

3330.1 PURCHASING POLICIES – SUPPLIER DIVERSITY OUTREACH PROGRAM FOR PROFESSIONAL SERVICES, COMMODITIES, AND OTHER CONTRACTUAL SERVICES CONTRACTS

[NOTE: Policy No. 3330 Sections A, B, C, and D are incorporated herein by reference.]

E. Industry-Specific Remedial Affirmative Procurement Initiatives

3. Race-Neutral Professional Services Program Elements

The GSC shall consider the application of one or more of the following Race-Neutral APIs for each SBBC Professional Services solicitation:

a. SBE 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 SDOP Office 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.

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 establish an evaluation preference with an award of up to twenty percent (20%) of the total available evaluation points reserved for those prime bidders or Respondents that are certified as SBEs. Out of those twenty percent (20%) of the total evaluation preference points, the GSC may limit SBE bidders that have prior experience performing work on behalf of SBBC to a maximum of ten percent (10%) out of the total twenty percent (20%) evaluation preference points that are reserved for SBE firms. SBEs that have never before received SBBC work may be eligible for the entire twenty percent (20%) of reserved SBE evaluation preference points. Alternatively, the GSC may, at its discretion, reserve all of the twenty percent (20%) 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 Director 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 S/M/WBE 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 do 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%) 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:

- i. 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 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 Office. The SDOP Office shall base its determination of a waiver request on criteria such as, but not limited to:

- i. Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available SBEs;
- ii. Whether subcontracting would be inappropriate and/or not provide a "Commercially Useful Function" under the scope of the contract; and
- iii. 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 the SDOP Office 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 Office 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 (1) or more other certified SBE Subcontractors and shall submit a waiver request to the SDOP Office 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 School 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 (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 SBBC'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 SBBC'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 allocate up to twenty percent (20)% of weighted selection criteria in favor of the selection of a

Respondent that is a certified M/WBE firm. Out of those twenty percent (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 a maximum of ten percent (10%) out of the total twenty percent (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 twenty percent (20%) of reserved M/WBE evaluation preference points. Alternatively, the GSC may, at its discretion, reserve all of the twenty percent (20%) 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 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 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 Office, 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:

- 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; and
- iii. 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 Office. The SDOP Office shall base its determination on a waiver request on criteria such as, but not limited to:

- i. Whether the requestor of the waiver has made Good Faith Efforts to subcontract with qualified and available M/WBEs;
- ii. Whether subcontracting would be inappropriate and/or not provide a "Commercially Useful Function" under the scope of the contract; and
- iii. 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 Office, 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 SDOP Office 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 Office, 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 Office, 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 Office 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 or more other certified M/WBE Subcontractor(s) and shall submit a waiver request to the SDOP Office 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 Office, 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 Segmented Subcontracting Goals for Professional Services

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 (1) 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. 4. c of this Policy.

e. 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 Office 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.

5. Race-Neutral Commodities Program Elements

a. SBE Price Evaluation Preferences for Commodities

Under this Program element, the GSC may apply a five percent (5%) percent bid discount for purposes of bid price evaluations on prime contract bids submitted by certified SBE firms. If, as a result of the application of the price evaluation preference, an SBE firm's bid is ranked as the lowest price bid, the contract shall be awarded to that SBE, but at its originally bid price as it existed prior to the application of the bid discount. The Superintendent or designee may impose a maximum cap on the dollar value of such bid discounts to be permitted under this Program element. Such maximum caps are to be disclosed in the bid solicitation language whenever this API is applied by the GSC.

b. 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 Office 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.

c. 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 School 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%) MBE prime contract participation and sixteen percent (16%) WBE prime contract participation based upon the industry availability estimates in accordance with the SBBC'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 SBBC'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 SBBC'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 Price Evaluation Preferences for Commodities

Under this Program element, the GSC may apply a five percent (5) percent bid discount for purposes of bid price evaluations on prime contract bids submitted by certified M/WBE firms. If, as a result of the application of the price evaluation preference, an SBE firm's bid is ranked as the lowest price bid, the contract shall be awarded to that SBE, but at its originally bid price as it existed prior to the application of the bid discount. The Superintendent or designee may impose a maximum cap on the dollar value of such bid discounts to be permitted under this Program element. Such maximum caps are to be disclosed in the bid solicitation language whenever this API is applied by the GSC.

c. 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 Office 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.

d. 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 Office 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 Office 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 Office 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.

e. Mandatory M/WBE Distributorship Development Program

Under this Program element, in the event a Manufacturer has been determined to have violated the SBBC's Commercial Nondiscrimination Policy (Purchasing Policy No. 3330, Section D.1.), the SDOP Office may require that Manufacturer to participate in the Voluntary M/WBE Distributorship Development Program as a condition of its ability to sell products to the SBBC.

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 A&E 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 Office 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.

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 establish an evaluation preference with an award of up to twenty percent (20%) of the total available evaluation points reserved for those prime bidders or Respondents that are certified as SBEs. Out of those twenty percent (20%) of the total evaluation preference points, the GSC may limit SBE bidders that have prior experience performing work on behalf of SBBC to a maximum of ten percent (10%) out of the total twenty percent (20%) evaluation preference points that are reserved for SBE firms. SBEs that have never before received SBBC work may be eligible for the entire twenty percent (20%) of the reserved SBE evaluation preference points. Alternatively, the GSC may, at its discretion, reserve all of the twenty percent (20%) 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 School 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 SBBC'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 SBBC'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 SBBC'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 Office 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.

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 establish an evaluation preference with an award of up to twenty percent (20%) of the total available evaluation points reserved for those prime bidders or Respondents that are certified as M/WBEs. Out of those twenty percent (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 a maximum of ten percent (10%) out of the total twenty percent (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 twenty percent (20%) of the reserved M/WBE evaluation preference points. Alternatively, the GSC may, at its discretion, reserve all of the twenty percent (20%) evaluation preference points for those M/WBE firms that have never previously performed any Other Contractual services work on behalf of the SBBC.