

**THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA**

**MINORITY AND WOMEN BUSINESS ENTERPRISE ASSISTANCE PROGRAM**

**PROCEDURES**

**August 8, 2005**

**Rev 3g**

# MINORITY AND WOMEN BUSINESS ENTERPRISE ASSISTANCE PROGRAM

## I. OBJECTIVE

A primary objective of the School Board's adoption of the Program is to encourage development of prime contractor-level capabilities among M/WBEs in the Orlando SMSA. The School Board seeks to accomplish the aforementioned by facilitating (through the implementation of the Program) the creation of more joint ventures between M/WBEs and majority firms and the establishment of mutually beneficial mentoring relationships between such firms. The School Board shall also be proactive in its efforts to identify projects that lend themselves to construction management and/or prime contractor participation. The School Board desires that these efforts lead to M/WBEs becoming more competitive for construction management and prime contractor contracts.

In addition to increased involvement in the construction area, the Program seeks to encourage participation by certified MWBE vendors for goods and services and professional services.

Additionally, the School Board's adoption of its Local Developing Business Enterprise Program will implement race and gender neutral policies that will foster the development of the construction management and prime contractor-level M/WBE capacity in the Orlando SMSA.

M/WBE participation levels shall be evaluated by the School Board on an annual basis. In the event that the annual review indicates underutilization of M/WBEs and a proper predicate has been established to support a compelling interest for specific industry subcategories, the School Board may implement or extend levels of participation for selected Contracts in those subcategories.

## II. DEFINITIONS

As used in the Program, the following terms shall be defined as follows:

- A. "Affiliates" means: Entities in which either directly or indirectly: 1) one entity controls or has the power to control both; or 2) a third party or parties controls or has the power to control both; or 3) an identity of interest between or among parties exists such that affiliation may be found. The affiliation rules promulgated by the Small Business Administration under 13 C.F.R. 121.103 may be used as a basis for affiliation analysis under the Program. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships.
- B. "Applicant" means: A person or entity applying for M/WBE status under the Program.
- C. "Business Opportunity Administrator" means: That person who is authorized by the Superintendent to supervise and coordinate the implementation of the Program.

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- D. "Certification" means: The process by which an Applicant is determined to be a bona fide Minority and/or Women Business Enterprise (M/WBE).
- E. "Contract" means: Any agreement with the School Board for construction projects or for the purchase, lease or disposal of supplies or other goods, or maintenance, installation or other services, including professional services, but not including leases of real property, space use permits, employee benefits, taxes, judgments, agreements for travel, dues, pensions, utilities, subscriptions, auto allowances, debt service requirements, purchases from governmental entities or postage.
- F. "Contractor" means: Any person, firm, or entity that, pursuant to a bid, proposal or negotiation and a corresponding Contract agrees to provide professional and/or construction services or goods and/or supplies to the School Board. This term does not mean or include any person, firm or entity that, pursuant to a Contract agrees (1) to only directly sell or furnish supplies, materials or personal services to the School Board, whether or not same are to be incorporated into improvements to or upon real property, or (2) to repair or maintain existing structures, buildings, real property or improvements situated in or upon real property.
- G. "Goods" means: Personal property of all types, including, without limitation, equipment, tools, vehicles, materials, and office supplies.
- H. "Joint Venture" means: An association of an M/WBE and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the M/WBE is responsible for a distinct, clearly defined portion of the work of the Contract and whose share in the capital contribution, control, management, risks and profits of the undertaking are commensurate with its ownership interests.
- I. "Minority/Woman Owned Business" or "M/WBE" means: A for-profit business entity: 1) at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, in which fifty-one percent (51%) of the issued and outstanding stock is owned by one or more such individuals which give such socially and economically disadvantaged individuals legal control of the entity; and 2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- J. "Professional Services" means: Architectural and engineering services, accounting services, legal services and other such services as may be identified from time to time by the School Board.
- K. "Qualified" means: Any person or entity that is duly licensed, registered or certified by the appropriate local and state agencies to legitimately engage in the work it proposes to perform.
- L. "Socially and Economically Disadvantaged Individual" means: any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who falls into one of the categories below:

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- a) "African Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish culture or origin, regardless of race;
  - c) "Native Americans," which includes persons having origins in any of the original peoples of that part of North America that has become the United States;
  - d) "Asian-Pacific Americans," which includes persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
  - e) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
  - f) Women;
  - g) Any individual when the School Board finds to be socially and economically disadvantaged on a case by case basis.
- M. "Services" means: The furnishing of labor, time, expertise, or effort, but does not include the rendition of Professional Services, employment or collective bargaining agreements, or the providing of a tangible end product.
- N. "Subcontractor" means: Any person, firm or entity that, pursuant to a sub-contract agreement with a Contractor, furnishes or provides to a Contractor any labor or services necessary or required by a Contract.
- O. "Superintendent" means: The Superintendent of the School Board or the person or persons designated by the Superintendent to act on his behalf with respect to issues delegated to the Superintendent under this Program.
- P. "Supplier" means: Any person, firm or entity who, pursuant to an agreement with a Contractor or a purchase order from a Contractor, furnishes or supplies materials and/or equipment, which are to be incorporated into or used in construction work, but who does not in addition thereto provide any labor or services to be incorporated into such construction work.
- Q. "Construction Management Contract" means: A contract with licensed or registered professionals (referred to as Construction Managers) for the specific fields or areas of construction to be performed, as required by law in which a guaranteed maximum price is negotiated.
- R. "Design Build Contract" means: A single contract with a design-build firm for the design and construction of a public construction project.

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- S. “Program Management Contract” means: A contract with licensed or registered professionals (referred to as Program Managers) that would act as the agent of the board and would be responsible for schedule control, cost control, and coordination in providing or procuring planning, design, and construction services.
- T. “Construction Bids” means: A bid advertised for a construction project and awarded to a licensed general contractor. This excludes construction projects that utilize a construction manager, design builder, or program manager.

### III. ESTABLISHMENT OF GOALS

In order to address the inequity in the School Board’s procurement processes as identified in Disparity Study II, the School Board sets within the Program certain participation levels for the dollar value of work to be awarded to M/WBEs. In addition to the annual overall Program participation levels established by the School Board, the Superintendent may set Contract participation levels for individual projects for which there are known available M/WBEs with capabilities consistent with the requirement of the specific Contract. The current overall annual participation levels are as follows:

1. Construction Work and Construction Materials – 23%;
2. Professional Services of Architects, Engineers, Landscape Architects, Land Surveyors, Attorneys, etc, - 15%; and
3. Procurement of Goods and Non-Professional Services – 12% (this goal is established for the purchase of goods and services except; lease of real property, spaces, use permits, employee benefits, taxes, judgments, agreements for travel, dues, pensions, utilities, subscriptions, anti-allegiances, debt service requirements, and/or purchases from governmental entities and postages.).

### IV. DESIGNATION OF A BUSINESS OPPORTUNITY ADMINISTRATOR FOR POLICY ADMINISTRATION

A Business Opportunity Administrator (“the Administrator”) shall be designated by the Superintendent. The Administrator will be responsible for managing the Program. The Business Opportunity Administrator will conduct periodic surveys to determine whether the Program is achieving its objectives. Reports of surveys will be the basis for action to correct deficiencies, where appropriate. Where action is prescribed, the Business Opportunity Administrator will make appropriate recommendations to the Superintendent. The Business Opportunity Administrator will also be responsible to make recommendations concerning updating Disparity Study II. The findings of Disparity Study II will help the School Board to determine whether the School Board is reducing the identified disparity in contracting.

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The Business Opportunity Administrator will also be charged with:

1. Providing information to M/WBEs on the School Board's needs for goods and services, professional services, construction projects, and future plans;
2. Providing assistance in resolving major procurement and contracting issues affecting M/WBEs;
3. Organizing and scheduling seminars to acquaint M/WBEs with information on School Board bid specifications, procurement policies, and general bidding requirements;
4. Evaluating the effectiveness of the Program;
5. Ensuring that only entities meeting the requirements of the Program benefit from the Program;
6. Ensuring that the M/WBE directories utilized by the School Board accurately reflect M/WBEs available to compete for Contracts;
7. Developing, where reasonable, technical assistance and participation programs for M/WBEs;
8. Monitoring contractors' and subcontractors' compliance with M/WBE commitments throughout the performance period of Contracts;
9. Attending and encouraging M/WBEs to attend pre-bid, pre-proposal, and pre-construction conferences to explain M/WBE requirements and respond to questions;
10. Assisting in the facilitation and monitoring of mentoring relationships;
11. Participating in bid and proposal review committees;
12. Monitoring the impact of the School Board's Local – Developing Business Enterprise Program on its utilization of M/WBEs;
13. Coordinating the use of The Program and the School Board's Local – Developing Business Enterprise Program in the utilization of M/WBEs by the School Board;
14. Preparing reports as required of the percentages of participation by M/WBEs and LDBs for goods and services, professional services and construction services. Managing the means and methods for compilation of accurate data for reporting;
15. Performing related duties, as assigned.

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### V. PROCEDURES TO ENSURE THAT M/WBES HAVE AN EQUITABLE OPPORTUNITY TO COMPETE FOR CONTRACTS AND SUBCONTRACTS

To ensure equitable opportunity for M/WBEs to compete for Contracts and subcontracts, the School Board will take the following affirmative steps to facilitate involvement of M/WBEs:

1. Communicate to M/WBE contractor and business organizations as to the availability of contracting and subcontracting opportunities with the School Board;
2. Ensure that approved M/WBE organizations are provided access to plans and specifications related to contracting and subcontracting opportunities with the School Board;
3. Participate in pre-bid/pre-proposal conferences to provide firms with ample opportunity to ask questions about M/WBE requirements;
4. Provide, upon request, M/WBE contractors, and business organizations lists of firms bidding as prime contractors on School Board projects;
5. Work through business organizations and M/WBE business assistance organizations to collaborate with the district;
6. Ensure that bidding opportunities are advertised in news media, specifically including minority-focus news media;
7. Provide recommendations to divide large projects into small contractual work elements, where prudent, so smaller M/WBEs are able to compete for the projects;
8. Assist bidders/proposers in efforts to obtain the names and addresses of M/WBEs that may be utilized as subcontractors;
9. Provide outreach programs on a periodic basis for vendors, contractors, sub-contractors and professional service providers;

### VI. PROCEDURES TO ASCERTAIN THE ELIGIBILITY OF M/WBES AND JOINT VENTURES

#### 1. Construction Bids

The Business Opportunity Administrator will determine prior to the award of each bid which is subject to the Program, whether each M/WBE listed by a Contractor in its bid to the School Board is a validly certified M/WBE, thus entitling the Contractor to the Award. In making such determination, the Business Opportunity Administrator will accept a copy of an unexpired M/WBE certificate issued by the City of Orlando, Orange County, NMSDC (National Minority Supplier Diversity Council) any agency of the State of Florida which regularly certifies M/WBEs or the Greater Orlando Aviation Authority, provided that the M/WBE certifies that since the date of its M/WBE certification by one of the aforementioned entities, it has not experienced a change that would effect the M/WBE's status as an M/WBE. If an M/WBE has been certified by one of the enumerated agencies, but has been

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denied certification by another, the Administrator is authorized to undertake whatever action deemed appropriate to make a determination as to M/WBE status. The School Board, through its Business Opportunity Department has the discretion to be a certifying agency.

Any firm that believes that it has been wrongfully denied recognition as a certified M/WBE firm or joint venture involving an M/WBE, may file an appeal in accordance with Section IX of the Program.

### 2. Professional Services, Construction Management, Program Management and Design Build Contracts

For professional service, construction management, program management and design build contracts, the Business Opportunity Administrator will monitor monthly pay applications to determine at the end of the project whether the professional service provider, construction manager, program manager, or design builder has complied with the participation goals established in their contract and whether each M/WBE listed by the firm in its monthly pay applications is a validly certified M/WBE.

In making such determination, the Business Opportunity Administrator will accept a copy of an unexpired M/WBE certificate issued by the City of Orlando, Orange County, any agency of the State of Florida which regularly certifies M/WBEs or the Greater Orlando Aviation Authority, provided that the M/WBE certifies that since the date of its M/WBE certification by one of the aforementioned entities, it has not experienced a change that would effect the M/WBE's status as an M/WBE. If an M/WBE has been certified by one of the enumerated agencies, but has been denied certification by another, the Administrator is authorized to undertake whatever action deemed appropriate to make a determination as to M/WBE status. The School Board, through its Business Opportunity Department has the discretion to be a certifying agency.

Any firm that believes that it has been wrongfully denied recognition as a certified M/WBE firm or joint venture involving an M/WBE, may file an appeal in accordance with Section IX of the Program.

### 3. Goods and Services

The Business Opportunity Administrator will determine after the award of each bid which is subject to the Program whether the award has been made to a validly certified M/WBE. In making such determination, the Business Opportunity Administrator will accept a copy of an unexpired M/WBE certificate issued by the City of Orlando, Orange County, any agency of the State of Florida which regularly certifies M/WBEs or the Greater Orlando Aviation Authority, provided that the M/WBE certifies that since the date of its M/WBE certification by one of the aforementioned entities, it has not experienced a change that would effect the M/WBE's status as an M/WBE. If an M/WBE has been certified by one of the enumerated agencies, but has been denied certification by another, the Administrator is authorized to undertake whatever action deemed appropriate to make a determination as to M/WBE status. The School Board, through its Business Opportunity Department has the discretion to be a certifying agency.

Any firm that believes that it has been wrongfully denied recognition as a certified M/WBE firm or joint venture involving an M/WBE, may file an appeal in accordance with Section IX of the Program.



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### VII. M/WBE PARTICIPATION; GOOD FAITH EFFORTS

#### 1. Construction Bids

A. Requirements for the utilization of M/WBEs will be included in each bid. Thus, a bidder must submit to the School Board at bid opening all M/WBE participation information requested by the School Board in the bid documents in order to be eligible for award.

B. Contractors meeting the M/WBE participation level need not submit good faith documentation. If the bidder fails to meet the M/WBE participation level, the School Board will require bidder to submit evidence of good faith efforts utilized to reach the desired M/WBE participation level. Evidence of good faith efforts submitted by the bidder can include, but is not limited to, the following efforts:

1. Indicating the name and title of the person responsible for the bidder's good faith effort to satisfy the goal established herein;
2. Attending a pre-bid meeting, if any, scheduled by the School Board to inform M/WBEs of available subcontracting opportunities;
3. Documenting commitments from enough M/WBEs to meet or exceed the M/WBE participation level established for the work;
4. Providing copies of written correspondence to M/WBEs providing information about the specific work available, and/or soliciting their bids (attach fax confirmation sheets, certified return receipts or unopened, returned mail to prove receipt by the M/WBEs);
5. Breaking out commercially useful portions of the overall contract work (consistent with normal industry practice) to increase subcontracting opportunities for M/WBEs;
6. Providing evidence of assistance given to M/WBEs to assist in the procurement bonding, lines of credit and/or insurance;
7. Advertising the availability of subcontracting opportunities in trade association publications and other minority and women focused media within a reasonable period of time prior to the date bids or proposals are due;
8. Assisting interested M/WBEs with reviewing contract plans, specifications, and the terms and conditions of the general contract, subcontract and addenda, if any, in sufficient time allow a response;
9. Making efforts to help interested M/WBEs obtain equipment, supplies, materials, or other assistance needed to successfully complete the subcontract work;

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10. Making follow-up inquiries after initial written solicitations of interest from M/WBEs (evidenced by documentation of the date, time and name of individuals contacted or a telephone log );
11. Providing a list of negotiation efforts with M/WBEs that submitted quotes;
12. Explaining why M/WBEs were not utilized (higher quotes, lack of interest or availability, etc.);
13. Demonstrating that M/WBEs were not rejected as unqualified without a thorough and documented investigation of their capabilities and capacity.

### 2. Professional Services, Construction Management, Program Management and Design Build Contracts

A. Utilization of M/WBE's by professional service providers, construction managers, program managers, and design builders will be included in each monthly pay application submitted by the firm. The utilization shall be submitted using the form provided by the Business Opportunity Department.

B. If the professional service providers, construction managers, program managers, or design builders fail to meet the M/WBE participation level, the School Board will require the firm to submit evidence of good faith efforts utilized to reach the desired M/WBE participation level. Evidence of good faith efforts submitted by the firm can include, but is not limited to, the efforts described in Section VII, 1, B, 1-13.

## VIII. EVALUATION OF GOOD FAITH EFFORTS

### 1. Construction Bids

In order to assure that contractors and vendors comply with the Program, successful bidders must meet or exceed the M/WBE participation level for a specific bid or demonstrate good faith efforts to meet those goals. Within forty-eight (48) hours after receipt of a request from the School Board, bidders failing to substantiate compliance with the M/WBE participation level must submit documentation of good faith efforts made before submission of their bid/proposal. In evaluating good faith efforts, the School Board or its designee will determine whether the competitor made reasonable efforts, prior to submission of the bid/proposal, to include M/WBEs. The School Board's evaluation will include the different kinds of efforts made by a bidder/proposer, plus the quantity and intensity of those efforts. The School Board will not consider efforts made by the bidder/proposer after submission of the bid/proposal to meet the desired M/WBE participation levels.

In addition to the documentation listed in this Section VI, the School Board may consider the following information in evaluation of the bidder's/proposer's good faith efforts:

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- a) Efforts made by the bidder/contractor to select portions of the work proposed to be performed by M/WBEs in order to increase the desired level of participation by M/WBEs;
- b) Whether other bidders/contractor met or exceeded the desired M/WBE firm participation levels established for the contract award;
- c) Whether the bidder/contractor has established a bona fide mentoring program to assist M/WBEs in acquiring skills and experience which will foster the preparedness and growth of M/WBEs;
- d) The extent to which a bidder/contractor utilizes M/WBEs in private sector work;
- e) The extent to which the bidder/contractor has race, ethnic and gender diversity at the management staff level in its company;

Bids submitted which do not meet or exceed the desired level of M/WBE participation; or do not demonstrate that good faith efforts were utilized to include M/WBEs, will be considered non-responsive and the bidder will not be eligible for award of the bid.

### 2. Professional Services, Construction Management, Program Management and Design Build Contracts

Professional service providers, construction managers, program managers, and design builders shall submit documentation of good faith efforts within 48 hour of receipt of request from the School Board. In evaluating good faith efforts, the School Board or its designee will determine whether the competitor made reasonable efforts to include M/WBEs. The School Board's evaluation will include the different kinds of efforts made by a contractor, plus the quantity and intensity of those efforts.

In addition to the documentation listed in this Section VII, the School Board may consider the information listed in Section VIII, 1, a-e in evaluation of the contractor's good faith efforts:

A construction manager or design builder who fails to meet or exceed the desired level of M/WBE participation, and who does not demonstrate that good faith efforts were utilized to include M/WBEs, will be subject to suspension from future work with OCPS in accordance with OCPS Policy.

## IX. APPEALS

- A. In the event the Business Opportunity Administrator recommends that a bid be rejected or that a construction manager/design builder be suspended for failing to meet the School Board's desired M/WBE participation levels and failing to demonstrate good faith efforts, the Administrator shall promptly provide a written explanation of the basis for rejection or suspension. A bidder or contractor may appeal the Administrator's determination by submitting a written request for review of the issue(s) to the Superintendent of the School Board or his designee. The appeal must be made within five (5) business days after the receipt of the

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written explanation of the basis for rejection. The written request for review shall specify the reasons why the Administrator's recommendations are inapplicable. The Superintendent of the School Board or his designee shall prepare a written decision, together with the reasons therefore, within a reasonable time after review of the appeal request. A copy of the decision shall be sent to the bidder or contractor.

### X. COUNTING UTILIZATION OF M/WBE FIRMS TOWARD MEETING DESIRED M/WBE PARTICIPATION

1. In non-direct contracts bids/proposals, all bidders/proposers including M/WBE bidders/proposers, but excluding M/WBE joint ventures, shall meet the desired M/WBE participation levels through second tier participation.
2. In direct contracts, no second tier M/WBE participation shall be required. However, the M/WBE bidder/proposer may not subcontract more than forty nine percent (49%) of the total dollar amount of the Contract to a firm or firms that are not M/WBEs. However, second-tier participation will be documented and reported.
3. The degree of M/WBE participation through joint ventures between M/WBEs, and between M/WBE and majority firms shall be calculated as follows:

A joint venture, consisting of an M/WBE and majority firm functioning as a prime contractor, will be credited with M/WBE participation on the basis of percentage of the dollar amount of the work to be performed by the M/WBE prime and through second-tier participation.

### XI. PROCEDURES BY WHICH THE SCHOOL BOARD MAY IMPLEMENT M/WBE DIRECT CONTRACTS

The Superintendent, or his designee, may endeavor to increase M/WBE participation by direct contracts exclusively for M/WBE participation for construction work and construction materials, procurement of goods and non-professional services and procurement professional services that will or are likely to attract meaningful competition from LDBs firms capable of meeting the contract specifications. Consequently, the School Board may use direct contracting techniques when necessary to meet M/WBE goals provided that the following conditions exist:

1. At least **three** certified M/WBE's capable of performing the contract are available;
2. The Superintendent or his designee has determined that the contract should be a direct contract in order to meet M/WBE goals.

The School Board will state in its solicitation if a particular contract is intended to be a direct contract with M/WBEs.

M/WBEs interested in bidding or proposing on School Board direct contracts must submit M/WBE certification in accordance with the instructions provided in the contract documents.

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### XII. CALCULATING PERCENTAGE OF PARTICIPATION

For the purposes of calculating the percentage for Construction and Professional Services, the total dollar amount paid to date to M/WBEs will be reported as a percentage of the total dollar amount paid to date to the contractor.

For the purposes of calculating the percentage for goods and services, the total dollar value for purchase orders issued to MWBEs will be reported as a percentage of total dollar value of purchase orders issued during that same time period.

### XIII. QUARTERLY REVIEW OF PARTICIPATION

A quarterly progress report will be submitted to the School Board for review. This report will provide dollars spent with certified M/WBE firms and percentages of participation for goods and services, professional services and construction services.

### XIV. PERIODIC REVIEW OF GOALS

The School Board will periodically review the participation level of M/WBEs performing work on School Board projects. Based on this review of actual participation levels, the School Board, in its discretion, may adjust M/WBE participation levels to maximize opportunities for M/WBEs to compete for Contracts let by the School Board.

### XV. EFFECTIVE DATE

The Program and the procedures set forth herein shall become effective upon the School Board's adoption of the Policy.