



POLICY 6.143

5-H I recommend that the Board approve development of the proposed **revised** Policy 6.143, entitled "Diversity and Equitable Utilization in Business."

[Contact: Elizabeth McBride, PX 47673 and Michelle Adrewin, PX 48508.]

Development

CONSENT ITEM

- This revision expands the definition of discriminate. See 3(m).

POLICY 6.143

DIVERSITY AND EQUITABLE UTILIZATION IN BUSINESS

1. Factual Predicate and Purpose

- a. In September 1993, the School Board of Palm Beach County hired MGT of America, a Tallahassee consulting firm, to conduct a disparity study to analyze utilization of minority- and women-owned business enterprises (M/WBEs) in School District procurement. The disparity study was accepted by the School Board on April 5, 1995.
- b. The study was designed to address four major issues: Whether there is a disparity in the utilization of M/WBEs in the District's procurement program; whether any such disparity is the product or result of past discrimination or other factors related to race- or gender-based discrimination; whether such disparity could be effectively ameliorated through race- and gender-neutral programs; and if the appropriate remedy was 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.
- c. The 1995 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.
- d. Since 1995, the School District has employed several race- and gender-neutral methods in an effort to eliminate disparities in the utilization of M/WBE firms, such as: bond waivers, contract de-bundling, contractual prohibitions against discrimination, advertisements in minority media; outreach activities by the District; and agency networking and trade fair activities.
- e. Incorporating recommendations in the disparity study report, the Department of Equity Assurance prepared Policy 6.146A and Procedures Manual 6.146B, approved by the School Board in February 1996 with a Sunset date of September 30, 2005. These policies were later amended to sunset on June 6, 2001.
- f. On August 6, 2001, the School Board adopted Policy 6.142, directing "the Superintendent to compile and analyze additional data as may be necessary to develop appropriate programs and procedures" in furtherance of and equitable participation by minority-and-women-owned business enterprises (M/WBEs), and "that the Superintendent will bring back a policy that actively

36 promotes diversity and business practices that sets goals for M/WBE
37 participation that are consistent with the calculated disparity above."

38 g. The administration in the Office of Equity Assurance transitioned to a focus on
39 M/WBE participation, and the Board established the Office of Diversity in
40 Business Practices (ODBP) in August of 2001 to monitor all contracts, bids,
41 and professional services and promote the increased use of M/WBEs in the
42 District's procurement process.

43 h. On December 12, 2001, Washington & Rice, LLC, was hired to conduct a
44 comprehensive review of the District's M/WBE program and procurement
45 practices, customize and install the CHAMP software, a comprehensive
46 database and tracking system for use by the ODBP.

47 i. In June 2004, the School District commissioned D. J. Miller & Associates, Inc.
48 (DJMA) to conduct a Causation and Anecdotal Study (DJMA Study) to
49 examine School District procurement practices, to examine the existence of
50 any disparities in market outcomes in the utilization of ready, willing, and able
51 minority- and women-owned businesses on District contracts, to determine
52 possible causes for any such disparities and whether there is an compelling
53 government interest to utilize race/gender-conscious means to remedy
54 ongoing effects of marketplace discrimination upon the School Districts
55 contracting. Additionally, the DJMA Study sought to recommend narrowly
56 tailored remedies to any identified barriers to equitable participation of
57 minority- and women-owned businesses (M/WBEs) in School District contracts
58 that are consistent with applicable law. Based largely upon its review of the
59 DJMA Study results and previously gathered evidence, the School Board has
60 made the following significant findings:

61 i. Within the relevant geographic market (consisting of the Palm Beach
62 County, Ft. Lauderdale, and Miami-Dade County, FL MSAs), there are
63 statistically significant disparities in the utilization of ready, willing, and
64 able minority- and women-owned business in the following categories of
65 contracts and business owners:

66 A. Construction (African American owned firms)

67 B. Non-professional Services (Hispanic American owned firms)

68 C. Professional Services (African American, Hispanic American, Native
69 American, and Women owned firms)

70 D. General Procurement (Asian American and Native American owned
71 firms)

- 72 ii. These significant disparities establish an inference of discrimination that
73 is adversely affecting the Palm Beach County School District's utilization
74 of ready, willing, and able minority- and women-owned firms.
- 75 iii. These inferences of discrimination were further supported by other
76 strong and compelling evidence for the relevant time period including, but
77 not limited to, the following examples:
- 78 A. White male-owned firms received the overwhelming majority of the
79 County's construction building permits in the public sector for prime
80 contracts (98.54%) and for subcontracts (94.81%).
- 81 B. White male-owned firms received an even larger overwhelming
82 majority of the County's construction building permits for private
83 sector prime contracts (99.41%) and subcontracts (97.75%). This
84 significant private sector disparity in the relevant market was further
85 confirmed by findings derived from Reed Construction data that
86 reflect M/WBEs received only 6.81% of public sector construction
87 dollars, and 5.17% of the private sector construction dollars.
- 88 C. Interviews with District purchasing staff and M/WBE firms identified a
89 number of discriminatory barriers affecting the relevant market
90 including unequal access to bonding, finance, and insurance; unfair
91 denials of opportunities to bid; unfair denial of contract awards; "good
92 old boy" networks; double standards in performance; jobsite
93 harassment; and false reporting of M/WBE contract participation to
94 avoid utilization of legitimate M/WBE firms.
- 95 D. The implementation of a broad array of race- and gender-neutral
96 assistance efforts and programs throughout the relevant market over
97 the past decade have been unsuccessful in eliminating these
98 persistent and significant disparities in the District's utilization of
99 ready, willing, and able M/WBE firms. (See DJMA Study, pp. VII-1 to
100 VII-20). These race- and gender-neutral efforts have included small
101 business programs, technical assistance, loan guarantee assistance,
102 bonding assistance, business development assistance, financing
103 assistance, matchmaking sessions, and mentor-protégé programs.
- 104 E. Based upon comparisons of the ranking of bids obtained through an
105 analysis of Reed Elsevier Construction Data, M/WBE contractors are
106 as competitive as their white male counterparts. However, the
107 M/WBE bidding rate is nearly three times as great in the public
108 sector as it is in the private sector, and M/WBEs receive a
109 significantly lower percentage of contract dollars in the private sector.
110 (See DJMA Study pp. VIII-22 to VIII-33). Yet, a significant disparity in

111 the utilization of African American construction firms by the School
112 District persists.

113 j. Based upon the totality of the evidence gathered and presented to the Board
114 since 1995, the Board has concluded that there is a strong basis in evidence
115 establishing that the School District has a compelling interest to remedy the
116 ongoing effects of discrimination that is occurring in the broader relevant
117 market and adversely affecting the District's utilization of ready, willing, and
118 able minority- and women-owned firms in District contracts. The Board has
119 further concluded that it needs to take action to avoid becoming a passive
120 participant in private sector discrimination.

121 k. The Board has further concluded that race- and gender-neutral remedies, in
122 and of themselves, are likely to be insufficient to eliminate the effects of the
123 identified forms of discrimination, and that a narrowly tailored combination of
124 race- and gender-neutral and race- and gender-conscious remedies is
125 warranted.

126 **2. Policy Direction**

127 a. The School District shall resort to the use of race- and gender-conscious
128 means for addressing disparities only when it is apparent that the use of
129 neutral means alone will likely be insufficient to remedy the effects of identified
130 discrimination.

131 b. Having found that it has a compelling governmental interest to remedy the
132 effects of identified discrimination in District procurement and contracting, the
133 School Board directs the Superintendent to establish procedures to implement
134 remedies that are consistent with this Policy and that are narrowly tailored to
135 the findings and conclusions of the DJMA Study.

136 c. It is the policy of the Board to take all necessary, reasonable, and legal action
137 to prevent discrimination and to ensure that all businesses, including M/WBEs,
138 are afforded the maximum equitable opportunity to participate in the District's
139 purchasing process.

140 d. This Policy shall apply to the solicitation of all goods, services, and
141 construction contracts procured in accordance with the Palm Beach County
142 School Board policies, Florida Statutes, and Department of Education (DOE)
143 rules. The District's procurement processes shall promote diversity and
144 equitable utilization of M/WBEs; and such solicitation processes shall be used,
145 whenever possible, even for those goods and services which are exempt from
146 competitive procurement under State Board of Education Rule 6A-1.012.

147 e. The Superintendent shall take all necessary and reasonable steps permissible
148 by law to ensure full equitable participation by M/WBEs in the procurement of

149 goods and services for the District school system. As a minimum, those steps
150 shall include:

151 i. developing programs and procedures as described herein that will
152 achieve the School Board's diversity objectives in business practices in a
153 manner that is consistent with this Policy;

154 ii. establishing a commercial non-discrimination policy that ensures that
155 companies doing business with the School Board do not discriminate in
156 the solicitation, selection, or treatment of subcontractors, suppliers,
157 vendors, or commercial customers on the basis of race, color, sex or
158 national origin;

159 iii. ensuring that the ODBP is included on all selection committees for bids,
160 contracts and professional services. The ODBP shall review contract
161 specifications to ensure that they are not unnecessarily restrictive to the
162 availability and the participation of Small Business Enterprises (SBEs)
163 and M/WBE firms in the procurement and contracting process;

164 iv. establishing an evaluation system whereby all School District employees
165 who are responsible for the procurement of goods and services are
166 knowledgeable about the District's goals in achieving diversity and
167 evaluated on their job performance regarding implementation of this
168 Policy;

169 v. ensuring that all senior-level staff performance evaluations include an
170 indicator for SBE and M/WBE diversity objectives for procurement; and

171 vi. evaluating the levels of availability and utilization in SBE and M/WBE
172 participation through the establishment and use of a centralized bidder
173 registration system, and adjusting the implementation of policy
174 accordingly to account for changing needs and circumstances and to
175 ensure that appropriate utilization objectives are established and
176 achieved.

177 3. **Definitions.**-- As used in this Policy, the terms below have the following meanings:

178 a. Agency.-- The School Board of Palm Beach County.

179 b. Availability.-- The percentage of ready, willing and able business firms that are
180 minority- and/or women-owned and seek to provide goods and services to the
181 School District.

182 c. Award Amount.-- The award amount is the dollar value of the contract when
183 awarded.

- 184 d. Board.- The School Board of Palm Beach County, which is the legal entity with
185 authority to enter contracts on behalf of the District school system under Fla.
186 Stat. § 1001.41(4).
- 187 e. Business.-- Any for-profit corporation, partnership, sole proprietorship, joint
188 stock company, joint venture, or any other private legal entity.
- 189 f. Certification.-- The process by which the ODBP determines that a business
190 meets the criteria for classification as a small, minority, or woman business
191 enterprise.
- 192 g. Centralized Bidder Registration System.-- A computer-based management
193 information system designed to manage the contract compliance process. It is
194 a software solution designed to develop and monitor narrowly tailored M/WBE
195 programs by integrating with existing School District financial and contract
196 systems for the purpose of tracking all aspects of the contract sequence
197 process: vendor information, contract information, solicitation/award
198 information, invoice, and payment information.
- 199 h. Construction.-- The process, usually requiring the professional services of an
200 architect and/or engineer, of building, altering, repairing, improving, or
201 demolishing any structure or building, or other improvements of any kind to
202 any real property as determined by the Director of Purchasing.
- 203 i. Contract.-- (1) A written agreement between two or more competent parties to
204 perform or not perform a specific act or acts; and (2) any type of agreement
205 regardless of what it is called for the procurement or disposal of supplies,
206 services, or construction.
- 207 j. Contractor.-- A separate and distinguishable business entity participating or
208 seeking to participate in the performance of a contract.
- 209 k. Controlled.-- For the purpose of determining whether a business is a minority
210 or women business enterprise, "controlled by" shall mean that the minority/ies,
211 the woman, or combination of minorities and women, as the context requires,
212 shall (1) possess legal authority and power to manage business assets, good
213 will and daily operations of the business; and (2) actively and continuously
214 exercise such authority and power in determining the policies and directing the
215 operations of the business, knowledge and technical expertise in the business
216 endeavor, licensed to perform the business or trade, and the lack of external
217 influence over the day-to-day operations or decision-making process by any
218 entity (with the exception of franchise operations).
- 219 l. Compliance.-- The level of performance at which the School District and the
220 Prime Contractor utilizes vendors in meeting diversity objectives.

- 221 m. Discriminate.-- To treat an individual or group differently solely on the basis of
222 color, religion, sex, ethnicity, national origin, age, sexual orientation, gender
223 identity or expression, genetic information, marital status, parental status,
224 disability, disabled veteran status; or any other characteristic protected by law
225 ~~race, religion, color, sex, national origin, age, handicap, ancestry or disabled~~
226 ~~veteran status.~~
- 227 n. Debarment.-- The exclusion of a vendor or contractor, for cause, from bidding
228 and/or doing business with the School Board.
- 229 o. District.-- The School District of Palm Beach County, its individual and
230 collective departments, managers, staff and facilities.
- 231 p. Disability.-- A physical or mental impairment that substantially limits one or
232 more of an individual's major life activities.
- 233 q. DOE.-- Department of Education, an executive-branch department of the State
234 of Florida, which is tasked with recommending education-related policy to the
235 Governor, State Board of Education, and state Legislature, and oversees local
236 school districts' adherence to state requirements.
- 237 r. DOE or State Board of Education Rules.-- Legislatively-mandated policies as
238 established by the Department of Education or State Board of Education for
239 governmental and operational facilities for personnel and administration,
240 including State Board of Education Rule 6A-1.012, "Purchasing Policies."
- 241 s. Front.-- A business which purports to be a M/WBE for purposes of obtaining
242 District contracts, but which is actually owned, controlled, and/or operated in a
243 manner that is inconsistent with the performance of a commercially useful
244 function and that does not comply with the District's requirements for M/WBE
245 certification.
- 246 t. Goals (Annual Diversity Goals).-- A percentage of total contract dollar volume,
247 on an annual basis, for the participation of minority and women-owned
248 businesses in the District's procurement, professional services and
249 construction contracts.
- 250 u. Industry Categories.-- Construction, professional services, non-professional
251 services, commodity procurement, manufacturing, wholesale, and retail.
- 252 v. Joint Venture.-- An association of two or more persons or businesses to carry
253 out a single business enterprise for profit for which purpose they combine their
254 property, capital, efforts, skills and knowledge. Joint ventures must be
255 established by written agreement.
- 256 w. Minority.- a "minority" or "minority person" means a lawful, permanent resident

- 257 of Florida who is:
- 258 i. an "African American," a person having origins in any of the racial groups
259 of the African Diaspora;
- 260 ii. a "Hispanic American," a person of Spanish or Portuguese culture with
261 origins in Mexico, Central or South America, or the Caribbean, regardless
262 of race;
- 263 iii. an "Asian American," a person having origins in any of the original
264 peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the
265 Pacific Islands, including the Hawaiian Islands prior to 1778;
- 266 iv. a "Native American," a person who is a member of or is eligible to be a
267 member of a federally recognized Indian tribe. A "federally recognized
268 Indian tribe" means an Indian tribe, band, nation, rancheria, pueblo,
269 colony, or other organized group or community, including any Alaska
270 native village, which recognized by the Secretary of the Interior on
271 October 1, 1985, as having special rights and is recognized as eligible for
272 the services provided by the United States to Indians because of their
273 status as Indians, and any tribe that has a pending application for federal
274 recognition on October 1, 1985, as having special rights and is
275 recognized as eligible for the services provided by the United States to
276 Indians because of their status as Indians, and any tribe that has a
277 pending application for federal recognition on October 1, 1985; or
- 278 v. an American woman.
- 279 x. M/WBE.-- A minority-owned business enterprise or a women-owned business
280 enterprise or a designated combination of minority- and woman-owned
281 business enterprise in a specified industry that:
- 282 i. employs 200 or fewer permanent full-time employees and that, together
283 with its affiliates, has a net worth of not more than five million dollars (\$5
284 million) or any firm based in this state which has a Small Business
285 Administration 8(a) certification (and as applicable to sole proprietorships,
286 the \$5 million net worth requirement shall include both personal and
287 business investments); and
- 288 ii. has at least 51% minority ownership, daily management, and control of
289 the business; and
- 290 iii. is domiciled in the Palm Beach County, Miami-Dade County, or Ft.
291 Lauderdale metropolitan statistical areas (MSA), or is domiciled in the
292 State of Florida and can demonstrate that it routinely bids on and/or
293 performs contracts in Palm Beach County; and

- 294 iv. is lawfully organized to engage in commercial transactions.
- 295 However, ownership by a minority person does not include ownership resulting
296 from a transfer from a non-minority person to a minority person within a related
297 immediate family group if the combined total net asset value of all members of
298 such family group exceeds one million dollars (\$1 million). For purposes of this
299 definition, the term "related immediate family group" means one or more
300 children under sixteen (16) years of age and a parent of such children or the
301 spouse of such parent residing in the same house or living unit. The
302 Superintendent shall implement procedures for periodic re-certification and
303 graduation of M/WBEs from M/WBE program eligibility.
- 304 y. NIGP (National Institute of Governmental Purchasing).-- Standards used to
305 classify business enterprises by industry codes.
- 306 z. Owned.-- For the purposes of determining whether a business is a minority or
307 woman business enterprise, shall mean that the minority/ies or woman(en), as
308 the context requires, shall possess an ownership interest of a minimum of
309 51%.
- 310 aa. Preferential Programs.-- The preference extended for diversity participation in
311 the ranking of responsive bidders and the bid preference procedures under
312 this Policy. It also means the maximum point allocation for professional service
313 contract award evaluations.
- 314 bb. Prime Contractor.-- Any person or business entity that has a contract with the
315 School Board to provide specific construction services, sales, supplies,
316 materials, professional services, labor and/or equipment.
- 317 cc. Professional Services.-- Any narrow discipline wherein a known practitioner
318 has through education and experience developed expert advisory and
319 programming skills as a vocation; any service performed primarily by
320 vocational personnel which requires the analysis or certification of a
321 professional before the services are acceptable to the user of the service; or
322 any other advisory study, or programming activity where the School District's
323 Director of Purchasing determines that the level of skills and/or creativity of the
324 potential or known practitioner(s) warrant utilizing a request for proposals,
325 request for information, or similar solicitation process other than the
326 competitive bid or quotation process.
- 327 dd. Project Goals.-- Contract-specific goals expressed as percentages of the total
328 contract dollar volume that are anticipated by the District for subcontract
329 participation by Small Business Enterprise firms or M/WBE firms based upon
330 relative availability in the relevant industry.
- 331 ee. Proposal.-- An executed formal document submitted by an offeror to the

332 purchasing agent stating the goods and/or services offered to satisfy the need
333 as requested in the Request for Proposal or Request for Information.

334 ff. Procurement.-- Buying, purchasing, renting, leasing or otherwise acquiring any
335 goods and/or services for public purposes in accordance with the law, rules,
336 regulations and procedures intended to provide for the economic expenditure
337 of public funds. For the purpose of this Policy, procurement refers to those
338 goods and/or services, except professional services, solicited by the
339 Purchasing Department pursuant to Department of Education requirements
340 and Policy 6.14.

341 gg. Ready, Willing, and Able.-- Any vendor(s), who has registered an interest in
342 doing business with the School District , and has the technical expertise,
343 training, and licenses to perform in accordance to the contract document.

344 hh. Relevant Market Place.-- The geographical area in which the majority of the
345 School District's suppliers, vendors, and / or contractors are located.

346 ii. Small Business Enterprise (SBE) - Any business firm that is certified by the
347 District as having average annual gross sales and an average number of full-
348 time employees over the last three years that are less than fifty percent (50%)
349 of the small business size standards as most recently defined by the U. S.
350 Small Business Administration for the business firm's relevant industry. In
351 addition, to be eligible as an SBE for bidding purposes, a business firm must
352 have received less than one million dollars (\$1 million) in contract payments
353 from District projects or contracts in the fiscal year preceding the bid, The
354 Superintendent shall establish procedures for periodic re-certification and
355 graduation of SBE firms from SBE program eligibility.

356 jj. Subcontractor.-- Any person providing goods and/or services to a prime
357 contractor for profit, if such goods and/or services are procured or used in
358 fulfillment of the prime contractor's obligations arising from a contract with the
359 School District of Palm Beach County.

360 kk. Diversity Directory.-- A compilation of certified SBEs and M/WBEs, which is
361 retained and published by the ODBP and made available to contractor(s) or
362 vendor(s) for use in identifying subcontractors, material suppliers, etc.

363 ll. Underutilization.-- A level of contract participation by a group of businesses
364 (e.g., M/WBEs) that is at least two standard deviations below their relative
365 availability in a given an industry code.

366 mm. WBE.-- Woman-owned, controlled, and operated business enterprises (which
367 have at least 51% female ownership, management, and control of the
368 business).

369 nn. Goals.-- The annual or contract-specific goals for contract participation that
370 express the anticipated level or proportion of contract dollars in a given time
371 frame that would be expected to be received by a particular segment of the
372 total population of Ready, Willing, and Able (RWA) firms. RWA firms are
373 defined as those firms that are ready and able to sell goods or services that
374 the School District buys, and that have registered their interest in doing
375 business with the School District. Such goals are based upon availability
376 analysis derived from a database established through the implementation of a
377 mandatory and automated centralized bidder registration system. Upon
378 completion of availability analysis, such goals for contract participation may,
379 under certain circumstances, be set and narrowly tailored by race, gender, and
380 industry codes. Annual goals are intended as an administrative guide only to
381 assist the District in its annual policy review to determine whether the use of
382 more aggressive or less aggressive remedies are warranted in the future.
383 Annual goals shall not be routinely applied to specific contracts absent
384 independent availability analysis that demonstrates they are appropriate for
385 application to a specific contract.

386 4. **Procurement Process.**-- The Board hereby directs the Superintendent to
387 implement the following race- and gender-neutral measures and procurement
388 procedures to provide fairer access to District contracts:

389 a. Establishment of a Procurement Policy Work Group to examine and propose
390 modifications to the District's procurement processes and practices, including
391 a thorough review of policies and practices affecting small dollar purchases,
392 the use of blanket purchase orders, contract-bundling, the merits of centralized
393 vs. de-centralized purchasing and its effects on M/WBE utilization, the
394 uniformity (or lack thereof) in the standards applied in the development of
395 contract specifications, the utilization of construction managers at risk, and any
396 other policies and practices that may adversely affect the utilization of small,
397 minority, and women-owned firms on District contracts.

398 b. Establishment of a Commercial Non-Discrimination Policy, to be proposed for
399 Board approval, which provides: (a) a clear policy statement against
400 discrimination in business on the basis of race, gender, religion, national
401 origin, ethnicity, age, or disability; (b) a prohibition against the District entering
402 into contracts with business firms that discriminate in the solicitation, selection,
403 or treatment of vendors, suppliers, subcontractors, or commercial customers;
404 (c) a formal complaint process and investigation process for alleged violations
405 of this policy; and (d) due process for hearing evidence, rendering findings,
406 and imposing sanctions against business firms and District employees that
407 violate this Policy, in coordination with any applicable collective bargaining
408 procedures.

409 c. Establishment of an automated and mandatory Centralized Bidder

410 Registration system for all firms that are interested in selling goods or services
411 to the District. This Centralized Bidder Registration system should be a
412 computer-based management information system designed to manage the
413 contract compliance process. It should enable targeted e-mail solicitation of
414 prospective bidders of relevant bid opportunities. The Centralized Bidder
415 Registration system should also facilitate the collection of data that is
416 necessary for the development and monitoring of narrowly tailored SBE and
417 M/WBE programs. In doing so, it should also interface with existing School
418 District financial and contract systems for the purpose of tracking all aspects of
419 the contract sequence process: vendor information, contract information,
420 solicitation/award information, invoice, and payment information. All bidders,
421 regardless of ownership type, shall be required to register on this system prior
422 to submitting a bid, receiving a contract award, or submitting an invoice for
423 payment to the School District.

424 d. Establishment of business development assistance initiatives such as the use
425 of bond waivers for contracts up to \$200,000 in value; prohibition against
426 prime contractors' requirements for bonds from subcontractors on District
427 contracts; wrap-up insurance plans; financial assistance programs for SBEs
428 (e.g., loan initiatives, revolving working capital fund, contract financing, and
429 public venture capital funds); mentor-protégé programs; and a one-stop
430 referral system for firms in need of technical assistance resources.

431 e. Establishment of a procedure for bid de-briefing for losing bidders on District
432 contracts.

433 f. Establishment of a linked deposit program to encourage financial institutions
434 that hold District funds to improve capital access and loan availability for SBEs
435 and M/WBEs.

436 g. Establishment of a procedure for ODBP to preview proposed contract bids in
437 advance of their public dissemination to suggest ways in which contracts may
438 be de-bundled or segmented into smaller segments to provide for greater
439 competition and opportunities for greater prime contract participation by SBE
440 and M/WBE firms.

441 h. Establishment of a Prompt Payment Policy that requires that every contract let
442 by the School Board for the performance of work shall contain a provision
443 requiring the prime contractor to certify in writing with the submission of its
444 invoices to the District that all subcontractors, sub consultants, and suppliers
445 have been paid for satisfactorily delivered work and materials from previous
446 progress payments received, less any retainage, by the prime contractor.
447 During the term of the contract and upon the completion of the contract, the
448 District shall request documentation to certify payment to subcontractors, sub
449 consultants, or suppliers. Failure to comply with this policy or to provide this

450 required documentation shall constitute a material breach of contract. Such
451 failure shall also preclude the prime contractor from further receipt of progress
452 payments from the District until such delinquent payments to subcontractors,
453 sub consultants, and suppliers are made. This provision in no way creates any
454 contractual relationship between any subcontractor, sub consultant, or supplier
455 and the District or any liability on the District for the contractor's failure to make
456 timely payment to the subcontractor, sub consultant, or supplier.

457 **5. Industry Specific Remedial Programs.-** The Board hereby directs the
458 Superintendent to develop and implement remedial programs for the purpose of
459 eliminating the disparities in M/WBE contract participation in District contracts
460 caused by discrimination. The following array of industry-specific programs are to
461 be established and implemented in a narrowly tailored manner consistent with the
462 factual predicate and consistent with the terms of this Policy:

463 **a. Construction Programs**

464 i. A Small Business Enterprise Program permitting the use of set asides of
465 small prime contracts that are below competitive bidding dollar thresholds
466 for bidding exclusively among certified SBE firms, and also establishing
467 mandatory subcontracting goals for the participation of certified SBE
468 subcontractors on those construction contracts that are above the
469 competitive bidding threshold and that have commercially useful
470 subcontract opportunities.

471 ii. An Internal Matchmaking Program for SBE and M/WBE construction
472 contractors wherein the Program Management Department shall review
473 bids for viable opportunities for SBE and M/WBE participation and then
474 inform SBE and M/WBE firms of those specific opportunities that they are
475 likely to be interested in. The District shall establish mechanisms to
476 ensure timely notification of SBEs and M/WBEs of such opportunities and
477 shall also establish an open door policy to permit SBE and M/WBEs to
478 dialogue with and market themselves directly to appropriate District
479 construction personnel.

480 iii. An External Matchmaking Program for SBE and M/WBE construction
481 contractors wherein ODBP shall sponsor matchmaking sessions between
482 prime contractors and SBE and M/WBE subcontractors to occur
483 simultaneously with public release of contract forecasts to provide the
484 maximum opportunity for SBE and M/WBE collaboration with non-minority
485 firms. The Program Management Department and its construction
486 managers should be actively involved in the process.

487 iv. A Minority Business Enterprise Program establishing bid preferences on
488 certain construction contracts on behalf of certified M/WBE African

489 American-owned construction firms including the use of contract-specific
490 subcontracting goals on selected contracts with genuine opportunities for
491 commercially useful subcontracting as described herein under Section 8
492 of this Policy.

493 **b. Non-professional Services Programs**

494 i. A Small Business Enterprise Program permitting the use of set asides of
495 small prime contracts that are below competitive bidding dollar thresholds
496 for bidding exclusively among certified SBE firms, and also establishing
497 mandatory subcontracting goals for the participation of certified SBE
498 subcontractors on those non-professional services contracts that are
499 above the competitive bidding threshold and that have commercially
500 useful subcontract opportunities.

501 ii. An Internal Matchmaking Program for SBE and M/WBE non-professional
502 services firms wherein the Purchasing Department shall review bids for
503 viable opportunities for SBE and M/WBE participation and then inform
504 SBE and M/WBE firms of those specific opportunities that they are likely
505 to be interested in. The District shall establish mechanisms to ensure
506 timely notification of SBEs and M/WBEs of such opportunities and shall
507 also establish an open door policy to permit SBE and M/WBEs to
508 dialogue with and market themselves directly to appropriate District
509 procurement personnel.

510 iii. An External Matchmaking Program for SBE and M/WBE non-professional
511 services firms wherein the ODBP shall sponsor matchmaking sessions
512 between prime contractors and SBE and M/WBE subcontractors and joint
513 venture partners to occur simultaneously with public release of contract
514 forecasts to provide the maximum opportunity for SBE and M/WBE
515 collaboration with non-minority firms. The Purchasing Department
516 purchasing agents and managers should be actively involved in the
517 process.

518 iv. A Minority / Women Business Enterprise Program permitting the use of
519 set asides of small prime contracts that are below competitive bidding
520 dollar thresholds for bidding exclusively among certified M/WBE firms that
521 are owned by Hispanic Americans, and also establishing contract-specific
522 subcontracting goals for the participation of certified M/WBE
523 subcontractors on those non-professional services contracts that are
524 above the competitive bidding threshold and that have commercially
525 useful subcontract opportunities.

526 **c. Professional Services Programs**

527 i. A Small Business Enterprise Program to establish bid preferences, joint

528 venture incentives, and evaluation preferences on behalf of certified SBE
529 firms as described hereunder in Section 8 of this Policy.

530 ii. An Internal Matchmaking Program for SBE and M/WBE professional
531 services firms wherein the Program Management Department and the
532 Purchasing Department shall review bids for viable opportunities for SBE
533 and M/WBE participation and then inform SBE and M/WBE firms of those
534 specific opportunities that they are likely to be interested in. The District
535 shall establish mechanisms to ensure timely notification of SBEs and
536 M/WBEs of such opportunities and shall also establish an open door
537 policy to permit SBE and M/WBEs to dialogue with and market
538 themselves directly to appropriate District engineering, architectural
539 design, and procurement personnel.

540 iii. An External Matchmaking Program for SBE and M/WBE professional
541 services firms wherein the ODBP shall sponsor matchmaking sessions
542 between prime contractors and SBE and M/WBE subcontractors and joint
543 venture partners to occur simultaneously with public release of contract
544 forecasts to provide the maximum opportunity for SBE and M/WBE
545 collaboration with non-minority firms. The Purchasing Department
546 purchasing agents and managers should be actively involved in the
547 process.

548 iv. A Minority / Women Business Enterprise Program permitting the use of
549 bid preferences, joint venture incentives, and evaluation preferences
550 among certified M/WBE firms that are owned by African Americans,
551 Hispanic Americans, Native Americans, and Women and also
552 establishing contract-specific subcontracting goals for the participation of
553 certified M/WBE subcontractors on those professional services contracts
554 that are above the competitive bidding threshold and that have
555 commercially useful subcontract opportunities.

556 **d. General Procurement Programs**

557 i. A Small Business Enterprise Program permitting the use of set asides of
558 small prime contracts that are below the competitive bidding dollar
559 thresholds for bidding exclusively among certified SBE firms, and also
560 establishing mandatory subcontracting goals for the participation of
561 certified SBE subcontractors on those general procurement contracts that
562 are above the competitive bidding threshold and that have commercially
563 useful subcontract opportunities as described hereunder in Section 8 of
564 this Policy.

565 ii. An Internal Matchmaking Program for SBE and M/WBE general
566 procurement firms wherein the Purchasing Department shall review bids

567 for viable opportunities for SBE and M/WBE participation and then inform
568 SBE and M/WBE firms of those specific opportunities that they are likely
569 to be interested in. The District shall establish mechanisms to ensure
570 timely notification of SBEs and M/WBEs of such opportunities and shall
571 also establish an open door policy to permit SBE and M/WBEs to
572 dialogue with and market themselves directly to appropriate District
573 procurement personnel.

574 iii. An External Matchmaking Program for SBE and M/WBE general
575 procurement firms wherein the ODBP shall sponsor matchmaking
576 sessions between prime contractors and SBE and M/WBE subcontractors
577 and joint venture partners to occur simultaneously with public release of
578 contract forecasts to provide the maximum opportunity for SBE and
579 M/WBE collaboration with non-minority firms. The Purchasing Department
580 purchasing agents and managers should be actively involved in the
581 process.

582 iv. A Minority / Women Business Enterprise Program permitting the use of
583 set asides of small prime contracts that are below competitive bidding
584 dollar thresholds for bidding exclusively among certified M/WBE firms that
585 are owned by Asian Americans and Native Americans, and also
586 establishing contract-specific subcontracting goals for the participation of
587 certified M/WBE subcontractors on those general procurement contracts
588 that are above the competitive bidding threshold and that have
589 commercially useful subcontract opportunities.

590 6. **Administration.-** The Board hereby directs the Superintendent to adopt
591 procedures to ensure that the ODBP will periodically conduct the following kinds of
592 analyses using data captured by an automated mandatory centralized bidder
593 registration system as described in this policy:

594 a. **Availability Analysis**

595 i. Overall Availability.-- The measure of overall availability is based on all
596 the vendors and contractors that register in the automated and mandatory
597 centralized bidder registration system. Such availability measurements
598 shall be segmented according to the proportion of business ownership by
599 race, gender, and size within certain NIGP or North American Industrial
600 Classification System (NAICS) or comparable industry codes.

601 ii. SBE Availability.- The proportion of overall availability of the ready,
602 willing, and able (RWA) vendors that are certified as Small Business
603 Enterprise (SBE) firms within the SBE program, categorized by industry
604 codes and relevant markets.

605 iii. M/WBE Availability.-- The proportion of overall availability of the ready,

606 willing, and able (RWA) vendors that are certified within the M/WBE
607 program, categorized by race, gender, industry codes, and relevant
608 market.

609 iv. Race-Neutral SBE Contract Goals.-- Availability analysis shall be used to
610 set contract participation goals on an annual basis and on a contract-
611 specific basis.. The contract participation goals shall be set based on the
612 relevant measures of SBE availability as compared to all RWA vendors
613 within the specific industry code of the contract in the relevant market.

614 v. M/WBE Contract Goals.- Availability analysis shall be used whenever
615 setting contract participation goals on an annual basis or on a contract-
616 specific basis. The contract participation goals shall be set based on the
617 relevant measures of M/WBE availability as compared to all RWA
618 vendors within the specific industry code of the contract in the relevant
619 market. In setting such goals, the Superintendent shall consider adoption
620 of procedures based upon DJMA's recommendations for Algorithm Target
621 Methodology (ATM) or Benchmarking (see pages IX-20 through IX-24 of
622 the DJMA Study).

623 b. **Utilization Analysis.**-- The utilization analysis shall be based on the total
624 dollar amount paid in a given period, such as a year, to the vendors and
625 contractors that were registered in the automated and mandatory centralized
626 bidder registration system This analysis reflects the proportion of contract
627 dollars that are spent, by industry code, and within SBE or M/WBE vendor
628 categories, as compared to the total contract dollars spent with the overall
629 vendor population within those industries.

630 c. **Disparity Analysis**

631 i. This disparity analysis shall be based on the 80% statistical significance
632 rule adopted under *Croson v. Richmond*, which is defined as two
633 standard deviations between utilization and availability. Utilization of RWA
634 M/WBE firms that is 80% or less of the level of availability of M/WBE firms
635 in a particular market is considered statistically significant under-
636 utilization. Utilization of that is above 100% of the level of availability is
637 considered over-utilization.

638 ii. Statistically significant underutilization creates an inference of
639 discrimination, and in combination with other factors, permits
640 consideration of the use of narrowly tailored race- and gender-conscious
641 remedies to ameliorate the effects of such discrimination.

642 d. **Remedy Analysis**

643 i. If disparity is shown in the disparity analysis above, the District shall

644 review the findings and recommendations from the DJMA Study (or from
645 the District's most recent independent disparity study) to determine the
646 most appropriate and effective remedies to apply to a given set of
647 contracts to eliminate barriers and overcome the effects of various forms
648 of discrimination identified through the DJMA Study or any subsequent
649 studies.

650 ii. In selecting a remedial approach for any given contract, the District shall
651 seek to identify the remedy that is most likely to be effective in promoting
652 fair and equitable contract participation by all segments of the relevant
653 vendor population, yet does not impose any undue burden on innocent
654 third parties.

655 **e. Periodic Review of Factual Predicate**

656 i. At least once every four years, the ODBP shall contract with an
657 independent disparity study consultant to conduct an updated review of
658 the factual predicate for the District's M/WBE programs, and to determine
659 whether there is any ongoing need for the use of race- and gender-
660 conscious remedies.

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

664 iii. Each successive disparity study update shall make specific findings and
665 recommendations regarding the ongoing need for race- and gender-
666 neutral and race- and gender-conscious remedies for certain categories
667 of contracts. Study recommendations should also suggest appropriate
668 modifications to existing District procurement procedures, SBE programs,
669 and M/WBE programs to promote fair and equitable participation in
670 School District contracting opportunities in the most effective (yet least
671 restrictive and least burdensome) manner.

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

676 **7. Goal Setting Committee.**-- The goals mentioned in Section 6 will be established
677 by a Goal Setting Committee under the auspices of ODBP, and shall be composed
678 of professional and senior-level representation from the following departments:

679 a. Department of Purchasing;

680 b. Diversity in Business Practices;

- 681 c. Chief Operating Officer;
- 682 d. Superintendent's Designee; and
- 683 e. The Department responsible for letting the contract.

684 **8. Remedial Options to Encourage Fair and Equitable Contract Participation**

685 a. **Bid Preferences.**-- Specific goals for each project or contract may be
686 adopted on a project-by-project, or contract-by-contract basis, wherein the
687 contract award shall be made to the lowest responsive, responsible bidder
688 meeting the SBE or M/WBE subcontracting goals for the contract/project,
689 when that bidder's price does not exceed the lowest bidder's price by an
690 amount greater than the dollar or percentage amount set by the Goal Setting
691 Committee.

692 b. **Professional Services Evaluation Preferences**

693 i. In the selection process for the award of certain professional services
694 contracts, the District may include as one of its evaluation criteria the
695 level of SBE or M/WBE participation on the team or in subcontract
696 participation. Under this remedial approach, the maximum number of
697 evaluation points is available to an SBE or M/WBE proposer.

698 ii. A summary of any applicable SBE or M/WBE Program procedures shall
699 be plainly stated in each solicitation. For competitive professional services
700 contracts, a point system of evaluation will be used by an evaluation
701 committee to determine the recipient of the contract award
702 recommendation. Businesses submitting proposals to provide
703 professional services to the District will be eligible to receive, on a sliding
704 scale, a designated number of the total possible points based upon their
705 SBE or M/WBE participation. The distribution of points allocated to the
706 evaluation criteria shall be stated in the request for proposal. SBE or
707 M/WBE participation shall be but one of several criteria used to evaluate
708 each proposal. Maximum points shall be awarded when the proposer is a
709 certified SBE or M/WBE. The provisions within this section pertaining to
710 the procurement of professional services are not intended to be used to
711 the exclusion of other provisions of this policy.

712 c. **Internal Matchmaking.**-- ODBP, in conjunction with the Purchasing
713 Department and the Program Management Department, shall review bids for
714 viable opportunities for M/WBE participation and then inform M/WBEs of those
715 specific opportunities that they are likely to be interested in. The District shall
716 establish mechanisms to ensure timely notification of M/WBEs of such
717 opportunities and shall also establish an open door policy to permit M/WBEs to
718 dialogue with and market themselves directly to appropriate District

719 procurement personnel.

720 d. **External Matchmaking.**-- ODBP shall facilitate non-M/WBE firms and
721 M/WBEs coming together on specific School District projects where
722 opportunities are available for cooperative efforts. Such matchmaking
723 sessions should occur simultaneously with public release of contract forecasts
724 to provide the maximum opportunity for M/WBE collaboration with non-minority
725 firms. On construction projects, the Program Management Department and its
726 construction managers should be actively involved in the process.

727 **9. Contract Solicitation and Award**

728 a. **ODBP Review.**-- The ODBP shall preview all solicitations for construction,
729 procurement, and professional services prior to public dissemination, for
730 compliance with the objectives stated in this policy, and to ensure that bid
731 specifications do not unnecessarily restrict the ability of SBE and M/WBE firms
732 to compete and bid. All District award recommendations shall bear the review
733 signature of the Director of the ODBP.

734 b. **Disqualification/Rejection.**-- The School District and School Board reserve the
735 right to reject any proposals from bidders who have previously failed to
736 perform properly and who have done so by commission or omission of an act
737 of such serious and compelling nature that the act indicates a serious lack of
738 business integrity or honesty.

739 c. **Contract Compliance Requirements.**-- As the Superintendent's designee, the
740 ODBP will establish procedures for monitoring and evaluating program
741 performance and compliance.

742 d. The School District and School Board reserve the right to reject any proposal
743 deemed non-responsive for failing to meet the Diversity requirements.

744 e. A firm's failure to comply with the contract may result in the drafting of a
745 recommendation for suspension or debarment of the firms or individuals
746 involved. Suspension or debarment of vendors by the School Board for activity
747 contrary to this program will be carried out in accordance with Policy 6.14.

748 **10. Waivers**

749 a. **Pre-Award Waiver.**-- At any time prior to the award of a contract for a
750 purchase of goods and supplies, the Superintendent or designee may grant a
751 partial or complete waiver of diversity requirements for reasons such as: cases
752 of emergency procurement; situations where a non-M/WBE is the sole source
753 of the needed goods or services and there are no apparent commercially
754 useful functions available to be performed by Ready, Willing, and Able SBE or
755 M/WBE subcontractors; or good faith efforts to meet the contract diversity goal

756 have proven unsuccessful. The Department making an emergency
757 procurement shall consider the availability of SBE or M/WBEs from which to
758 make such purchases. The Director of Purchasing shall make available a
759 report of procurement activities, including at a minimum project name, project
760 number, project description, awarded vendor, advertisement date, waivers of
761 diversity requirements (and reasons for the waiver), and estimated dollar value
762 to include change orders.

763 b. Performance and Payment Bonds.-- The Director of Purchasing and the
764 Director of the ODBP, as the Superintendent's designees, in accordance with
765 provisions of Fla. Stat. § 255.05 shall have the authority to waive the
766 requirements for performance and payment bonds for projects having a dollar
767 value to \$200,000 or less. The determination of this exemption shall be made
768 on a contract-by-contract or project-by-project basis. In the event such
769 exemption is granted, the Board or the District and its officers or officials shall
770 not be personally liable to persons suffering loss because of granting such
771 exemption.

772 11. **Program Administration.**-- The Superintendent of Schools has the overall
773 responsibility for establishing procedures and administering the Diversity Program.
774 The ODBP shall report directly to the Chief Operating Officer. The ODBP shall be
775 responsible for developing, managing, and implementing the Diversity program on
776 a day-to-day basis.

777 12. **District Implementation.**-- The School District shall take all necessary steps
778 permissible under law to ensure that M/WBEs are afforded the maximum equitable
779 opportunity to participate in the District's procurement processes. The ODBP will
780 utilize internal and external monitoring and reporting as the methods of evaluation.

781 13. **Reporting.**-- The ODBP will provide the following reports:

782 a. Reports and recommendations to the Board on at least an annual basis
783 regarding suggestions for policy changes consistent with these guidelines.
784 This report shall be generated within 90 days subsequent to the Division of
785 Financial Management's completing the fiscal close out of the School District
786 records.

787 b. A program evaluation analysis will be submitted to the Board every four years
788 to assess the success of diversity in the District's procurement process and
789 whether disparity continues to exist in individual industry codes.

790 c. A disparity study update report prepared by an independent consultant, and as
791 described in Section (6)(e) of this Policy, will be submitted to the Board every
792 four years.

793 14. **Graduation from the SBE and M/WBE Programs.**-- Participation in the SBE or

794 M/WBE program will be dependent upon the firm's need for the preferences
795 extended under this Policy. Data should be maintained to determine which firms
796 have overcome size barriers and barriers related to the effects of discrimination
797 sufficiently to join the competitive mainstream in their respective industries. Firms
798 that exceed the District's SBE and M/WBE size standards or which are otherwise
799 graduated from the SBA or M/WBE programs shall remain eligible for certification,
800 technical assistance, and other forms of assistance not related to bid preferences
801 or evaluation preferences. Moreover, .the utilization of graduated M/WBE firms
802 shall continue to be tracked and counted towards attainment of the District's Annual
803 M/WBE participation goals. However, these firms may not participate in any of the
804 race- or gender-conscious preferences of this Policy.

805 **15. Implementation by the Superintendent.**-- Wherever this Policy mentions
806 procedures to be established or implemented by the Superintendent, certain
807 internal operational procedures and guidelines may be set forth in Bulletins where
808 appropriate. Other more formal procedures, when sufficiently developed and
809 solidified, should be recommended to the Board, where appropriate, for adoption
810 as Policy; thus, the District's [M/WBE and SBE Procedures Manual](#), dated July
811 2006, is hereby incorporated by reference as if fully set forth herein and is available
812 on the Board Policies web site.

813 **16. Policy Review.**-- As required by Fla. Stat. \tilde{A} ,§ 120.74(1), the Board shall review
814 and revise this Policy as often as necessary to ensure that it complies with legal
815 requirements, such as applicable current standards of binding decisions of the
816 Eleventh Circuit Court of Appeals and the United States Supreme Court. Moreover,
817 at least every fourth year, the Board will review the successes and failures of the
818 M/WBE program and make a determination as to the need for a continuing M/WBE
819 program.

820 **17. Severability.**-- If any section, paragraph, sentence, clause, phrase or word of this
821 Policy is for any reason held by a Court to be unconstitutional, inoperative, or void,
822 it is intended that to the maximum extent practicable such holding shall not affect
823 the remainder of this Policy.

824 STATUTORY AUTHORITY: Fla. Stat. §§ 1001.41(2); 1001.42(22); 1001.43(2)(a), (6)
825 LAWS IMPLEMENTED: Fla. Stat. §§ 287.055(3)(d); 287.093; 287.0931; 287.094;
826 287.0943; 287.09451; 287.09431; 288.703; 288.7031; 1001.41(1), (3); 1001.42(10)(i);
827 1001.43(2)(a); 1013.45(4); 1013.46(1)(c)
828 HISTORY: 5/11/05; 7/26/2006; __/___2011

Legal Signoff:

The Legal Department has reviewed proposed Policy 6.143 and finds it legally sufficient for development by the Board.

Attorney

Date