

## SUPPLIER DIVERSITY OUTREACH PROGRAM

Effective July 2017, the School Board authorizes and directs the Superintendent to establish and implement a Supplier Diversity Outreach Program (“SDOP”) through Standard Operating Procedures (“SOP”) that are consistent with the factual predicate, purposes, and objectives stated below and containing the following elements:

### A. Factual Predicate and Purpose

1. This policy is adopted to establish a Supplier Diversity Outreach Program to remedy the ongoing effects of identified marketplace discrimination that the School Board has found continue to adversely affect the participation of Small/Minority and/or Women Business Enterprises (“S/M/WBE”) in School Board contracts.
2. In October 2015, the School Board received, reviewed, and accepted the final report of a Disparity Study conducted by Mason Tillman Associates, Ltd. (“MTA”) on behalf of The School Board of Broward County, Florida (“SBBC”). The MTA Disparity Study used a variety of methodologies to undertake a comprehensive examination of the relevant marketplace for School Board purchases for the Study period from July 1, 2008, through June 30, 2013. This MTA Disparity Study identified a number of barriers, including various forms of marketplace discrimination that undermine the formation, growth, and equitable participation of minority- and women-owned businesses in School Board purchases and contracts. Among the numerous findings that form a strong basis in evidence to support adoption of this Policy are the following:
  - a. There is evidence of ongoing effects of past discrimination in the relevant local marketplace in Broward County, Palm Beach County, and Miami-Dade County as previously reflected in the 2010 Broward County Disparity Study and the 2013 Miami-Dade County Public Schools Disparity Study, and as reflected in School Board purchases examined in the 2015 Broward County Public Schools Disparity Study. The present opportunities for Minority/Women Business Enterprise (“M/WBE”) participation in the local marketplace and in School Board contracts are affected by past discrimination in the private sector. For example, regression analysis conducted as part of the 2015 Disparity Study for the School Board observed large, adverse, and statistically significant disparities in business formation and business earnings for M/WBEs in the construction sector and in commodities and other contractual services sectors, even while controlling for independent variables such as age, experience, finances, marital status, homeownership, and education. Moreover, a regression analysis of data from the 2003 National Survey of Small Business Finances found when Minority Business Enterprises (“MBE”) applied for loans, their requests were substantially more likely to be denied than non-MBEs, even after accounting for differences like firm size and credit history.

The ongoing effects of such discrimination are also reflected by disparity analysis that shows significant underutilization of available and qualified M/WBE firms in School Board contracts and in the overall marketplace from 2008 through 2013 in the construction, professional services, commodities, and other contractual services industry segments.

- b. There is contemporary evidence of discrimination against M/WBEs in the relevant marketplace. Some practices within the marketplace have the effect of causing disadvantage to M/WBE firms and undermine their ability to compete. MTA found particularized evidence of negative stereotypes against M/WBEs, and qualitative evidence obtained through interviews of business owners and searches of judicial opinions in Broward County confirmed a history of fraud and collusion and other exclusionary practices of prime contractors to avoid utilizing M/WBE subcontractors and sub-consultants. Such practices adversely affect M/WBE contract participation, growth, and competitiveness. As noted above, the MTA Disparity Study contains extensive evidence of discrimination against M/WBE business owners when seeking commercial credit within the local market. Credit is a necessary attribute for a firm to be successful in each of the industries from which the SBBC makes purchases; especially in the construction industry wherein credit availability affects access to bonding. Bonding is often a prerequisite to being able to bid on School Board construction contracts.
  - c. The MTA Disparity Study's threshold analysis of M/WBE participation on smaller contracts ruled out differences in capacity as the explanation for significant disparities in the underutilization of M/WBE firms in SBBC contracts. However, significant anecdotal evidence supports the finding that unequal access to capital leads to unequal access to bonding and unequal access to bonding reduces the size of bid opportunities and the magnitude of business earnings for M/WBE firms competing for SBBC contracts. Accordingly, such discrimination adversely affects the availability, growth, capacity, and size of M/WBE firms.
  - d. Other forms of marketplace discrimination identified by the MTA Disparity Study such as slow payment by prime contractors, good old boy networks that exclude M/WBEs from prime contract and subcontract opportunities, manipulation of the bidding process to deny M/WBE firms adequate time to respond to bid requests, and unfair denial of contract awards also adversely affect the ability of M/WBE firms to compete for School Board contracts.
3. This Policy further seeks to exercise the spending powers of the School Board in a manner that promotes economic inclusion of all segments of the business population, regardless of race or gender, so as to maximize the economic vitality and development of the region that the School Board serves, and to maximize future economic opportunities for the students that the School Board is responsible for educating.

## B. Policy Objectives

1. This Policy, and the SDOP Standard Operating Procedures established pursuant to this Policy, shall serve the District's compelling interest to remedy the various ongoing effects of marketplace discrimination against S/M/WBEs that are ready, willing, and able to sell goods and services to the School Board.
2. The narrowly-tailored remedial efforts established in this Policy are designed to promote greater availability, capacity development, and contract participation by S/M/WBEs in School Board contracts.
3. This Policy is intended, in part, to further the District's compelling interest in ensuring that it is neither an active nor passive participant in private sector marketplace discrimination and to actively promote equal opportunity for all segments of the contracting and business community to participate in School Board contracts.
4. The School Board shall resort to the use of race- and gender-conscious means for addressing disparities within its contract participation only when it is apparent that the use of race- and gender-neutral means alone will likely be insufficient to remedy the effects of identified discrimination.
5. Having found that it has a compelling governmental interest to remedy the effects of discrimination upon School Board contracts, the School Board directs the Superintendent or designee, the Director of Procurement & Warehousing Services or designee, and the SDOP Coordinator or designee to collaborate in periodically recommending to the School Board possible future amendments necessary to fully effectuate the purposes and objectives established in this Policy. Such proposed amendments shall also be narrowly-tailored in accordance with applicable law and the specific barriers to S/M/WBE participation identified within the District's factual predicate as described above in Section A. 2. of this Policy.
6. It is the policy of the School Board to take all necessary, reasonable, and legal action to prevent discrimination and to ensure that all businesses, including S/M/WBEs, are afforded the maximum practicable opportunity to participate in the District's purchasing and contracting processes.
7. As referenced in Section D, it is the policy of the School Board to ensure that the firms it engages in business with, do not discriminate in the solicitation, selection, or treatment of subcontractors, suppliers, vendors, or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners.
8. The Supplier Diversity Outreach Program shall have primary oversight responsibility with the full support and cooperation of all other School District offices and departments in the administration of the SDOP policy, as well as the SDOP Standard Operating Procedures established pursuant to this Policy.

9. The Supplier Diversity Outreach Program will notify the Board and appropriate committees of any substantive changes to the Standard Operating Procedures. A substantive change is any change that alters the responsibilities, roles, duties, process or procedures for the administration of this policy in a material way. Minor alterations to timeframes for the performance of tasks and duties under the Standard Operating Procedures shall, in general, not be deemed to be substantive changes. Similarly, changes to the Standard Operating Procedures that are intended merely as more detailed clarifications of existing Standard Operating Procedures shall not be considered to be substantive changes. However, to the extent there is any uncertainty as to whether a change to the Standard Operating Procedures is substantive or material; the SDOP shall err on the side of providing notification of such changes to the Board and appropriate committees.

C. Scope and Exclusions / Definitions - Supplier Diversity Outreach Program

1. This Policy shall apply to all solicitations and awards of contracts for the purchase of services, goods, or supplies that are awarded by, or on behalf of, the School Board; including, but not limited to, every contract or other agreement between the School Board and any governmental agency, quasi-governmental agency, corporation, vendor, or contractor, under which the agency, corporation, vendor, or contractor directly or indirectly receives any fiscal assistance or remuneration from the School Board for the purpose of contracting with businesses to perform construction, renovation, maintenance or other services, or for the purpose of directly or indirectly purchasing goods or commodities for use by the School District. As such, the School Board shall require the agency, corporation, vendor, or contractor to comply with this Policy in the solicitation, the award, and administration of that contract or agreement, provided; however, that the following categories of contracts shall be excluded from the scope and application of this Policy:
  - a. Any expenditure for purchases with a value that is less than \$5,000 and that are not competitively bid as stated in Section B, of Policy 3320;
  - b. Contracts for the purchase of goods or supplies of a unique nature for which the District's Procurement & Warehousing Services Department determines and confirms there is only a sole source of supply;
  - c. Contracts for electricity or water and sewage services from a municipal utility district or governmental agency;
  - d. Emergency contracts for goods or supplies that the Superintendent or designee determines are necessary for the preservation of public health or safety and whose immediacy of need is so great that it is impractical for the School District to apply the terms of this Policy to the contract;
  - e. Contracts for the District's lease or purchase of real property where School District is lessee or purchaser; and
  - f. Contracts for personal services involving the unique abilities or style of a particular individual.

2. Definitions. The following definitions shall be used for the purposes of this Policy and related Standard Operating Procedures:

**Affirmative Procurement Initiatives (“API”)** – refers to various SDOP tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals, and joint venture incentives. (For full descriptions of these and other SDOP tools, see, Section E of this Policy and the SDOP Standard Operating Procedures.)

**Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation in School Board contracts is established each year for construction, professional services, commodities, and other contractual services industry categories. This annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (“GSC”) based upon the M/WBE availability by industry in accordance with the District’s 2015 MTA Disparity Study findings, along with relative M/WBE availability data to be collected by the School Board through its Centralized Bidder Registration (“CBR”) system, and the utilization of M/WBEs. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the SDOP policy on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.

**Award** – the final selection of a respondent for a specified prime contract or subcontract dollar amount. Contract awards are made by the School Board to prime contractors or vendors and by prime contractors or vendors to subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract.)

**Best Value Contracting** – a purchasing solicitation process through which the originating department may evaluate factors other than price. Evaluation criteria for selection may include a respondent’s previous experience and quality of product or services procured and other factors identified in the applicable statute.

**Centralized Bidder Registration (CBR) System** – an electronic system of hardware and software programs by which the School District requires all prospective respondents and subcontractors that are ready, willing, and able to sell goods or services to the District to register. All businesses awarded a School Board contract shall be required to register in the CBR system.

The CBR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the District. The CBR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of S/M/WBE firms by industry or commodity codes and for establishing annual Aspirational Goals and contract-by-contract subcontracting goals.

**Certification** – the process by which the Supplier Diversity Outreach Program staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (“ESBE”) are automatically eligible for certification as Small Business Enterprises (“SBE”). Any firm may apply for multiple certifications that cover each and every status category e.g., SBE, ESBE, MBE, or Women Business Enterprise (“WBE”) for which it is able to satisfy eligibility standards. The SDOP staff may contract these services to a regional certification agency or other entity. For purposes of certification, the School District may accept any firm that is certified by local government entities and other organizations identified herein that have adopted certification standards and procedures similar to those followed by the SDOP, provided the prospective firm satisfies the eligibility requirements set forth in the SOP, Section 6.

**Certification Application** – this form shall be completed by vendors when applying for certification and/or re-certification status for participation as S/M/WBE firms in the District’s SDOP policy. This form shall be submitted, to the District’s certifying agency, every two years by each certified vendor by the anniversary date of its original certification.

**Commercially Useful Function** – an S/M/WBE firm performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing, and supervising the work involved. To perform a commercially useful function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a commercially useful function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.

**Control** – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business, and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

**Economic Inclusion** – efforts to promote and maximize commercial transactions within, between, and among all segments of the business population, regardless of race or gender, within the relevant marketplace.

**Emerging SBE** – a certified SBE corporation, partnership, sole proprietorship, or other legal entity for the purpose of making a profit, which is independently owned and operated by individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than twenty-five percent (25%) of the small business size standards for its industry as established by the U.S. Small Business Administration (“SBA”) and meets the Significant Business Presence requirements as defined herein.

**Emerging S/M/WBE** – a certified M/WBE firm whose annual revenues and number of employees are no greater than twenty-five percent (25%) of the small business size standards for its industry as established by the U.S. Small Business Administration and meets the Significant Business Presence requirements as defined herein.

**Evaluation Preference** – an API that may be applied by the Goal Setting Committee to construction, professional services, other contractual services, and commodities contracts that are to be awarded on a basis that includes factors other than lowest price and wherein responses that are submitted to the School District by S/M/WBE firms may be awarded additional points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime respondents.

**Formal Solicitation** – an Invitation to Bids, Request For Proposals (“RFP”), Request For Qualifications (“RFQ”), or other solicitation documents issued by an SBBC department for a contract that requires School Board approval, in accordance with the procurement rules adopted by the Superintendent or designee through a memorandum issued by the Superintendent or designee, an administrative directive or a procurement manual issued under the authority of the Superintendent or designee, and/or pursuant to statutory requirements.

**Goal Setting Committee (GSC)** – a committee or series of committees appointed and chaired by the Superintendent or designee that includes, at a minimum, the Coordinator of the Supplier Diversity Outreach Program, the Director of Procurement & Warehousing Services or designee, the Chief of Facilities and Construction Management or designee, the Office of the Chief Financial Officer, Financial Management or designee, the director or designee of the originating department (if the originating department is neither Procurement & Warehousing Services or Facilities and Construction Management), a designee from the Program Manager / Cost & Control all without duplication of designees.

The Superintendent or designee may also appoint two ex-officio members of the Small Business Advisory Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE program goals for the School District (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determines which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon industry categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives are to be applied to specific contracts based upon various criteria.

**Good Faith Efforts** – documentation of the respondent’s intent to comply with S/M/WBE program goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the respondent’s commitment to comply with SBE or M/WBE goals as established under the SDOP by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE program goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE or S/M/WBE firms listed in the SDOP’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a prime contractor’s posting of a bond covering the work of SBE or M/WBE subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding, or insurance required by the respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE subcontractors).

**Graduation** – an S/M/WBE firm permanently graduates from the District’s S/M/WBE program when it meets the criteria for graduation set forth in Section (7) of the Standard Operating Procedures for this Policy. A firm’s graduation or temporary suspension from participation as an S/M/WBE firm in the SDOP does not necessarily affect its eligibility to be recertified and to participate in the District’s SDOP policy as an S/M/WBE. Graduated S/M/WBE firms shall be eligible to apply for S/M/WBE re-certification following the expiration of the two-year period immediately following graduation. Such application for S/M/WBE re-certification shall only be granted on condition that the graduated S/M/WBE firm presents documentation as required by the SDOP that establishes that the S/M/WBE firm’s annual revenues and number of employees have fallen below the SBA’s small business size standards for the relevant industry for two consecutive years of the post-graduation period. An S/M/WBE firm permanently graduates from the SDOP when it meets the criteria for graduation as set forth in Section (7) of the Standard Operating Procedures for this Policy. However, a graduated M/WBE firm may continue to participate in and benefit from other race-neutral, non-industry-specific remedies of the SDOP policy as described in Section D of this Policy.

**Independently Owned and Operated** – ownership of an SBE firm must be direct, independent, and by individuals only. Ownership of an M/WBE firm may be by individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and control as specified in Section (6) of the Standard Operating Procedures for this Policy. The M/WBE firm must also be independently owned and operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

**Individual** – an adult person that is of legal majority age.

**Industry Categories** – procurement groupings for the SBBC inclusive of construction, professional services, other contractual services, and commodities (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

**Informal Solicitations** – solicitations for contracts that exceed \$5,000 but do not require formal solicitations.

**Leases and Concessions** – the renting of SBBC-owned space on a contractual basis for the purpose of making a profit by selling a commodity/service.

**Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and controlled by one or more minority group members, and that is ready, willing, and able to sell goods or services that are purchased by the SBBC. To qualify as an MBE, the enterprise annual revenues and number of employees shall be no greater than fifty percent (50%) of the small business size standards for its industry as established by the U.S. Small Business Administration and meets the significant business presence requirements as defined herein. In addition, for purposes of being a certified MBE that is eligible to benefit from race- and gender-conscious APIs in this Policy, the enterprise shall meet the size standards for being “small” as defined herein. Unless otherwise stated, the term MBE as used in this Policy is not inclusive of women-owned business enterprises (WBE).

**Minority Group Members** – African-Americans, Hispanic Americans, Asian-Pacific Americans, and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons with origins in any of the black racial groups of Africa.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish, or Central and South American origin.

Asian-Pacific Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

Native Americans: Persons having no less than one-sixteenth (1/16<sup>th</sup>) percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

**Minority/Women Business Enterprise** – a firm that is certified as either a minority business enterprise or as a women business enterprise and which is at least fifty-one percent (51%) owned, managed, and controlled by one or more minority group members and/or women, and that is ready, willing, and able to sell goods or services that are purchased by the School District.

**M/WBE Subcontracting Program** – an API in which prime contractors or vendors are required to make good faith efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing commercially useful functions wherein:

- (1) There have been ongoing disparities in the utilization of available M/WBE subcontractors; or
- (2) Race-neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular industry category or industry segment (e.g., construction contracts, professional services contracts, other contractual services contracts) and subcontract opportunities are limited outside of SBBC contracts.

When specified by the GSC, the M/WBE Subcontracting Program may also be required to reflect good faith efforts that a prime contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation) towards attainment of subcontracting goals for M/WBE firms.

**Originating Department** – the School District department or authorized representative of the School District which issues solicitations or for which a solicitation is issued for the purchase of goods or services.

**Payment** – dollars actually paid to prime contractors and/or subcontractors and vendors for SBBC contracted goods and/or services.

**Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some construction, professional services, other contractual services, and commodities contracts (e.g., between 15-20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals.)

**Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the SBBC for purposes of providing goods or services for the School District.

**Race-Conscious** – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”).

**Race-Neutral** – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).

**Relevant Marketplace** – the geographic market area affecting the SDOP policy as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by this Policy, is defined as Southern Florida, currently including the counties of Broward, Palm Beach, and Miami-Dade and all political subdivisions contained therein.

**Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the School District.

**Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

**Responsive** – a firm’s submittal (bid, response, or proposal) conforms in all material respects to the solicitation (Invitation to Bid, Request for Qualifications, or Request for Proposals) and shall include compliance with SDOP policy requirements.

**SBE Directory** – a listing of small businesses that have been certified for participation in the District’s SBE program APIs.

**SBE Subcontracting Program** – a race- and gender-neutral API in which prime contractors or vendors are required to make good faith efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing commercially useful functions. When specified by the GSC, the SBE Subcontracting Program may also be required to reflect good faith efforts that a prime contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation) towards attainment of subcontracting goals for SBE firms.

**School District** – refers to The School Board of Broward County, Florida, and the School District in Broward County, Florida, that it governs.

**Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within annual Aspirational Goals or for M/WBE subcontracting goals on an individual School District contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such

segmented goals specifically target the participation of a particular segment of business enterprises owned and controlled by WBEs or certain minority group members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and minority group member categories of M/WBEs. The application of Segmented M/WBE goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

**Significant Business Presence** – to qualify for participation as an S/M/WBE firm in this SDOP policy, an S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the relevant marketplace, defined as: an established place of business in one or more of the three counties that make up the Southern Florida relevant marketplace, from which at least fifty percent (50%) of its full-time, part-time, and contract employees are domiciled and regularly based, and from which a substantial role in the S/M/WBE's performance of a commercially useful function is conducted. A location utilized solely as a post office box, mail drop or telephone message center, or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

**Small Business Advisory Committee (SBAC)** – an eleven-member citizens committee made up of representatives of trade groups and members of the general business community and appointed by the School Board as an advisory group to: (a) assist the Coordinator of the Supplier Diversity Outreach Program or designee, the Superintendent or designee, and the School Board in reviewing the continuing programs for contractors and prime contractors and subcontractors that promote S/M/WBE participation; (b) coordinate activities and actions with the School Board or corresponding committees designated by the School Board or Superintendent; and (c) make recommendations to the Coordinator of SDOP, the Superintendent or designee, and School Board concerning modifications of such programs and procedures established pursuant to this Policy. Committee members may participate as advisory non-voting members of Goal Setting Committees.

**Small Business Enterprise** – a corporation, partnership, sole proprietorship, or other legal entity for the purpose of making a profit, which is independently owned and operated by individuals legally residing in, or that are citizens of, the United States or its territories, and which annual revenues and number of employees shall be no greater than fifty percent (50%) of the small business size standards for its industry(ies) as established by the U.S. Small Business Administration, and meets the significant business presence requirements as defined herein.

**Small/Minority/Women Business Enterprise** – any for-profit business firm that is certified as being either small, minority, and/or women-owned, controlled, and managed in accordance with the certification eligibility standards established herein.

**Small/Minority/Women Business Enterprise Directory** – a listing of S/M/WBEs that have been certified for participation in the District’s Supplier Diversity Outreach Program Policy’s APIs.

**Solicitation Incentives** – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for construction, professional services, other contractual services, and commodities contracts, including change orders and amendments.

**Subcontractor** – any vendor or contractor that is providing goods or services to a prime contractor in furtherance of the prime contractor’s performance under a contract or purchase order with the School District. A copy of the binding agreement between the prime contractor and the subcontractor shall be submitted prior to the - District’s issuance of a notice to proceed.

**Supplier Diversity Outreach Program (SDOP)** – refers to the program established by this Policy and the department that falls under the office of Procurement & Warehousing Services is primarily responsible for administering this Policy and promoting the economic inclusion of small, minority, and/or women-owned businesses in prime contracts and subcontracts that are solicited by, or on behalf of, the School District.

**Suspension** – the temporary stoppage of a SBE or M/WBE firm’s beneficial participation in the District’s SDOP for a finite period of time due to cumulative contract payments the SBE or M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section (7) of the Standard Operating Procedures for this Policy or pursuant to the penalties and sanctions set forth in Section 13 of the Standard Operating Procedures for this Policy.

**Utilization Documentation** – a binding part of the contract which includes the name of all subcontractors to be utilized in the contract, specifying the S/M/WBE certification category for each, as approved by the SDOP Coordinator or designee. Additions, deletions, or modifications of the utilization amounts, or substitutions or deletions of S/M/WBE subcontractors, require an amendment to be approved by the SDOP Coordinator or designee.

**Women Business Enterprises** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of this Policy as being at least fifty-one percent (51%) owned, managed, and controlled by one (1) or more non-minority women individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing, and able to sell goods or services that are purchased by the SBBC and that meets the significant business presence requirements as defined herein.

In addition, for purposes of being a certified WBE that is eligible to benefit from race- and gender-conscious APIs in this Policy, the enterprise annual revenues and number of employees shall be no greater than fifty percent (50%) of the small business size standards for its industry as established by the U.S. Small Business Administration; and meets the significant business presence requirements as defined herein. Unless otherwise stated, the term WBE as used in this Policy is not inclusive of MBEs.

#### D. Administrative Reforms and Non-Industry-Specific Remedies

In furtherance of the policies and objectives of this Policy, the Superintendent or designee shall be responsible for implementing the following procurement policy reforms and non-industry-specific remedies to address ongoing effects of discrimination that adversely affect M/WBE access to public and private sector contracting opportunities and that will further facilitate the efficient implementation and successful enforcement of the SDOP:

##### 1. Commercial Nondiscrimination Policy

###### a. Statement of Policy

It is the policy of the School Board not to enter into a contract or to be engaged in a business relationship with any business entity that has discriminated in the solicitation, selection, hiring, or commercial treatment of vendors, suppliers, subcontractors, or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's employees or owners; provided that nothing in this policy shall be construed to prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that have occurred or are occurring in the relevant marketplace.

###### b. Policy Implementation

The Supplier Diversity Outreach Program shall implement this policy by periodically conducting outreach and distributing educational materials to the District's contracting and vendor community and related trade associations to advise such contractors, vendors, and prospective respondents of this policy and the procedures to be followed in submitting complaints alleging violations of this policy. In addition, the Superintendent or designee, the Office of the Chief Financial Officer, Financial Management, the Director of the Department of Purchasing & Warehousing Services, the Chief of Facilities and Construction Management, and the Office of the General Counsel shall ensure that the following commercial nondiscrimination clause language is set forth in, and incorporated into, all the School Board contracts that result from formal solicitations:

**Every contract and subcontract shall contain a nondiscrimination clause that reads as follows:**

"As a condition of entering into this agreement, the company represents and warrants that it will comply with the District's Commercial Nondiscrimination Policy, as described under, Section D.1 of the District's Policy No. 3330 – Supplier Diversity Outreach Program.

As part of such compliance, the company shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the District's relevant marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in School Board contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party."

**All formal solicitations issued for SBBC contracts shall include the following certification to be completed by the respondent:**

The undersigned respondent hereby certifies and agrees that the following information is correct:

In preparing its response on this project, the respondent has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in the District's Policy No. 3330 – Supplier Diversity Outreach Program, Section D.1; to wit: discrimination in the solicitation, selection, or commercial treatment of any subcontractor, vendor, supplier, or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or other unlawful forms of discrimination. Without limiting the foregoing, "discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination." Without limiting any other provision of the solicitation for responses on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the School District to reject the response submitted by the respondent

on this project, and terminate any contract awarded based on the response. As part of its response, the respondent shall provide to the School District a list of all instances within the immediate past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Florida that the respondent discriminated against its subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken. As a condition of submitting a response to the School Board, the respondent agrees to comply with the District's Commercial Nondiscrimination Policy as described under its School Board Policy No. 3330 – Supplier Diversity Outreach Program, Section D.1.

## 2. Centralized Bidder Registration Policy

The SBBC shall establish an electronic Centralized Bidder Registration system to provide the elements and functionalities necessary to advance and facilitate the program objectives of the SDOP policy stated herein. The CBR shall, at a minimum, include the following:

- a. The CBR shall allow a prospective vendor to electronically enter, maintain, and update its vendor registration and profile data. The CBR shall capture relevant vendor contact information, nationally recognized industry/commodity identification codes, ownership status, length of time in business, number of employees, and the unique identifiers deemed necessary by the School District. Vendors shall be required to update critical fields, as defined by the SDOP Coordinator or designee, within seventy-two (72) hours of any changes. Vendors shall be required to update any changes to their entire registration and profile and confirm their interest in performing work for the School District on an annual basis.
- b. Every vendor that seeks to respond to SBBC solicitations, to receive an SBBC prime contract or subcontract, or to receive payment for work performed, and/or to receive payment for goods or services delivered on behalf of the SBBC, is recommended to register through the CBR System. All businesses awarded a School District contract shall be required to register in the CBR. The School District shall designate the acceptable methods for the unique identification of vendors. Each respondent/vendor must complete registration on the CBR to be eligible to respond to any SBBC solicitations, to receive a contract award, or to receive a payment from the School District.
- c. The School District shall use the CBR for electronic outreach purposes and to send alerts to CBR registrants of upcoming solicitation opportunities based upon the identified industry/commodity codes of CBR registrants or vendor-identified areas of interest, unless such notification is declined.
- d. The CBR shall track all payments, by industry/commodity classification codes that are made to each CBR registrant.

- e. Upon payment by the School District to a vendor for goods or services provided, vendors shall be required to provide and aver at such times and in the format required by the School District:
  - i. Their CBR vendor identifiers;
  - ii. The CBR vendor identifiers for all subcontractors and suppliers;
  - iii. The claimed value of the respective goods or services provided by the vendor and any subcontractor or supplier; and
  - iv. The nationally-recognized industry/commodity identification codes for all goods or services provided by the vendor and any subcontractors or suppliers.

The School Board shall electronically notify such identified subcontractors and suppliers and require that they confirm and aver payment from prime contractors for goods and services for which the SBBC has paid the prime contractor.

- f. The CBR shall provide users the ability to identify prospective respondents, subcontractors, and vendors that are ready, willing, and able to sell specific types of goods or services. Consistent with applicable law regarding privacy and public records, the School Board may establish policies regarding the access and use of the CBR system by vendors and by the general public.
- g. The School Board shall strive to ensure this registration process is integrated with any other registrations required by law or available by common practice. The Superintendent shall recommend any inter-local, intergovernmental, and data-sharing agreements, as necessary for the development of this CBR, in a manner that promotes integration with other registrations. The CBR shall contain links to such other mandatory on-line business registration systems, business-licensing applications, and business ownership status certification applications that are not directly integrated with the CBR, as deemed appropriate by the School District.

### 3. Respondent De-briefings

For any contract in which the SBBC has undertaken a formal solicitation and subsequent evaluation of responses in accordance with a “Best Value Contracting” method of procurement, the Director of the department issuing the solicitation, or of the department on whose behalf the solicitation was issued, or their designees, shall provide a de-briefing to any non-recommended respondent, upon request. At a minimum, debriefings shall include disclosures of scoring criteria and scores from the evaluation panel responsible for making the selection for each response that was evaluated. To the extent possible, the de-briefing should also identify for each non-recommended respondent those areas where its submittal was not as competitive as others, with an explanation as to why.

## E. Industry-Specific Remedial Affirmative Procurement Initiatives

The GSC shall be established by the Superintendent or designee in accordance with this Policy and shall have the responsibility of evaluating categories of informal solicitations and each prospective formal solicitation document in advance of its advertised posting to the public to determine which of the following APIs it should apply to a given contract within a particular industry. Once any API is selected for application by the GSC, then it shall be applied to the bid solicitation language in advance of advertised posting to the public, and also to the resultant contract language for that awarded contract as follows:

### 1. Race-Neutral Construction Program Elements

#### a. Direct Owner Purchasing Program

Under this Program element, the Division of Facilities and Construction Management shall continue and expand its practice of directly purchasing large dollar item equipment and supply purchases for its construction projects that are valued at \$200,000 or less (e.g., heating, ventilation and air conditioning units, kitchen equipment, pool pump, sprinkler systems) so as to level the playing field for smaller contractors that may not be able to negotiate as low of a price with suppliers or vendors. In this way, contractors will not need to provide bonding for that portion of the contract that would normally require them to purchase those large dollar equipment and supply items. The Chief of Facilities and Construction Management or designee shall be responsible for establishing systems and procedures for coordinating the warehousing of such items that are purchased directly by SBBC and for managing efficient and accountable delivery of the inventory of the purchased items to the correct job sites for installation by selected contractors.

#### b. Small Business Enterprise Prime Contract Program

Under this Program element, the GSC may establish a SBE prime contractor capacity-building initiative to enhance long-term competition and to provide the SBBC with its “Best Value” on Construction projects valued at \$500,000 or less using alternative construction delivery methods of contracting in accordance with Florida law. Under this Program, the GSC may allocate from fifteen percent up to a maximum of twenty percent (15%-20%) of weighted selection criteria in favor of the selection of a respondent that is a certified SBE firm. A SBE prime contractor that is awarded a prime contract under this Program may not subcontract more than forty-nine percent (49%) of the contract value to a non-SBE firm. In determining whether the SBE Prime Contract Program should be applied to a particular contract, the GSC shall consider: the relative availability of SBEs, with a preference for at least three (3) SBEs that are likely to bid as a prime contractor for the contract; and the degree of underutilization of the

SBEs in the specific industry categories. In addition, under this Program element, the GSC may elect to waive bonding on contracts valued under \$200,000, and may further exclusively reserve prime contracts valued at under \$50,000 for bids by SBE firms only.

c. ESBE Prime Contract Program

Under this Program element, the GSC may establish an Emerging Small Business Enterprise prime contract capacity-building initiative to enhance long-term competition and to provide the SBBC with its “Best Value” on construction projects valued at \$500,000 or less using alternative construction delivery methods of contracting in accordance with Florida law. Under this program, the GSC may allocate from fifteen percent up to a maximum of twenty percent (15%-20%) of weighted selection criteria in favor of the selection of a respondent that is a certified ESBE. An ESBE contractor that is awarded a prime contract under this program may not subcontract more than forty-nine percent (49%) of the contract value to a non-ESBE firm. In determining whether a particular contract is eligible for this program, the GSC shall consider: a) the relative availability of ESBEs, with a preference for at least three (3) ESBEs that are likely to bid as a prime contractor for the contract; and b) the degree of underutilization of ESBEs in the specific industry categories. In addition, under this Program element, the GSC may elect to waive bonding on contracts valued under \$200,000 and may further exclusively reserve prime contracts valued at under \$50,000 for bids by ESBE firms only.

d. SBE Subcontracting Program

Under this Program element, the GSC may, at its discretion, and on a contract-by-contract basis, require that a predetermined percentage of a specific contract, up to forty percent (40%) be subcontracted to eligible SBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of SBE firms to perform commercially useful functions on the specific contract.

A prospective respondent, to a School District solicitation for which price and scope are defined, shall submit at the time as required in the solicitation such documentation as required by the SBBC that provides:

- i. The name(s) of the SBE subcontractor(s) it intends to use on the project;
- ii. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each SBE;
- iii. A description of the work that each SBE subcontractor shall perform; and
- iv. Documentation confirming the subcontractor’s commitment to perform the work at the stated price.

A prospective respondent on a School District solicitation for which respondents are not initially evaluated based on price or for which the project scope is not predefined, shall submit as required in the solicitation such documentation as required by the SBBC to affirm its intent to meet the subcontracting requirements indicated in the solicitation. Failure of a respondent to commit as required in the solicitation to satisfying the SBE subcontracting goal, shall render its response non-responsive. During the price proposal negotiation phase, respondents shall be required to submit:

- v. Subcontractor(s) it intends to use on the project;
- vi. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each SBE;
- vii. A description of the work that each SBE subcontractor shall perform; and
- viii. Documentation confirming the subcontractor's commitment to perform the work at the stated price.

A respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation at the time as required in the solicitation. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the respondent and careful review by the SDOP. The SDOP shall base its determination of a waiver request on criteria such as, but not limited to:

- ix. Whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available SBEs;
- x. Whether subcontracting would be inappropriate and/or not provide a "commercially useful function" under the scope of the contract; and
- xi. Whether there are no certified SBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SDOP, failure of a prime contractor to commit as required in the solicitation to satisfying the SBE subcontracting goal, shall render its response non-responsive. Provided, however, that on any prime contract valued under \$10 million, if the prime contractor is a certified SBE firm, then the prime contractor is allowed to self-perform up to the entire SBE subcontracting goal amount with its own forces. To the extent that the certified SBE prime contractor does not self-perform a portion of the SBE subcontracting goal, it shall be responsible

for complying with all other requirements of this API for that portion of work that is subcontracted. This self-performance option for certified SBE prime contractors may be suspended at the discretion of the Coordinator of the SDOP or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

In the absence of a waiver granted by the SDOP or the self-performance of a portion or all of the SBE subcontracting goal by a certified SBE prime contractor, the failure of a prime contractor to attain a subcontracting goal for SBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract terms with the SBBC, or by law.

A prime contractor is required to notify and obtain prior written approval from the SDOP in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a School District-mandated change order or contract amendment, or the SBBC has mandated the de-certification, suspension, graduation, or termination of a designated SBE subcontractor. However, under such circumstances, the prime contractor shall undertake good faith efforts to replace the de-certified, suspended, graduated, or terminated SBE with one or more other certified SBE subcontractors and shall submit a waiver request to the SDOP in the event such good faith efforts are unsuccessful.

Upon award of the prime contract to a respondent, the prime contractor shall be required to submit accurate progress payment information with each invoice regarding each of its subcontractors, including SBE subcontractors. The originating department shall audit the reported payments to SBE and non-SBE subcontractors to ensure that the prime contractor's reported subcontract participation is accurate. SBBC contracts with prime contractors shall include clauses requiring prime contractors to pay subcontractors in compliance with Florida prompt payment laws, and such clauses shall mandate that in the event of a prime contractor's non-compliance regarding such payments, the prime contractor shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract terms with the SBBC, or by law.

e. ESBE Subcontracting Program

Under this Program element, the GSC may, at its discretion, and on a contract-by-contract basis, require that a predetermined percentage of a specific contract, up to forty percent (40%), be subcontracted to eligible ESBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of ESBE firms to perform commercially useful functions on the specific contract.

A prospective respondent, to a School District solicitation for which price and scope are defined, shall submit at the time as required in the solicitation such documentation as required by the SBBC that provides:

- i. The name(s) of the ESBE subcontractor(s) it intends to use on the project;
- ii. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each ESBE;
- iii. A description of the work that each ESBE subcontractor shall perform; and
- iv. Documentation confirming the subcontractor’s commitment to perform the work at the stated price.

A prospective respondent on a School District solicitation for which respondents are not initially evaluated based on price or for which the project scope is not predefined, shall submit as required in the solicitation such documentation as required by the SBBC to affirm its intent to meet the subcontracting requirements indicated in the solicitation. Failure of a respondent to commit as required in the solicitation to satisfying the ESBE subcontracting goal, shall render its response non-responsive.

During the price proposal negotiation phase, respondents shall be required to submit:

- v. Subcontractor(s) it intends to use on the project;
- vi. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each ESBE;
- vii. A description of the work that each ESBE subcontractor shall perform; and
- viii. Documentation confirming the subcontractor’s commitment to perform the work at the stated price.

A respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation at the time as required in the solicitation. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the respondent and careful review by the SDOP. The SDOP shall base its determination of a waiver request on criteria such as, but not limited to:

- ix. Whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available ESBEs;
- x. Whether subcontracting would be inappropriate and/or not provide a “commercially useful function” under the scope of the contract; and
- xi. Whether there are no certified ESBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SDOP, failure of a prime contractor to commit as required in the solicitation to satisfying the ESBE subcontracting goal, shall render its response non-responsive. Provided, however, that on any prime contract valued under \$1 million, if the prime contractor is a certified ESBE firm, then the prime contractor is allowed to self-perform up to the entire ESBE subcontracting goal amount with its own forces. To the extent that the certified ESBE prime contractor does not self-perform a portion of the ESBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted. This self-performance option for certified ESBE prime contractors may be suspended at the discretion of the Coordinator of the SDOP or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

In the absence of a waiver granted by the SDOP, or the self-performance of a portion or all of the ESBE subcontracting goal by a certified ESBE prime contractor, the failure of a prime contractor to attain a subcontracting goal for ESBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract terms with the SBBC, or by law.

A prime contractor is required to notify and obtain prior written approval from the SDOP in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a School District-mandated change order or contract amendment, or the SBBC has mandated the de-certification, suspension, graduation, or termination of a designated ESBE subcontractor. However, under such circumstances, the prime contractor shall undertake good faith efforts to replace the de-certified, suspended, graduated, or terminated ESBE with one or more other certified ESBE subcontractors and shall submit a waiver request to the SDOP in the event such good faith efforts are unsuccessful.

Upon award of the prime contract to a respondent, the prime contractor shall be required to submit accurate progress payment information with each invoice regarding each of its subcontractors, including ESBE

subcontractors. The originating department shall audit the reported payments to ESBE and non-ESBE subcontractors to ensure that the prime contractor's reported subcontract participation is accurate. SBBC contracts with prime contractors shall include clauses requiring prime contractors to pay subcontractors in compliance with Florida prompt payment laws, and such clauses shall mandate that in the event of a prime contractor's non-compliance regarding such payments, the prime contractor shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract terms with the SBBC, or by law.

f. SBE Mentor-Protégé Program

Under this Program element, the SDOP shall consult with the Small Business Advisory Committee to establish a SBE Mentor-Protégé Program that provides technical assistance to SBEs to build their capacity by pairing SBE protégé firms with a more established, successful mentor firm that can provide the SBE protégé with knowledge to further grow their business. The Coordinator of the SDOP shall examine various "best practices" of other mentor-protégé programs including, but not limited to, incentives for mentor firms to pair with protégé firms; approval and monitoring of written mentor-protégé team agreements that outline the respective objectives and responsibilities of the mentor-protégé teams; maintaining the independence and business autonomy of the protégé firms from mentor team members; terms for dissolution of mentor-protégé teams; and objective criteria for quantifying the success of mentor-protégé relationships. The SDOP Coordinator or designee shall seek to establish the guidelines for this program within one (1) year of the effective date of this Policy, and shall have discretion to modify the Mentor-Protégé Program as necessary to address weaknesses or unintended consequences.

2. Race-Conscious Construction Program Elements

The GSC shall consider establishment of an overall M/WBE annual Aspirational Goal in accordance with subsection "a" below and, in addition, shall review each prospective SBBC construction formal solicitation in advance of its public release and advertisement, and shall make a determination whether to apply any of the other race-conscious APIs to those construction solicitations and resultant contracts based upon the following criteria:

- i. Whether the most recent data on M/WBE utilization in the absence of race-conscious APIs indicate that construction contracts of this type have exhibited significant disparities in the utilization of M/WBE subcontractors and/or M/WBE prime contractors;
- ii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of M/WBE subcontractors and/or M/WBE prime contractors based upon past contract award and payment data;

- iii. Whether a particular API is the least burdensome available remedy to non-M/WBE Respondents that is narrowly-tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in construction contracts; and
  - iv. Whether the particular API is appropriate for the specific type of construction contract being procured. Whenever the GSC uses its discretion to apply any of the following race-conscious APIs to construction solicitations, it shall provide an explanation in the solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the District's relevant marketplace for construction services.
- a. M/WBE Annual Aspirational Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation on SBBC construction contracts.

This annual Aspirational Goal for M/WBE participation in SBBC construction contracts has initially been established at thirty-seven percent (37%) MBE prime contract participation and twelve percent (12%) WBE prime contract participation and thirty-three percent (33%) MBE subcontract participation and eleven percent (11%) WBE subcontract participation based upon the industry availability estimates in accordance with the District's 2015 Disparity Study findings.

This annual Aspirational Goal is to be reviewed on an annual basis for potential adjustment by the GSC based upon the District's relative M/WBE availability data to be collected by the SBBC through its CBR system once established for at least one (1) year and the utilization of M/WBEs.

Annual Aspirational Goals are not to be routinely applied to individual solicitations but are intended to serve as a benchmark against which to measure the overall effectiveness of the SDOP policy on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of race-conscious and race-neutral remedies and APIs being applied pursuant to this Policy.

M/WBE annual Aspirational Goals may be stated only in those SBBC solicitations that do not contain contract-specific S/M/WBE goals, and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Policy.

b. M/WBE Subcontracting Program

Under this Program element, the GSC may, on a contract-by-contract basis, at its discretion, require that a predetermined percentage of a specific construction contract, up to forty percent (40%), be subcontracted to eligible M/WBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of M/WBE firms to perform commercially useful functions on the specific contract.

A prospective respondent on a School District solicitation, for which price and scope are defined, shall submit at the time as required in the solicitation such documentation as required by the SBBC that provides:

- i. The name(s) of the M/WBE subcontractor(s) it intends to use on the project;
- ii. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each S/M/WBE;
- iii. A description of the work that each M/WBE subcontractor shall perform; and
- iv. Documentation confirming the subcontractor's commitment to perform the work at that price.

A prospective respondent to a School District solicitation, for which respondents are not initially evaluated based on price or for which project scope is not predefined, shall submit at the time as required in the solicitation such documentation as required by the SBBC to affirm its intent to meet the subcontracting requirements indicated in the solicitation.

In the absence of a waiver granted by the SDOP, failure of a respondent to commit as required in the solicitation to satisfying the M/WBE subcontracting goal, shall render its response non-responsive.

During the price proposal negotiation phase, respondents shall be required to submit:

- v. The name(s) of the M/WBE subcontractor(s) it intends to use on the project;
- vi. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each M/WBE; and
- vii. A description of the work that each M/WBE subcontractor shall perform.

A respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation at the time as required in the solicitation. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the respondent and careful review by the SDOP. The SDOP shall base its determination on a waiver request on criteria such as, but not limited to:

- viii. Whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available M/WBEs;
- ix. Whether subcontracting would be inappropriate and/or not provide a “commercially useful function” under the scope of the contract; and
- x. Whether there are no certified M/WBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SDOP, failure of a prime contractor to commit as required in the solicitation to satisfying the M/WBE subcontracting goal, shall render its response non-responsive. Provided, however, that on any prime contract valued under \$10 million, if the prime contractor is a certified M/WBE firm, then the prime contractor is allowed to self-perform up to the entire M/WBE subcontracting goal amount with its own forces. To the extent that the certified M/WBE prime contractor does not self-perform a portion of the M/WBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted. This self-performance option for certified M/WBE prime contractors may be suspended at the discretion of the Coordinator of the SDOP or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

In the absence of a waiver granted by the SDOP, or the self-performance of a portion or all of the M/WBE subcontracting goal by a certified M/WBE prime contractor, the failure of a prime contractor to attain a subcontracting goal for M/WBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the SBBC and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract with the SBBC, or by law.

With the exception of certified M/WBE prime contractors that are self-performing a portion or all of a subcontracting goal, in the absence of a waiver granted by the SDOP, failure of a prime contractor to attain a subcontracting goal for M/WBE participation in the performance of its

contract shall be considered a material breach of contract, shall be grounds for termination of that contract with the SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, the terms of its contract with the SBBC, or by law.

A prime contractor is required to notify and obtain prior written approval from the SDOP in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a School District-mandated change order or contract amendment, or the SBBC has mandated the de-certification, suspension, graduation, or termination of a designated M/WBE subcontractor. However, under such circumstances, the prime contractor shall undertake good faith efforts to replace the de-certified, suspended, graduated, or terminated M/WBE subcontractor(s) with one (1) or more other certified M/WBE subcontractor(s) and shall submit a waiver request to the SDOP in the event such good faith efforts are unsuccessful.

Upon award of the prime contract to a respondent, the prime contractor shall be required to submit accurate progress payment information with each invoice regarding each of its subcontractors, including M/WBE subcontractors. The originating department shall audit the reported payments to M/WBE and non-M/WBE subcontractor to ensure that the prime contractors' reported subcontract participation is accurate. Absent a waiver from the SDOP, a prime contractor's failure to reach the required level of M/WBE subcontracting shall be considered a material breach of contract. SBBC Bids, RFPs, RFQs, and/or contracts shall include language pertaining to responsibilities for prime contractors or vendors regarding invoicing and payment schedules. Prime contractors shall include clauses requiring them to pay subcontractors in compliance with Florida prompt payment laws (the "Prompt Payment Act"), and such clauses shall mandate that in the event of prime contractor non-compliance regarding such payments, the prime contractor shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract with the SBBC, or by law.

c. M/WBE Segmented Subcontracting Goals

The GSC may establish segmented M/WBE goals within the annual Aspirational Goal based upon the M/WBE availability by industry in accordance with the SBBC's 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the SBBC through its CBR system, and the utilization of M/WBEs. The GSC may also establish M/WBE segmented subcontracting goals on an individual SBBC contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals that specifically target the participation of a particular segment of minority group member categories or the WBE segment based upon relative availability. Such segmented goals shall specifically target the participation of a particular segment of business

enterprises owned and controlled by WBEs or certain minority group members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and minority group member categories of M/WBEs. The application of segmented M/WBE goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance. Segmented M/WBE goals shall operate in the same manner as the M/WBE Subcontracting Program set forth in Section E. 2. C. of this Policy.

d. M/WBE Mentor-Protégé Program

Under this Program element, the SDOP shall consult with the Small Business Advisory Committee to establish an M/WBE Mentor-Protégé Program that provides technical assistance to M/WBEs to build their capacity by pairing M/WBE protégé firms with a more established successful mentor firm that can provide the M/WBE business knowledge to further grow their business. The Coordinator of the SDOP shall examine various “best practices” of other mentor-protégé programs including, but not limited to, incentives for mentor firms to pair with protégé firms; approval and monitoring of written mentor-protégé team agreements that outline the respective objectives and responsibilities of the mentor-protégé team members; maintaining the independence and business autonomy of the protégé firms from mentor team members; terms for dissolution of mentor-protégé teams; and objective criteria for quantifying the success of mentor-protégé relationships. The Coordinator of the SDOP or designee shall seek to establish the guidelines for this program within one (1) year of the effective date of this Policy, and shall have discretion to modify the M/WBE Mentor-Protégé Program as necessary to address weaknesses or unintended consequences.

e. Minority Inclusion Language in RFPs

Under this Program element, in “Best Value” contracts that are issued pursuant to RFPs rather than lowest responsible bid Invitation to Bids (e.g., construction manager or design-build contracts), the GSC may include language in the RFP to include diversity in participation on a respondent’s team and its plans to encourage M/WBE subcontract participation as one (1) element in the selection criteria. An additional element in such selection criteria may be past performance of the respondent in achieving diversity in subcontract awards on similar projects, as well as inclusion of M/WBE primes, M/WBE suppliers, and M/WBE professional services firms in prior projects.

f. M/WBE Evaluation Preference for “Best Value” RFPs

Under this Program element, the GSC may establish an M/WBE prime contractor capacity-building initiative to enhance long-term competition and to provide the SBBC with its “Best Value” on construction projects using alternative construction delivery methods of contracting in accordance with Florida law. The GSC may allocate from fifteen percent up to a maximum of twenty percent (15%-20%) of weighted selection criteria in favor of the selection of a respondent that is a certified M/WBE firm. An M/WBE prime contractor that is awarded a prime contract under this program may not subcontract more than forty-nine percent (49%) of the contract value to a non-M/WBE firm. In determining whether the M/WBE Evaluation Preference for “Best Value” RFPs should be applied to a particular contract, the GSC shall consider: a) the relative availability of M/WBEs, with the preference for at least three (3) M/WBEs that are likely to bid as a prime contractor for the contract; and b) the degree of underutilization of the M/WBEs in the specific industry categories.

3. Race-Neutral Professional Services Program Elements

The Goal Setting Committee (GSC) shall consider the application of one or more of the following race-neutral Affirmative Procurement Initiatives for each SBBC professional services solicitation:

a. Small Business Enterprise Vendor Rotation

Under this Program element, the GSC may use vendor rotation of a pre-qualified panel of certified SBE professional services firms for smaller SBBC contracts valued at less than \$50,000. Work tasks are rotated among this pre-qualified panel of SBE professional services firms. The order of the vendor rotation is periodically adjusted by the Supplier Diversity Outreach Program or designee to account for ranking from the lowest dollar volume of work tasks assigned to the highest dollar volume of work tasks assigned to each SBE vendor that is listed on the pre-qualified panel of vendors. Participation on vendor rotation panel is contingent on vendor having no negative history of unsatisfactory performance on prior SBBC contracts.

b. Evaluation Preference for SBE Prime Bidders

Under this Program element, on “Best Value” contract solicitations where low price is not the only factor considered in contract award, the GSC may reserve from fifteen percent up to a maximum of twenty percent (15%-20%) of the total available evaluation points for award to those prime bidders or respondents that are certified as SBEs. Out of those fifteen to twenty percent (15%-20%) of the total evaluation preference points, the GSC may limit SBE bidders that have prior experience performing work on behalf of SBBC to half of the evaluation preference points seven and a half to ten percent (7.5%-10%) out of the total fifteen to twenty percent (15%-20%) evaluation preference points that are reserved for SBE firms.

SBEs that have never before received SBBC work may be eligible for the entire fifteen to twenty percent (15%-20%) of reserved SBE evaluation preference points. Alternatively, the GSC may, at its discretion, reserve all of the fifteen to twenty percent (15%-20%) of evaluation preference points for those SBE firms that have never previously performed any professional services work on behalf of the SBBC.

c. Evaluation Panel Diversity

Under this Program element, on “Best Value” contract solicitations where low price is not the only factor considered in contract awards, the Coordinator of the SDOP may appoint a voting representative to serve on the evaluation panel to ensure that scoring is fair and to guard against inherent bias against non-incumbent firms and Small/Minority/Women Business Enterprise firms.

d. SBE Reserve of Contracts Up to \$50,000

Under this Program element, the GSC may reserve some smaller professional services contracts valued at less than \$50,000 for competition solely among SBE professional services firms. The GSC shall determine whether there are at least three (3) qualified SBE firms that are available to compete for the work prior to applying this API.

e. SBE Subcontracting Goals Program

Under this Program element, the GSC may, at its discretion, and on a contract-by-contract basis, require that a predetermined percentage of a specific contract, up to forty percent (40%), be subcontracted to eligible SBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of SBE firms to perform commercially useful functions on the specific contract.

A prospective respondent, to a District solicitation for which price and scope are defined, shall submit at the time as required in the solicitation such documentation as required by the SBBC that provides:

- i. The name(s) of the SBE subcontractor(s) it intends to use on the project;
- ii. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each SBE;
- iii. A description of the work that each SBE subcontractor shall perform; and
- iv. Documentation confirming the subcontractor’s commitment to perform the work at the stated price.

A prospective respondent on a District solicitation for which respondents are not initially evaluated based on price or for which the project scope is not predefined, shall submit as required in the solicitation such documentation as required by the SBBC to affirm its intent to meet the subcontracting requirements indicated in the solicitation. Failure of a respondent to commit as required in the solicitation to satisfying the SBE subcontracting goal, shall render its response non-responsive. During the price proposal negotiation phase, respondents shall be required to submit:

- v. Subcontractor(s) it intends to use on the project;
- vi. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each SBE;
- vii. A description of the work that each SBE subcontractor shall perform; and
- viii. Documentation confirming the subcontractor's commitment to perform the work at the stated price.

A respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation at the time as required in the solicitation. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the respondent and careful review by the SDOP. The SDOP shall base its determination of a waiver request on criteria such as, but not limited to:

- ix. Whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available SBEs;
- x. Whether subcontracting would be inappropriate and/or not provide a "commercially useful function" under the scope of the contract; and
- xi. Whether there are no certified SBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SDOP, failure of a prime contractor to commit as required in the solicitation to satisfying the SBE subcontracting goal, shall render its response non-responsive. Provided, however, that on any prime contract valued under \$10 million, if the prime contractor is a certified SBE firm, then the prime contractor is allowed to self-perform up to the entire SBE subcontracting goal amount with its own forces. To the extent that the certified SBE prime contractor does not self-perform a portion of the SBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of

work that is subcontracted. This self-performance option for certified SBE prime contractors may be suspended at the discretion of the Director of Procurement & Warehousing Services or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

In the absence of a waiver granted by the SDOP or the self-performance of a portion or all of the SBE subcontracting goal by a certified SBE prime contractor, the failure of a prime contractor to attain a subcontracting goal for SBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract terms with the SBBC, or by law.

A prime contractor is required to notify and obtain prior written approval from the SDOP in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a District-mandated change order or contract amendment, or the SBBC has mandated the de-certification, suspension, graduation, or termination of a designated SBE subcontractor. However, under such circumstances, the prime contractor shall undertake good faith efforts to replace the de-certified, suspended, graduated, or terminated SBE with one (1) or more other certified SBE subcontractors and shall submit a waiver request to the SDOP in the event such good faith efforts are unsuccessful.

Upon award of the prime contract to a respondent, the prime contractor shall be required to submit accurate progress payment information with each invoice regarding each of its subcontractors, including SBE subcontractors. The originating department shall audit the reported payments to SBE and non-SBE subcontractors to ensure that the prime contractor's reported subcontract participation is accurate. SBBC contracts with prime contractors shall include clauses requiring prime contractors to pay subcontractors in compliance with Florida prompt payment laws, and such clauses shall mandate that in the event of a prime contractor's non-compliance regarding such payments, the prime contractor shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract terms with the SBBC, or by law.

#### 4. Race-Conscious Professional Services Program Elements

The GSC shall consider establishment of an overall M/WBE annual Aspirational Goal in accordance with subsection "a" below and, in addition, shall review each prospective SBBC professional services formal solicitation in advance of its public release and advertisement, and shall make a determination whether to apply any of the other race-conscious APIs to those professional services solicitations and resultant contracts based upon the following criteria:

- i. Whether the most recent data on M/WBE utilization in the absence of race-conscious APIs indicate that professional services contracts of this type have exhibited significant disparities in the utilization of M/WBE subcontractors and/or M/WBE prime contractors;
  - ii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of M/WBE subcontractors and/or M/WBE prime contractors based upon past contract award and payment data;
  - iii. Whether a particular API is the least burdensome available remedy to non-M/WBE respondents that is narrowly-tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in professional services contracts; and
  - iv. Whether the particular API is appropriate for the specific type of professional services contract being procured. Whenever the GSC uses its discretion to apply any of the following race-conscious APIs to professional services solicitations, it shall provide an explanation in the solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the District's relevant marketplace for professional services.
- a. M/WBE Annual Aspirational Goals
- For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation on SBBC professional services contracts.

This annual Aspirational Goal for M/WBE participation in SBBC professional services contracts has initially been established at sixty-two percent (62%) MBE prime contract participation and eight percent (8%) WBE prime contract participation and fifty-eight percent (58%) MBE subcontract participation and nine percent (9%) WBE subcontract participation based upon the industry availability estimates in accordance with the District's 2015 Disparity Study findings.

This annual Aspirational Goal is to be reviewed on an annual basis for potential adjustment by the GSC based upon the District's relative M/WBE availability data to be collected by the SBBC through its CBR system once established for at least one (1) year and the utilization of M/WBEs.

Annual Aspirational Goals are not to be routinely applied to individual solicitations but are intended to serve as a benchmark against which to measure the overall effectiveness of the SDOP policy on an annual basis and to gauge the need for future adjustments to the mix and aggressiveness of race-conscious and race-neutral remedies and APIs being applied pursuant to this Policy.

M/WBE annual Aspirational Goals may be stated only in those SBBC solicitations that do not contain contract-specific S/M/WBE goals, and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Policy.

b. M/WBE Evaluation Preference for “Best Value” RFPs

Under this Program element, the GSC may establish an M/WBE prime contractor capacity-building initiative to enhance long-term competition and to provide the SBBC with its “Best Value” on professional services contracts in accordance with Florida law. The GSC may reserve from fifteen percent up to a maximum of twenty percent (15%-20%) of the total available evaluation points for award to a respondent that is a certified M/WBE firm. Out of those fifteen to twenty percent (15%-20%) of the total evaluation preference points, the GSC may limit M/WBE bidders that have prior experience performing work on behalf of SBBC to half of the evaluation preference points seven and a half to ten percent (7.5%-10%) out of the total fifteen to twenty percent (15%-20%) evaluation preference points that are reserved for M/WBE firms. M/WBEs that have never before received SBBC work, may be eligible for the entire fifteen to twenty percent (15%-20%) of reserved M/WBE evaluation preference points. Alternatively, the GSC may, at its discretion, reserve all of the fifteen to twenty percent (15%-20%) of evaluation preference points for those M/WBE firms that have never previously performed any professional services work on behalf of the SBBC. An M/WBE prime contractor that is awarded a prime contract under this program element may not subcontract more than forty-nine percent (49%) of the contract value to a non-M/WBE firm. In determining whether the M/WBE Evaluation Preference for “Best Value” RFPs should be applied to a particular contract, the GSC shall consider: a) the relative availability of M/WBEs, with a preference for at least three (3) M/WBEs that are likely to bid as a prime contractor for the contract; and b) the degree of underutilization of the M/WBEs in the specific industry categories.

c. M/WBE Subcontracting Program for Professional Services

Under this Program element, the GSC may, on a contract-by-contract basis, at its discretion, require that a predetermined percentage of a specific professional services contract, up to forty percent (40%) be subcontracted to eligible M/WBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of M/WBE firms to perform commercially useful functions on the specific contract.

A prospective respondent on a District solicitation, for which price and scope are defined, shall submit at the time as required in the solicitation such documentation as required by the SBBC that provides:

- i. The name(s) of the M/WBE subcontractor(s) it intends to use on the project;
- ii. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each M/WBE;
- iii. A description of the work that each M/WBE subcontractor shall perform; and
- iv. Documentation confirming the subcontractor’s commitment to perform the work at that price.

A prospective respondent to a District solicitation, for which respondents are not initially evaluated based on price or for which project scope is not predefined, shall submit at the time as required in the solicitation such documentation as required by the SBBC to affirm its intent to meet the subcontracting requirements indicated in the solicitation. In the absence of a waiver granted by the SDOP, failure of a respondent to commit as required in the solicitation to satisfying the M/WBE subcontracting goal shall render its response non-responsive.

During the price proposal negotiation phase, respondents shall be required to submit:

- v. The name(s) of the M/WBE subcontractor(s) it intends to use on the project;
- vi. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each M/WBE; and
- vii. A description of the work that each M/WBE subcontractor shall perform.

A respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation at the time as required in the solicitation. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the respondent and careful review by the SDOP. The SDOP shall base its determination on a waiver request on criteria such as, but not limited to:

- viii. Whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available M/WBEs;
- ix. Whether subcontracting would be inappropriate and/or not provide a “commercially useful function” under the scope of the contract; and

- x. Whether there are no certified M/WBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SDOP, failure of a prime contractor to commit as required in the solicitation to satisfying the M/WBE subcontracting goal, shall render its response non-responsive. Provided, however, that on any prime contract valued under \$10 million, if the prime contractor is a certified M/WBE firm, then the prime contractor is allowed to self-perform up to the entire M/WBE subcontracting goal amount with its own forces. To the extent that the certified M/WBE prime contractor does not self-perform a portion of the M/WBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted. This self-performance option for certified M/WBE prime contractors may be suspended at the discretion of the Director of the Procurement & Warehousing Services or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

In the absence of a waiver granted by the SDOP, or the self-performance of a portion or all of the M/WBE subcontracting goal by a certified M/WBE prime contractor, the failure of a prime contractor to attain a subcontracting goal for M/WBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract with the SBBC, or by law.

With the exception of certified M/WBE prime contractors that are self-performing a portion or all of a subcontracting goal, in the absence of a waiver granted by the SDOP, failure of a prime contractor to attain a subcontracting goal for M/WBE participation in the performance of its contract shall be considered a material breach of contract, shall be grounds for termination of that contract with the SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, the terms of its contract with the SBBC, or by law.

A prime contractor is required to notify and obtain prior written approval from the SDOP in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a District-mandated change order or contract amendment, or the SBBC has mandated the de-certification, suspension, graduation, or termination of a designated M/WBE subcontractor. However, under such circumstances, the prime contractor shall undertake good faith efforts to replace the de-certified, suspended, graduated, or terminated M/WBE subcontractor(s) with one or more other certified M/WBE subcontractor(s) and shall submit a waiver request to the SDOP in the event such good faith efforts are unsuccessful.

Upon award of the prime contract to a respondent, the prime contractor shall be required to submit accurate progress payment information with each invoice regarding each of its subcontractors, including M/WBE subcontractors. The originating department shall audit the reported payments to M/WBE and non-M/WBE subcontractor to ensure that the prime contractors' reported subcontract participation is accurate. Absent a waiver from the SDOP, a prime contractor's failure to reach the required level of M/WBE subcontracting shall be considered a material breach of contract. SBBC contracts with prime contractors shall include clauses requiring prime contractors to pay subcontractors in compliance with Florida prompt payment laws (the "Prompt Payment Act"), and such clauses shall mandate that in the event of prime contractor non-compliance regarding such payments, the prime contractor shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract with the SBBC, or by law.

d. M/WBE Vendor Rotation

Under this Program element, the GSC may use vendor rotation of a pre-qualified panel of certified M/WBE professional services firms for smaller SBBC contracts valued at less than \$50,000. Work tasks are rotated among this pre-qualified panel of M/WBE professional services firms. The order of the vendor rotation is periodically adjusted by the SDOP or designee to account for ranking from the lowest dollar volume of work tasks assigned to the highest dollar volume of work tasks assigned to each M/WBE vendor that is listed on the pre-qualified panel of vendors. Participation on vendor rotation panel is contingent on vendor having no negative history of unsatisfactory performance on prior SBBC contracts.

5. Race-Neutral Commodities Program Elements

a. SBE Vendor Rotation

Under this Program element, the GSC may use vendor rotation of a pre-qualified panel of certified SBE commodities vendors for smaller SBBC contracts valued at less than \$50,000. Supply orders are rotated among this pre-qualified panel of SBE commodities vendors. The order of the vendor rotation is periodically adjusted by the SDOP or designee to account for ranking from the lowest dollar volume of purchase orders assigned to the highest dollar volume of purchase orders assigned to each SBE vendor that is listed on the pre-qualified panel of vendors. Participation on vendor rotation panel is contingent on vendor having no negative history of unsatisfactory performance on prior SBBC contracts.

b. SBE Reserve for Contracts Up to \$50,000

Under this Program element, the GSC may reserve some smaller Commodities contracts valued at less than \$50,000 for bid competition solely among SBE commodities firms. The GSC shall determine whether there are at least three (3) qualified SBE firms that are available to compete for the sale of the commodities to the SBBC prior to applying this API.

6. Race-Conscious Commodities Program Elements

The GSC shall consider establishment of an overall M/WBE annual Aspirational Goal in accordance with subsection “a” below and, in addition, shall review each prospective SBBC commodities formal solicitation in advance of its public release and advertisement and shall make a determination whether to apply any of the other race-conscious APIs to those commodities solicitations and resultant contracts based upon the following criteria:

- i. Whether the most recent data on M/WBE utilization in the absence of race-conscious APIs indicate that commodities contracts of this type have exhibited significant disparities in the utilization of M/WBE subcontractors and/or M/WBE prime contractors;
  - ii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of M/WBE subcontractors and/or M/WBE prime contractors based upon past contract award and payment data;
  - iii. Whether a particular API is the least burdensome available remedy to non-M/WBE respondents that is narrowly-tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in commodities contracts; and
  - iv. Whether the particular API is appropriate for the specific type of commodities contract being procured. Whenever the GSC uses its discretion to apply any of the following race-conscious APIs to commodities solicitations, it shall provide an explanation in the solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the District’s relevant marketplace for commodities.
- a. M/WBE Annual Aspirational Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime participation on SBBC commodities contracts.

This annual Aspirational Goal for M/WBE participation in SBBC commodities contracts has initially been established at thirty-four percent (34%) Minority Business Enterprise (MBE) prime contract participation and sixteen percent (16%) WBE prime contract participation based upon the industry availability estimates in accordance with the District's 2015 Disparity Study findings.

This annual Aspirational Goal is to be reviewed on an annual basis for potential adjustment by the GSC based upon the District's relative M/WBE availability data to be collected by the SBBC through its Centralized Bidder Registration system once established for at least one (1) year and the District's utilization of M/WBEs.

Annual Aspirational Goals are not to be routinely applied to individual solicitations but are intended to serve as a benchmark against which to measure the overall effectiveness of the SDOP policy on an annual basis and to gauge the need for future adjustments to the mix and aggressiveness of race-conscious and race-neutral remedies and APIs being applied pursuant to this Policy.

M/WBE annual Aspirational Goals may be stated only in those SBBC solicitations that do not contain contract-specific S/M/WBE goals and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Policy.

**b. M/WBE Vendor Rotation**

Under this Program element, the GSC may use vendor rotation of a pre-qualified panel of certified M/WBE commodities firms for smaller SBBC contracts valued at less than \$50,000. Purchase orders are rotated among this pre-qualified panel of M/WBE commodities firms.

The order of the vendor rotation is periodically adjusted by the SDOP or designee to account for ranking from the lowest dollar volume of purchase orders assigned to the highest dollar volume of purchase orders assigned to each M/WBE vendor that is listed on the pre-qualified panel of vendors. Participation on vendor rotation panel is contingent on vendor having no negative history of unsatisfactory performance on prior SBBC contracts.

**c. Voluntary M/WBE Distributorship Development Program**

Under this Program element, where there is low availability of M/WBE distributorships that are able to sell particular commodities to the SBBC, the GSC may apply incentives to encourage manufacturers to establish authorized dealerships or distributorships with M/WBE suppliers of their products on a non-discriminatory basis. Such incentives may include two (2) or three (3) additional option years in supply contracts that may be exercised by the SBBC when the manufacturer sells its products through

its authorized M/WBE distributorship and demonstrates that its distributorship with that M/WBE vendor is established and operated in a non-discriminatory fashion as compared to its other distributorships. When this API is applied by the GSC to a commodities solicitation, the SDOP shall review the distributorship agreements of the selected manufacturer that accepts the incentives as part of its bid to ensure that the terms of the designated authorized M/WBE's distributorship agreement are similar to that of non-M/WBE distributors for that manufacturer. Specifically, as a condition of the application of the incentives under this API, the SDOP will review relevant documentation to determine whether the M/WBE distributor is in no way more limited in geographic territory, credit terms, marketing support, public and private sector customer allocations and access, pricing, rebates, volume discounts, etc. as compared to the terms of similar non-M/WBE distributorship agreements for that manufacturer. The SDOP will also determine whether the M/WBE distributorship is performing a commercially useful function on behalf of the SBBC prior to exercising each additional option year under the contract. An additional incentive that may be provided by the GSC to the manufacturer and M/WBE distributorship under this API is accelerated payment terms of invoices for payment from the SBBC within fifteen (15) days of receipt of goods and invoices.

## 7. Race-Neutral Other Contractual Services Program Elements

### a. Direct Contracting for Other Contractual Services

Under this Program element, the GSC may direct the originating department to separate out certain other contractual services categories (e.g., trucking, hauling, surveying, demolition, environmental consulting, testing, and landscaping) that normally would be bundled within much larger construction contracts or architectural and engineering design contracts, and issue separate bid solicitations to permit the SBBC to directly award contracts for those specialty or non-license services. This API is intended to expand opportunities for such S/M/WBE firms to gain experience as prime vendors and prime contractors.

### b. SBE Vendor Rotation

Under this Program element, the GSC may use vendor rotation of a pre-qualified panel of certified SBE other contractual services vendors for smaller SBBC contracts valued at less than \$50,000. Work tasks are rotated among this pre-qualified panel of SBE other contractual services vendors. The order of the vendor rotation is periodically adjusted by the SDOP or designee to account for ranking from the lowest dollar volume of work tasks assigned to the highest dollar volume of work tasks assigned to each SBE vendor that is listed on the pre-qualified panel of vendors.

Participation on vendor rotation panel is contingent on vendor having no negative history of unsatisfactory performance on prior SBBC contracts.

c. SBE Evaluation Preference for Prime Bidders

Under this Program element, on “Best Value” contract solicitations where low price is not the only factor considered in contract award, the GSC may reserve from fifteen percent up to a maximum of twenty percent (15%-20%) of the total available evaluation points for award to those prime bidders or respondents that are certified as SBEs. Out of those fifteen to twenty percent (15%-20%) of the total evaluation preference points, the GSC may limit SBE bidders that have prior experience performing work on behalf of SBBC to half of the evaluation preference points seven and a half to ten percent (7.5%-10%) out of the total fifteen to twenty percent (15%-20%) evaluation preference points that are reserved for SBE firms. SBEs that have never before received SBBC work may be eligible for the entire fifteen to twenty percent (15%-20%) of the reserved SBE evaluation preference points. Alternatively, the GSC may, at its discretion, reserve all of the fifteen to twenty percent (15%-20%) of evaluation preference points for those SBE firms that have never previously performed any other contractual services work on behalf of the SBBC.

8. Race-Conscious Other Contractual Services Program Elements

The GSC shall consider establishment of an overall M/WBE annual Aspirational Goal in accordance with subsection “a” below and, in addition, shall review each prospective SBBC other contractual services formal solicitation in advance of its public release and advertisement, and shall make a determination whether to apply any of the other race-conscious APIs to those other contractual services solicitations and resultant contracts based upon the following criteria:

- i. Whether the most recent data on M/WBE utilization in the absence of race-conscious APIs indicate that other contractual services contracts of this type have exhibited significant disparities in the utilization of M/WBE subcontractors and/or M/WBE prime contractors;
- ii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of M/WBE subcontractors and/or M/WBE prime contractors based upon past contract award and payment data;
- iii. Whether a particular API is the least burdensome available remedy to non-M/WBE respondents that is narrowly-tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in other contractual services contracts; and

iv. Whether the particular API is appropriate for the specific type of other contractual services contract being procured. Whenever the GSC uses its discretion to apply any of the following race-conscious APIs to other contractual services solicitations, it shall provide an explanation in the solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the District's relevant marketplace for other contractual services.

a. M/WBE Annual Aspirational Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime participation on SBBC other contractual services contracts.

This annual Aspirational Goal for M/WBE participation in SBBC other contractual services contracts has initially been established at forty-one percent (41%) MBE prime contract participation and twenty-three percent (23%) WBE prime contract participation based upon the industry availability estimates in accordance with the District's 2015 Disparity Study findings.

This annual Aspirational Goal is to be reviewed on an annual basis for potential adjustment by the GSC based upon the District's relative M/WBE availability data to be collected by the SBBC through its CBR system once established for at least one (1) year and the District's utilization of M/WBEs.

Annual Aspirational Goals are not to be routinely applied to individual solicitations but are intended to serve as a benchmark against which to measure the overall effectiveness of the SDOP policy on an annual basis and to gauge the need for future adjustments to the mix and aggressiveness of race-conscious and race-neutral remedies and APIs being applied pursuant to this Policy.

M/WBE annual Aspirational Goals may be stated only in those SBBC solicitations that do not contain contract-specific S/M/WBE goals, and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Policy.

b. M/WBE Vendor Rotation

Under this Program element, the GSC may use vendor rotation of a pre-qualified panel of certified M/WBE other contractual services vendors for smaller SBBC contracts valued at less than \$50,000. Work tasks are rotated among this pre-qualified panel of M/WBE other contractual services vendors. The order of the vendor rotation is periodically adjusted

by the SDOP or designee to account for ranking from the lowest dollar volume of work tasks assigned to the highest dollar volume of work tasks assigned to each SBE vendor that is listed on the pre-qualified panel of vendors. Participation on vendor rotation panel is contingent on vendor having no negative history of unsatisfactory performance on prior SBBC contracts.

c. M/WBE Evaluation Preference for Prime Bidders

Under this Program element, on “Best Value” contract solicitations where low price is not the only factor considered in contract award, the GSC may reserve from fifteen percent up to a maximum of twenty percent (15%-20%) of the total available evaluation points for award to those prime bidders or respondents that are certified as M/WBEs. Out of those fifteen to twenty percent (15%-20%) of the total evaluation preference points, the GSC may limit M/WBE bidders that have prior experience performing work on behalf of SBBC to half of the evaluation preference points seven and a half to ten percent (7.5%-10%) out of the total fifteen to twenty percent (15%-20%) evaluation preference points that are reserved for M/WBE firms. M/WBEs that have never before received SBBC work may be eligible for the entire fifteen to twenty percent (15%-20%) of the reserved M/WBE evaluation preference points. Alternatively, the GSC may, at its discretion, reserve all of the fifteen to twenty percent (15%-20%) of evaluation preference points for those M/WBE firms that have never previously performed any other contractual services work on behalf of the SBBC.

F. Periodic Review and Factual Predicate

Beginning no later than December 31, 2020, five (5) years after the District’s adoption of the 2015 Disparity Study, and every five (5) year interval thereafter, the SBBC shall issue a Request for Proposals to undertake a comprehensive update of the full disparity study, and upon completion of each disparity study update, present disparity study results to the SBBC, and following SBBC review and a public comment period regarding those study findings and recommendations, the SBBC shall consider any proposed modifications to, or sunset of, this Policy. As part of this review process, the Superintendent or designee shall make, or recommend to the SBBC as appropriate, modifications to the procedures or substantive provisions of this Policy, and submit any necessary draft amendments to policies and procedures to the School Board for adoption as appropriate to effectuate the continuation, modification, or termination of the SDOP’s SBE and M/WBE program elements.

G. SDOP Policy Review, Modification, and Sunset

Beginning no later than December 31, 2020, five (5) years after the District’s adoption of the 2015 Disparity Study, (and every five (5) year interval thereafter), the SBBC shall issue a Request for Proposals to undertake a comprehensive update of the full disparity study, and upon completion of each disparity study update, present disparity

study results to the SBBC, and following SBBC review and a public comment period regarding those study findings and recommendations, the SBBC shall consider any proposed modifications to, or sunset of, this Policy. As part of this review process, the Superintendent or designee shall make or recommend to the SBBC as appropriate, modifications to the procedures or substantive provisions of this Policy and submit any necessary draft amendments to policies and procedures to the School Board for adoption as appropriate to effectuate the continuation, modification, or termination of the SDOP’s SBE and M/WBE program elements. Absent an extension in the sunset date for this amended SDOP policy by the School Board, the provisions of this Policy shall be void and may not be enforced after December 31, 2022.

H. Severability Clause

If any section, paragraph, sentence, clause, phrase, or word of this SDOP policy, or the application thereof, to any person or circumstance is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, invalid, or void, such holding shall not affect the remainder of this Policy or the application of any other provisions of this Policy which can be given effect without the invalid provision or application, and to this end, all the provisions of this Policy are hereby declared to be severable.

**AUTHORITY:**

F.S.1001.41  
Adopted: 01/18/17