

**Minority/Women Contracting****BUSINESS DEVELOPMENT AND ASSISTANCE PROGRAM**

- I. The School Board of Miami-Dade County, Florida, in March of 1985 and June of 1990, determined through statistical analysis of current contracting expenditures and evaluation of economic and sociological studies applicable to Miami-Dade County in general, that a disparity continues to exist in the award of contracts to Minority/Women Business Enterprises, and that such disparity is the result of past discriminatory practices. In accordance with the United States Supreme Court decision in *City of Richmond v. J.A. Croson*, 109 S.Ct. 706 (1989), the School Board commissioned a disparity study. The study discovered and analyzed evidence of the nature and extent of discrimination against minority and women businesses in the Miami-Dade County Public Schools (M-DCPS) market area. The Supreme Court held that all race-conscious programs now require direct evidence of past discrimination against minority contractors, consultants, and vendors, and that the programs must be narrowly tailored to specifically address such discrimination. It is, therefore, the Board's intent to continue the Business Development and Assistance (BD&A) Program to:
  - A. Ensure that the School Board of Miami-Dade County, Florida, does not discriminate in the award of contracts for construction projects, procurement of goods and services, and professional services on the basis of race, color, sex, or national origin.
  - B. Ensure the maximum opportunity for Minority/Women Business Enterprises to participate in the award and performance of contracts with The School Board of Miami-Dade County, Florida.
  - C. Eliminate the current disparity in the award of contracts to Minority/Women Business Enterprises by affirmatively ensuring progressively greater participation by Minority/Women Business Enterprises through the use of minority/women set aside contracts, the establishment of goals for minority/women subcontract participation, prime contracting, and other methods as may be developed and approved by the School Board, in conformance with applicable State Statutes, regulations and rules.
  - D. Develop, and implement through the adoption of additional related Board Rules, such administrative procedures as may be necessary to fully implement the Business Development and Assistance Program.

- E. Establish progressive annual objectives and related affirmative implementation actions for increased participation by the various Minority/Women Business Enterprise subgroups.
  - F. Using the Ready, Willing and Able (RWA) M/WBE Assistance Methodology, evaluate the levels and increases in Minority/Women Business Enterprise participation annually and adjust the affirmative implementation actions accordingly to account for changing needs and circumstances to ensure that progressive utilization objectives are achieved.
  - G. Phase out affirmative implementation actions when evaluation of contract expenditures indicates that the present effects of past discriminatory practices have been eradicated.
- II. Based on the disparity study of 1990, it is the Board's intent to modify the Business Development and Assistance Program to:
- A. Strengthen the efficiency and fairness of general procurement procedures and practices to increase opportunities for contracting with M/WBEs;
  - B. Establish insurance requirements which, although providing appropriate protection, are not more restrictive than necessary to protect the public's interest;
  - C. Establish economic incentives that encourage the waiver of bonds, and enhance the bonding technical assistance program;
  - D. Establish administrative procedures regarding the expeditious resolution of monetary disputes, and motivate prime contractors to make timely payments;
  - E. Establish a more comprehensive contract reporting and monitoring system to provide accurate information;
  - F. Establish a Small Business Enterprise Program which will focus on all small business concerns, without regard to ethnicity, race or gender;
  - G. Rename the Division of Minority Business Enterprises to the Division of Business Development and Assistance, in order to provide a race/ethnic/gender neutral program, and present a more positive perception of the office and its mission;

- H. Ensure that the Division of Business Development and Assistance maintains independent oversight of all School Board procurement and construction activities, facilitates expeditious and considered resolution of issues, strengthens reporting systems, and is directly responsible for the full implementation of the Business Development and Assistance Program; and
- I. Establish a statistically based goal assistance methodology for determining the assistance levels, to be established on an annual basis, using the Ready, Willing and Able model.

### III. Definitions

#### A. Minority/Women Business Enterprise (M/WBE)

1. "Minority/Women Business Enterprise" means any legal entity which is organized to engage in commercial transactions and which is at least fifty-one (51) percent owned and controlled by a minority person or persons.
2. "Minority person" means a person who is a citizen or lawful permanent resident of the United States, and who is:
  - a. An African American, a person having origins in any of the Black racial groups of Africa;
  - b. An Hispanic, a person of Spanish or Portuguese culture, including, but not limited to, persons with origins in Mexico, South America, Central America, or the Caribbean Islands, regardless of race; or
  - c. A Woman.

#### B. Business Development and Assistance (BD&A) Program

The School Board's Business Development and Assistance Program encompasses all available affirmative action methods, to assist minority, women and small firms with contracting opportunities.

Two components of the Business Development Assistance Program are:

- 1) Minority/Women Business Enterprise (M/WBE) Program - will monitor, track and certify M/WBE firms for the School Board.
- 2) Small Business Enterprise (SBE) Program - will be in addition to the M/WBE program. The program will provide assistance to small business concerns without regard to ethnicity, race or gender. The program will be developed contingent upon legislative approval.

C. School Board

The School Board of Miami-Dade County, Florida.

D. Minority/Women Set Aside Contract

A set aside is the designation of a given contract for competition solely among M/WBE contractors, or subgroups of M/WBE contractors. Set asides may be utilized only where, prior to invitation for bid or request for proposal, it is determined that there are sufficient Minority/Women Business Enterprise contractors, consultants, vendors or suppliers to generate effective competition for a project or purchase. All set aside projects will be reviewed by the Contract Review Committees, pursuant to Board Rules 6Gx13- 3G-1.03 and 6Gx13- 3G-1.04.

E. M/WBE Assistance Levels (Subcontract Goals)

Applied to all construction projects in excess of five million dollars (\$5,000,000.). When utilized, goals shall be based on estimates made prior to bid advertisement of the quantity and type of subcontracting opportunities provided by a project to be constructed, or goods and services to be purchased, and on the availability and capability of Minority/Women Business Enterprise contractors, consultants, vendors or suppliers to do such work or provide such goods or services. When goals are utilized, the bid advertisement or request for proposal shall set forth the minority/women participation goals and, as a condition of responsiveness, bidders, as part of their bid submission, shall demonstrate every reasonable effort to meet the goals. The Instructions to Bidders and General Conditions for Construction contracts, and Special Conditions for Procurement shall incorporate a M/WBE Contractor Participation Provision, which shall specify the steps required to demonstrate every reasonable effort to meet the

goals, and set forth such other specifications, terms, conditions and procedures applicable to Minority/Women Business Enterprise participation.

F. Prime Contracting

Large general single contracts may be reduced into multiple smaller specific prime contracts. The resulting prime contracts may be bid as minority/women set aside contracts, may utilize minority/women subcontracting goals, and/or identify specific scopes of work for M/WBE participation.

G. Minority Business Enterprise Advisory Committee

A standing committee established by the School Board to assist in the development, implementation and evaluation of the Business Development and Assistance Program. This Committee shall be comprised of community members representing various minority, women and majority business interests, and a member appointed by each School Board member.

H. Certification

The procedures and necessary documentation required to determine that a contractor, consultant, or vendor is a Minority/Women Business Enterprise, as defined in Section III A.1. and Board Rule 6Gx13- 3G-1.05.

I. Local Minority/Women Business Enterprise

1. Minority/Women Business Enterprise having its main office within Miami-Dade County, and an occupational license establishing it as an entity legally authorized to conduct business in Miami-Dade County, Florida.
2. For the purpose of meeting M/WBE participation objectives, preference will be given to firms as defined above as a contract award tie breaker and to M/WBE firms having their main office in Broward, Palm Beach, or Monroe County, if Miami-Dade County based firms are not available.

J. Construction and Procurement Contract Review Committees

The Construction and Procurement Contract Review Committees (CCRC and PCRC) determine which affirmative action methods will be applied on a construction project or procurement bid. Professional services contracts, other than

construction related professional services, will be included in procurement.

K. Small/Exempt Contract

The purchase or contract by a Buyer, a school site administrator, or other work location administrator of \$10,000 and under. These purchases are not regularly reviewed for M/WBE participation. Periodic review will be conducted to include this area in outreach activities and to monitor efforts to encourage M/WBE participation.

L. Disparity Study

A determination of whether a difference exists between the availability of M/WBEs in the relevant market area and their utilization. If a disparity is found and the disparity is significant, an inference of under-utilization may be drawn.

M. Miami-Dade County Public School (M-DCPS) Market Area

The criteria for establishing the relevant market area is either:

1. the area where eighty-five (85) percent or more of the contract or procurement awardees are located; or
2. the area where eighty-five (85) percent or more of the listed vendors are located.

Therefore, the relevant market area for construction is Florida, and the relevant market area for procurement is the United States.

N. Ready, Willing and Able Firm (RWA)

A firm which must affirmatively indicate that it wants to do business with the School Board.

O. Goal Assistance Methodology

A statistically based methodology utilizing the Ready, Willing and Able (RWA) model developed to determine Assistance Levels. This methodology provides the following:

1. Assistance

- a. Assistance is based on the Disparity trends evidenced from previous years' performance (expenditures);
- b. Assistance is provided on the basis of the degree of disparity and gradually reduced until the specific M/WBE group is close to parity and can remain so without Assistance;
- c. The degree of utilization of any group is limited by Availability and Assistance. The maximum Assistance Level possible is three times the Availability of each group; and
- d. The methodology adjusts Assistance Levels for changes in Utilization and Availability.

2. Availability

The ratio of the number of specific racial, ethnic, and gender group contractors, consultants and vendors, actually certified by the School Board versus the total number of firms which are either certified by the School Board, or in the case of the non-M/WBE group, have either bid on a contract, or performed a contract or subcontract for the School Board.

3. Utilization

A ratio of the dollar amounts of contracts awarded for a specific M/WBE group of contractors/consultants/vendors compared to the total of all dollars awarded for all groups of contractors, consultants and vendors, based on actual annual School Board expenditures.

4. Disparity

Once Availability and Utilization have been calculated for a specific M/WBE group for a given time period, an expression of Disparity may be calculated. Disparity is ratio comparing the Utilization of a specific M/WBE group with the Availability of potential contractors, consultants and vendors in that group.

## IV. Implementation

- A. The Superintendent, assisted by the Minority Business Enterprise Advisory Committee, shall develop the following documents to be adopted by the Board through rulemaking procedures in the form of related Board Rules.
1. The function, makeup, duties, and responsibilities of the Minority Business Enterprise Advisory Committee.
  2. New or revised statements of the current levels of Disparity and the specific participation objectives for each of the applicable M/WBE subgroups at the end of each fiscal year. This statement shall also provide the projected annual expenditures in the contracting categories of construction, goods and services, and professional services. The annual participation objectives and projected expenditures shall be used to develop the specific dollar amounts and Assistance Levels for affirmative action contracting each fiscal year. Procedures will also be developed for adjustment of objectives, Assistance Levels and dollar amounts, in response to actual expenditures, and actual changes in minority/women availability and utilization.
  3. New or revised Administrative Procedures governing affirmative actions for the implementation of the Business Development and Assistance Program in regard to construction contracting. These procedures shall delineate the specific methods and data to be utilized in selecting projects to be bid with minority/women subcontracting goals; methods and data for advertising projects and bids; methods for determining insurance and bonding requirements; methods and data for providing prime/subcontractor prompt payment and retainage; identification of subcontractors; contract compliance monitoring and conflict resolution; comprehensive reporting structures, and methods to be utilized in selecting and establishing prime contract projects.
  4. New or revised Administrative Procedures governing affirmative actions for the implementation of the Business Development and Assistance Program in regard to the procurement of goods and services. These procedures shall establish the specific methods for the advertisement and bidding of projects, the methods and data to be utilized in



selecting contracts or groups of contracts to be bid as minority/women set asides, the establishment of minority/women subcontracting goals; the monitoring of purchases \$10,000 and under; the establishment of rotation of vendors; the methods for providing access for dispute resolution and contract compliance monitoring; the methods and data for providing prompt payment; the method for eliminating proprietary specifications; and developing policies of standardization.

5. New or revised Administrative Procedures governing the solicitation and selection of professional services contractors, to include the methods for selecting specific contracts for minority/women set aside and the development and application of M/WBE subconsultant goals or other minority/women involvement in professional service contracts.
6. New or revised Administrative Procedures for the development of necessary documentation, data base, evaluation procedures, reporting schedules and formats for ensuring that actual performance and the degree of achievement of the program goals are accurately evaluated and reported to the School Board. Included will be the specific procedures to be utilized in determining if and when existing disparity has been eliminated, and subsequent phase out of affirmative contracting actions.

B. Schedule

1. New or revised affirmative contracting actions may commence as soon as possible, or in accordance with specific direction by the School Board.
2. The Administrative Procedures shall be routinely reviewed for adjustments based upon Availability and Utilization.
3. Evaluation and reporting of progress shall take place each year immediately after the close of the fiscal year.
4. The School Board, may discontinue, all or part of, any affirmative contracting actions at any time upon receiving an annual report indicating that the disparity has been eradicated.

C. References

1. School Board Resolution 85-3 Minority Business Enterprise Statement, February 6, 1985.
2. Florida Statutes 235.31(1)(b); 287.093.
3. City of Richmond v. J.A. Croson, 109 S.Ct. 706 (1989).
4. D.J. Miller and Associates 1990 DCPS Disparity Study.
5. Bureau of Management and Accountability, Division of Minority Business Enterprise, Minority Business Enterprise Utilization Study Recommendations and Administrative Responses, April 24, 1991.
6. Transcript - Public Hearing, Special Panel, Vol. I & II, August 28-29, 1990.

Specific Authority: 230.22(2) F.S.

Law Implemented, Interpreted or Made Specific: 235.31(1)(b); 237.02; 287.093 F.S.; 6A-1.012 FAC

**History: THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**

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