and have the power to direct the management and policies and receive the beneficial interests of the company. Representations regarding average gross revenue and payroll are subject to audit. If a business has not existed for three (3) years, the employment and gross revenue limits shall be applied based upon the annual averages over the course of the existence of the business.

**W. X. Minority/Women Business Enterprise (M/WBE)** – see the definitions under the Minority/Women Business Enterprise Program section of this policy.

**X. Y. Points** – the quantitative assignment of value for specific evaluation criteria in the vendor or consultant selection process.

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

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

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

**AB. Ready, Willing and Able** – any vendor who has registered an interest in doing business with the Board and has the technical expertise, training, and licenses to perform in accordance with the contract document. S/MBEs, M/WBEs, and VBEs must also be certified pursuant to this policy.

**AC. Responsible** – means that a firm is capable in all respects of fully performing the contract requirements and has the integrity and reliability to assure good faith performance.

AD. **Responsive** – description of a firm’s bid or proposal that conforms in all material respects to the invitation to bid or request for proposal and shall include compliance with S/MBE, M/WBE, and VBE Program requirements.

AE. **School Board** – The School Board of Miami-Dade County, Florida, which is the legal entity with authority to enter contracts on behalf of the District school system under F.S. 1001.41(4).

AF. **Service-Disabled Veteran** - a veteran who is a permanent Florida resident with a service-connected disability as determined by the United States Department of Veteran Affairs or who has been terminated from military service by reason of disability by the United States Department of Defense.

AG. **Sheltered Market** – an affirmative procurement initiative designed to set aside a Board contract/project exclusively among S/MBE, M/WBE, and/or VBE firms.

AH. **Significant Employee Presence** – no less than twenty-five percent (25%) of a firm’s total number of employees are domiciled in Miami-Dade County, Florida.

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

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

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

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

AM. **Subcontractor Goal** – a proportion of a total contract value stated as a percentage to be subcontracted to S/MBEs, M/WBEs, or VBEs to perform a commercially useful function.

AN. **Suspension** – the temporary stoppage of an S/MBE, M/WBE, or VBE firm’s participation in the Board’s contracting process for a finite period of time.

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

### **VIII. Application**

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



## **IX. Subcontractor Goals and Incentives**

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

## **X. Goal Setting Committee**

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

## **XI. Small/Micro Business Enterprise Program**

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

## **XII. Small/Micro Business Enterprise Eligibility and Certification**

- A. The OEO shall certify a company or other business entity (excluding non-profits) as a Small Business Enterprise (SBE) or a Micro Business Enterprise (MBE) upon its submission of a completed District required online certification form, supporting documentation, and a signed affidavit stating that it meets all of the following criteria:
1. Is an independently owned and operated business that is not dominant in its field of operation and is performing a commercially useful function.
  2. The business must have an actual place of business in the Miami- Dade Metropolitan Statistical Area (Miami-Dade County, Broward County, and Palm Beach County) for at least one (1) year preceding the application and be registered as a vendor with the District.
  3. The business has been established for at least one (1) year or the principals of the business have at least three (3) years of relevant experience prior to forming or joining the business.
  4. The business has an applicable local business tax receipt and all required licenses.
  5. An owner of the business must have the required professional license(s).
  6. The Board may honor a valid SBE and/or MBE Certification granted by another agency if the agency's requirements are consistent with the District's SBE/MBE certification criteria. The Superintendent shall develop procedures to implement this policy.
  7. The owner of the business is a person born in the United States, naturalized in the United States, or is a permanent resident of the United States.
- B. Additionally, the requirements for SBE/MBE Program eligibility based on industry are:
1. Micro Business Enterprise

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

## 2. Small Business Enterprise

- a. Professional Services A/E: The annual gross revenue averaged over the previous three (3) years shall be greater than \$500,000 and not exceed \$1,000,000 (Tier 1) or \$2,000,000 (Tier 2).
- b. Professional Services non-A/E: The annual gross revenue averaged over the previous three (3) years shall be greater than \$1,000,000 and not exceed \$2,000,000 (Tier 1) or \$4,000,000 (Tier 2).
- c. Goods and Services (Procurement Program): The annual gross revenue averaged over the previous three (3) year period shall be greater than \$1,000,000 and not exceed \$2,000,000 (Tier 1) or \$4,000,000 (Tier 2).
- d. Construction and Construction-Related Specialty Trades: The annual gross revenue averaged over the previous three (3) years shall be greater than \$1,000,000 and not exceed \$3,000,000 (Tier 1) or \$6,000,000 (Tier 2).

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

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

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

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

- A. An SBE shall be permanently graduated after its three (3) fiscal year average gross revenue exceeds \$6 million for construction and construction-related specialty trades, \$4 million for goods and services, \$2 million for professional services (architectural and engineering), and \$4 million for professional services (non-architectural and non-engineering).
- B. When an MBE exceeds the eligibility certification thresholds, it automatically graduates to the SBE criteria and restrictions.
- C. If an SBE exceeds the size standards for the Small Business Program during any fiscal year, it shall be allowed to complete any pending contractual obligation(s), and its participation can be counted in the goals.
- D. Upon graduation from the SBE/MBE program, the OEO shall provide the SBE/MBE with written notice that includes the basis for graduation.

### **XIV. Small Business Enterprise/Micro Business Enterprise Program Suspension, Certification Revocation, and/or Debarment**

- A. The OEO may revoke SBE/MBE eligibility if it fails to perform a commercially useful function under a contract, or if it allows its SBE/MBE status to be fraudulently used for the benefit of a non-SBE/MBE firm or the owners of a non-SBE/MBE firm to provide the non-SBE/MBE firm or firm owners benefits from Affirmative Procurement Initiatives for which the non-SBE/MBE firm and its owners would not otherwise be entitled.
- B. Upon suspension from the SBE/MBE program, the OEO shall provide written notice to the SBE/MBE including specific findings constituting the basis for suspension, certification revocation, and/or debarment. The notice must also provide the applicable sanctions and the process to appeal the decision.

### **XV. Small Business Enterprise/Micro Business Enterprise Certification Appeals**

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

### **XVI. Veteran Business Enterprise Program**

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

### **XVII. Veteran Business Eligibility Criteria**

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

- A. employs 200 or fewer permanent full-time employees;

- B. together with its affiliates has a net worth of \$5 million or less or, if a sole proprietorship, has a net worth of \$5 million or less including both personal and business investments;
- C. is organized to engage in commercial transactions;
- D. is domiciled in this State;
- E. is at least fifty-one percent (51%) owned and controlled by one (1) or more veterans; and,
- F. the management and daily business operation is controlled by one (1) or more veterans or service-disabled veterans, or, for a service-disabled veteran having a permanent and total disability, by the spouse or permanent caregiver of the veteran.

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

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

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

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

### **XVIII. Minority/Women Business Enterprise Program**

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

#### **A. Terms and Definitions**

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

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

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

##### **2. *Minority Person*** - is a person born or naturalized in the United States, or a permanent resident of the United States. The following groups are considered:

- a. An African American, a person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin. (The African Diaspora refers to the communities throughout the world that have resulted from the movement in historic times of people from Africa, predominantly to the Americas and among other areas around the globe. The term has been historically applied in particular to the descendants of west and central Africans between the 16th and 19th centuries, with their largest populations in

Brazil, the United States, and Haiti. For purposes of this category, African Diaspora populations include: African Americans, Black Caribbeans, and Black Canadians (descendants of west Africans brought to the United States, the Caribbean, and South America), Zanj (descendants from southeast Africa, primarily the Swahili coast, whose ancestors were brought to western Asia and other parts of Asia), and Siddis (descendants from southeast Africa, primarily the Swahili coast, whose ancestors were brought to the Indian subcontinent (Pakistan and Indian).)

- b. A Hispanic American, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, not in the African Diaspora.
- c. An Asian American, a person having origins of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands before 1778.
- d. A Native American, a person who has origins in any of the Indian Tribes of North America before 1835, upon presentation of proper documentation as established by rule of the Department of Management Services.
- e. A non-minority woman.

#### **B. Minority/Women Business Enterprise Eligibility and Certification**

1. The OEO shall certify a company or other business entity (excluding non-profits) as a M/WBE upon its submission of a completed certification form and supporting documentation. The applicant may self-identify as a minority person pursuant to the definitions above. The Board recognizes that there is a clear distinction between race and ethnicity. The OEO may request additional documentation on the applicant's minority status only if it suspects fraud or misrepresentation and provides the reasons in writing to the applicant. In addition, the applicant must submit a signed affidavit stating that it meets the following criteria:

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

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

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

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

- c. the business must have an actual place of business in the Metropolitan Statistical Area (Miami-Dade County, Broward County, and Palm Beach County, Florida) for at least one (1) year preceding the application and be registered as a vendor with the District.
  - d. the business has an applicable local business tax receipt and all required licenses.
  - e. an owner of the business must have the required professional license(s).
2. Other factors in determining ownership that will be considered shall include, but are not limited to the following:

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

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

1. The minority/woman owner(s) must submit documentation demonstrating control through the authority and responsibility to sign company checks, for all bank accounts, and letters of credit, negotiate contracts on behalf of the business, signature responsibility for insurance, bid bonds, and performance and payment bonds, negotiate bank transactions, and guarantee all instruments which indebted the business.
  2. Unless a business is a franchise, agreements for contractual support services that usurp a minority/woman owner's authority to control a company are not allowed.
  3. Minority/Women owners shall control or supervise the hiring, firing, and supervision of employees, and establishment of employment policies, wages, benefits, and other employment conditions.
  4. Minority/Women owners shall have knowledge and control of all financial matters of the business.
3. Applicants shall submit a verified declaration that the information provided for certification and re-certification is truthful and accurate. Any applicant who knowingly makes a false statement on the application and/or in writing with the intent to mislead the OEO and/or its representatives in the performance of their official duties of reviewing and/or approving an application is guilty of a second-degree misdemeanor under F.S. 837.06. In addition, anyone who knowingly makes a false verified declaration is guilty of perjury, a third-degree felony under F.S. 92.525.
  4. Upon receipt of M/WBE certification or re-certification applications, the OEO shall review all enclosed forms, affidavits and documentation, and determine whether the applicant satisfies the eligibility requirements. All applicants shall be notified in writing as to whether they are eligible. The OEO shall also provide to ineligible applicants in writing the basis for the denial of eligibility and the right to request an appeal in accordance with this policy. Applicants determined ineligible shall not be eligible to submit a new application for at least one (1) year after the date of the notice of denial of eligibility.
  5. All certified M/WBEs will be included in the District's online directory which will be regularly updated and available to school sites.

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

#### **XIX. Minority/Women Business Enterprise Certification Appeals**

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

#### **XX. Industry Specific Programs**

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

##### **A. Construction Programs**

1. A Small/Micro Business Enterprise Program permitting the use of sheltered markets for small prime contracts that are below competitive dollar thresholds for bidding exclusively among certified S/MBE businesses and also establishing mandatory subcontracting goals for the participation of certified S/MBE subcontractors or those construction contracts that are above the competitive bidding threshold and that have commercially useful subcontract opportunities.
2. A Minority/Women Business Enterprise Program establishing Affirmative Procurement Initiatives on certain construction and construction-related contracts on behalf of certified M/WBE African-American, Non-Minority Women, Asian-American and Native-American businesses, including the use of contract-specific subcontracting goals on selected contracts with genuine opportunities for commercially useful subcontracting pursuant to this policy.

##### **B. Professional Services Non-A/E Program**

1. A Small/Micro Business Enterprise Program permitting the use of sheltered markets for small prime contracts that are below competitive dollar thresholds for bidding exclusively among certified S/MBE businesses and also establishing mandatory subcontracting goals for the participation of certified S/MBE subcontractors or those contracts that are above the competitive bidding threshold and that have commercially useful subcontract opportunities pursuant to this policy.
2. A Minority/Women Business Enterprise Program establishing Affirmative Procurement Initiatives on certain professional services non-A/E contracts on behalf of certified M/WBE African-American, Non-Minority Women, Asian-American and Native-American businesses, including the use of contract-specific subcontracting goals on selected contracts with genuine opportunities for commercially useful subcontracting pursuant to this policy.

#### **C. Professional Services A/E Program**

1. A Small/Micro Business Enterprise Program to establish Affirmative Procurement Initiatives, joint venture/teaming/partnerships incentives, and evaluation preferences on behalf of certified S/MBE businesses.
2. A Minority/Women Business Enterprise Program permitting the use of Affirmative Procurement Initiatives, including, but not limited to, sheltered markets, joint venture/teaming/partnership incentives, and evaluation preferences on construction-related professional services A/E contracts among certified M/WBE businesses that are owned by African-Americans, Asian-Americans, Native Americans and Non-Minority Women and also establishing contract-specific subcontracting goals for the participation of certified M/WBE subcontractors on those construction-related professional services A/E contracts that are above the competitive bidding thresholds and that have commercially useful subcontract opportunities.

#### **D. General Goods and Services Procurement Programs**

1. A Small/Micro Business Enterprise Program permitting the use of Affirmative Procurement Initiatives, including, but not limited to, sheltered markets for small prime contracts that are below competitive dollar thresholds for bidding exclusively among certified S/MBE businesses and also establishing mandatory subcontracting goals for the participation of certified S/MBE subcontractors on those construction and goods and services contracts that are above the competitive bidding threshold and that have commercially useful subcontract opportunities.
2. A Minority/Women Business Enterprise Program permitting the use of Affirmative Procurement Initiatives on certain goods and services contracts for certified M/WBE businesses that are owned by African-Americans, Asian-Americans, and Non-Minority Women, and also establishing contract-specific subcontracting goals for the participation of certified M/WBE subcontractors on those contracts that are above the competitive bidding thresholds and that have commercially useful subcontract opportunities.

### **XXII. Administration**

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

#### **A. Availability Analysis**

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



2. S/MBE Availability – The proportion of overall availability of the ready, willing, and able vendors that are certified as SBE or MBE businesses within the S/MBE Program, categorized by industry codes and relevant markets.
3. M/WBE Availability – The proportion of overall availability of the ready, willing, and able vendors that are certified within the M/WBE program, categorized by race, gender, industry codes, and relevant market.
4. Race-Neutral S/MBE Contract Goals – Availability analysis shall be used to set contract participation goals on an annual basis and on a contract-specific basis. The contract participation goals shall be set based on the relevant measures of S/MBE availability as compared to all ready, willing, and able vendors within the specific industry code of the contract in the relevant market.
5. M/WBE Contract Goals – Availability analysis shall be used whenever setting contract participation goals on an annual basis or on a contract-specific basis. The contract participation goals shall be set based on the relevant measures of M/WBE availability as compared to all ready, willing, and able vendors within the specific industry code of the contract in the relevant market.

#### **B. Utilization Analysis**

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

#### **C. Periodic Review of Factual Predicate**

1. At least once every three (3) to five (5) years, the OEO and Superintendent shall recommend a contract with an independent disparity study consultant to the Board to conduct an updated review of the factual predicate for the District's M/WBE programs to determine whether there is any ongoing need for the use of race- and gender-conscious remedies.
2. Each successive disparity study update shall use methodologies and data sources that are preferred or consistent with the most recent controlling legal precedents.
3. Each successive disparity study update shall make specific findings and recommendations regarding the ongoing need for race- and gender-neutral and race- and gender-conscious remedies for certain categories of contracts. Study recommendations should also suggest appropriate modifications to existing District procurement procedures, S/MBE programs, and M/WBE programs to promote fair and equitable participation in District contracting opportunities in the most effective but least restrictive and least burdensome manner.

#### **D. Sunset Clause**

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

### **XXIII. Affirmative Procurement Initiatives**

#### **A. Construction and Construction Related Services**

The following Affirmative Procurement Initiatives may be used in awarding Board contracts to S/MBEs, M/WBEs, or VBEs according to the industry-specific programs identified in this policy. However, pursuant to State law and Policy 6320.05, no local vendor or employment preference for S/MBEs, M/WBEs, or VBEs may

be applied to competitive solicitations for construction services in which fifty percent (50%) or more of the cost will be paid from State-appropriated funds which have been appropriated at the time of the competitive solicitation. The solicitation documents for construction services in this event must disclose that no SBE/MBE or M/WBE will be awarded based upon the State restriction regarding the utilization of local vendor preference.

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

## **2. Bid Preferences:**

**Bid Preference:** Specific goals for each project or contract may be adopted on a project-by-project, or contract-by-contract basis, in which the contract award shall be made to the lowest responsive, responsible bidder meeting the S/MBE, M/WBE, or VBE subcontracting goals for the contract/project, set by the Goal Setting Committee.

**Evaluation Preference** – In ranking and evaluating proposals for "best value" contracts in which factors other than price are relevant to the selection process, the Board may award up to twenty percent (20%) of the total points available to a S/MBE, M/WBE, or VBE or a joint venture/teaming/partnership with an S/MBE, M/WBE, or VBE partner in response to a request for proposal.

### **Evaluations**

1. In the selection process for the award of contracts, the District may include as one (1) of its evaluation criteria the level of S/MBE, M/WBE, or VBE participation on the team or in subcontract participation. Under this remedial approach, the maximum number of evaluation points is available to an S/MBE, M/WBE, or VBE proposer.
2. A summary of any applicable S/MBE, M/WBE, or VBE Program procedures shall be plainly stated in each solicitation. A point system of evaluation will be used by an evaluation committee to determine the recipient of the contract award recommendation. Businesses submitting proposals to the District will be eligible to receive on a sliding scale a designated number of the total possible points based upon their S/MBE, M/WBE, or VBE participation. The distribution of points allocated to the evaluation criteria shall be stated in the request for proposal. S/MBE, M/WBE, or VBE participation shall be only one of several criteria used to evaluate each proposal. Maximum points shall be awarded when the proposer is a certified S/MBE, M/WBE, or VBE. The provisions within this section are not intended to be used to the exclusion of other provisions of this policy.

## **3. Reporting Requirements:**

Vendors with S/MBE, M/WBE, and VBE participation must submit a monthly report via the Online Diversity Compliance System (ODCS).

A Prime contractor cannot use one sub-contracting firm to meet both its M/WBE and S/MBE goals. The A/E sub-consultant may utilize a sub-consulting firm in different disciplines if the total participation of that same firm equals or exceeds the total combined SBE and M/WBE goal for the project.

#### 4. Mandatory Subcontracting:

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

b. An S/MBE, M/WBE, or VBE prime contractor may not subcontract more than forty-nine percent (49%) of the contract value to a non-S/MBE, M/WBE, or VBE.

c. A prospective bidder on a Board contract shall submit the name of the S/MBE, M/WBE, or VBE subcontractor or subcontractors and describing both the percentage of subcontracting by the S/MBE, M/WBE, or VBE and the work to be performed by the S/MBE, M/WBE, or VBE. A bidder may request a full or partial waiver of this mandatory subcontracting requirement from the OEO for good cause by submitting the Best Faith Effort Non-Compliance Form (FM-7539) ~~Unavailability Certification Form~~ to the OEO prior to bid opening. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the bidder and careful review by the OEO. The OEO shall determine a waiver request upon the following criteria:

1. whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available S/MBEs, M/WBEs, or VBEs;

2. whether subcontracting would be inappropriate and/or not provide a "commercially useful function" under the circumstances of the contract; or

3. whether there are no certified S/MBEs, M/WBEs, or VBEs that are qualified and available to provide the construction goods or services ~~required~~.

d. In the absence of a waiver granted by the OEO, failure of a prime contractor to commit in its bid or proposal to satisfying the mandatory S/MBE, M/WBE, or VBE subcontracting goal shall render its bid or proposal non-responsive.

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

f. A prime contractor is required to notify and obtain written approval from the OEO in advance of any reduction in subcontract scope, termination, or substitution (Request for Sub-Contractor Substitution Form (FM-7686)) for a designated S/MBE, M/WBE, or VBE subcontractor. Failure to do so shall constitute a material breach of its contract with the Board.

#### 5. Sheltered Market:

1. The OEO and GSC may select certain contracts for award to a S/MBE, M/WBE, or VBE or a joint venture/teaming/partnership agreement with a S/MBE, M/WBE, or VBE through the Sheltered Market Program.
2. In determining whether a particular contract is eligible for the Sheltered Market Program, the OEO and GSC shall consider whether there are at least three (3) S/MBEs, M/WBEs, or VBEs that are capable and available to participate in the Sheltered Market Program for that contract; the degree of underutilization of the S/MBE, M/WBE, or VBE prime contractors in the specific industry categories; and the extent to which the Board's S/MBE, M/WBE, or VBE prime contractor utilization goals are being achieved.

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

## **B. Goods and Services, Professional Services, Architecture and Engineering and Professional Services, Non-Architecture/Engineering**

The following Affirmative Procurement Initiatives may be used in awarding Board contracts to S/MBEs or M/WBEs according to the industry-specific programs identified in this policy.

1. Bid Preference: Specific goals for each contract may be adopted on a contract-by-contract basis in which the contract award shall be made to the lowest responsive, responsible bidder meeting the S/MBE or M/WBE criteria as set by the Goal Setting Committee (GSC).

2. Evaluation Preference: In ranking and evaluating Request for Proposal or Invitation to Bid for "best value" contracts in which factors other than price are relevant to the selection process, the Board may award up to twenty points (20) or twenty (20) percent (20%) minority designation of the total points available to an S/MBE or M/WBE in response to a Request for Proposal or Invitation to Bid.

### Selection Preference:

a. The GSC will review and monitor all potential procurement and professional service contracts for inclusion of any applicable S/MBE or M/WBE Program that fall within the prescribed purchasing threshold.

b. On purchases above the \$50,000 threshold, a summary of any applicable S/MBE or M/WBE Program procedures shall be plainly stated in each solicitation. A point system of evaluation will be used by an evaluation committee to determine the recipient of the contract award recommendation. Vendors submitting proposals to the District who are S/MBE or M/WBE will have preference and receive a possible total of twenty (20) points or twenty percent (20%) on a sliding scale. S/MBE or M/WBE participation shall be only one of several criteria used to evaluate each proposal. Maximum total points of twenty points (20) or twenty percent (20%) shall be awarded when the proposer is a certified S/MBE or M/WBE. The provisions within this section are not intended to be used to the exclusion of other provisions of this policy.

### 3. Goals by Purchasing Threshold:

In order to strive to meet the minority procurement goals, the District shall reserve contracts for goods and services and professional services non-architecture and engineering among certified minority business enterprises. In accordance with Board Policy 6320, purchasing thresholds have been implemented to provide for purchasing feasibility.

a. \$0 to \$999 – purchases require one (1) quote; although these purchases are not subject to goal setting, buyers are encouraged to utilize a M-DCPS OEO certified firm when possible.

b. \$1,000 to \$50,000 –shall utilize the RFQ process and small/micro and/or minority/women goals may be implemented as determined by the GSC.

c. Above \$50,000 – shall utilize the bidding process and small/micro and/or minority/women goals may be implemented as determined by the GSC. Vendors who are S/MBE or M/WBE shall be awarded a maximum total of twenty (20) preference points or up to ten percent (10%) price preference.

d. GSC shall determine if a contract may be bundled.

#### 4. Sheltered Market:

Sheltered markets are reserved for S/MBE and M/WBE businesses on purchasing contracts that require bid solicitations and are classified in the purchases of over the \$50,000 threshold.

a. The GSC may select certain contracts for award to a S/MBE or M/WBE through the Sheltered Market Program.

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

#### **XXIV. Contract Solicitation and Award**

- A. The OEO shall review all original documents and solicitations for construction, procurement, and professional services prior to public dissemination for compliance with the objectives stated in this policy and to ensure that bid specifications do not unnecessarily restrict the ability of S/MBE, M/WBE, and VBE businesses to compete and bid. All District award recommendations shall bear the review signature of the OEO Director.
- B. Disqualification/Rejection – The District and Board may 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.
- C. Contract Compliance – As the Superintendent's designee, the OEO will establish procedures for monitoring and evaluating program performance and compliance.
- D. The District and Board may reject any proposal deemed non-responsive for failing to meet the diversity requirements.
- E. A firm's failure to comply with the contract may constitute a violation of the anti-discrimination provisions of Policy 6465 and result in suspension or debarment pursuant to Policy 6320.04.

#### **XXV. Pre-Award Waiver**

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

#### **XXVI. Fair Subcontracting Practices**

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

#### **XXVII. Prompt Payment**

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

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

### **XXVIII. Violations and Sanctions**

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

1. fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain certification status as an S/MBE, M/WBE, or VBE for purposes of this policy;
2. willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing it contains any false, fictitious, or fraudulent statements or entry pursuant to this policy;
3. willfully obstruct, impede, or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity that has requested certification as an S/MBE, M/WBE, or VBE;
4. fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining, or attempting to obtain public monies to which the person is not entitled under this policy;
5. failing to cooperate in any investigation of violations of this policy or Policy 6465;
6. making false statements to any entity that any other entity is or is not certified as an S/MBE, M/WBE, or VBE for purposes of this policy.

B. Sanctions – Any person or business entity that violates this policy shall be subject to suspension, contract cancellation, or debarment pursuant to Policy 6320 and Policy 6320.04 and any other penalty provided by law.

C. The Superintendent shall apply appropriate sanctions for violations of this policy upon recommendation of the OEO.

### **XXIX. Anti-Discrimination Complaints**

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

### **XXX. Small/Micro Business Enterprise, Minority/Women Business Enterprise, and Veterans Business Enterprise Program Performance Review**

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

**XXXI. Policy Review**

The Board shall review and revise this policy as often as necessary to ensure that it complies with State and Federal law, as well as other legal requirements such as applicable current standards of binding decisions of the Eleventh Circuit Court of Appeals and the United State Supreme Court. In addition, at least every three (3) to five (5) years, the Board will review the successes and failures of the M/WBE program and make a determination as to the need for a continuing M/WBE program.

**XXXII. Severability**

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

**XXXIII. Statutory Citations**

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

- Effective 7/1/11
- Revised 11/21/12
- Revised 1/16/13
- Revised 9/3/13
- Revised 6/18/14
- Revised 1/14/15
- Revised 10/14/15
- Revised 3/9/16
- Revised 11/15/17
- Revised 6/20/18
- Revised 3/13/19

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Legal	F.S. 218.735
	F.S. 287.093
	F.S. 1013.46(1)(b)



Book	Policy Manual
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Last Revised	March 17, 2021

## 6320 - PURCHASING

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

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

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

Payment for any unauthorized purchase(s) may be the responsibility of the person placing the order.

### I. Definitions

- A. *Commodity Code* - system of words, numbers, or both, designed to identify and list goods and services by classes and subclasses.
- B. *Competitive Solicitation* - purchasing made through the issuance of an invitation to bid, request for proposals, and invitation to negotiate.
- C. *Construction Services* - all labor, services, and materials provided in connection with the construction, alterations, repair, demolition, reconstruction, or any other improvements to real property.
- D. *Cooperative Purchasing* - action taken when two (2) or more entities combine their requirements to obtain advantages of volume purchases including administrative savings and other benefits. Cooperative procurement efforts may result in contracts that other entities may "piggyback".
- E. *Invitation to Bid* - a written solicitation for competitive sealed bids used when the Board is capable of specifically defining the scope of work for which a contractual service is required or when the



Board is capable of establishing precise specifications defining the actual commodity or group of commodities required.

- F. *Invitation to Negotiate* - a written solicitation for competitive sealed replies to select one (1) or more vendors with which to negotiate for the procurement of commodities or contractual services used when the Board determines that negotiations may be necessary to receive the best value.
- G. *Originating Department* - the department requesting informal and/or formal solicitations. This department is responsible for the product and/or services sought and for monitoring vendor performance.
- H. *Purchasing Cards (PCards)* - a payment method in which School District requisitioners purchase directly from a vendor using a credit card; a pre-established credit limit is generally established for each card issued.
- I. *Procurement Authority* - documentation establishing that a purchase requisition, PCard, fund reservation, or draft contract adheres to the competitive bidding process or meets criteria for an exemption in this policy.
- J. *Proposer* - vendors submitting bids or responses to a competitive solicitation.
- K. *Request for Information* - a non-binding method whereby a jurisdiction publishes via newspaper, internet, or direct mail its need for input from interested parties for an upcoming solicitation. A procurement practice used to obtain comments, feedback, or reactions from potential suppliers (contractors) prior to issuing of a solicitation. Generally, price ~~or cost~~ is not required. Feedback may include best practices, industry standards, technology issues, etc.
- L. *Request for Proposals* - a written solicitation for competitive sealed proposals used when it is not practicable for the Board to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the Board is requesting that a responsible vendor propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document.
- M. *State Appropriated Funds* - funds appropriated in the Florida General Appropriations Act, excluding Federal funds; does not include general obligation bond funds for capital construction or funds raised through local capital outlay millage.
- N. *Unauthorized Purchases* - an agreement, a commitment, or an order for goods or services, construction, or changes to existing contracts, by any person who does not have an approved purchase order, fund reservation, and/or PCard approval, and includes (1) purchases made without the required competitive bidding, (2) purchases made in advance of an approved purchase order, fund reservation, and/or PCard approval, and (3) changes under existing contracts made by a person who does not have delegated procurement authority.
- O. *Vendor File* - accumulated record of a vendor maintained by Procurement Management Services, including information on the vendor's relationship with the Board, application for inclusion on the bidder's list, record of performance under contracts, and correspondence.
- P. *Small Business Enterprise (SBE), Micro Business Enterprise (MBE), Minority/Women Business Enterprise (M/WBE), and Veteran Business Enterprise (VBE)* are defined by Board Policy 6320.02.

## **II. Purchase Approval and Competitive Bidding Process Requirements**

### **Responsibilities**

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

- A. Where the purchasing agent for any public agency is authorized by law to make purchases for the benefit of other governmental agencies within the county, the Board shall have the option to purchase under the current contracts as established for these public agencies at or below the stated unit price, if the purchase is economically advantageous to the Board, and the items purchased conform to the standards and specifications prescribed by the Superintendent.
- B. As required by F.S. 1001.42(12)(j), the Board shall receive and consider available prices according to the rules of the Department of Management Services, Division of Purchasing. The Board may use prices established by the Division of Purchasing through its State purchasing agreement price schedule. If Board policy provides for purchasing under this State purchasing program, the conditions for use shall be those imposed on State agencies.
- C. In lieu of requesting competitive solicitations from three (3) or more sources, the Board may make purchases at or below the specified prices from contracts awarded by other city or county governmental agencies, other school boards, community colleges, Federal agencies, the public or governmental agencies of any state, or from State university system cooperative bid agreements, when the proposer awarded a contract by another entity permits purchases by a school board on the same terms, conditions, and prices (or below such prices) awarded in the contract, and the purchases are economically advantageous to the Board.
- D. The requirement for requesting competitive solicitations for commodities or contractual services from three (3) or more sources is waived pursuant to F.S. 1010.04(4)(a), for:
  - 1. the purchase by the Board of professional services which shall include artistic services, academic program reviews, lectures by individuals, auditing services not subject to F.S. 218.391, legal services, including attorney, paralegal, expert witness, court reporting, appraisal or mediator services; and health services involving examination, diagnosis, treatment, prevention, medical consultation or administration; procurements which render competitive bidding impractical; and
  - 2. the purchase by the Board of educational services and copyrighted materials including educational tests, textbooks, printed instructional materials, computer software, films, filmstrips, videotapes, DVDs, disc or tape recordings, digital recordings, or similar audio-visual materials, and for library and reference books, and printed library cards where these materials are purchased directly from the producer or publisher, the owner of the copyright, an exclusive agent with the State, a governmental agency or a recognized educational institution. Purchases for computer applications and software purchases that are not content-based (i.e. contain intellectual content for student instruction) and exceed \$5,000,000 per contract must be formally competitively bid.

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

~~F. E.~~ Additional exemptions authorized under certain conditions:

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

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

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

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

~~G.F.~~ Commodities or contractual services available from a single source may be exempted from the competitive solicitation requirements. When the Board believes that commodities or contractual services are available only from a single source, the Board shall electronically or otherwise publicly post a description of the commodities or contractual services for a period of at least seven (7) business days. The description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. If it is determined in writing by the Board, after reviewing any information received from prospective vendors, that the commodities or contractual services are available only from a single source, the Board shall provide notice of its intended decision to enter a single source contract in the manner specified in F.S. 120.57(3), and may negotiate the best terms and conditions with the single source vendor.

~~H.G.~~ A contract for commodities or contractual services may be awarded without competitive solicitations if State or Federal law, a grant or a State or Federal agency contract prescribes with whom the Board must contract or if the rate of payment is established during the appropriations process.

~~I.H.~~ A contract for regulated utilities or government-franchised services may be awarded without competitive solicitations.

~~J.I.~~ Except as otherwise required by statute, the Board, when purchasing insurance, entering risk management programs, or contracting with third party administrators, may use the competitive solicitation process or direct negotiations and contract.

~~K.J.~~ The Board may dispense with requirements for competitive solicitations for the emergency purchase of commodities or contractual services when the Superintendent determines in writing that an immediate danger to the public health, safety, or welfare or other substantial loss to the School District requires emergency action, pursuant to F.A.C. 6A-1.012(12)(e). After the Superintendent makes such written determination, the Board may procure commodities or contractual services necessitated by the immediate danger, without requesting competitive solicitations. However, such an emergency purchase shall be made by obtaining pricing information from at least two (2) prospective vendors, which must be retained in the contract file, unless the Superintendent determines in writing that the time required to obtain pricing information will increase the immediate danger to the public health, safety, or welfare or other substantial loss to the District.

~~L.K.~~ Emergency purchases made and approved by the Superintendent or the Superintendent's designated representative. The Superintendent will report all emergency purchases to the Board, as soon as possible.

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

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

1. Emergency Purchase Request (Form B FM-3739) estimated expenditure \$50,000 and under requires the signature of the initiating administrator, recommended by Director or above and approval by the Assistant Superintendent or above.
2. Emergency Purchase Request (Form A FM-2333) estimated expenditure over \$50,000 requires the signature of the initiating administrator, recommended by the Assistant Superintendent or above, or his/her designee(s) and approval by Superintendent or designee. Emergency purchases over \$50,000 shall be reported to the Board.

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

**N.M.** Non-Purchase Order Invoice Funds Reservation Purchases/Check Requests are purchases for goods and services, expenditures, fund transfers, etc., that are not appropriate for normal competitive purchasing procedures. Periodically, these purchases shall be reviewed by procurement staff to ensure compliance with this Board policy. Only the expenditures listed below will be authorized and processed as Non-Purchase Order Invoice Funds Reservation/Check Requests Purchases. Non-Purchase Order Invoice Funds Reservation/Check Requests purchases require the same financial authorization and approval process as purchase requisitions and shopping carts. Those purchases for goods and services, expenditures, fund transfers, etc., that are authorized for Non-Purchase Order Invoice Funds Reservation/Check Requests Purchases are limited to include various types of fund advances, services, reimbursements and purchases, and/or payment for goods and services, which are not appropriate for normal competitive purchasing procedures:

1. additional services where a professional service contract is not required or there is no bid in place (polygraph, transcribing, etc.)
2. employee related admission/registration fees to workshops and conferences that are not expensed to out-of-county travel (all out-of-county travel must be entered through and approved by the travel system process)
3. association fees, professional association dues, academy certification requirements and District membership to organizations
4. internal distribution of funds to school athletic programs, vending machine commissions, diplomas, and savings programs
5. District rental/lease of facilities
6. all utility service, connection charges, and fees
7. graduation program fees (non-employees, union charges, etc.), including facility rental, equipment requirements, foliage rental, non-employees, and union charges

8. tickets, and admissions to parks, registration fees for competitions, and hotel accommodations, not done through a travel agency
9. groceries and supplies for educational use in alternative programs or academic requirements
10. media advertising (newspaper, radio, television, brochures, pamphlets, etc.)
11. grant authorized workshop reimbursements including refreshments
12. petty cash replenishment
13. postage requisitions
14. toll charges for authorized District departments
15. travel reimbursement for non-employees

**O.N.** Contracts for legal services by the Board attorney and the attorneys supervised by the Board attorney, contracted third party claims administration, nonpublic school placements and other services/goods for which selection procedures are provided by State statute, State Board rule, or other Board policy.

**P.O.** The Professional Services Contract Committee (PSCC) may consider requests for exceptions from competitive bidding. The PSCC shall be comprised of representatives, as stated in the attendee requirements for an evaluation committee. The PSCC may grant exceptions for sole source contracts, contractors having specific expertise, or as otherwise determined by the PSCC to be in the best interest of the Board. The PSCC will be used in extenuating circumstances only. For contracts with an annual estimated cost of more than \$50,000, exceptions recommended by the PSCC must be approved by the Board.

**Q.P.** Procurement Management Services staff will provide the Board a quarterly written expenditure report of purchases made using the exemptions above and that exceed \$100,000.00. The report shall include date of purchase, vendor, amount, funding source, and purchasing authority.

**R.Q.** The Board shall have the authority to reject any or all proposals submitted in response to any competitive solicitation and to request new proposals or purchase the required commodities or contractual services in any other manner authorized by this section.

As much as practicable, all purchases shall be based on contracts, purchasing card systems, electronic procurements, or purchase orders.

**S.R.** The Board, when acquiring, whether by purchase, lease, lease with option to purchase, rental or otherwise, information technology, as defined in F.S. 282.0041~~(14)~~, may make acquisitions through the competitive solicitation process or by direct negotiation and contract with a vendor or supplier, as fits the needs of the School District as determined by the Board.

**T.S.** The Superintendent may be authorized to purchase commodities or contractual services where the total amount does not exceed an amount prescribed by the Board and does not exceed the applicable appropriation in the District budget. The Superintendent may also be authorized to purchase commodities or is exempt by statute or Florida Administrative Code, or contractual services under Department of Management Services State term contracts. The Superintendent may authorize designated staff to perform these purchasing tasks.

**U.T.** In accordance with State law and Policy 6327, Public-Private Partnerships and Unsolicited Proposals, the Superintendent may submit proposed public-private partnership agreements for qualifying projects, including those resulting from unsolicited proposals, to the Board for consideration. The

Superintendent and Board shall evaluate and consider all proposed public-private partnership agreements according to the guidelines in F.S. 255.065 and Policy 6327.

### III. Competitive Bidding Requirement

#### A. Invitation to Bid (ITB)

Invitation to Bid may be used when the Board is capable of specifically defining the scope of work for which a contractual service is required or when the Board is capable of establishing precise specifications defining the actual commodity or group of commodities required.

The following process shall be followed for an ITB:

1. For contracts estimated to be more than \$50,000 annually:
  - a. In accordance with Board Policy 6320.02, the Goal Setting Committee (GSC) shall review the summary scope of work to determine incentives to be applied under the supervision of Procurement Management Services for vendors certified by the M-DCPS Office of Economic Opportunity (OEO) ~~SBE, MBE, M/WBE, or VBE participation in the project.~~
  - b. The ITB shall be advertised to solicit maximum vendor participation. To enhance SBE, MBE, M/WBE, or VBE participation, advertisements may be published and announced in major publications that serve minority communities; however, it shall be posted electronically.
2. The ITB shall include an implementation schedule consisting of the following:
  - a. GSC meetings;
  - b. mailing/posting date;
  - c. pre-proposal conference (if required);
  - d. opening date and time documented by bid opening minutes;
  - e. evaluation and tabulation of bid;
  - f. recommendation of award process to the Board; and
  - g. award notification is provided to all awarded bidder(s).
3. The Board may accept the proposal of the lowest responsive, responsible proposer. Alternatively, the Board may award contracts to the lowest responsive, responsible bidder as the primary awardee of a contract and to the next lowest responsive, responsible bidder(s) as alternate awardee(s) from whom commodities or contractual services would be purchased should the primary awardee becomes unable to provide all of the commodities or contractual services required by the Board during the term of the contract. Multiple awards to the lowest responsive and responsible bidders are permitted when multiple awards are clearly allowed by the bid solicitation documents. Also, awards shall be made to preapproved vendor(s), where price is not an evaluation factor and bidders are responsive to other factors noted within the solicitation document.

4. When the determination is made that a bid is appropriate, the performance specifications and standard requirements shall be stated in detail and shall be furnished to Procurement Management Services by the originating department. After review, Procurement Management Services shall issue the invitation to bids, including all general and special conditions, and evaluate the bids submitted. The requirements for solicitation and review of bids by the Goal Setting Committee (GSC) shall be followed in all cases. Board approval is required for contracts recommended for award.
5. For each purchase of more than \$50,000, bids shall be noticed publicly to ensure open competition. Notices of bids shall be electronically posted or may be sent to all vendors on the active vendor mailing list(s) per commodity code(s). This list shall include all SBE, MBE, M/WBE, or VBE vendors, identified by the Board in accordance with Policy 6320.02, for that particular category of goods or services, as well as organizations involved in assisting SBE, MBE, M/WBE, or VBE. Notices of bids shall be advertised in one (1) or more major local newspapers or electronically posted at least seven (7) days prior to the bid opening date. This may include, as necessary, major newspapers having circulation representative of the various relevant minority classifications or electronic posting. Tabulations of current bids shall be retained in bid files and shall be available for reference. Standard bid forms used shall be those reviewed and approved by the Board attorney's office.
6. Any additional evaluation criteria, such as small or micro-business enterprise, minority and/or veteran preferences that are referenced in the solicitation document shall be reviewed and evaluated.

B. Request for Proposals (RFP)

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

The RFP shall be used when it is not practicable for the Board to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the Board is requesting that a responsible vendor propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document.

In acceptance of responses to requests for proposals, district school boards may award contracts to one or more responsive, responsible proposers in accordance with the selection criteria published in the request for proposal. The district school board is not required to request proposals for purchases made from contracts of the Department of Management Services.

The following process shall be followed for an RFP:

1. For contracts estimated to be more than \$50,000 annually:
  - a. In accordance with Board Policy 6320.02, the GSC shall review the summary scope of work RFP to determine incentives to be applied under the supervision of Procurement Management Services for vendors certified by the M-DCPS OEO ~~SBE, MBE, M/WBE, or VBE participation in the project.~~
  - b. The RFP shall be advertised to solicit maximum vendor participation. To enhance SBE, MBE, M/WBE, or VBE participation, advertisements may be published and announced in major publications that serve minority communities and it shall be posted electronically.

2. The RFP shall include an implementation schedule consisting of the following:

- a. GSC meetings,
- b. mailing/posting date,
- c. pre-proposal conference (if required),
- d. opening date and time documented by bid opening minutes,
- e. oral presentations (if required),
- f. recommendation of award process and to the Board,
- g. award notification is provided to all awarded bidder(s).

3. The evaluation criteria shall include, but are not limited to:

- a. technical qualifications and conformance to the proposal requirements experience,
- b. past performance,
- c. price considerations,
- d. small or micro-business, minority, and/or veteran business participation, and
- e. other instructions specific to RFP.

C. Invitation to Negotiate

The Invitation to Negotiate (ITN) shall be used as a written solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. This method is used when the Board determines that negotiations may be necessary to receive the best value. The following but not limited to criteria may be used to determine if an ITN is the best procurement methodology:

1. The District cannot accurately and completely define the scope of work for the contract, which often occurs for acquisitions of rapidly changing technology, outsourcing, or complex services;
2. The goods or services can be provided in several different ways, any of which could be acceptable, which occurs for acquisition of emerging technologies or complex services;
3. Contractor qualifications and the quality of the goods or services to be delivered can be considered more important than the contract price;
4. The responses may contain innovative solutions that differ from what the District may have requested and this process allows for those types of alternatives to be considered; and
5. The responses may contain a different level of goods or services than that requested, requiring the negotiation to reduce price or services to match.

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

D. Evaluation Committee Meetings for RFPs and ITNs Only



1. The committee shall consist of at least: 1) two (2) individuals from the originating department; however, not more than one (1) of these individuals can be from the requesting ~~office department bureau~~; 2) two (2) individuals from outside the requesting department; 3) one (1) individual from the Office of Economic Opportunity; and 4) one (1) individual from Procurement Management Services (non-voting). Additional members may be appointed at the discretion of the Chief Procurement Officer. The committee shall to the extent possible, be ethnically and gender representative.
2. These meetings are subject to F.S. Chapter 286 except for meetings in which the vendors will be making oral presentations and answering questions as part of the solicitation process which shall be closed to the public in accordance with F.S. 286.0113(2)(b)(1).
3. When committees are established to evaluate a RFP or ITN, the Procurement Management Services staff will conduct the meetings, and ensure that: 1) minutes are recorded, and 2) proper documentation and records of committee actions are maintained.
4. The evaluation committee's written recommendation must include the following for inclusion in the master bid file within Procurement Management Services:
  - a. clear objective of the RFP,
  - b. identification of the committee members,
  - c. committee meeting dates and brief synopsis of the general discussion,
  - d. dates of any or all oral presentations,
  - e. name and location of the offeror(s),
  - f. evaluation criteria,
  - g. explanation of the basis for selection,
  - h. recommendation of acceptance of the offeror(s) proposal,
  - i. committee member votes or tabulation results.
5. When the committee evaluation process is complete, the Superintendent will forward the recommendations to the Board for approval before any contract will be issued.

E. Written or Electronic Quotations (Request for Quotes)

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

Quotations obtained shall be electronically attached to or included with the purchase order. by written notations or electronic reference indicating quotation prices and sources, certification by signature or facsimile. The requisition shall be approved for purchase as authorized by the

Superintendent. All internal fund purchases shall comply with Policy 6610.

F. Purchasing Thresholds for Competitive Bidding

The following provides a summary of the purchasing thresholds and the corresponding procurement documents allowed to facilitate the purchases:

1. \$0 to \$999 - shall obtain one (1) written~~/and~~-dated quotation~~;~~ with an ~~applicable~~-expiration date. ~~such as ninety (90) days.~~
2. \$1,000 to \$50,000 - shall obtain three (3) written, telephonic, or electronic and dated quotation(s), which may be completed using a Request for Quotes template.
3. Above \$50,000 shall utilize the Invitation to Bid, Invitation to Negotiate, or the Request for Proposal template(s).

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

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

- a. establish specifications for goods and services as needed;
- b. identify several existing, commercially available "standard brands-" that meet the specifications acceptable as examples; and
- c. invite vendors to bid on the standard brands identified or their equivalent.

2. All bid quantities and specifications shall be transmitted to Procurement Management Services by the originating department in writing. The originating department shall also certify to Procurement Management Services in writing that the specifications for an existing bid (to be rebid) are still appropriate before issuance of the bid. Specifications originated by Procurement Management Services shall follow similar certification procedures.
3. All increases to quantities specified in an existing term bid requiring a supplemental bid award shall be requested in writing by the originating department, countersigned by an administrator reporting directly to the Superintendent, and identifying the reason why the increase in quantities was unavoidable. If an adequate reason cannot be identified, then the corrective action to be taken by the originating department to prevent a future underestimate of quantities shall be described. A similar procedure will be followed for term bids originated by Procurement Management Services.
4. All changes to specifications for an existing bid (to be rebid) or similar bid shall be identified in writing, including the reason for the change, by the originating department or Procurement Management Services if it is the originator.
5. The Chief Procurement Officer of Procurement Management Services shall identify specifications which appear to limit the bidding process to a single vendor. In the event that the Chief Procurement Officer has identified such a set of specifications, the originating department shall be required to justify in writing the specifications which appear to favor a single vendor. This documentation shall be countersigned by an administrator reporting directly to the Superintendent.

#### H. Federal Grants/Funds

Procurement of all supplies, materials, equipment, and services paid for from Federal funds or District matching funds shall be made in accordance with Board Policy 6320.07 and all applicable Federal, State, and local statutes and/or regulations, the terms and conditions of the Federal grant, School Board policies, and administrative procedures.

The Superintendent shall have and use a procurement and contract administration system in accordance with the requirements of 2 C.F.R. 200.317-200.326 for the administration and management of Federal grants and Federally-funded programs. The District shall maintain oversight that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall conform to the provisions of this policy.

The District shall take affirmative steps, in accordance with Federal regulations, to assure that firms certified pursuant to Board Policy 6320.02, and applicable labor surplus area firms, are used when possible.

The District shall comply with any limitations or exclusions set forth as cost principles in 2 C.F.R. Part 200 or in the terms and conditions of the Federal award.

Domestic Preference for Federal Procurement:

As appropriate and to the extent consistent with law, the District shall, to the extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. Such requirements shall be included in all subawards including all contracts and purchase orders for work or products under the Federal award.

#### I. Purchase Requisitions

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

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

Requisitions must contain the appropriate authorized approvals as prescribed by administrative procedures for the SAP system, as well as documented procurement authority. Fully approved requisitions will be reviewed and approved by procurement staff to ensure proper application of this policy and will be converted to approved purchase orders for release to the vendors.

#### J. Unauthorized Purchases

As defined, unauthorized purchases are agreements, commitments, or an order for goods or services or construction, or changes to existing contracts by any District staff and/or school site staff who does not have an approved purchase order, fund reservation and/or PCard approval. Also unauthorized are (1) purchases made without the required competitive bidding, (2) purchases made in advance of an approved purchase order, fund reservation and/or PCard approval, and (3) changes under existing contracts made by a person who does not have delegated procurement authority.

Unauthorized purchases are not binding on the District. Payment for any unauthorized purchase may be the responsibility of the staff person placing the order. Additional disciplinary action may be taken against the responsible staff person.

For each suspected incident of an unauthorized purchase, procurement staff will notify the staff person(s) involved and request appropriate documentation to authorize or cancel the purchase and to ensure future compliance with this policy.

K. Protests

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

L. Protest of Specifications

Any notice of protest of the specifications contained in an Invitation to Bid (ITB) or Request for Proposal (RFP) or Invitation to Negotiate (ITN) shall be filed accordance with Board Bylaw 0133.

For a protest of the specifications contained in an Invitation to Bid (ITB) or in a Request for Proposals (RFP) or Invitation to Negotiate (ITN), the Notice of Protest shall be filed in writing within seventy-two (72) hours after the posting of a solicitation. The Formal Written Protest shall be filed within ten (10) calendar days after the date the notice of protest is filed. Failure to file a Notice of Protest or failure to file a Formal Written Protest shall constitute a waiver of proceedings under this rule. The Formal Written Protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and legal holidays shall be excluded in the computation of the seventy-two (72) hour time period provided by this paragraph.

M. Posting the Bond

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

1. Bond: Commodities (Other than Lease of Space) and Contractual Services (Including Professional Services and Insurance) – Pursuant to F.S. 287.042(2)(de), any person who files an action protesting a decision or intended decision pertaining to a solicitation or contract award shall post with the Board, at the time of filing the formal written protest, a bond secured by an acceptable surety company in Florida, payable to The School Board of Miami-Dade County, Florida, in an amount equal to one percent (1%) of the District's estimate of the dollar value of the proposed contract.
  - a. The District shall provide the estimated contract amount to the protestor within seventy-two (72) hours (excluding Saturdays, Sundays, and holidays when the District administrative office is closed) after the filing of the Notice of Protest. The estimated contract amount is not subject to protest under this policy or F.S. 120.57(3). In lieu of a bond, the Board may accept a cashier's check or money order in the amount of the bond.
  - b. The bond shall be conditioned upon the payment of all costs and charges which may be levied against the protestor in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding.
  - c. Pursuant to F.S. 287.042(2)(c), if, the Board prevails in the administrative hearing process and any appellate court proceedings, it shall be entitled to recover all costs and charges

which are included in the final order or judgment, excluding attorneys' fees. Upon payment of such costs and charges by the person protesting the decision or intended decision or contract award, the bond, cashier's check, or money order shall be returned to the protestor. If the protestor prevails, the protestor may recover from the Board the costs and charges which are included in the final order or judgment, excluding attorneys' fees.

2. Bond: Competitive Bids for Lease of Space -- Pursuant to F.S. 255.25(3) (c), any person who files an action protesting a decision or intended decision pertaining to a competitive bid for space to be leased by the Board shall post with the Board, at the time of filing the formal written protest, a bond payable to the Board in an amount equal to one percent (1%) of the estimated total rental of the basic lease period or \$5,000, whichever is greater. The bond shall be conditioned upon the payment of all costs which may be levied against him/her in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. If the Board prevails in the administrative hearing process and any appellate court proceedings, it shall recover all costs and charges, which are included in the final order or judgment, excluding attorneys' fees. Upon payment of such costs and charges by the person protesting the award, the bond shall be returned to him/her. If the person protesting the award prevails, the bond shall be returned to that person and s/he shall recover from the Board the costs and charges which are included in the final order or judgment, excluding attorneys' fees.
3. Bond: Construction Purchasing – Construction purchasing is separately governed by Board policy, and persons protesting competitive procurement related to educational facilities shall be required to post a bond in the amount specified in F.S. 255.0516, which also governs recovery of fees and costs including attorneys' fees.
4. Staying the Procurement Process – Upon timely receipt of the formal written protest petition, and posting of the bond, the solicitation or contract award process shall be stayed until the protest is resolved by final agency action, unless the Board sets forth, in writing, particular facts and circumstances which require the continuance of the solicitation or contract award process in order to avoid an immediate and serious danger to the public health, safety, and welfare.

#### N. Protest of Bid Award

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

The Formal Written Protest will be reviewed by Procurement Management Services, who will offer the protesting bidder the opportunity to meet and discuss the merits of the protest within seven (7) days, excluding Saturdays, Sundays, and State holidays upon receipt of the formal written protest and bond. If the protest is not resolved, the matter may be referred for proceedings, pursuant to F.S. 120.569 and 120.57. Petitions for hearing on protests pursuant to F.S. 120.569 and 120.57 must be filed in accordance with Board Bylaw 0133 on quasi-judicial proceedings.

Upon receipt, the Board Clerk shall forward a copy of any Notice of Protest to the Board. After a Notice of Protest is filed, the Clerk shall notify the Board upon receipt of a Formal Written Protest, and shall also notify the Board if no Formal Written Protest is submitted after the statutory time period for filing a Formal Written Protest has elapsed. The Clerk will inform the Board of the final resolution of any Formal Written Protest, regardless of whether the resolution involved a formal administrative hearing. If the resolution

involved a formal administrative hearing, the Board will be informed of the results in accordance with Policy 0133, Quasi-Judicial Proceedings.

O. Receiving and Opening of Bids

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

1. Except for construction solicitations, bids are to be submitted to Procurement Management Services or electronically up to the time and on the date specified in the bid documents. Bids received after the date and hour specified in the bid documents will not be considered.
2. At least two (2) Procurement Management Services staff will be assigned to facilitate the public bid opening.
3. All bids will be recorded at the time they are received, showing the bid number, bid title, and the names of the bidders submitting bid forms. Notification of timely receipt shall be confirmed by the bid opening minutes and submitted to the Board at the next regularly scheduled Board meeting.

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

P. The Recording or Tabulation of Purchasing Bids

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

Q. Rejection of Bids

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

R. Irregular or Deviating Bids

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

S. Award Recommendation

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

T. Official Award Date

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

U. Contract Renewals

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

V. Legal Basis for Procedures

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

W. Bidding

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

X. Identical Prices/Points--Priorities for Award

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

1. A business that certifies that it has implemented a drug-free work place program shall be given preference in accordance with the provisions of F.S. 287.087;
2. Local vendor as defined by Board Policy 6320.05;
3. Certified service-disabled Veteran business;
4. A certified Minority/Women Business Enterprise vendor;
5. The Miami-Dade County SBE/Micro/Minority/Women Business Enterprise vendor;
6. The Broward, Palm Beach or Monroe County SBE/Micro/Minority/Women Business Enterprise vendor;
7. The Broward, Palm Beach or Monroe County vendor, other than the SBE/Micro/Minority/Women Business Enterprise vendor;
8. The Florida vendor who is a SBE/Micro/Minority/Women Business Enterprise vendor;
9. The Florida vendor, other than a Minority/Women Business Enterprise vendor;
10. The Minority/Women Business Enterprise vendor, who, because of lower prices, receives a larger dollar award for other items; and
11. The SBE/Micro/non-Minority/Women Business Enterprise vendor who, because of lower prices, receives a larger dollar award for other items.

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

If application of the above criteria does not indicate a priority for award or cannot be applied by law, Board administration shall determine if the award is capable of being split, and, if the vendors will agree

to split the award. If the award cannot be split, or the vendors do not agree to split the award, the award will be decided by the toss of a coin. The toss of a coin shall be held publicly, with the tie low bid vendors invited to be present as witnesses and participants. The Chief Procurement Officer or a staff member from the Office of Procurement Management will preside over the coin toss and a member from Internal Audits will observe.

Y. Vendor Preference for Certified Service-Disabled Veteran Business Enterprises

The Board provides a vendor preference for certified service disabled veteran businesses in accordance with Board Policy 6320.02 and State law.

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

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

The Board's goal for participation by service disabled veteran business enterprises shall be established at three percent (3%) of the total value of all prime contract/subcontract awards for each fiscal year.

Z. Performance and Payment Security, Default and Bonding Company Qualifications

1. Performance Security on Construction Bids and Awards

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

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

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

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

Should the accepted bidder fail to furnish performance and materials and payment bonds, the amount of the bid security may be forfeited to the District.

2. Performance Security on Awards Other than Construction

a. Bid awards of \$200,000 or less shall be exempt from performance and payment security.

b. Performance security shall not be required unless otherwise defined in the bid specification. Performance security shall equal 100% of the award amount.



3. Bonding Company Qualifications

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

a. Awards Greater than \$500,000

1. A minimum rating in the latest revision of Best's Insurance Reports of:

<b>Contract Amount</b>	<b>Minimum Rating by A.M. Best</b>
\$200,000.00 to \$5,000,000	A, No Minimum Class
\$5,000,000.01 to \$10,000,000	A, Class IV
\$10,000,000.01 or more	A, Class V

2. Current certificate of authority as acceptable surety on Federal Bonds in accordance with the latest edition of the United States Treasury Department Circular 570 entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" and shall be accepted for an amount not exceeding the underwriting limitation thereon.

b. Awards of \$500,000 or less

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

IV. Additional Requirements

AA. Vendor Performance

Upon award of all bids and contracts, vendor performance shall be documented by the originating department. Periodically, procurement staff and the originating department shall review and discuss awarded vendors' performance, per the terms and conditions of the bid or contract, including the spend analysis.

Should the vendor be identified with poor performance, procurement staff and the originating department shall notify the vendor to cure the bid or contract deficiency, within a stated timeframe.

AB. Suspension or Default by Vendor

Board Policy 6320.04, Contractor Discipline, governs debarment, suspension, and other disciplinary action that may be taken by the Board against contractors that violate law and Board policies.

Contractors may be suspended and/or debarred from doing business with the Board or otherwise disciplined. Suspension and debarment are serious sanctions that may only be imposed when it is in the best interest of the Board and to protect the public.

The Superintendent is authorized to develop and implement disciplinary procedures that comply with State and Federal laws, ordinances, codes, regulations, and Policy 6320.04.

AC. Bid or Contract Close-Out Period

Procurement staff and the originating department shall notify the vendor of the termination of the bid or contract services, within a reasonable time, requesting any pending reports, documents, data or property generated using district funds during the contract period or invoices to be submitted.

AD. Signatures of Superintendent and Designees on Contracts

The Board authorizes the use of signatures of the Superintendent and his/her designees on behalf of the Board on all contracts, agreements, and documents where a signature of the Chair is not required by law or regulation of the Department of Education. All contracts, agreements, and documents must be based upon approvals previously adopted and spread upon the minutes of the Board, unless exempted by Board policy. Each contract shall demonstrate its procurement authority.

AE. Purchasing Cards (PCards)

Pursuant to Board Policy 6424, purchasing cards may be used to make small dollar purchases and acquire materials and supplies as needed for operations.

Purchasing cards shall not be used to circumvent the general purchasing procedures established by State law and Board policy. Purchasing cards shall only be used for expenses in connection with Board-approved or school-related activities, that benefit the District and serve a valid and proper public purpose. Periodically, procurement staff shall review the PCard expenditures to ensure compliance with Board policies and the purchasing threshold requirements.

AF. Purchasing Principles

Employees shall be guided by the following principles and standards adopted by the National Institute of Governmental Purchasing (NIGP):

1. Accountability: taking ownership and being responsible to stakeholders for our actions, essential to preserve the public trust and protect the public interest.
2. Ethics: acting in a manner true to these values, essential to preserve the public's trust.
3. Impartiality: unbiased decision-making and action, essential to ensure fairness for the public good.
4. Professionalism: upholding high standards of job performance and ethical behavior, essential to balance diverse public interests.
5. Service: obligation to assist stakeholders, essential to support the public good.
6. Transparency: easily accessible and understandable policies and processes, essential to demonstrate responsible use of public funds.

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

Complaints alleging discrimination against any commercial enterprise doing business with the Board must be filed and will be investigated and addressed in accordance with Board Policy 6465.

## **V. Maintenance of Procurement Records**

The District shall maintain records sufficient to detail the history of all procurements, in accordance with the applicable retention period provided in the Records Retention Schedule of the Florida Department of State, Bureau of Archives and Records Management, or in 2 C.F.R., Part 200 as applicable to federal grant funds, whichever is longer. These records will include, but are not necessarily limited to, the following: rationale for the

method of procurement, selection of contract type, contractor selection, or rejection, and the basis for the contract price (including a cost or price analysis if applicable).

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F.S. 119.07  
F.S. 120.569  
F.S. 120.57  
F.S. 120.57(3)  
F.S. 255.0516  
F.S. 255.065  
F.S. 255.099  
F.S. 255.0991  
F.S. 255.25(3)(d)  
F.S. 282.0041(20)  
F.S. 286.0113(2)(b)(1)  
F.S. 287.017  
F.S. 287.042(2)(c)  
F.S. 287.056  
F.S. 595.404  
F.S. 1001.41(1)(2)  
F.S. 1001.42(12)(j)  
F.S. 1001.42(26)  
F.S. 1001.43(10)  
F.S. 1006.27  
F.S. 1010.04(2)  
F.S. 1010.04(4)(a)  
F.A.C. 6A-1.012  
F.A.C. 5P-2.002  
F.A.C. 28-110.005(2)  
2 C.F.R. 200.317-.326  
2 C.F.R. 200.520  
Appendix II to 2 C.F.R., Part 200

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