

**PROPOSED POLICY 6.143**

**5-F** I recommend the Board approve the proposed new Policy 6.143, to be entitled "Preference for Local Vendors."

[Contact: Sharon Swan, 434-8214.]

◆ **Development**

- Since the initial reading on June 17, new subsections (4)(c) and (8)(b) have been added to clarify the relationship of this Policy to state law concerning construction procurement.
- On June 17, the Board discussed the proximity of some firms located in an adjoining county, immediately across the Palm Beach County boundary line. However, there was no clear direction for amending the proposed plan of giving a 4% preference to all vendors headquartered in the adjacent county. Due to the difficulty of artificially setting a line other than the official county boundary, it seems appropriate to retain the proposed 4% preference as is. Notably, the 4% preference for vendors in bordering counties is reasonably close in effect to the 5% preference for Palm Beach County vendors.
- Although Fla. Stat. § 287.087 may require giving a tie-breaking preference to vendors who certify that they have a drug-free workplace program, this amended text does not use "drug-free workplace" as a tie-breaker category in Section (5) because *all* District vendors are required to sign a drug-free workplace statement.

CONSENT ITEM

**PROPOSED NEW POLICY 6.143**

**PREFERENCE FOR LOCAL VENDORS**

- 1 **1. Local Preference Policy.--** In a competitive procurement process (other than  
2 price-based construction bidding under Fla. Stat. § 235.31), businesses that are  
3 certified as local vendors will be given a preference as outlined in this Policy,  
4 consistent with Florida law and AGOs 2001-65 and 2002-03.
  
- 5 **2. Relation to Policies 6.14 and 6.142.--** This Policy shall be applied in conjunction  
6 with Board Policy 6.14, "Purchasing Department" and Policy 6.142, "Diversity in  
7 Business Practices" for the procurement of goods and services.
  
- 8 **3. Certification.--** Vendors interested in receiving local certification status shall  
9 register with the Office of Diversity in Business Practices, subject to the following  
10 criteria:
  - 11 **a.** To be certified as a Palm Beach County local vendor, the company  
12 headquarters must be located in Palm Beach County.
  - 13 **b.** To be certified as local to a bordering county, the company headquarters must  
14 be located within that bordering county.
  - 15 **c.** To be certified as local to Florida, the company headquarters must be located  
16 within the boundaries of the State of Florida, other than Palm Beach County or  
17 a bordering county.
  
- 18 **4. Application of the Preference**
  - 19 **a. Invitation to Bid.--** In a competitive procurement using an Invitation to Bid  
20 (ITB) process, vendors who are certified by the District as a local vendor shall  
21 receive the following preferences when evaluating the lowest and best bid:
    - 22 **i.** a five percent (5%) preference for firms certified as local to Palm Beach  
23 County.
    - 24 **ii.** a four percent (4%) preference for firms certified as local to a county  
25 bordering Palm Beach county.
    - 26 **iii.** a two percent (2%) preference for firms certified as local to Florida.
  - 27 **b. Request for Proposals.--** In a competitive procurement process using a  
28 Request for Proposals (RFP), "Location of Business" will be a category in the

29 evaluation process, ranging in point value from zero percent (0%) to five  
30 percent (5%) of the overall points possible.

31 i. Proposers certified as local shall receive points in the "Location of  
32 Business" category as follows:

33 A. vendors who are certified as a Palm Beach County local vendor shall  
34 receive points equivalent to five percent (5%) of the overall points  
35 possible.

36 B. vendors certified as local to a bordering county shall receive points  
37 equivalent to four percent (4%) of the overall points possible.

38 C. vendors certified as local to Florida shall receive points equivalent to  
39 two percent (2%) of the overall points possible.

40 ii. Vendors not certified as local to Palm Beach County, a bordering county,  
41 or Florida, will not receive any points in the "Location of Business"  
42 category; provided, however, that partial points may be awarded if a non-  
43 local vendor certifies that it will subcontract with an identified certified  
44 local vendor for part of the engagement. The ratio of partial points should  
45 correspond to the percentage of the project that will be subcontracted.

46 c. Request for Qualifications.-- In a competitive procurement process using a  
47 Request for Qualifications (RFQ), "Location of Business" will be a factor in the  
48 qualifications rating; and location may be considered through a range of point  
49 values from zero percent (0%) to five percent (5%) of the overall points  
50 possible when rating the qualifications.

51 i. For example, as required by the Consultants' Competitive Negotiation Act  
52 (CCNA) and explained in AGO 2001-65, "location" will be considered  
53 along with the other factors listed in Fla. Stat. § 287.055(4)(b) (ability,  
54 M/WBE certification, past performance, willingness to meet time/budget  
55 requirements, location, workloads, and volume of work previously  
56 awarded) in determining whether an architect, engineer, landscape  
57 architect, or surveying and mapping professional is "qualified" in the  
58 qualifications phase of selection.

59 ii. Location will likewise be considered in the qualifications phase when a  
60 construction-management entity or program-management entity is  
61 selected through the CCNA process under Fla. Stat. § 235.211(1)(c) &  
62 (d). In the selection of a design-build firm, location may be considered as

63 a qualifications factor as stated in paragraph (i) if the District elects to use  
64 the CCNA process, as authorized by Fla. Stat. §§ 235.211(1)(b) and  
65 287.055(3)-(5) & (9)(c). (For selection by RFP, see subsection (4)(b),  
66 above.)

67 iii. When points are used in rating qualifications factors, the procedure for  
68 awarding the percentages of preference in a qualifications process will be  
69 the same as set forth under subparagraphs (4)(b)(i)(A)-(C) above; and  
70 vendors not certified as local to Palm Beach County, a bordering county,  
71 or Florida, will not receive any points in the "Location of Business"  
72 category. However, partial points may be awarded to a non-local vendor  
73 certifying during the qualifications phase that it will subcontract with an  
74 identified certified local vendor for part of the engagement. The ratio of  
75 partial points should correspond to the percentage of the project to be  
76 subcontracted. Accordingly, the subcontractor's qualifications should also  
77 be considered when rating the primary firm's qualifications.

78 5. Priority Sequence for Tied Results.-- When a tie exists in a competitive  
79 procurement process, priority for award shall be given in the following sequence  
80 (which does not list the drug-free workplace preference of Fla. Stat. § 287.087,  
81 because all District vendors are required to certify a drug-free workplace):

82 a. a vendor that is 1) certified a local vendor by the District; 2) certified as a  
83 minority/women business enterprise (M/WBE) firm by the District or the State  
84 of Florida; and 3) a small business as defined by the Small Business  
85 Administration.

86 b. a vendor that is both 1) certified as a local vendor by the District and 2)  
87 certified as a minority/women business enterprise (M/WBE) firm by the District  
88 or the State of Florida.

89 c. a vendor certified as local to Palm Beach County.

90 d. a vendor certified as local to a county that borders Palm Beach County.

91 e. a vendor certified as local to Florida.

92 f. a vendor certified as a minority/women business enterprise (M/WBE) firm by  
93 the District or the State of Florida.

94 6. Alternate Method for Resolving a Tie.-- If the application of the criteria in  
95 Section (5) does not indicate a priority for award when the results are tied, the

96 award shall be decided as follows:

97 a. Tied bids will be decided by a coin toss. The coin toss shall be held in the  
98 Purchasing Department, with the tied low-bid vendors invited to be present as  
99 witnesses.

100 b. Tied proposals will be decided by the lowest price.

101 7. Utilization for Non-Competitive Procurement.-- All schools and departments will  
102 be encouraged to utilize local vendors on all non-competitive procurement, when  
103 possible.

104 8. Exception to Application.-- Consistent with AGO 2001-65, the preference  
105 system set forth in this Policy does not apply to construction procurement using  
106 sealed price-based bids as defined in subsection (a), below.

107 a. For purposes of this Policy, the term "construction procurement" refers to  
108 competitive selection for construction, remodeling, renovation, demolition, or  
109 other improvement of any educational or ancillary plant when the award is  
110 made to the lowest responsible bidder under Fla. Stat. §§ 235.31 and  
111 235.211(1)(a).

112 b. This Section shall not preclude giving a statewide preference for construction  
113 contracting when applicable under Fla. Stat. § 255.04.

114 STATUTORY AUTHORITY: §§ 230.22(2); 230.23005(2), Fla. Stat.

115 LAW(S) IMPLEMENTED: §§ 230.22(1); 230.23005(2)(a); 235.31; 287.055(4)(b);  
116 287.017(1)(e), Fla. Stat.

117 ATTORNEY GENERAL

118 OPINIONS CITED: AGOs 2001-65 and 2002-03.

119 HISTORY: / /2002

Legal Signoff:

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

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Attorney

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Date