



POLICY 6.143

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

[Contact: Dr. Otelia DuBose, PX 48508.]

Development

CONSENT ITEM

- This policy is being revised to conform to current practices.
- Definitions have been updated to include: algorithm target methodology; electronic acknowledgement; annual, contract and project goals; M/WBE data base; M/WBE participation requirement; narrowly tailored; non-professional services; reciprocal certification application and standard governmental codes.
- The section regarding the procurement process has been revised to include the centralized bidder system. The bid preferences section clarifies when bid preferences may be used. Penalties for lack of M/WBE participation has been added.

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 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 strong
76 and compelling evidence for the relevant time period including, but not
77 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 automated
173 ~~centralized bidder~~ registration system, and adjusting the implementation
174 of policy accordingly to account for changing needs and circumstances
175 and to 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. Algorithm Target (ATM) Methodology. – The ATM formula, developed
180 exclusively by DJMA, allows entities to develop goals based on both market
181 conditions (availability) and actual levels of participation by the School District
182 (utilization). The ATM formula also allows the School District to forecast the
183 necessary MWBE participation levels to achieve the desired outcome,
184 correcting for stated disparity, by an established date. This methodology has
185 been designed to assist the School District to determine its goals through a
186 realistic and statistically valid model.
- 187 c. Availability. -- The percentage of ready, willing and able business firms that

- 188 are minority- and/or women-owned and seek to provide goods and services to
189 the School District.
- 190 d. Award Amount. -- The award amount is the dollar value of the contract when
191 awarded.
- 192 e. Board.- The School Board of Palm Beach County, which is the legal entity with
193 authority to enter contracts on behalf of the District school system under Fla.
194 Stat. § 1001.41(4).
- 195 f. Business. -- Any for-profit corporation, partnership, sole proprietorship, joint
196 stock company, joint venture, or any other private legal entity.
- 197 g. Certification. -- The process by which the ODBP determines that a business
198 meets the criteria for classification as a small, minority, or woman business
199 enterprise.
- 200 h. Compliance. -- The level of performance at which the School District and the
201 Prime Contractor utilizes vendors in meeting diversity objectives.
- 202 i. Construction.-- The process, usually requiring the professional services of an
203 architect and/or engineer, of building, altering, repairing, improving, or
204 demolishing any structure or building, or other improvements of any kind to
205 any real property as determined by the Director of Purchasing.
- 206 j. Contract. -- (1) A written agreement between two or more competent parties to
207 perform or not perform a specific act or acts; and (2) any type of agreement
208 regardless of what it is called for the procurement or disposal of supplies,
209 services, or construction.
- 210 k. Contractor. -- A separate and distinguishable business entity participating or
211 seeking to participate in the performance of a contract.
- 212 l. Controlled.-- For the purpose of determining whether a business is a minority
213 or women business enterprise, "controlled by" shall mean that the minority/ies,
214 the woman, or combination of minorities and women, as the context requires,
215 shall (1) possess legal authority and power to manage business assets, good
216 will and daily operations of the business; and (2) actively and continuously
217 exercise such authority and power in determining the policies and directing the
218 operations of the business, knowledge and technical expertise in the business
219 endeavor, licensed to perform the business or trade, and the lack of external
220 influence over the day-to-day operations or decision-making process by any
221 entity (with the exception of franchise operations).
- 222 m. Debarment. -- The exclusion of a vendor or contractor, for cause, from bidding
223 and/or doing business with the School Board.

- 224 n. Disability. -- A physical or mental impairment that substantially limits one or
225 more of an individual's major life activities.
- 226 o. Discriminate. -- To treat an individual or group differently solely on the basis of
227 race, religion, color, sex, national origin, age, handicap, ancestry or disabled
228 veteran status.
- 229 p. District. -- The School District of Palm Beach County, its individual and
230 collective departments, managers, staff and facilities.
- 231 q. Diversity Directory.-- A compilation of certified SBEs and M/WBEs, which is
232 retained and published by the ODBP and made available to contractor(s) or
233 vendor(s) for use in identifying subcontractors, material suppliers, online, etc.
- 234 r. DOE.-- Department of Education, an executive-branch department of the State
235 of Florida, which is tasked with recommending education-related policy to the
236 Governor, State Board of Education, and state Legislature, and oversees local
237 school districts' adherence to state requirements.
- 238 s. DOE or State Board of Education Rules.-- Legislatively-mandated policies as
239 established by the Department of Education or State Board of Education for
240 governmental and operational facilities for personnel and administration,
241 including State Board of Education Rule 6A-1.012, "Purchasing Policies."
- 242 t. Electronic Acknowledgement. – Validating an individual, agency or corporation
243 authorized as the rightful owner who recognizes and acknowledges that the
244 statements contained in the District's M/WBE and/or SBE APPLICATIONS are
245 being given and that any material misrepresentation will be grounds for denial
246 of certification or re-certification and may result in not awarding or terminating
247 contracts which may be awarded as the result of information contained in the
248 District's M/WBE and/or SBE APPLICATION. This validation applies to all
249 forms submitted and received by the Office of Diversity in Business Practices
250 in lieu of notarized signatures and stamp.
- 251 u. Front.-- A business which purports to be a M/WBE for purposes of obtaining
252 District contracts, but which is actually owned, controlled, and/or operated in a
253 manner that is inconsistent with the performance of a commercially useful
254 function and that does not comply with the District's requirements for M/WBE
255 certification.
- 256 v. Goals.-- The annual or contract-specific goals for contract participation that
257 express the anticipated level or proportion of contract dollars in a given time
258 frame that would be expected to be received by a particular segment of the
259 total population of Ready, Willing, and Able (RWA) firms. RWA firms are
260 defined as those firms that are ready and able to sell goods or services that
261 the School District buys, and that have registered their interest in doing

262 ~~business with the School District.~~ Such goals are based upon availability
263 analysis derived from a database established through the implementation of a
264 mandatory and automated ~~centralized bidder registration~~ system. Upon
265 completion of availability analysis, such goals for contract participation may,
266 under certain circumstances, be set and narrowly tailored by race, gender, and
267 industry codes. Annual goals are intended as an administrative guide only to
268 assist the District in its annual policy review to determine whether the use of
269 more aggressive or less aggressive remedies are warranted in the future.
270 Annual goals shall not be routinely applied to specific contracts absent
271 independent availability analysis that demonstrates they are appropriate for
272 application to a specific contract.

273 w. ~~Goals (Annual Diversity Goals). -- A percentage of total contract dollar volume,~~
274 ~~on an annual basis, for the participation of minority and women-owned~~
275 ~~businesses in the District's procurement, professional services and~~
276 ~~construction contracts. Goals are based upon availability analysis derived~~
277 ~~from a database established through the implementation of a mandatory and~~
278 ~~automated centralized M/WBE and SBE Database. Upon completion of~~
279 ~~availability analysis, such goals for participation may, under certain~~
280 ~~circumstances, be set and narrowly tailored by race, gender, and industry~~
281 ~~codes.~~

282 i. Annual Goals - A percentage of the applicable contract dollar volume, on
283 an annual basis, for the participation of minority and women-owned
284 businesses in the District's procurement, professional services, non-
285 professional services and construction contracts. Annual goals are
286 intended as an administrative guide only to assist the District in its annual
287 policy review to determine whether the use of more aggressive or less
288 aggressive remedies are warranted in the future. Annual goals shall not
289 be routinely applied to specific contracts or projects absent independent
290 availability analysis that demonstrates they are appropriate for application
291 to a specific contract or project.

292 ii. Contract Goals - Contract-specific goals expressed as percentages of the
293 applicable contract dollar volume that are anticipated by the District for
294 subcontract participation by SBE firms or M/WBE firms based upon
295 relative availability in the relevant industry. These goals are specific for
296 contract participation that express the anticipated level or proportion of
297 contract dollars in a given time frame that would be expected to be
298 received by a particular segment of the total population.

299 iii. Project Goals - Some contracts are for goods and/or services spanning
300 multiple projects. Project-specific goals expressed as percentages of the
301 applicable project dollar volume that are anticipated by the District for
302 subcontract participation by SBE firms or M/WBE firms based upon

303 relative availability in the relevant industry. These goals are specific for
304 project participation that express the anticipated level or proportion of
305 project dollars in a given time frame that would be expected to be
306 received by a particular segment of the total population of Ready, Willing,
307 and Able (RWA) firms.

308 x. Industry Categories. -- Construction, professional services, non-professional
309 services, commodity procurement, manufacturing, wholesale, and retail. ;

310 y. Joint Venture.-- An association of two or more persons or businesses to carry
311 out a single business enterprise for profit for which purpose they combine their
312 property, capital, efforts, skills and knowledge. Joint ventures must be
313 established by written agreement.

314 z. Minority.- a "minority" or "minority person" means a lawful, permanent resident
315 of Florida who is:

316 i. an "African American," a person having origins in any of the racial groups
317 of the African Diaspora;

318 ii. a "Hispanic American," a person of Spanish or Portuguese culture with
319 origins in Mexico, Central or South America, or the Caribbean, regardless
320 of race;

321 iii. an "Asian American," a person having origins in any of the original
322 peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the
323 Pacific Islands, including the Hawaiian Islands prior to 1778;

324 iv. a "Native American," a person who is a member of or is eligible to be a
325 member of a federally recognized Indian tribe. A "federally recognized
326 Indian tribe" means an Indian tribe, band, nation, rancheria, pueblo,
327 colony, or other organized group or community, including any Alaska
328 native village, which recognized by the Secretary of the Interior on
329 October 1, 1985, as having special rights and is recognized as eligible for
330 the services provided by the United States to Indians because of their
331 status as Indians, and any tribe that has a pending application for federal
332 recognition on October 1, 1985, as having special rights and is
333 recognized as eligible for the services provided by the United Sates to
334 Indians because of their status as Indians, and any tribe that has a
335 pending application for federal recognition on October 1, 1985; or

336 v. an American woman.

337 aa. M/WBE.-- A minority-owned business enterprise or a women-owned business
338 enterprise or a designated combination of minority- and woman-owned
339 business enterprise in a specified industry that:

- 340 i. with the exception of manufacturing and wholesaling firms, employs 200
341 or fewer permanent full-time employees (Reference the District's SBE
342 and M/WBE Procedures Manual dated July 2006, for the M/WBE
343 Revenue or Sales Size Standards (4)(c)(i)(ii)&(iii). ~~and that, together with~~
344 ~~its affiliates, has a net worth of not more than five million dollars (\$5~~
345 ~~million) or any firm based in this state which~~
- 346 ii. has a Small Business Administration 8(a) certification and is located in
347 the State of Florida. ~~(and as applicable to sole proprietorships, the \$5~~
348 ~~million net worth requirement shall include both personal and business~~
349 ~~investments); and~~
- 350 iii. has at least 51% minority ownership, daily management, and control of
351 the business; and
- 352 iv. is domiciled in the Palm Beach County, Miami-Dade County, or Ft.
353 Lauderdale metropolitan statistical areas (MSA), or is domiciled in the
354 State of Florida and can demonstrate that it routinely bids on and/or
355 performs contracts in Palm Beach County; and
- 356 v. is lawfully organized to engage in commercial transactions.

357 However, ownership by a minority person does not include ownership resulting
358 from a transfer from a non-minority person to a minority person within a related
359 immediate family group if the combined total net asset value of all members of
360 such family group exceeds one million dollars (\$1 million). For purposes of this
361 definition, the term "related immediate family group" means one or more
362 children under ~~sixteen (16)~~ eighteen (18) years of age and a parent of such
363 children or the spouse of such parent residing in the same house or living unit.
364 The Superintendent shall implement procedures for periodic re-certification
365 and graduation of M/WBEs from M/WBE program eligibility.

- 366 bb. M/WBE Data Base. – A data base built inside PeopleSoft to integrate the
367 information relating to vendors, payments, SBE and M/WBE information for
368 the purpose of tracking all aspects of the SBE and M/WBE program.
- 369 cc. M/WBE Participation Requirement. – The School District of Palm Beach
370 County is committed to affirmatively ensuring the award of construction service
371 contracts to the School District of Palm Beach County certified MBE African
372 American owned firms. In accordance with this Policy, Minority/Women
373 Business Enterprises Program requires that all projects must have MBE
374 African American participation goals and that firms awarded work on such
375 projects fully participate in the M/WBE program.
- 376 dd. Narrowly Tailored. – A race-conscious governmental program must be
377 narrowly tailored to further a compelling governmental interest. In general,

378 “narrowly tailored” will seek to remedy the discrimination identified in the
379 factual predicate for its program. The Supreme Court has identified six factors
380 for judging whether a program is sufficiently narrowly tailored.

381 ee. Non-Professional Services – Services that are not professional. Such
382 services include but are not limited to rubbish removal, janitorial services, lawn
383 mowing and lawn care, non-exclusive maintenance of equipment, such as
384 maintenance of fire extinguishers, alarms, and elevators, and other type
385 contracts that do not involve a licensed professional.

386 ff. Owned.-- For the purposes of determining whether a business is a minority or
387 woman business enterprise, ~~shall mean that the minority/ies or woman(en),~~
388 owned and operated as the context requires, shall possess an ownership
389 interest of a minimum of 51%.

390 gg. Prime Contractor. -- Any person or business entity that has a contract with the
391 School Board to provide specific construction services, sales, supplies,
392 materials, professional services, labor and/or equipment.

393 hh. Procurement. -- Buying, purchasing, renting, leasing or otherwise acquiring
394 any goods and/or services for public purposes in accordance with the law,
395 rules, regulations and procedures intended to provide for the economic
396 expenditure of public funds. For the purpose of this Policy, procurement refers
397 to those goods and/or services, except professional services, solicited by the
398 Purchasing Department pursuant to Department of Education requirements
399 and Policy 6.14.

400 ii. Professional Services.-- Any narrow discipline wherein a known practitioner
401 has through education and experience developed expert advisory and
402 programming skills as a vocation; any service performed primarily by
403 vocational personnel which requires the analysis or certification of a
404 professional before the services are acceptable to the user of the service; or
405 any other advisory study, or programming activity where the School District's
406 Director of Purchasing determines that the level of skills and/or creativity of the
407 potential or known practitioner(s) warrant utilizing a request for proposals,
408 request for information, or similar solicitation process other than the
409 competitive bid or quotation process.

410 jj. Project Goals.-- Contract-specific goals expressed as percentages of the total
411 contract dollar volume that are anticipated by the District for subcontract
412 participation by Small Business Enterprise firms or M/WBE firms based upon
413 relative availability in the relevant industry.

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

- 417 ll. Reciprocal Certification Application. – Accepted by Inter-local agreements only
418 with other certifying agencies, municipalities, and governmental entities.
- 419 mm. Relevant Market Place. -- The geographical area in which the majority of the
420 School District's suppliers, vendors, and / or contractors are located.
- 421 nn. Small Business Enterprise (SBE) - Any business firm that is certified by the
422 District as having average annual gross sales and an average number of full-
423 time employees over the last three years that are less than fifty percent (50%)
424 of the small business size standards as most recently defined by the U. S.
425 Small Business Administration for the business firm's relevant industry. In
426 addition, to be eligible as an SBE for bidding purposes, a business firm must
427 have received less than one million dollars (\$1 million) in contract payments
428 from District projects or contracts in the fiscal year preceding the bid, The
429 Superintendent shall establish procedures for periodic re-certification and
430 graduation of SBE firms from SBE program eligibility. (Reference the District's
431 SBE and M/WBE Procedures Manual dated July 2006, for the SBE Revenue
432 or Sales Size Standards (5) (f) (i) (ii) & (iii).
- 433 oo. Standard Governmental Codes --Standards used to classify business
434 enterprises by industry codes.
- 435 pp. Subcontractor.-- Any person providing goods and/or services to a prime
436 contractor for profit, if such goods and/or services are procured or used in
437 fulfillment of the prime contractor's obligations arising from a contract with the
438 School District of Palm Beach County.
- 439 qq. Underutilization. -- A level of contract participation by a group of businesses
440 (e.g., M/WBEs) that is at least two standard deviations below their relative
441 availability in a given an industry code.
- 442 rr. WBE. -- Woman-owned, controlled, and operated business enterprises (which
443 have at least 51% female ownership, management, and control of the
444 business).
- 445 ~~ss. Centralized Bidder Registration System. -- A computer based management~~
446 ~~information system designed to manage the contract compliance process. It is~~
447 ~~a software solution designed to develop and monitor narrowly tailored MAWBE~~
448 ~~programs by integrating with existing School District financial and contract~~
449 ~~systems for the purpose of tracking all aspects of the contract sequence~~
450 ~~process: vendor information, contract information, solicitation/award~~
451 ~~information, invoice, and payment information.~~
- 452 tt. NIGP (National Institute of Governmental Purchasing). -- Standards used to
453 classify business enterprises by industry codes.

454 uu. ~~Preferential Programs.-- The preference extended for diversity participation in~~
455 ~~the ranking of responsive bidders and the bid preference procedures under~~
456 ~~this Policy. It also means the maximum point allocation for professional service~~
457 ~~contract award evaluations.~~

458 vv. ~~Proposal.-- An executed formal document submitted by an offeror to the~~
459 ~~purchasing agent stating the goods and/or services offered to satisfy the need~~
460 ~~as requested in the Request for Proposal or Request for Information.~~

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

464 a. ~~Establishment of a Procurement Policy Work Group~~ Business Diversity
465 Committee to examine and propose modifications to the District's procurement
466 processes and practices, including a thorough review of policies and practices
467 affecting small dollar purchases, the use of blanket purchase orders, contract-
468 bundling, the merits of centralized vs. de-centralized purchasing and its effects
469 on M/WBE utilization, the uniformity (or lack thereof) in the standards applied
470 in the development of contract specifications, the utilization of construction
471 managers at risk, and any other policies and practices that may adversely
472 affect the utilization of small, minority, and women-owned firms on District
473 contracts.

474 b. Establishment of a Commercial Non-Discrimination Policy, to be proposed for
475 Board approval, which provides: (a) a clear policy statement against
476 discrimination in business on the basis of race, gender, religion, national
477 origin, ethnicity, age, or disability; (b) a prohibition against the District entering
478 into contracts with business firms that discriminate in the solicitation, selection,
479 or treatment of vendors, suppliers, subcontractors, or commercial customers;
480 (c) a formal complaint process and investigation process for alleged violations
481 of this policy; and (d) due process for hearing evidence, rendering findings,
482 and imposing sanctions against business firms and District employees that
483 violate this Policy, in coordination with any applicable collective bargaining
484 procedures.

485 c. ~~Establishment of an automated and mandatory Centralized Bidder~~
486 ~~Registration system for all firms that are interested in selling goods or services~~
487 ~~to the District. This Centralized Bidder Registration system should be a~~
488 ~~computer-based management information system designed to manage the~~
489 ~~contract compliance process. It should enable targeted e-mail solicitation of~~
490 ~~prospective bidders of relevant bid opportunities. The Centralized Bidder~~
491 ~~Registration system should also facilitate the collection of data that is~~
492 ~~necessary for the development and monitoring of narrowly tailored SBE and~~
493 ~~M/WBE programs. In doing so, it should also interface with existing School~~

494 District financial and contract systems for the purpose of tracking all aspects of
495 the contract sequence process: vendor information, contract information,
496 solicitation/award information, invoice, and payment information. All bidders,
497 regardless of ownership type, shall be required to register on this system prior
498 to submitting a bid, receiving a contract award, or submitting an invoice for
499 payment to the School District. Establishment of an automated and
500 mandatory Centralized Bidder Registration system for all firms that are
501 interested in selling goods or services to the District. This Centralized Bidder
502 Registration system should be a computer-based management information
503 system designed to manage the solicitation process. It should enable targeted
504 e-mail solicitation of prospective bidders of relevant bid opportunities. All
505 bidders, regardless of ownership type, shall be required to register on this
506 system prior to submitting a bid. In addition, a MBE Bolt-on system should
507 facilitate the collection of data that is necessary for the development and
508 monitoring of narrowly tailored SBE and M/WBE programs. In doing so, and
509 being part of the financial system, it should interface with the Centralized
510 Bidder Registration system and track all aspects of the contract sequence
511 process; vendor information, and payment information.

512 d. Establishment of business development assistance initiatives such as the use
513 of bond waivers for contracts up to \$200,000 in value; prohibition against
514 prime contractors' requirements for bonds from subcontractors on District
515 contracts where subcontracts are less than \$200,000; wrap-up insurance
516 plans; financial assistance programs for SBEs (e.g., loan initiatives, revolving
517 working capital fund, contract financing, and public venture capital funds);
518 mentor-protégé programs; and a one-stop referral system for firms in need of
519 technical assistance resources.

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

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

525 g. Establishment of a procedure for ~~ODBP~~ the Business Diversity Committee to
526 preview solicitations or commodities proposed contract bids in advance of their
527 public dissemination to suggest ways in which contracts may be de-bundled or
528 segmented into smaller segments to provide for greater competition and
529 opportunities for ~~greater prime contract~~ participation by SBE and M/WBE
530 firms.

531 h. Establishment of a Prompt Payment Policy that requires that every contract let
532 by the School Board for the performance of work shall contain a provision
533 requiring the prime contractor to certify in writing with the submission of its

534 invoices to the District that all subcontractors, subconsultants, and suppliers
535 have been paid for satisfactorily delivered work and materials from previous
536 progress payments received, less any retainage, by the prime contractor.
537 During the term of the contract and upon the completion of the contract, the
538 District shall request documentation to certify payment to subcontractors,
539 subconsultants, or suppliers. Failure to comply with this policy or to provide
540 this required documentation shall constitute a material breach of contract.
541 Such failure shall also preclude the prime contractor from further receipt of
542 progress payments from the District until such delinquent payments to
543 subcontractors, subconsultants, and suppliers are made. This provision in no
544 way creates any contractual relationship between any subcontractor,
545 subconsultant, or supplier and the District or any liability on the District for the
546 contractor's failure to make timely payment to the subcontractor,
547 subconsultant, or supplier.

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

554 a. **Construction Programs**

555 i. A Small Business Enterprise Program permitting the use of ~~set asides~~
556 micro contracts of small prime contracts that are below competitive
557 bidding dollar thresholds for bidding exclusively among certified SBE
558 firms, and also may establishing mandatory subcontracting goals for the
559 participation of certified SBE subcontractors on those construction
560 contracts that are above the competitive bidding threshold and that have
561 commercially useful subcontract opportunities.

562 ii. An Internal Matchmaking for the benefit of ~~Program for~~ SBE and M/WBE
563 construction contractors wherein the ~~Program~~ Facilities Management
564 Department shall review certain bids for viable opportunities for SBE and
565 M/WBE participation and then inform SBE and M/WBE firms of those
566 specific opportunities that they are likely to be interested in. The District
567 shall establish mechanisms to ensure timely notification of SBEs and
568 M/WBEs of such opportunities and ~~shall also~~ establish an open door
569 policy to permit SBE and M/WBEs to dialogue with and market
570 themselves directly to appropriate District construction personnel.

571 iii. An External Matchmaking Program for the benefit of SBE and M/WBE
572 construction contractors wherein ODBP shall sponsor matchmaking
573 sessions between prime contractors and SBE and M/WBE subcontractors

574 to occur ~~simultaneously~~ with ~~public release~~ of contract forecasts to
575 provide the maximum opportunity for SBE and M/WBE collaboration with
576 non-minority firms. The Facilities Management Department and its
577 Program Management Department and its construction managers should
578 be actively involved in the process.

579 iv. A Minority Business Enterprise Program establishing bid preferences on
580 certain construction contracts on behalf of certified M/WBE African
581 American-owned construction firms including the use of contract-specific
582 subcontracting goals on selected contracts with genuine opportunities for
583 commercially useful subcontracting as described herein under Section 8
584 of this Policy.

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

586 i. A Small Business Enterprise Program permitting the use of micro
587 contracts ~~set-asides~~ of small prime contracts that are below competitive
588 bidding dollar thresholds for bidding exclusively among certified SBE
589 firms, and also establishing mandatory subcontracting goals for the
590 participation of certified SBE subcontractors on those non-professional
591 services contracts that are above the competitive bidding threshold and
592 that have commercially useful subcontract opportunities.

593 ii. An Internal Matchmaking Program for SBE and M/WBE non-professional
594 services firms wherein the Purchasing Department shall review bids for
595 viable opportunities for SBE and M/WBE participation and then inform
596 SBE and M/WBE firms of those specific opportunities that they are likely
597 to be interested in. The District shall establish mechanisms to ensure
598 timely notification of SBEs and M/WBEs of such opportunities and shall
599 also establish an open door policy to permit SBE and M/WBEs to
600 dialogue with and market themselves directly to appropriate District
601 procurement personnel.

602 iii. An External Matchmaking Program for SBE and M/WBE non-professional
603 services firms wherein the ODBP shall sponsor matchmaking sessions
604 between prime contractors and SBE and M/WBE subcontractors and joint
605 venture partners to occur simultaneously with public release of contract
606 forecasts to provide the maximum opportunity for SBE and M/WBE
607 collaboration with non-minority firms. The Purchasing Department
608 purchasing agents and managers should be actively involved in the
609 process.

610 iv. A Minority / Women Business Enterprise Program permitting the use of
611 micro contracts ~~set-asides~~ of small prime contracts that are below
612 competitive bidding dollar thresholds for bidding exclusively among

613 certified M/WBE firms that are owned by Hispanic Americans, and also
614 establishing contract-specific subcontracting goals for the participation of
615 certified M/WBE subcontractors on those non-professional services
616 contracts that are above the competitive bidding threshold and that have
617 commercially useful subcontract opportunities.

618 **c. Professional Services Programs**

619 i. A Small Business Enterprise Program to establish bid preferences, joint
620 venture incentives, and evaluation preferences on behalf of certified SBE
621 firms as described hereunder in Section 8 of this Policy.

622 ii. An Internal Matchmaking Program for SBE and M/WBE professional
623 services firms wherein the Program Management Department and the
624 Purchasing Department shall review bids for viable opportunities for SBE
625 and M/WBE participation and then inform SBE and M/WBE firms of those
626 specific opportunities that they are likely to be interested in. The District
627 shall establish mechanisms to ensure timely notification of SBEs and
628 M/WBEs of such opportunities and shall also establish an open door
629 policy to permit SBE and M/WBEs to dialogue with and market
630 themselves directly to appropriate District engineering, architectural
631 design, and procurement personnel.

632 iii. An External Matchmaking Program for SBE and M/WBE professional
633 services firms wherein the ODBP shall sponsor matchmaking sessions
634 between prime contractors and SBE and M/WBE subcontractors and joint
635 venture partners to occur simultaneously with public release of contract
636 forecasts to provide the maximum opportunity for SBE and M/WBE
637 collaboration with non-minority firms. The Purchasing Department
638 purchasing agents and managers should be actively involved in the
639 process.

640 iv. A Minority / Women Business Enterprise Program permitting the use of
641 bid preferences, joint venture incentives, and evaluation preferences
642 among certified M/WBE firms that are owned by African Americans,
643 Hispanic Americans, Native Americans, and Women and also
644 establishing contract-specific subcontracting goals for the participation of
645 certified M/WBE subcontractors on those professional services contracts
646 that are above the competitive bidding threshold and that have
647 commercially useful subcontract opportunities.

648 **d. General Procurement Programs**

649 i. A Small Business Enterprise Program permitting the use of micro
650 contracts ~~set-asides~~ of small prime contracts that are below the
651 competitive bidding dollar thresholds for bidding exclusively among

652 certified SBE firms, and also establishing mandatory subcontracting goals
653 for the participation of certified SBE subcontractors on those general
654 procurement contracts that are above the competitive bidding threshold
655 and that have commercially useful subcontract opportunities as described
656 hereunder in Section 8 of this Policy.

657 ii. An Internal Matchmaking Program for SBE and M/WBE general
658 procurement firms wherein the Purchasing Department shall review bids
659 for viable opportunities for SBE and M/WBE participation and then inform
660 SBE and M/WBE firms of those specific opportunities that they are likely
661 to be interested in. The District shall establish mechanisms to ensure
662 timely notification of SBEs and M/WBEs of such opportunities and shall
663 also establish an open door policy to permit SBE and M/WBEs to
664 dialogue with and market themselves directly to appropriate District
665 procurement personnel.

666 iii. An External Matchmaking Program for SBE and M/WBE general
667 procurement firms wherein the ODBP shall sponsor matchmaking
668 sessions between prime contractors and SBE and M/WBE subcontractors
669 and joint venture partners to occur simultaneously with public release of
670 contract forecasts to provide the maximum opportunity for SBE and
671 M/WBE collaboration with non-minority firms. The Purchasing Department
672 purchasing agents and managers should be actively involved in the
673 process.

674 iv. A Minority / Women Business Enterprise Program permitting the use of
675 micro contracts ~~set-asides~~ of small prime contracts that are below
676 competitive bidding dollar thresholds for bidding exclusively among
677 certified M/WBE firms that are owned by Asian Americans and Native
678 Americans, and also establishing contract-specific subcontracting goals
679 for the participation of certified M/WBE subcontractors on those general
680 procurement contracts that are above the competitive bidding threshold
681 and that have commercially useful subcontract opportunities.

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

686 a. **Availability Analysis**

687 i. Overall Availability. -- The measure of overall availability is based on all
688 the vendors and contractors that register in the automated and mandatory
689 ~~centralized-bidder-registration~~ system. Such availability measurements
690 shall be segmented according to the proportion of business ownership by

691 race, gender, and size within certain NIGP or North American Industrial
692 Classification System (NAICS) or comparable industry codes.

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

697 iii. M/WBE Availability.-- The proportion of overall availability of the ready,
698 willing, and able (RWA) vendors that are certified within the M/WBE
699 program, categorized by race, gender, industry codes, and relevant
700 market.

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

706 v. M/WBE Contract Goals. - Availability analysis shall be used whenever
707 setting contract participation goals on an annual basis or on a contract-
708 specific basis. The contract participation goals shall be set based on the
709 relevant measures of M/WBE availability as compared to all RWA
710 vendors within the specific industry code of the contract in the relevant
711 market. In setting such goals, the Superintendent shall consider adoption
712 of procedures based upon DJMA's recommendations for Algorithm Target
713 Methodology (ATM) or Benchmarking (see pages IX-20 through IX-24 of
714 the DJMA Study).

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

722 c. **Disparity Analysis**

723 i. This disparity analysis shall be based on the 80% statistical significance
724 rule adopted under *Croson v. Richmond*, which is defined as two
725 standard deviations between utilization and availability. Utilization of RWA
726 M/WBE firms that is 80% or less of the level of availability of M/WBE firms
727 in a particular market is considered statistically significant under-
728 utilization. Utilization of that is above 100% of the level of availability is
729 considered over-utilization.

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

734 **d. Remedy Analysis**

735 i. If disparity is shown in the disparity analysis above, the District shall
736 review the findings and recommendations from the DJMA Study (or from
737 the District's most recent independent disparity study) to determine the
738 most appropriate and effective remedies to apply to a given set of
739 contracts to eliminate barriers and overcome the effects of various forms
740 of discrimination identified through the DJMA Study or any subsequent
741 studies.

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

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

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

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

756 iii. Each successive disparity study update shall make specific findings and
757 recommendations regarding the ongoing need for race- and gender-
758 neutral and race- and gender-conscious remedies for certain categories
759 of contracts. Study recommendations should also suggest appropriate
760 modifications to existing District procurement procedures, SBE programs,
761 and M/WBE programs to promote fair and equitable participation in
762 School District contracting opportunities in the most effective (yet least
763 restrictive and least burdensome) manner.

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

768 7. **Business Diversity Committee Goal Setting Committee**-- The goals mentioned
769 in Section 6 will be established by a ~~Goal Setting~~ Business Diversity Committee
770 under the auspices of ODBP, and shall be composed of professional and senior-
771 level representation from the following departments:

772 a. ~~Department of Purchasing;~~

773 b. Diversity in Business Practices;

774 c. Chief Operating Officer;

775 d. Facilities Management

776 e. ~~Superintendent's Designee; and~~

777 f. ~~The Department responsible for letting the contract.~~

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

779 a. **Bid Preferences.** -- ~~Specific goals for each project or contract may be~~
780 ~~adopted on a project-by-project, or contract-by-contract basis, wherein the~~
781 ~~contract award shall be made to the lowest responsive, responsible bidder~~
782 ~~meeting the SBE or M/WBE subcontracting goals for the contract/project,~~
783 ~~when that bidder's price does not exceed the lowest bidder's price by an~~
784 ~~amount greater than the dollar or percentage amount set by the Goal Setting~~
785 ~~Committee. Bid Preference for SBE or M/WBE firms may be used on a~~
786 ~~specific Bid wherein the contract award shall be made to the lowest~~
787 ~~responsive, responsible certified SBE or M/WBE bidder for the~~
788 ~~contract/project, when that certified SBE or M/WBE's bid price does not~~
789 ~~exceed the lowest bidder's price by an amount greater than the dollar or~~
790 ~~percentage amount as specified in the Invitation to Bid document and set by~~
791 ~~the Business Diversity Committee.~~

792 b. **Professional Services Evaluation Preferences**

793 i. In the selection process for the award of certain professional services
794 contracts, the District may include as one of its evaluation criteria the
795 level of SBE or M/WBE participation on the team or in subcontract
796 participation. Under this remedial approach, the maximum number of SBE
797 or M/WBE evaluation points should be is available to an SBE or M/WBE
798 proposer.

799 ii. A summary of any applicable SBE or M/WBE Program procedures shall
800 be plainly stated in each solicitation. For competitive professional services
801 contracts, a point system of evaluation will be used by an evaluation
802 committee to determine the recipient of the contract award

803 recommendation. Businesses submitting proposals to provide
804 professional services to the District will be eligible to receive, on a sliding
805 scale, a designated number of the total possible points based upon their
806 SBE or M/WBE participation. The distribution of points allocated to the
807 evaluation criteria shall be stated in the request for proposal. SBE or
808 M/WBE participation shall be but one of several criteria used to evaluate
809 each proposal. Maximum points ~~shall~~ should be awarded when the
810 proposer is a certified SBE or M/WBE. The provisions within this section
811 pertaining to the procurement of professional services are not intended to
812 be used to the exclusion of other provisions of this policy.

813 c. **Internal Matchmaking.** -- ODBP, in conjunction with the Purchasing
814 Department and the Program Management Department, shall review bids for
815 viable opportunities for M/WBE participation and then inform M/WBEs of those
816 specific opportunities that they are likely to be interested in. The District shall
817 establish mechanisms to ensure timely notification of M/WBEs of such
818 opportunities and shall also establish an open door policy to permit M/WBEs to
819 dialogue with and market themselves directly to appropriate District
820 procurement personnel.

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

828 9. **Contract Solicitation and Award**

829 a. ~~ODBP Review~~ Business Diversity Committee review. -- The ODBP Business
830 Diversity Committee shall preview all categories of solicitations by commodity
831 type for construction, general procurement, and non-professional and
832 professional services ~~prior to public dissemination,~~ for compliance with the
833 objectives stated in this policy, and to ensure that bid specifications do not
834 unnecessarily restrict the ability of SBE and M/WBE firms to compete and bid.
835 ~~All District award recommendations shall bear the review signature of the~~
836 ~~Director of the ODBP.~~

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

- 842 c. Contract Compliance Requirements. -- As the Superintendent's designee, the
843 ODBP will establish procedures for monitoring and evaluating program
844 performance and compliance.
- 845 d. The School District and School Board reserve the right to reject any proposal
846 deemed non-responsive for failing to meet the Diversity requirements.
- 847 e. A firm's failure to comply with the contract may result in the drafting of a
848 recommendation for suspension or debarment of the firms or individuals
849 involved. Suspension or debarment of vendors by the School Board for activity
850 contrary to this program will be carried out in accordance with Policy 6.14.
- 851 f. Additional Penalties – Remedy for lack of M/WBE participation on project. A
852 penalty of \$10,000 or a percentage of difference (whichever is greater) in the
853 contract is retained by the School District of Palm Beach County (ex. 15%
854 M/WBE participation and only 10% M/WBE participation is achieved – 5% of
855 that contract or \$10,000 are the funds to be retained by the School District of
856 Palm Beach County.

857 **10. Waivers**

- 858 a. Pre-Award Waiver.-- At any time prior to the award of a contract for a
859 purchase of goods and supplies, the Superintendent or designee may grant a
860 partial or complete waiver of diversity requirements for reasons such as: cases
861 of emergency procurement; situations where a non-M/WBE is the sole source
862 of the needed goods or services and there are no apparent commercially
863 useful functions available to be performed by Ready, Willing, and Able SBE or
864 M/WBE subcontractors; or good faith efforts to meet the contract diversity goal
865 have proven unsuccessful. The Department making an emergency
866 procurement shall consider the availability of SBE or M/WBEs from which to
867 make such purchases. The Director of Purchasing shall make available a
868 report of procurement activities, including at a minimum project name, project
869 number, project description, awarded vendor, advertisement date, waivers of
870 diversity requirements (and reasons for the waiver), and estimated dollar value
871 to include change orders.
- 872 b. Performance and Payment Bonds.-- The Director of Purchasing and the
873 Director of the ODBP, as the Superintendent's designees, in accordance with
874 provisions of Fla. Stat. § 255.05 shall have the authority to waive the
875 requirements for performance and payment bonds for projects having a dollar
876 value to \$200,000 or less. The determination of this exemption shall be made
877 on a contract-by-contract or project-by-project basis. In the event such
878 exemption is granted, the Board or the District and its officers or officials shall
879 not be personally liable to persons suffering loss because of granting such
880 exemption.

- 881 11. **Program Administration.** -- The Superintendent of Schools has the overall
882 responsibility for establishing procedures and administering the Diversity Program.
883 The ODBP shall report directly to the Chief Operating Officer. The ODBP shall be
884 responsible for developing, managing, and implementing the Diversity program on
885 a day-to-day basis.
- 886 12. **District Implementation.** -- The School District shall take all necessary steps
887 permissible under law to ensure that M/WBEs are afforded the maximum equitable
888 opportunity to participate in the District's procurement processes. The ODBP will
889 utilize internal and external monitoring and reporting as the methods of evaluation.
- 890 13. **Reporting.**-- The ODBP will provide the following reports:
- 891 a. Reports and recommendations to the Board on at least an annual basis
892 regarding suggestions for policy changes consistent with these guidelines.
893 This report shall be generated within 90 days subsequent to the Division of
894 Financial Management's completing the fiscal close out of the School District
895 records.
- 896 b. A program evaluation analysis will be submitted to the Board every four years
897 to assess the success of diversity in the District's procurement process and
898 whether disparity continues to exist in individual industry codes.
- 899 c. A disparity study update report prepared by an independent consultant, and as
900 described in Section (6) (e) of this Policy, will be submitted to the Board every
901 four years.
- 902 14. **Graduation or Denied from the SBE and M/WBE Programs.** -- Participation in
903 the SBE or M/WBE program will be dependent upon the firm's need for the
904 preferences extended under this Policy. Data should be maintained to determine
905 which firms have overcome size barriers and barriers related to the effects of
906 discrimination sufficiently to join the competitive mainstream in their respective
907 industries. Denied firms Firms that exceed the District's SBE and M/WBE size
908 standards or firms which are otherwise graduated from the SBEA or M/WBE
909 programs shall remain denied or graduated but are eligible for ~~certification~~,
910 technical assistance, and other forms of assistance not related to bid preferences
911 or evaluation preferences. Moreover, the utilization of graduated M/WBE firms shall
912 continue to be tracked and counted towards attainment of the District's Annual
913 M/WBE participation goals. However, these firms may not participate in any of the
914 race- or gender-conscious preferences of this Policy.
- 915 15. **Implementation by the Superintendent.** -- Wherever this Policy mentions
916 procedures to be established or implemented by the Superintendent, certain
917 internal operational procedures and guidelines may be set forth in Bulletins where
918 appropriate. Other more formal procedures, when sufficiently developed and
919 solidified, should be recommended to the Board, where appropriate, for adoption

920 as Policy; thus, the District's [M/WBE and SBE Procedures Manual](#), dated July
921 2006, is hereby incorporated by reference as if fully set forth herein and is available
922 on the Board Policies web site. The School Board delegates authority to the
923 Superintendent or his/her designee to be responsible for making changes to the
924 July 2006 M/WBE and SBE Procedures Manual from time to time.

925 16. **Policy Review.**-- As required by Fla. Stat. § 120.74(1), the Board shall review and
926 revise this Policy as often as necessary to ensure that it complies with legal
927 requirements, such as applicable current standards of binding decisions of the
928 Eleventh Circuit Court of Appeals and the United States Supreme Court. Moreover,
929 at least every fourth year, the Board will review the successes and failures of the
930 M/WBE program and make a determination as to the need for a continuing M/WBE
931 program.

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

936 STATUTORY AUTHORITY: Fla. Stat. §§ 1001.41(2); 1001.42(22); 1001.43(2) (a), (6)
937 LAWS IMPLEMENTED: Fla. Stat. §§ 287.055(3)(d); 287.093; 287.0931; 287.094;
938 287.0943; 287.09451; 287.09431; 288.703; 288.7031; 1001.41(1), (3); 1001.42(10)(i);
939 1001.43(2)(a); 1013.45(4); 1013.46(1)(c)
940 HISTORY: 5/11/05; 7/26/2006; __/___2010

Legal Signoff:

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

Attorney

Date