

STANDARD OPERATING PROCEDURES FOR THE SUPPLIER DIVERSITY OUTREACH PROGRAM



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2016 Standard Operating Procedures for the Supplier Diversity Outreach Program
 (“SDOP”)

(Adopted by the Superintendent of Broward County Public Schools on
 December 6, 2016, pursuant to SDOP Policies 3330 and 3330.1)

[Definitions from Policy 3330 are incorporated by reference herein]

Section F.

1. SDOP Office Duties and Responsibilities

The SDOP Policy will be administered and managed by the Coordinator of the SDOP Office or designee. The Coordinator of the SDOP office or designee shall attend all School Board meetings to address any Small / Minority and/or Women Business Enterprises (S/M/WBE) or SDOP policy issues. The SDOP office shall be responsible for the overall administration of the District’s SDOP policy. At a minimum, the SDOP office shall:

- (a) Report to The School Board of Broward County, Florida (SBBC) and the public, based on available data, on at least an annual basis as to the District’s progress toward satisfying the SDOP policy purposes and objectives;
- (b) Formulate, establish, distribute and implement additional forms, rules and procedures for SDOP policy waivers, improvements and adjustments to the goal-setting methodologies and other policy features;
- (c) Have advance substantive input in a contract specification review process consistent with this Policy to ensure that contract solicitation specifications are not unnecessarily restrictive and unduly burdensome to S/M/WBE firms;
- (d) Receive and analyze external and internal information, including statistical data and anecdotal testimony regarding the barriers encountered by S/M/WBE firms in attempting to obtain contract opportunities with the SBBC, and the relative effectiveness of various Affirmative Procurement Initiatives (APIs) in addressing those barriers;
- (e) Monitor and support the implementation of the SDOP policy and propose modifications to appropriate SBBC officials as necessary to fully achieve the purpose and objectives of the Policy;
- (f) Provide public education and advocacy internally and externally regarding the purposes and objectives of the SDOP policy;

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- (g) Develop, maintain and distribute directories of certified Small Business Enterprises (SBEs), Emerging Small Business Enterprise (ESBEs) and Minority and/or Women Business Enterprises (M/WBEs);
- (h) Assess technical assistance needs of S/M/WBE firms and provide seminars and technical assistance referrals to S/M/WBE firms to enhance their ability to effectively compete for SBBC contracts;
- (i) Investigate alleged violations of this Policy and provide written recommendations to appropriate authorities for remedial action and imposition of sanctions and penalties when necessary;
- (j) Determine Prime Contractor compliance with SDOP policy requirements prior to contract award presentation to the SBBC and prior to originating department release of final retainage;
- (k) Oversee the maintenance of an accurate contract performance and compliance reporting system;
- (l) Provide staff support for the Small Business Advocacy Committee (SBAC) and the Goal Setting Committees (GSC); and
- (m) Collaborate with the Office of the Chief of Financial Officer, Financial Management and the Procurement & Warehousing Services Department to streamline the invoice and payment procedures at SBBC so as to accelerate payments for undisputed invoices within fifteen (15) days of receipt to prime contractors and vendor, and to require such primes and vendors to then pay undisputed subcontractor invoices within five (5) days of receipt of invoice.

2. Goal Setting Committees

Each Goal Setting Committee or series of Goal Setting Committees is to be appointed and chaired by the Superintendent or designee. The GSC shall include, 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 Construction and Facilities Management) all without duplication of designees. The Superintendent or designee may also appoint two (2) ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE program goals for the 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

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makes determinations about which APIs are to be applied to specific contracts based upon various criteria.

At a minimum, the GSC **shall**:

- (a) Meet as often as it deems necessary to accomplish its duties as outlined in this Policy, but not less than once monthly;
- (b) Formulate, recommend to the Superintendent or designee, and implement additional rules and procedures for SDOP policy goal-setting and other aspects of its duties in selecting and applying specific APIs to SBBC solicitations and contracts in an efficient and effective manner; and
- (c) Monitor and support the implementation of the SDOP policy.

3. Annual Aspirational Goals

The GSC shall establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation in School Board contracts 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 GSC based upon the M/WBE availability by industry in accordance with the Districts’ 2015 Mason Tillman Associates, Ltd. (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.

For each fiscal year, the GSC may establish a non-mandatory, industry-specific annual aspirational percentage goal for overall M/WBE prime contract and subcontract participation on SBBC contracts as follows:

The Annual Aspirational Goals for M/WBE participation in the SBBC “Construction” contracts have initially been established at thirty-seven percent (37%) for MBE prime contract participation and twelve percent (12%) WBE prime contract participation, and also thirty-three percent (33%) MBE subcontract participation and eleven percent (11%) WBE subcontract participation based upon the combined M/WBE availability by its industry in accordance with the 2015 Disparity Study findings.

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The Annual Aspirational Goals for M/WBE participation in the SBBC “Professional Services” contracts have initially been established at sixty-two percent (62%) for MBE prime contract participation and eight percent (8%) for WBE prime contract participation, and also fifty-eight percent (58%) MBE subcontract participation and nine percent (9%) WBE subcontract participation based upon the combined M/WBE availability by industry in accordance with the 2015 Disparity Study findings.

The Annual Aspirational Goals for M/WBE participation in the SBBC “Commodities” contracts have initially been established at thirty-four percent (34%) MBE prime contract participation and sixteen percent (16%) WBE prime contract participation based upon the combined M/WBE availability by industry in accordance with the 2015 Disparity Study findings.

The Annual Aspirational Goals for M/WBE participation in the SBBC “Other Contractual Services” contracts has initially been established at forty-one percent (41%) for MBE prime contract participation and twenty-three percent (23%) for WBE prime contract participation based upon the combined M/WBE availability by industry in accordance with the 2015 Disparity Study findings.

Annual Aspirational Goals are not to be routinely applied to individual contracts or solicitation documents 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 remedies and APIs being applied pursuant to this Policy.

Annual Aspirational Goals may be stated only in those SBBC contract solicitation specifications 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.

4. Contract-by-Contract Subcontract Goal-Setting / API Application

All subcontracting goals authorized under this Policy are intended to be established by the GSC and implemented only on a contract-by-contract basis. It is intended that such goal-setting will be based upon careful analysis of the availability of Commercially Useful Functions in subcontracting opportunities within a given contract and the relative availability of S/M/WBE firms to perform required tasks on such subcontract opportunities. Such contract-by-contract goal-setting shall be based upon reasonably reliable Respondent and Subcontractor availability data.

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5. Periodic Review of Factual Predicate

Beginning no later than December 31, 2020, five (5) years after the School Board’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.

6. Certification

Certification of all S/M/WBE firms shall be the responsibility of the SDOP office. The SDOP office shall be responsible for developing, issuing and reviewing all S/M/WBE certification and re-certification forms and applications in a manner that is consistent with the standards, definitions and intent established by this Policy. The SDOP office shall also maintain an automated and up-to-date web-based registry of all certified S/M/WBE firms that are readily available to the general public, as well as SBBC personnel.

- (a) In executing its responsibility in connection with these certifications, the SDOP office may contract with a regional certification agency/organization for the purpose of issuing certifications in a manner that is consistent with the standards established under this SDOP policy.
- (b) A firm eligible for certification(s) under this SDOP policy shall be an Independently owned and operated business. The ownership and control by Minority Group Members or Women shall be real and substantial, and shall be indicated by customary incidents of ownership as demonstrated by an examination of the substance, rather than the form, of ownership and operating arrangements. In determining whether a potential firm is an independently owned and operated business, the certifying agency considers all relevant factors including, but not limited to:
 - i) The date the business was established;
 - ii) The adequacy of its resources for the work of the contract; and
 - iii) The degree to which financial, equipment leasing, supplier and other relationships with non-minority businesses vary from industry practice.

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- (c) The Minority Group Member or women owners must possess and exercise the power to direct the management and policies of the firm and to make day-to-day decisions, as well as any decisions on matters of management policy, and operations. The firm shall not be subject to any formal or informal restrictions which limit the customary discretion of the Minority Group Member or women owners. There shall be no restrictions by partnership agreements, charter requirements, operating agreements or other arrangements which prevent the Minority Group Member or women owners from making business decisions for the firm without the cooperation or vote of any owner that is not a minority or female.
- (d) Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an S/M/WBE. certification as S/M/WBE firms will be in accordance with the definitions established in Part X, Section C. 2. of this Policy.
- (e) A claim of minority status as a Minority Group Member must be directly related to the applicant's parents' status. Neither birthplace nor marriage has any bearing on minority status of the certification applicant. All Minority Group and women owners of certified firms must be Individuals that are lawfully residing in, or are citizens of, the United States or its territories.
- (f) A firm seeking certification or re-certification status under this Policy shall cooperate fully with the SBBC in supplying additional information and in facilitating a site visit of the enterprise which may be requested in order to make a determination. Failure or refusal to cooperate shall result in denial or repeal of Certification.
- (g) Proof of certification by another certifying entity may be accepted by the SBBC in lieu of the SBBC's own certification process if the certifying entity adheres to the same or similar policies and standards as those established by the SBBC. To the extent the SBBC's factual predicate for its SDOP policy requires, under applicable law, a narrower definition of S/M/WBE firm categories (e.g., due to ethnicity / gender of ownership or relevant geographic market considerations), the SBBC shall limit the categories of S/M/WBE firms certified by other jurisdictions that shall be eligible for participation in the SBBC's Supplier Diversity Outreach Program as necessary to ensure that the Race-Conscious remedial relief provided by the SBBC's Program remains appropriately narrowly-tailored.
- (h) Before accepting another jurisdiction's S/M/WBE certification program, the SDOP office shall examine the definitions, standards and certification practices of the program to ensure that it adheres to established SBBC certification guidelines.
- (i) If the owners of the business who are not Minority Group Members or women are

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disproportionately responsible for the operation of the firm, the firm is not Controlled by minorities and/or women and may not be considered to be an M/WBE within the meaning of this Policy. Where the actual management of the business is contracted out to Individuals other than the owner, those persons who have the ultimate power to hire and fire the managers may, for the purposes of this Policy, be considered as Controlling the business.

- (j) All securities that constitute ownership or Control of a corporation for purposes of establishing it as an M/WBE under this Policy shall be held directly by Minority Group Members or women. Securities held in trust, or by any guardian for a minor, may not be considered as being held by Minority Group Members or women in determining the ownership or Control of a corporation.

- (k) The contributions of capital or expertise by the Minority Group Member or women owners to acquire their interests in the business shall be real and substantial. Examples of insufficient capital contributions include:
 - i) A promise to contribute capital;
 - ii) A note payable to the business or its owners who are not socially and economically disadvantaged, Minority Group Members or Women; and
 - iii) Contributions in labor or expertise that result solely in employee compensation, without participation in business profits as an owner.

- (l) Special consideration of the following additional circumstances in determining eligibility:
 - i) Newly-formed businesses and businesses whose ownership or control has changed since the date of the advertisement of the contract shall be closely scrutinized to determine the reasons for the timing of the formation of, or change in, the businesses;
 - ii) A previous or continuing employer–employee relationship between or among present owners shall be carefully reviewed to ensure that the employee–owner has management responsibilities and capabilities discussed in this Policy; and
 - iii) Any relationship between an M/WBE and a business that is not an M/WBE, but that has an interest in the M/WBE, shall be carefully reviewed to determine if the interest of the non-minority business conflicts with the ownership and control requirements of this Policy.

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- iv) Once certified, an S/M/WBE firm shall update its status biennially by submitting a certification affidavit. If ownership or control of the firm has changed, the S/M/WBE firm shall submit a new certification affidavit to the SDOP office, or its contracted certification agency within thirty (30) days of the change.
- v) The certifying entity will notify applicants of staff's determinations on certification and re-certification status.
- (m) Once denied certification, a firm may not re-apply for certification until the time indicated in the certification entity's policy.
- (n) A firm shall be de-certified when it no longer meets the eligibility requirements for Certification, and such de-certified firms shall not be eligible to re-apply for one year from the date of the final adverse decision.
- (o) Certification, once granted, remains in effect for two (2) years, except in accordance with the graduation and suspension provisions of this Policy.
- (p) Complaints regarding the certification status of a firm shall be forwarded to the SDOP office for investigation of any possible violations of this SDOP policy.

7. Graduation and Suspension

The SDOP office shall graduate, suspend or terminate an S/M/WBE firm from participation in the Supplier Diversity Outreach Program established by this Policy if, under Policy guidelines, the firm no longer is eligible for the Program's assistance or no longer qualifies for its remedial benefits. The SDOP office shall be responsible for monitoring and conducting periodic reviews of the size, SBBC contract participation levels, and conduct of all certified S/M/WBE firms to determine when they should be graduated, suspended or terminated from the participation in the respective program elements in a manner consistent with the standards, definitions, and intent established by this Policy. The SDOP office shall also ensure that its directory of certified S/M/WBE firms accurately and timely reflects the graduation, suspension, or termination of certified firms. In making the determination required by this paragraph, the SDOP office shall, to the extent practicable, adhere to the following guidelines:

- (a) S/M/WBE firms shall be graduated from participation under the SDOP policies' APIs when the firms are no longer eligible based upon the certification standards and definitions set forth in this Policy.
- (b) Certified S/M/WBE firms shall be graduated from participation in the Supplier Diversity Outreach Program when re-certification documents reflect that the S/M/WBE firm's annual revenues or number of employees exceed the size standards established by the

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Policy’s procedures for the relevant Industry Category (i.e., when the S/M/WBE firm’s annual revenues or number of employees as averaged over the past three (3) years exceed the comparable industry category size standards for small businesses established by the U.S. Small Business Administration).

- (c) Certified S/M/WBE firms shall be temporarily suspended from participation under any APIs for the remainder of any calendar year in which the firm has cumulatively received more than \$15 million in SBBC contract and/or resulting subcontract payments. Provided the suspended firm has not exceeded the size standards and still meets other certification requirements for an S/M/WBE, such firms may resume participation in race-and gender-neutral and race- and gender-conscious APIs the following calendar year.
- (d) ESBE and Emerging M/WBE firms shall be permanently graduated from the ESBE and Emerging M/WBE Programs upon submission of re-certification documents that reflect the firm’s annual revenues or number of employees have exceeded twenty-five percent (25%) of the SBA’s small business size standards for annual revenues or number of employees for the relevant Industry Category in each of two (2) consecutive calendar years.
- (e) S/M/WBE firms shall be graduated from the Supplier Diversity Outreach Program upon whichever of the following events occurs first:
 - i) The S/M/WBE firm cumulatively receives at least \$15 million in SBBC prime contract and subcontract payments in each of two (2) consecutive calendar years; or
 - ii) Upon submission of re-certification documents that reflect the firm’s annual revenues or number of employees have exceeded the SBA’s small business size standards for annual revenues or number of employees for the Relevant Industry in each of two consecutive calendar years.

Provided, however, that graduated S/M/WBE firms shall be eligible to apply for S/M/WBE re-certification following the expiration of the 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 office 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 (2) consecutive years of the post-graduation period.

- (f) For S/M/WBE firms that are certified by an agency that is recognized by the SBBC, but does not have graduation provisions, the SBBC will periodically audit these S/M/WBE firms to ensure that they meet the certification criteria contained within this Policy.

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8. Compliance Responsibilities of SDOP office

- (a) The SDOP Office, along with contracting staff of each SBBC department, shall monitor compliance with these requirements during the term of the contract. If it is determined that there is cause to believe that a Prime Contractor or Subcontractor has failed to comply with any of the requirements of this Policy, or with the contract provisions pertaining to S/M/WBE utilization, the Coordinator of the SDOP office or designee shall so notify the Originating Department and the contractor. The Coordinator of the SDOP office or designee may require such reports, information, and documentation from contractors, Respondents and the head of any SBBC department, division, or office as are reasonably necessary to determine compliance with the SDOP policy requirements, within fifteen (15) calendar days after the notice of noncompliance is issued. If the requested materials are not received within fifteen (15) calendar days, then a finding of noncompliance is determined and appropriate penalties and sanctions will apply as stated in Section F. 13. of these SDOP Standard Operating Procedures.

- (b) Joint responsibility is shared by the Coordinator of the SDOP office or designee and the Originating Department or designee to attempt to resolve a contractor's, subcontractor's, or vendor's noncompliance with the requirements of this Policy, including any non-compliance with contract provisions pertaining to S/M/WBE utilization, within fifteen (15) calendar days after the apparent noncompliance is discovered. A written notice of the noncompliance should immediately be sent by the Coordinator of the SDOP Office or designee to those contractors, subcontractors, or vendors that are in noncompliance, and to the Director of the Originating Department or designee. If noncompliance cannot be resolved within fifteen (15) calendar days after notice is sent, the Coordinator of the SDOP Office or designee and the Director of the Originating Department or designee shall submit written recommendations to the Superintendent or designee, and if the Superintendent or designee concurs with the finding, such sanctions as stated in Section F.13. of these SDOP Standard Operating Procedures shall be imposed.

- (c) Whenever the Coordinator of the SDOP office or designee finds, after investigation, that an Originating Department has failed to comply with the provisions of this Policy or the contract provisions pertaining to S/M/WBE utilization, a written finding specifying the nature of the noncompliance shall be transmitted to the Originating Department, and the Coordinator of the SDOP office or designee shall attempt to resolve any noncompliance through conference and conciliation. Should such attempt fail to resolve the noncompliance, the Coordinator of the SDOP office or designee shall transmit a copy of the finding of noncompliance, with a statement that conciliation was attempted and failed, to the Superintendent or designee who shall take appropriate action under this Policy to secure compliance.

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- (d) The Coordinator of the SDOP office or designee, through the Superintendent or designee, shall submit a written annual report to the SBAC and School Board on the progress of the SBBC toward the utilization goals established by this Policy together with an identification of problems and specific recommendations for improving the SBBC’s performance.
- (e) Subject to this SDOP policy’s scope and exclusions as described Section C.1., the terms of this Policy shall apply to all Respondents, vendors, suppliers, prime contractors, subcontractors, and prospective bidders, including, but not limited to, S/M/WBEs as defined in Section C. 2. of policy No. 3330, that seek and/or receive contract awards or payments directly or indirectly from the SBBC.
- (f) The SDOP office Coordinator or designee and Originating Departments shall work closely with the SBBC Office of General Counsel to include language in all SBBC contracts that ensures compliance with the SDOP policy. This language should also include a time period for the contractor to correct any and all deficiencies no later than fifteen (15) calendar days after notification of non-compliance.

9. Vendor Responsibilities

To facilitate the SDOP office completing its responsibilities in administering SDOP policy elements, a selected vendor shall:

- (a) Permit the SDOP office to inspect any relevant matter, including records and the jobsite, and to interview Subcontractors and workers (field compliance).
- (b) If performing an SBBC contract, comply with all SDOP policy terms in the contract, including, but not limited to, ensuring that all Subcontractors are paid any undisputed amount to which the Subcontractor is entitled within ten (10) calendar days of receiving a progress or final payment from the SBBC; and otherwise comply with SBBC’s contract terms and conditions which set forth the obligations of the Prime Contractor and Subcontractors and the remedies for delinquency or nonpayment of undisputed amounts.
- (c) Notify the SBBC in writing of any changes to their utilization and/or subcontracting plan. All changes (substitution and/or termination) must be approved in advance and in writing by the SDOP office.
- (d) Amendment for unforeseen circumstances: If at any time after submission of a solicitation response and before execution of a contract, the apparent successful Respondent determines that a certified SBE or M/WBE listed on the participation schedule has become or will become unavailable, then the apparent successful

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Respondent shall immediately notify the SDOP office. Any desired change in the SBE or M/WBE participation schedule shall be approved in advance by the SDOP office and shall indicate the Prime Contractor’s Good Faith Efforts to substitute another certified SBE or M/WBE Subcontractor (as appropriate) to perform the work. Any desired changes (including substitutions or termination and self-performance) must be approved in writing in advance by the SDOP office, or they are otherwise not in compliance with this Policy and therefore will be in material breach of contract terms.

- (e) Notify the Originating Department and the SDOP office immediately of any transfer or assignment of contract with the SBBC.
- (f) Retain records of all Subcontractor payments for a minimum of four (4) years following project termination date.

10. Reporting Requirements – SDOP office

The SDOP office Coordinator or designee shall monitor the implementation of this Policy and the progress of the SDOP policy and the various S/M/WBE Program elements. On an annual basis the Coordinator of the SDOP office or designee shall report to the School Board and the Superintendent on the implementation and, as data becomes available, progress on achieving the goals and objectives of the SDOP policy, including the achievement of contract participation goals for SBEs and M/WBEs by ethnicity and gender of ownership, by industry segment, by location, and by API. The Coordinator of the SDOP office or designee shall also issue a written report on an annual basis to the Superintendent and the School Board that summarizes contract payments to Prime Contractors and all Subcontractors for each of these categories. This written report should also address stated M/WBE Program objectives including, but not limited to, enhancement of competition as reflected in solicitation response activity, growth in availability and business capacity for SBE and M/WBE firms, removal of barriers to SBE and M/WBE contract participation, reduction or elimination of disparities in contract awards and contract payments to M/WBE firms in SBBC contracts. Other specific performance measures by which the success of the SDOP Policy might be evaluated (depending upon the availability of data) include: (a) growth in the numbers of SBE and M/WBE firms winning their first contract awards from SBBC; (b) growth in the SBBC’s overall SBE and M/WBE Prime Contracting dollar volume; (c) growth in the numbers of SBE and M/WBE firms that are bondable and in the collective bonding capacity of SBE and M/WBE firms; (d) growth in the numbers of SBE and M/WBE firms that successfully graduate from the programs and remain as viable competitors after the passage of two (2) years; (e) growth in the numbers of graduated SBE and M/WBE firms that successfully compete for SBBC contracts; (f) growth in the size of the largest SBBC contracts won and successfully performed by SBE and M/WBE firms; (g) comparability in the annual growth rates and median sales of SBE firms and M/WBE firms as compared to other firms; and (h) growth in the percentage of contract dollar participation of M/WBE firms in the private sector of the Relevant Marketplace. The written report should also contain any recommendations for modifications, suspension, or termination of any portion of this Policy, with justifications for each such recommendation.

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11. Originating Departments – Duties and Responsibilities

It shall be the responsibility of each Originating Department to ensure that solicitations emanating from the department adhere to the procedures and provisions set forth in this Policy.

- (a) The Originating Department Director or designee shall assume primary responsibility for achieving the objectives of this SDOP policy within the Originating Department and shall review, on a continuing basis, all aspects of the Program’s operations to assure that the purpose is being achieved.

- (b) Originating Departments shall maintain accurate records for each contract awarded, including unsuccessful Respondents, dollar value, the nature of the goods or services to be provided, the name of the contractor awarded the contract, the efforts it employed to solicit responses from S/M/WBEs, and all subcontracts awarded by the Prime Contractor identifying for each its dollar value, the nature of the goods or services provided and the name of the Subcontractor(s).

- (c) The Originating Department shall take the following actions to ensure that S/M/WBEs have the maximum practicable opportunity to participate on SBBC contracts:
 - i) Advertise Formal Solicitations in minority-targeted media before responses are due for specific contracting opportunities for no less than the length of the solicitation period required by state law;

 - ii) Post all Formal Solicitations on the SBBC website, for the solicitation period required by state law for the type of procurement, and then direct targeted e-mail alerts containing links to the webpage where such SBBC solicitations are posted at least four weeks in advance of bid or proposal due dates. Such e-mail alerts should be directed to all Respondents that have registered with the appropriate commodity/industry codes on the SBBC’s CBR system;

 - iii) Encourage all prospective Prime Contractor Respondents to SBBC solicitations to post their subcontract opportunities on the SBBC webpage where the solicitation specifications have been posted by the SBBC.

 - iv) Send notification of upcoming Formal Solicitations to minority and women trade associations and contractors’ associations as soon as practicable and in accordance with state law. Also provide ~~12-month~~ twelve (12) month and twenty-four (24) month advance forecasts for the issuance of solicitations for major procurements that are in excess of \$50,000.

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- v) Include the Commercial Nondiscrimination Policy statement, compliance language and any other materials and specifications required by this SDOP policy in all contracts and bid solicitation documents;
- vi) Preview and evaluate all contracting opportunities in an effort to de-bundle the total requirements of a contract into smaller units to promote maximum and reasonable opportunities for S/M/WBE participation, without making separate, sequential or component purchases in violation of state purchasing laws;
- vii) Establish procedures to ensure that all contractors submitting correct and undisputed invoices are paid within thirty (30) days and that Subcontractors are paid within ten (10) days after the SBBC pays the Prime Contractor. Insert a requirement in all contracts that Prime Contractors must inform subcontractors of written notice of disputed invoices within five (5) days of receipt, and clearly state in such notices the reasons for the disputed invoice;
- viii) Ensure that an SBBC contract is not executed and that a Notice to Proceed is not issued until binding agreements between the Prime and subcontracting S/M/WBEs have been executed by all parties and submitted to the Originating Department;
- ix) Ensure that all required statistics and documentation regarding bid, contract, invoice, and payment information are submitted to the SDOP office as requested;
- x) If circumstances prevent the Originating Department from meeting notification requirements contained herein, the Originating Department shall engage in direct and extensive outreach to S/M/WBE associations or other relevant organizations to inform them of the contracting opportunity, unless the circumstances are exigent and an emergency exists that requires immediate action to protect the public health, safety or welfare;
- xi) Notify the SDOP office Director or designee of all change orders and amendments to contracts that are subject to this Policy and take necessary steps to ensure that APIs applied to the contract by the GSC are also extended and enforced, to the maximum practical extent, with regard to any modified scope of work under the terms of such change orders and contract amendments; and

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- xii) On construction contracts, the Office of Construction and Facilities Maintenance shall impose flow-down contract clauses in prime contracts that provide for the payment of mobilization fees and other working capital to the prime contractor at the outset of contract award, Such subcontractor flow-down contract clauses shall require the prime contractor to share such mobilization fees and working capital payments proportionately with the relative value of the work being performed by each subcontractor, and to forward such payments to subcontractors within ten days of receipt of the funds.

12. Exceptions and Waivers

- (a) If a Respondent is unable to comply with the API requirements imposed by the GSC under the terms of this Policy, such Respondent shall submit, as required in the solicitation, a request for exception at the time as required in the solicitation. The exception request shall include specified documentation which demonstrates a Good Faith Effort to comply with the requirements as described under the selected APIs.
- (b) If, after award of a contract, the contractor is unable to meet the participation requirements for S/M/WBEs specified at response submittal, the contractor must seek substitute S/M/WBEs to fulfill the requirements; the requested substitution must be approved in writing by the Coordinator of the SDOP office or designee and the Originating Department Director or designee. If, after reasonable Good Faith Efforts, the contractor is unable to find a substitute M/WBE, a post-award waiver may be requested. The request shall document the reasons for the contractor’s inability to meet the goal requirement. In the event the contractor is found not to have performed Good Faith Efforts in its attempt to find a suitable substitute for the initial S/M/WBE proposed utilization, the contract may, in the SBBC’s sole discretion, be terminated for material breach. If the SBBC terminates the contract, the SBBC may then award the contract to the next lowest Responsible and Responsive Respondent or, in the alternative, re-solicit the contract with the terminated vendor being disqualified from participation in the re-solicitation.
- (c) Prior to submission of a prospective solicitation to the GSC, and prior to the public release of solicitations, an Originating Department may request the Coordinator of the SDOP office or designee to waive or modify the application of API requirements for S/M/WBE participation by submitting its reasons in writing. The Coordinator of the SDOP office or designee may grant such a waiver or modification upon determination that:
 - i) The extraordinary and necessary requirements of the contract render application of the APIs infeasible or impractical;

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- ii) The nature of the goods or services being procured are excluded from the scope of this Policy; or
- iii) Sufficient qualified S/M/WBEs providing the goods or services required by the contract are unavailable in the Relevant Market area of the project despite every reasonable attempt to locate them.

Otherwise, such solicitations shall be forwarded to the GSC for review and possible application of APIs. Any further requests from an Originating Department for modification of Goal amounts or other APIs as established by the GSC shall be presented to the Superintendent or designee, whose decisions on such requests shall be final.

- (d) The GSC may waive the application of APIs to enhance S/M/WBE utilization for a specific contract under the following circumstances:
 - i) Whenever the needed goods or services are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the SBBC, or the procurement is necessary to preserve or protect the health and safety of the School District’s students and staff; and
 - ii) The Originating Department certifies to the GSC and Superintendent or designee:
 - a) That an emergency exists which requires goods or supplies to be provided with such immediacy that it is unable to comply with the requirements of this Policy; and
 - b) That the prospective contractor is an S/M/WBE or, if not, that the prospective contractor will make a Good Faith Effort to utilize S/M/WBEs.

Final approval of all such waivers shall be made by the Superintendent or designee.

13. Penalties and Sanctions

- (a) Upon recommendation of sanctions by the Superintendent regarding the failure of a contractor, vendor, Respondent or other business representative to comply with any portion of this Policy, the School Board may impose upon the non-complying party any or all of the following penalties:

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- i) Suspension of contract;
- ii) Withholding of funds;
- iii) Rescission of contract based upon a material breach of contract pertaining to SDOP policy compliance;
- iv) Refusal to accept a response or proposal; and
- v) Disqualification of a Respondent, contractor or other business entity from eligibility for providing goods or services to the SBBC for a period not to exceed two (2) years (upon School Board approval)
- vi) Liquidated damages equal to difference in dollar value of S/M/WBE participation as committed to in contract, and dollar value of S/M/WBE participation as actually achieved.

(b) It is a violation of this Policy to:

- i) Fraudulently obtain, retain or attempt to obtain, retain or aid another in fraudulently obtaining, retaining or attempting to obtain or retain certification status as an S/M/WBE for purposes of this Policy.
- ii) Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of this Policy.
- iii) Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested certification as an S/M/WBE.
- iv) Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of this Policy.
- v) Make false statements to any entity that any other entity is or is not certified as an S/M/WBE for purposes of this Policy.

(c) Any person who violates these provisions shall be subject to penalties and sanctions

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established by Section F.13. (a) of the Standard Operating Procedures for this SDOP policy, and also to the maximum penalty provided by law.

14. Small Business Advocacy Committee (SBAC)

A citizens’ committee of no more than eleven persons, made up of representatives of trade groups and members of the general business community, including, but not limited to, S/M/WBE firm owners from various industries, herein referred to as the Small Business Advisory Committee (“SBAC”), shall be appointed by the Superintendent upon nomination by the Coordinator of the SDOP office. Each member of SBAC shall be appointed to staggered two (2) year terms. The SBAC shall function as an advisory group only, and shall: (a) assist the Director of SDOP office or designee, the Superintendent or designee, and the School Board in reviewing the continuing program elements for contractors and Subcontractors that promote S/M/WBE participation; (b) coordinate and facilitate S/M/WBE outreach activities and actions with the Coordinator of the SDOP office, the School Board or corresponding School Board committees as designated by the Superintendent; and (c) make recommendations annually to the Coordinator of the SDOP office or designee, the Superintendent or designee, and the School Board concerning proposed modifications to such programs, procedures, and practices established pursuant to this Policy.

15. S/M/WBE Ombudsman / Office of Contracts Arbitration

The Superintendent shall appoint a senior staff person outside of the realm of purchasing and contract activity to serve as the SDOP Ombudsman for purposes of mediating disputes between S/M/WBEs and SDOP staff and other SBBC departments. Any aggrieved S/M/WBE firm may seek the services of the SDOP Ombudsman by filing a request through the Superintendent’s Office. In the event mediation is unsuccessful, the Superintendent shall refer the parties to an independent Arbitration Office, provided both parties to the dispute agree to binding arbitration and to share costs of such arbitration equally, however, with the prevailing party being entitled to restitution of the arbitration fee and costs by the SBBC.

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