

# **ADMINISTRATIVE PROCEDURES FOR THE SCHOOL BOARD OF BROWARD COUNTY SUPPLIER DIVERSITY & OUTREACH PROGRAM**

The intent of the School Board of Broward County's Supplier Diversity and Outreach Program is to utilize available minority and women business enterprises (M/WBE's) within the Board's market area to compete for the award of School Board Construction and Purchasing contracts. The following administrative procedures are established to provide uniform guidelines in the implementation of Supplier Diversity Program.

## **I. IMPLEMENTATION**

- A. To implement The School Board policy 7007 Supplier Diversity Program, staff shall make every effort to perform the following activities to assist in providing opportunities for M/WBE seeking to do business with The School Board.
1. Identify competitive contracting opportunities within the District Budget.
  2. Analyze M/WBE availability to provide the products or services identified for contracting at the prime contract or subcontract levels.
  3. Monitor and maintain records sufficient for verification of steps taken and results achieved on M/WBE participation.
  4. Coordinate outreach with the Supply Management and Logistics Department, and Facilities and Management Department to offer instructions and clarify bid/proposal specifications, procurement policy, procedures, and general bidding requirements.
  5. Maintain a database of M/WBE and encourage M/WBE to participate in training programs offered by the District and/or third party development assistance providers.
  6. Encourage the development of M/WBE by using services and assistance provided by the Small Business Administration (SBA) and other third party development assistance providers.
  7. Refer businesses to third party development assistance providers for bonding, financial and technical assistance.
  8. Promote the Supplier Diversity and Outreach Program internally and externally, through the use of an annual marketing and communication plan.
  9. Collect and maintain information and reports to provide to the Advisory Committee and the Superintendent of Schools regarding the progress of the program.
  10. Schedule pre-bid or pre-proposal meetings, where appropriate, to inform potential contractors of Program requirements and other bid/proposal requirements.

11. Provide information and assistance on certification procedures, subcontracting practices, and bonding requirements.
12. Provide supplier diversity training to School Board employees.
13. Review multi-year contracts, amendments, and change orders for opportunities for M/WBE participation.
14. Review upcoming bids to determine whether restructuring a bid to multi bid awards; primary, first and second alternate bid award; or reduction of large contracts would enhance M/WBE participation
15. Investigate race, ethnic, and gender-neutral provisions to lessen barriers for participation by any business wishing to do business with the District.
16. Plan and participate in vendor training seminars for the purpose of informing potential bidders/proposers/vendors of the School Board's program and the business opportunities available.
17. Seek partnerships with professional organizations or private corporations to develop a Mentor/Partnership Plan. The plan will be designed to broaden the base of emerging M/WBE.
18. Serve as liaison with economic development organizations and agencies working in support of economic development in the minority community.
19. Provide notices of bids/business proposals to facilitate the participation of M/WBE.
20. Create an internet to access M/WBE directories for contractors and School Board employees for use in identifying subcontractors and material suppliers.

## **II. MINORITY/WOMEN BUSINESS ENTERPRISE CERTIFICATION PROCESS**

### **A. Certification Eligibility Requirements**

1. Minority Business Enterprise (MBE) any legal entity, which is organized to engage in commercial transaction, for profit, is one that is at least 51% owned, managed, operated by minority person(s). The minority person(s) must be a citizen or lawful permanent resident of the United States and who is
  - a). An African American, a person having origins in any of the Black racial groups of Africa.
  - b). A Native American which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.
  - c). An Asian-Pacific American, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Javalu, Nauru, Federated States of Micronesia, or Hong Kong.

- d) A Subcontinent Asian-American, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.
  - e). An Hispanic American, a person of Spanish or Portuguese culture which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin regardless of race.
2. Women Business Enterprise (WBE) any legal entity, which is organized to engage in commercial transactions, for profit, and is one that is at least 51% owned, managed, operated by woman or women.
  3. 51% ownership by minority/women persons must comply with the following:
    - a. The ownership by the minority/women shall be real, substantial, and continuing, and shall go beyond mere pro forma ownership of the firm as reflected in its percentage with no exchange of capital at fair market value.
    - b. The minority/women owner share in all risk and profits commensurate with the ownership interest as demonstrated by a detailed examination of the substance of business arrangements with others.
    - c. The Salary/profits of the minority/women owner must commensurate with their ownership interest
    - c. The minority/women owner acquired or established the firm from independently-owned holdings.
    - d. If ownership was obtained by transfer of stock with no exchange of capital at fair market value, the minority person or women on whom eligibility is based must own 51% of the firm for a minimum of one (1) year, when any previous majority ownership interest in the firm was by a non-minority. This requirement shall not apply to minority/women owners who take a 51% or greater interest in a firm due to an inheritance or divorce settlement.
    - e. In a corporate form of organization, the minority or women principal(s) must own at least 51% of all voting stock of the corporation. Any voting agreements among the shareholders must not dilute the beneficial ownership, the rights, or influence of the minority or women owners of the stock or classes of stock of the corporation.
    - f. In a partnership form of organization, the minority or women partners must own at least 51% of the partnership, profits, voting control, assets and/or dividends.
    - g. In a sole proprietorship, the sole proprietor must be a minority person or woman.
    - h. In any other form of organization, the minority or woman owner must own at least 51% of the business interest of the organization, including, but limited to 51% of the ownership of assets, dividends, and intangible assets.

4. The minority/women owners must demonstrate that they manage and control the daily operations of the business. Managerial and operational control may be demonstrated in the following manner:
  - a. The Corporate by-laws or Partnership agreements or any other form of agreements should be free of restrictive language which dilutes the minority/women owner's control and prohibits the owners from making decision which impact the business.
  - b. The minority/women owners must have the signature responsibility and the authority to negotiate contracts, loans, bonding applications, insurance, bid bonds, performance bonds, and payment bonds and banking transactions on behalf of the company.
  - c. The minority/women owners should have significant experience in the industry represented by the M/WBE applicant's type of business.
  - d. The minority/women owners should show that basic decisions relating to the day-to-day operation of the business could be independently made. This does not necessarily rule out the minority or women owners seeking paid or unpaid advice and assistance. The owner(s) must presently have the knowledge to consider all advice provided and make an independent decision.
  - e. The minority/women owners should have some technical knowledge in the industry to which certification is sought. Technical knowledge, as used herein, denotes a working knowledge of the technical requirements of the business needed to operate in the industry and sufficient enough to critically evaluate subordinates.
  - f. The minority/women business owner(s) shall have the ability to perform in its area of specialty/expertise without substantial reliance upon finances and resources (e.g., equipment, automobiles, facilities, etc.) of non-minority /women business enterprises. Recognition of the applicant as a separate and distinct entity may be based on the following tests of independence.
    - 1). Applicant's relationship with a non minority/women owned company that involves any long-term contracts or lease agreements.
    - 2). Applicant's status as a party to any contract or lease agreement on terms at variance with industry standards or prudent business practices.
    - 3.) Interlocking stock ownership of the applicant and non-minority/women owned company in the same industry.
    - 4). Common directors/officers between the applicant and non-minority/women owned business.
    - 5). Applicant's use of employees, equipment, expertise, facilities etc., shared with or obtained from a non-minority/women owned company.
    - 6). The receipt by the non-minority/woman of financial benefits (i.e., profits, wages, etc.) shall be commensurate with the duties performed.

- 7). Applicant's business that cannot operate without licenses, permits and/or insurance held by another firm is not independent. The firm must possess all legal requirements necessary to its operation.
5. The Minority or Women Business Enterprise must be a small business concern whose average gross sales over three years do not exceed:

Goods and Business Services: \$ 6 million

Professional Services: \$ 6 million

Construction trade and/or general contracting: \$12 million

Manufacturers / Wholesalers / Retailers can not have more than 25 employees.

#### B. Certification Application Process

1. Applicant must complete and submit an M/WBE certification application with required documentation.
2. Upon receipt of the certification application, the application shall be reviewed to ensure appropriate documentation, signature, completeness and accuracy.
3. Within (30) days following initial receipt of application, the M/WBE staff shall request the applicant to furnish omitted items or additional information. If requested items are not received in the M/WBE office within thirty (30) days from the date of the request, the applicant's M/WBE certification application file will be deemed closed. An applicant whose application has been closed under this section shall have the right to submit a new application within 30 days from receipt of the M/WBE Office closure of the applicant's M/WBE certification file.
4. An on-site review, when deemed appropriate, shall be conducted with the M/WBE applicant's principal(s) to discuss the documentation submitted and to determine if the applicant meets the criteria for ownership and control. Failure to cooperate with the scheduling of an on-site review shall result in the denial of the application.
5. Applicants who have been determined eligible for certification shall receive a certificate as well as a certification letter stating the length of time for which the business has been certified, the specialty area(s) of the business and the minority status categories in which the business is certified. Once certified, an applicant's certification shall be valid for a three (3) year period from the date of issue unless certification is suspended or revoked.
6. Applicants determined ineligible shall receive a letter stating the basis for the denial of certification, citing applicable rules, and shall not be eligible to submit a new application until one (1) year after the date of the notice of denial of certification or the SBBC's final order of denial.
7. Information provided on the M/WBE certification application, which identifies the minority/women status, will also be retained in the M/WBE Office's database, in addition to all other relevant data. The original M/WBE certification application will be filed in the M/WBE Office.

8. To assure the truthfulness of any statements made to the staff of the M/WBE Office, as required by these regulations, the M/WBE Office shall require that these statements be reduced to writing. Such written statements will be in the form of a sworn affidavit. Submission of such an affidavit will be a requirement of certification as an M/WBE. Failure to submit such a sworn affidavit upon request will be grounds for denial of the application for M/WBE certification.

### C. Recertification Process

1. The M/WBE Office will notify the M/WBE no later than sixty (60) days prior to expiration date of the certification period.
2. Application for renewal of certification must be submitted to the M/WBE Office not less than thirty (30) days prior to the date of expiration of the existing certification.
3. All applications for renewal of certification will consist of an affidavit attesting to the accuracy of the statements/information provided, and will declare that ownership and operational control of the firm has not changed during the past years since M/WBE certification was granted; copies of current business financial statement; copies or verification of the previous two years filed tax return; and copies of current license to do business (i.e. occupational, professional, etc.)
4. Upon receipt of the M/WBE recertification application, the M/WBE staff shall review to ensure appropriate documentation, signature, completeness and accuracy.
5. Within (30) days following initial receipt of the recertification application, the M/WBE staff shall request the applicant to furnish omitted items or additional information. If requested items are not received in the M/WBE office within thirty (30) days from the date of the request, the applicant's recertification as an M/WBE will be denied.
6. Recertification shall be granted when the applicant has complied with the above procedures and has substantiated eligibility for M/WBE status.
7. Applicants deemed eligible shall receive a recertification certificate as well as a recertification letter stating the length of time for which the business has been certified, the specialty areas of the business and the minority status categories in which the business is certified. Once recertified, an applicant shall remain certified for a period of three (3) years.
8. Applicants determined to be ineligible shall receive a letter stating the basis for the denial of certification, citing applicable rules, and shall not be eligible to submit a new applications until one (1) year after the date of the notice of denial of certification or the SBBC final order of denial.
9. If an application for recertification is timely submitted, the M/WBE shall remain certified until the District has made a determination concerning eligibility.

D. Reciprocal Certification

1. A list of governmental entities that meet the School Board's M/WBE certification standard shall be developed by surveying those entities to determine what standards are being utilized.
2. Reciprocal certification shall be granted to applicant businesses which have been certified by other governmental entities that are on the School Board's approved list of reciprocal entities.

E. Non-Certified Minority/Women Business Enterprises (M/WBEs)

1. Vendors choosing to be identified as a minority or women owned firm, but who do not wish to complete the M/WBE certification process, shall be designated as a "Non-certified" Minority/Women Business Enterprise.
2. Such firms shall complete a Non-certified Minority/Women Business Enterprise (M/WBE) form identifying:
  - a) The name of the firm
  - b) Address of the firm
  - c) Principal owners of the firm
  - e) Commodity/Service
  - f) M/WBE ethnicity/category
3. The participation of non-certified M/WBEs shall be monitored and reported in the M/WBE Annual Report.
4. Non-certified M/WBEs will not be listed in the Directory of certified M/WBEs.

F. Falsification

1. Applicant businesses are advised that criminal penalties can be imposed under Section 775.082, Section 775.083, or Section 775.084, F.S., for fraudulent M/WBE representation. It is the intent of the School Board to notify the proper law enforcement agency in such instances.

**III. GOOD FAITH EFFORTS**

A. Evaluating Good Faith Efforts

1. The proposer/bidder submitted an M/WBE participation plan showing all M/WBEs that will be used on any contract award. The specific elements of work that each M/WBE will be responsible for performing and the dollar value of the work, as the percentage of the total contract value.
2. The proposer selected portions of the proposal to be performed by available M/WBEs including dividing contracts or combining elements of work.

3. The proposer identified M/WBE with the greatest disparity of utilization, determined M/WBE availability, and developed a proposed M/WBE supplier list by requesting and using the assistance of the Board's Supplier Diversity & Outreach Office and/or any other state or local minority/women business development agencies.
4. The proposer notified and informs available M/WBEs of the contracting opportunities.
5. The proposer provides notice to available M/WBEs concerning contracting opportunities on the contract in sufficient time to allow response and effective participation.
6. The proposer advertised contracting opportunities in general circulation of minority/women- focused media.
7. The proposer documented and considered all proposers from M/WBEs.
8. The proposer documented reasons why proposal received from M/WBE were not used and follow-up with notices to the unsuccessful M/WBEs indicating such reasons.

B. Invitation to Bid

1. Bidder must submit an affidavit of good faith effort when submitting a bid to the School Board.
2. Failure to submit affidavit of good faith effort may make a bid non-responsive and the bidder ineligible to receive an award of the contract. The School Board shall reserve the right to seek clarification or additional documentation to assure good faith effort compliance.

C. Request for Proposal (RFP)/Request for Qualification (RFQ)

1. Proposers must submit an M/WBE participation plan showing all M/WBE that will be used on any contract award. The specific elements of work that each M/WBE will be responsible for performing and the dollar value of the work, as the percentage of the total contract value
2. Proposers must submit an affidavit of good faith effort when submitting a RFP or RFQ to the School Board.
3. Failure to submit an affidavit of good faith effort and an M/WBE participation plan may make a proposal non-responsive and the proposer ineligible to receive an award of the contract. The School Board shall reserve the right to seek clarification or additional documentation to assure good faith effort compliance.
4. The RFP or RFQ may request the following:
  - a). Proposer's history of M/WBE participation on previous awarded contracts.
  - b). Proposer's Diversity in employment.
  - c). Proposer's implementation of an Anti-Discrimination Policy or Procedure in Employment and/or Contracting



- d). Each RFP and/or RFQ shall be reviewed to determine the method of evaluating the proposer's M/WBE participation and/or the proposer's good faith efforts to utilize M/WBE's.

**D. Construction Projects**

1. All construction bid documents shall require the bidder to submit a Subcontracting Plan.
2. All Construction bid documents shall require the bidder to submit an affidavit of good faith effort when submitting a bid to the School Board.
3. Failure to submit an affidavit of good faith effort and a subcontracting plan may make a bid non-responsive and the bidder ineligible to receive an award of the contract. The School Board shall reserve the right to seek clarification or additional documentation to assure good faith effort compliance.

**IV. REPORTING**

- A. The M/WBE Office, Educational Technology Service (ETS), and the Supply Management and Logistics Department shall develop reports to effectively track M/WBE utilization on School Board Contracts. The reports shall identify the following:

1. Utilization of M/WBE's by schools, departments and centers.
2. Utilization of M/WBE contracts awarded or approved for use by the School Board.
3. M/WBE utilization on multi-award contracts.
4. M/WBE utilization on bids awarded as primary award, first and second alternate awards

- B. The M/WBE office shall require the submittal of Monthly M/WBE utilization Reports for all contracts, construction projects, architectural and engineering consulting services and contract awards for goods and services that include M/WBE participation.

- C. The M/WBE Office shall develop quarterly reports on M/WBE utilization on School Board contracts. The quarterly report will be submitted for review by the Superintendent of Schools and the Minority/Women Business Enterprise Advisory Committee.

- D. The M/WBE Office shall submit an annual report on M/WBE utilization on School Board contracts to the Superintendent of Schools and the School Board.

- E. The M/WBE Office shall submit intermittent reports to the Superintendent of Schools or the School Board, upon their request.

**V. SUNSET**

- A. The Supplier Diversity Program shall be reviewed every five years or as deemed necessary by The School Board or the Supplier Diversity Program Advisory

Committee to determine the need for a market area availability analysis. The market area availability analysis shall be used to consider adjustment of M/WBE participation and/or the continuation of the Supplier Diversity Program.

## **VI. ADMINISTRATIVE APPEAL**

- A. Any firm who believes it has been wrongly denied certification, recertification, or had its M/WBE certification suspended or revoked may file an appeal in writing, signed and dated, with the School Board. The appeal shall be filed no later than 15 business days from the date of the denial of certification.
- B. All requests for appeals for the denial of certification or recertification shall be reviewed within 30 days from receipt of the request for appeal.
- C. The appeal shall be reviewed and a determination made by a committee of three (3) members from the Minority/Women Business Enterprise Advisory Committee (see Policy 7007.1 Minority/Women Business Enterprise Advisory Committee) and one SBBC employee, as designated by the Superintendent of Schools.
- D. The decision from the committee shall be the School Board's final action.