



PROPOSED POLICY 6.143

4-A I recommend the Board approve the proposed new Policy 6.143, to be entitled "Diversity and Equitable Utilization in Business."

[Contact: Dr. Otelia DuBose, 434-8508.]

Development

CONSENT ITEM

- The presentation of this proposed new Policy fulfills the direction set by the Board in Policy 6.142(B) in 2001: "The Board hereby directs the Superintendent to compile and analyze additional data as may be necessary . . . [and] back a policy that actively promotes diversity and business practices that sets goals for MWBE participation that are consistent with the calculated disparity"
- The disparity information underlying this proposed Policy is derived from the CHAMP database.
- The proposed Policy was drafted by the Office of Diversity in Business Practices, based in part on Policy 6.146, which sunset in 2001.
- The proposed new Policy has been reviewed by expert outside counsel experienced with M/WBE programs.

1 **PROPOSED POLICY 6.143**

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3 **DIVERSITY AND EQUITABLE UTILIZATION IN BUSINESS**

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5 **1. History and Purpose**

6 a. In September 1993, the School Board of Palm Beach County hired MGT of
7 America, a Tallahassee consulting firm, to conduct a disparity study to analyze
8 utilization of minority- and women-owned business enterprises (M/WBEs) in
9 School District procurement. The disparity study was accepted by the School
10 Board on April 5, 1995.

11 b. The study was designed to address four major issues: Whether there is a
12 disparity in the utilization of M/WBEs in the District's procurement program;
13 whether any such disparity is the product or result of past discrimination or
14 other factors related to race- or gender-based discrimination; whether such
15 disparity could be effectively ameliorated through race- and gender-neutral
16 programs; and if the appropriate remedy was a race- or gender-conscious
17 program, how the program should be narrowly tailored to remedy the current
18 effects of past discrimination and conform to constitutional guidelines.

19 c. The 1995 study concluded that market area industry practices in construction,
20 construction support services, professional services, and commodities and
21 services were discriminatory toward M/WBEs and that the School District had
22 been a passive participant in discrimination against M/WBEs.

23 d. Incorporating recommendations in the disparity study report, the Department
24 of Equity Assurance prepared Policy 6.146A and Procedures Manual 6.146B,
25 approved by the School Board in February 1996 with a Sunset date of
26 September 30, 2005. These policies were later amended to sunset on June 6,
27 2001.

28 e. On August 6, 2001, the School Board adopted Policy 6.142, directing "the
29 Superintendent to compile and analyze additional data as may be necessary
30 to develop appropriate programs and procedures" in furtherance of and
31 equitable participation by minority-and-women-owned business enterprises
32 (M/WBEs), and "that the Superintendent will bring back a policy that actively
33 promotes diversity and business practices that sets goals for M/WBE
34 participation that are consistent with the calculated disparity above."

35 f. The administration in the Office of Equity Assurance transitioned to a focus on
36 M/WBE participation, and the Board established the Office of Diversity in
37 Business Practices (ODBP) in August of 2001 to monitor all contracts, bids,
38 and professional services and promote the increased use of M/WBEs in the

39 District's procurement process.

40 g. On December 12, 2001, Washington & Rice, LLC, was hired to conduct a
41 comprehensive review of the District's M/WBE program and procurement
42 practices, customize and install the CHAMP software, a comprehensive
43 database and tracking system for use by the ODBP.

44 **2. Policy Direction**

45 a. Since 1995, the School District has employed several race- and gender-neutral
46 methods in an effort to eliminate disparities in the utilization of M/WBE firms, such
47 as: bond waivers, contract de-bundling, contractual prohibitions against
48 discrimination, advertisements in minority media; outreach activities by the District;
49 and agency networking and trade fair activities. Where feasible, the School District
50 shall consider the use of additional race- and gender-neutral methods for
51 enhancing opportunities for M/WBE contract participation. The School District
52 shall resort to the use of race- and gender-conscious means for addressing
53 disparities only when it is apparent that the use of neutral means alone will likely
54 be insufficient to remedy the effects of identified discrimination.

55 b. The School Board finds that it has a compelling governmental interest for its
56 M/WBE program to remedy the effects of identified discrimination in District
57 procurement and contracting, and therefore defines remedial actions that are
58 necessary to ameliorate those effects in those instances where the computer-
59 based data and analyses clearly indicate that significant disparities in M/WBE
60 utilization remain. The School Board further finds that a narrowly-tailored
61 race- and gender-conscious program to enhance contracting opportunities for
62 MWBE firms for a limited time is necessary to eliminate these disparities and
63 to remedy the effects of identified discrimination.

64 c. It is the policy of the Board to take all necessary, reasonable and legal action
65 to prevent discrimination and to ensure that all businesses, including M/WBEs,
66 are afforded the maximum equitable opportunity to participate in the District's
67 purchasing process.

68 d. This Policy shall apply to the solicitation of all goods, services, and
69 construction contracts procured in accordance with the Palm Beach County
70 School Board policies, Florida Statutes, and Department of Education ("DOE")
71 rules. The District's procurement processes shall promote diversity and
72 equitable utilization of M/WBEs; and such solicitation processes shall be used,
73 whenever possible, even for those goods and services which are exempt from
74 competitive procurement under State Board of Education Rule 6A-1.012..

75 e. The Superintendent shall take all necessary and reasonable steps permissible
76 by law to ensure full equitable participation by M/WBEs in the procurement of

- 77 goods and services for the District school system. As a minimum, those steps
78 shall include:
- 79 i. developing programs and procedures that will achieve the School Board's
80 diversity objectives in business practices and implementation of the
81 program;
- 82 ii. eliminating the current disparity in M/WBE contract dollar volume by
83 encouraging increased participation through specified procedures,
84 including, but not limited to, the establishment of goals for prime
85 contractors, joint ventures, minority subcontract participation and other
86 methods that may be developed and approved, in conformance with
87 applicable state statutes, regulations and rules;
- 88 iii. ensuring that companies doing business with the School Board do not
89 discriminate in the award of construction contracts and subcontracts, the
90 procurement of goods and services, and the selection of professional
91 services firms on the basis of race, color, sex or national origin;
- 92 iv. ensuring that the ODBP is included on all selection committees for bids,
93 contracts and professional services. The ODBP shall review contract
94 specifications to ensure that they are not unnecessarily restrictive to the
95 availability and the participation of M/WBE firms in the procurement and
96 contracting process;
- 97 v. establishing an evaluation system whereby all school district employees
98 who are responsible for the procurement of goods and services are
99 knowledgeable about the district's goals in achieving diversity;
- 100 vi. ensuring that all senior-level staff performance evaluations include an
101 indicator for M/WBE diversity objectives for procurement;
- 102 vii. ensuring that the M/WBE certification provides maximum opportunity for
103 bona fide M/WBE firms, that are at least fifty-one (51%) owned and
104 controlled by minorities or women in form and in substance, to participate
105 in the program. Standardized procedures and guidelines for processing
106 applications for M/WBE status are established by the ODBP;
- 107 viii. continuing to evaluate the levels of availability and utilization in M/WBE
108 participation using a computer-based data tracking and analysis system
109 (such as CHAMP), and adjust the implementation accordingly to account
110 for changing needs and circumstances, to ensure that appropriate
111 utilization objectives are established; and
- 112 ix. providing, through the ODBP, at a minimum an annual report on this

113 diversity program and recommendations regarding policy and program
114 changes.

115 **3. Definitions.-- As used in this Policy, the following terms have these meanings:**

116 a. Agency.-- The School Board of Palm Beach County.

117 b. Availability.-- The percentage of ready, willing and able business firms that are
118 minority- and/or women-owned and seek to provide goods and services to the
119 School District.

120 c. Award Amount.-- The award amount is the dollar value of the contract when
121 awarded.

122 d. Board.—The School Board of Palm Beach County, which is the legal entity with
123 authority to enter contracts on behalf of the District school system under Fla. Stat.
124 § 1001.41(4).

125 e. Business.-- Any for-profit corporation, partnership, sole proprietorship, joint stock
126 company, joint venture, or any other private legal entity.

127 f. Certification.-- The process by which the ODBP determines that a business meets
128 the criteria for classification as a minority or woman business enterprise.

129 g. CHAMP.-- A computer management information system designed to manage the
130 contract compliance process. It is a stand-alone software solution designed to
131 develop and monitor narrowly-tailored M/WBE programs by tracking all aspects of
132 the contract sequence process: vendor information, contract information,
133 solicitation/award information, and payment information.

134 h. Construction.-- The process, usually requiring the professional services of an
135 architect and/or engineer, of building, altering, repairing, improving, or demolishing
136 any structure or building, or other improvements of any kind to any real property
137 as determined by the Director of Purchasing.

138 i. Contract.-- (1) A written agreement between two or more competent parties to
139 perform or not perform a specific act or acts; and (2) any type of agreement
140 regardless of what it is called for the procurement or disposal of supplies, services
141 or construction.

142 j. Contractor.-- A separate and distinguishable business entity participating or
143 seeking to participate in the performance of a contract.

144 k. Controlled.-- For the purpose of determining whether a business is a minority or
145 women business enterprise, shall mean that the minority/ies, the woman, or
146 combination of minorities and women, as the context requires, shall (1) possess

147 legal authority and power to manage business assets, good will and daily
148 operations of the business; and (2) actively and continuously exercise such
149 authority and power in determining the policies and directing the operations of the
150 business knowledge and technical expertise in the business endeavor, licensor to
151 perform the business or trade, the lack of external influence over the day-to-day
152 operations or decision-making process by any entity (with the exception of
153 franchise operations).

154 l. Compliance.-- The level of performance at which the School District and the Prime
155 Contractor utilizes vendors in meeting diversity objectives.

156 m. Discriminate.-- To treat an individual or group differently solely on the basis of
157 race, religion, color, sex, national origin, age, handicap, ancestry or disabled
158 veteran status.

159 n. Debarment.-- The exclusion of a vendor or contractor, for cause, from bidding
160 and/or doing business with the School Board;

161 o. District.-- The School District of Palm Beach County, its individual and collective
162 departments, managers, staff and facilities.

163 p. Disability.-- A physical or mental impairment that substantially limits one or more of
164 an individual's major activities.

165 q. DOE.-- Department of Education, a cabinet level office of the State of Florida,
166 which is tasked with recommending education-related policy to the Governor and
167 state Legislature and oversees the local school districts' adherence to state
168 requirements.

169 r. DOE or State Board of Education Rules.-- Legislatively-mandated policies as
170 established by the Department of Education or State Board of Education for
171 governmental and operational facilities for personnel and administration, including
172 State Board of Education Rule 6A-1.012, "Purchasing Policies."

173 s. Front.-- A business which purports to be a M/WBE for purposes of obtaining
174 District contracts, but which is actually owned, controlled, and/or operated in a
175 manner which does not comply with the District's requirements for M/WBE
176 certification.

177 t. Goals (Annual Diversity Goals).-- A percentage of total contract dollar volume, on
178 an annual basis, for the participation of minority and women-owned businesses in
179 the District's procurement, professional services and construction contracts.

180 u. Industry Categories.-- Construction, Consultants' Competitive Negotiation Act
181 (CCNA) professional services, non-CCNA professional services,

182 commodity/services procurement, manufacturing, wholesale, retail, contractual
183 and other services.

184 v. Joint Venture.-- An association of two or more persons or businesses to carry out
185 a single business enterprise for profit for which purpose they combine their
186 property, capital, efforts, skills and knowledge. Joint ventures must be established
187 by written agreement.

188 w. Minority.—Consistent with Fla. Stat. § 288.703(3), a "minority" or "minority person"
189 means a lawful, permanent resident of Florida who is:

190 i. An "African American," a person having origins in any of the racial groups of
191 the African Diaspora.

192 ii. A "Hispanic American," a person of Spanish or Portuguese culture with
193 origins in Mexico, Central or South America, or the Caribbean, regardless of
194 race.

195 iii. An "Asian American," a person having origins in any of the original peoples of
196 the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands,
197 including the Hawaiian Islands prior to 1778.

198 iv. A "Native American" is a person who is a member of or is eligible to be a
199 member of a federally recognized Indian tribe. A "federally recognized Indian
200 tribe" means an Indian tribe, band, nation, rancheria, pueblo, colony, or other
201 organized group or community, including any Alaska native village, which
202 recognized by the Secretary of the Interior on October 1, 1985, as having
203 special rights and is recognized as eligible for the services provided by the
204 United States to Indians because of their status as Indians, and any tribe that
205 has a pending application for federal recognition on October 1, 1985, as
206 having special rights and is recognized as eligible for the services provided
207 by the United States to Indians because of their status as Indians, and any
208 tribe that has a pending application for federal recognition on October 1,
209 1985.

210 v. An American woman.

211 x. M/WBE.-- Shall be defined consistent with Fla. Stat. § 288.703(2) as a minority-
212 owned business enterprise or a women-owned business enterprise or a
213 combination minority- and woman-owned business enterprise that: a) employs
214 200 or fewer permanent full-time employees and that, together with its affiliates,
215 has a net worth of not more than five (5) million dollars (as applicable to sole
216 proprietorships, the \$5 million net worth requirement shall include both personal
217 and business investments) or any firm based in this state which has a Small
218 Business Administration 8(a) certification; and b) has at least 51% minority

219 ownership, daily management, and control of the business; and c) is domiciled in
220 Florida and lawfully organized to engage in commercial transactions. However,
221 ownership by a minority person does not include ownership resulting from a
222 transfer from a nonminority person to a minority person within a related immediate
223 family group if the combined total net asset value of all members of such family
224 group exceeds \$1 million. For purposes of this definition, the term "related
225 immediate family group" means one or more children under 16 years of age and a
226 parent of such children or the spouse of such parent residing in the same house or
227 living unit.

228 y. NIGP (National Institute of Governmental Purchasing).-- Standards used to
229 classify business enterprises by industry codes.

230 z. Owned.-- For the purposes of determining whether a business is a minority or
231 woman business enterprise, shall mean that the minority(ies) or woman(en), as
232 the context requires, shall possess an ownership interest of a minimum of 51%.

233 aa. Preferential Programs.-- The preference extended for diversity participation in the
234 ranking of responsive bidders and the bid preference procedures under this
235 Policy. It also means the maximum point allocation for professional service
236 contract award evaluations.

237 bb. Prime Contractor.-- Any person or business entity that has a contract with the
238 School Board to provide specific construction services, sales, supplies, materials,
239 professional services, labor and/or equipment.

240 cc. Professional Services.-- Any narrow discipline wherein a known practitioner has
241 through education and experience developed expert advisory and programming
242 skills as a vocation; any service performed primarily by vocational personnel which
243 requires the analysis or certification of a professional before the services are
244 acceptable to the user of the service; or any other advisory study, or programming
245 activity where the School District's Director of Purchasing determines that the level
246 of skills and/or creativity of the potential or known practitioner(s) warrant utilizing a
247 request for proposals, request for information, or similar solicitation process other
248 than the competitive bid or quotation process.

249 dd. Project Goals.-- Diversity goals expressed as percentages of total dollar volume
250 for participation of minorities and women on individual District contracts.

251 ee. Proposal.-- An executed formal document submitted by an offeror to the
252 purchasing agent stating the goods and/or services offered to satisfy the need as
253 requested in the Request for Proposal or Request for Information.

254 ff. Procurement.-- Buying, purchasing, renting, leasing or otherwise acquiring any
255 goods and/or services for public purposes in accordance with the law, rules,

256 regulations and procedures intended to provide for the economic expenditure of
257 public funds. For the purpose of this Policy, procurement refers to those goods
258 and/or services, except professional services, solicited by the Purchasing
259 Department pursuant to Department of Education requirements and Policy 6.14.

260 gg. Ready, Willing, and Able.-- Any vendor(s), who expresses an interest in doing
261 business with the School District, and has the technical expertise, training, and
262 licenses to perform in accordance to the contract document.

263 hh. Relevant Market Place.-- The geographical area from which the agency draws the
264 majority of its contracting activity.

265 ii. Subcontractor.-- Any person providing goods and/or services to a prime contractor
266 for profit, if such goods and/or services are procured or used in fulfillment of the
267 prime contractor's obligations arising from a contract with the School Board of
268 Palm Beach County.

269 jj. Diversity Directory.-- A compilation of certified M/WBEs, which is retained and
270 published by the ODBP and made available to contractor(s) or vendor(s) for use in
271 identifying subcontractors, material suppliers, etc.

272 kk. Underutilization.-- A level of contract participation by a group of businesses (e.g.,
273 M/WBEs) that is at least two standard deviations below their relative availability in
274 a given an industry code.

275 ll. WBE.-- Woman-owned, controlled, and operated business enterprises (which
276 have at least 51% female ownership, management, and control of the business).

277 mm. Goals.-- The annual goals for minority participation in total contract dollar volume
278 based upon availability for M/WBE participants are determined by the Ready,
279 Willing, and Able (RWA) model applying availability of firms vs. utilization, using
280 the analysis database in an appropriate computer-based data tracking and
281 analysis system such as CHAMP. Upon completion of analysis, the goal is set and
282 narrowly tailored by race, gender, and industry codes.

283 4. Computer-Based Data Analysis -- The ODBP will conduct regular analyses using
284 a computer-based data tracking and analysis system.

285 a. Availability Analysis

286 i. Overall Availability.-- The overall availability is based on all the vendors
287 available in the District's database. They are categorized by race, gender
288 and industry codes.

289 ii. Program Availability.-- The number of vendors in specific racial, ethnic,

290 and gender groups, identified by industry codes as certified M/WBEs in
291 the database.

292 iii. Race-Neutral Goals/Contract Goals.-- Availability is used to set goals.
293 The overall goal is set based on the M/WBE program's RWA vendors.
294 The goal for each of the contracts is also set based on the availability of
295 the RWA M/WBE vendors within the specific industry code of the
296 contract.

297 b. Utilization Analysis.-- The dollar amount of contracts awarded for a specific
298 M/WBE group of vendors in specific racial, ethnic, and gender groups and
299 awarded by industry codes, compared to the total of all dollars awarded for all
300 groups (non-M/WBES) in those industry codes, based on total expenditures.

301 c. Disparity Analysis.-- After availability and utilization have been calculated for a
302 specific M/WBE group and industry code for a given time period, the disparity may
303 be calculated. Disparity is the ratio comparing the utilization of a specific M/WBE
304 group with the availability of all vendors in that industry code or group.

305 d. Anecdotal Analysis.-- If disparity is shown in the disparity analysis above, the
306 District shall conduct qualitative and quantitative causation analyses to determine
307 whether race and/or gender discrimination has been a causative factor in the
308 underutilization for each group (race and gender) in the affected industry codes.

309 i. Survey Analysis: Phase I.-- Surveys are sent out either by random sampling
310 or by census and are based upon the specific industry codes where disparity
311 is shown. Of the questions posed in the survey, the most important is one
312 that indicates how discrimination (negative environment) or neutral market
313 factors (positive) impacts a vendor that does business with the District in a
314 specific industry code.

315 ii. Public Hearings: Phase II.-- The District would hire a disparity study
316 consultant to formalize the study. Public hearings would be held by the Board
317 or an officially-designated panel, committee, individual, or staff, to further
318 explore the nature and the level of marketplace discrimination, and to further
319 corroborate or refute the findings of the Study as adopted by the School
320 Board.

321 5. Narrowly Tailored Race/Gender-Conscious Program.-- The data analysis is
322 based on race, gender and industrial codes. After disparity has been established,
323 and anecdotal analysis conducted, race/gender-conscious goals are then set for
324 each given industry code that has experienced significant disparity. Consistent
325 with decisions of the U.S. Supreme Court, the program shall be narrowly tailored
326 by using and considering some race-neutral alternative remedies; including an
327 appropriate limit on duration, such as graduating firms shown by the data to be no

328 longer disadvantaged by the effects of discrimination; maintaining flexibility in
329 goals; making goals numerically proportional to data on RWA M/WBE firms, also
330 taking into account the availability of those M/WBE firms that are certified; avoiding
331 undue burdens on non-minority firms; and avoiding over- or under-inclusiveness in
332 M/WBE classification.

333 **6. Procurement Goals**

334 a. In the data tracking and analysis software, procurement goals for total dollar
335 volume for participation of minorities and women are used to set narrowly-tailored
336 industry-code goals on individual contracts.

337 b. The disparity analysis report outlines all areas where under-utilization has
338 occurred by specific industry code, race, and gender.

339 c. Where disparity is established, the goals on each contract will be set based on the
340 industry codes, race, and gender. If a contract uses more than one industry code,
341 the codes are proportionally weighted based upon the estimated relative dollar
342 amount to be expended for each industry code.

343 d. The goal is set based on the available (ready, willing, and able) vendors in that
344 specific industry code, on all the races and genders within the specified industry
345 code.

346 e. After the goals are set, a comparison report is generated regarding actual M/WBE
347 utilization versus established goals.

348 f. The District then utilizes a corrective program until availability and utilization reach
349 parity.

350 **7. Goal Setting Committee.-- The goals mentioned in Section (6) will be established**
351 **by a Goal Setting Committee composed of professional and senior-level**
352 **representation from the following departments:**

353 a. Department of Purchasing;

354 b. Diversity in Business Practices;

355 c. Chief Operating Officer;

356 d. Superintendent's Designee; and

357 e. The Department responsible for letting the contract.

358 **8. Preferences to Assist in Reaching Diversity Objectives and Contract Goals**

359 a. **Bid Preferences.**--Specific goals for each project or contract shall be adopted on
 360 a project-by-project, or contract-by-contract basis, and the contract
 361 recommendation shall be made for the lowest responsive, responsible bidder
 362 meeting the M/WBE goals for the contract/project, when that bidder's price does
 363 not exceed the lowest bidder's price by an amount greater than the dollar or
 364 percentage amount set by the Goal Setting Committee.

365 b. **Professional Services**

366 i. The District will provide contracting opportunities for professional services
 367 pursuant to Fla. Stat. § 287.055 as amended, known as the "Consultant's
 368 Competitive Negotiation Act" which requires that one element of
 369 consideration is diversity participation. The District will also set diversity goals
 370 on the solicitation of all other professional services not covered by the
 371 Consultant's Competitive Negotiation Act. A summary of Diversity Program
 372 procedures will be included in each solicitation. A point system will be utilized
 373 to determine the recipient of the contract recommendation.

374 ii. Businesses submitting proposals to provide professional services to the
 375 District will be eligible to receive a percentage of the total possible points
 376 awarded, for Supplier Diversity participation. The distribution of points shall
 377 be stated in the request for proposal. Maximum points shall be awarded
 378 when the proposer is a certified M/WBE. The provisions within this section
 379 pertaining to professional services are not intended to be used to the
 380 exclusion of other provisions of this policy in the procurement of professional
 381 services.

382 9. **Contract Solicitation and Award**

383 a. **ODBP Review.**-- The ODBP shall review all solicitations for construction,
 384 procurement, and professional services prior to circulation, for compliance with the
 385 objectives stated in this policy, and to ensure that bid specifications do not
 386 unnecessarily restrict the ability of M/WBE firms to compete and bid. All District
 387 award recommendations shall bear the review signature of the Director of the
 388 ODBP.

389 b. **Disqualification/Rejection.**-- The School District and School Board reserve the
 390 right to reject any proposals from bidders who have previously failed to perform
 391 properly and who have done so by commission or omission of an act of such
 392 serious and compelling nature that the act indicates a serious lack of business
 393 integrity or honesty.

394 10. **Contract Compliance Requirements.**-- As the Superintendent's designee, the ODBP
 395 will establish procedures for monitoring and evaluating program performance and
 396 compliance.

397 a. The School District and School Board reserve the right to reject any proposal
398 deemed non-responsive for failing to meet the Diversity requirements.

399 b. A firm's failure to comply with the contract may result in the drafting of a
400 recommendation for suspension or debarment of the firms or individuals involved.
401 Suspension or debarment of vendors by the School Board for activity contrary to
402 this program will be carried out in accordance with Policy 6.14.

403 11. Waivers

404 a. **Pre-Award Waiver.**-- At any time prior to the award of a contract for a purchase of
405 goods and supplies, the Superintendent or designee may grant a partial or
406 complete waiver of diversity requirements for reasons such as: cases of
407 emergency procurement; situations where a non-M/WBE is the sole source of the
408 needed goods or services; or good faith efforts to meet the contract diversity goal
409 have proved unsuccessful. The Department making an emergency procurement
410 shall consider the availability of M/WBEs from which to make such purchases. The
411 Director of Purchasing shall make available a report of procurement activities,
412 including at a minimum project name, project number, project description,
413 awarded vendor, advertisement date, waivers of diversity requirements (and
414 reason for the waiver), and estimated dollar value to include change orders.

415 b. **Performance and Payment Bonds.**-- The Director of Purchasing and the
416 Director of the ODBP, as the Superintendent's designees, in accordance with
417 provisions of Fla. Stat. § 255.05 shall have the authority to waive the requirements
418 for performance and payment bonds for projects having a dollar value to \$200,000
419 or less. The determination of this exemption shall be made on a contract-by-
420 contract or project-by-project basis. In the event such exemption is granted, the
421 Board or the District and its officers or officials shall not be personally liable to
422 persons suffering loss because of granting such exemption.

423 12. **Monitoring M/WBE Participation.**-- To ensure that the School Board is not a
424 passive participant in private sector discrimination against M/WBEs, the ODBP will
425 monitor and analyze data in the computer-based data tracking and analysis
426 system. The data tracking and analysis system (such as CHAMP) for M/WBE
427 availability and utilization provides the disparity formula and analysis. The School
428 Board will receive periodic reports. Staff may recommend adjustments and
429 modifications to this Policy and procedures regarding M/WBE availability,
430 utilization, and disparities in contract participation that are designed to decrease
431 disparity.

432 13. **Program Administration.**-- The Superintendent of Schools has the overall
433 responsibility for administering the Diversity Program. The ODBP shall report
434 directly to the Chief Operating Officer. The ODBP shall be responsible for
435 developing, managing, and implementing the Diversity program on a day-to-day

436 basis.

437 14. District Implementation.-- The School District shall take all necessary steps
438 permissible under law to ensure that M/WBEs are afforded the maximum equitable
439 opportunity to participate in the District's procurement processes. The ODBP will
440 utilize internal and external monitoring and reporting as the methods of evaluation.

441 15. Reporting .-- The ODBP will provide the following reports:

442 a. Reports and recommendations to the Board on at least an annual basis regarding
443 suggestions for policy changes consistent with these guidelines. This report shall
444 be generated within 90 days subsequent to the Division of Financial
445 Management's completing the fiscal close out of the School District records.

446 b. A program evaluation analysis will be submitted to the Board every three years to
447 assess the success of diversity in the District's procurement process and whether
448 disparity continues to exist in individual industry codes.

449 16. Three-Year Availability Analysis.-- An availability analysis will be conducted
450 every three years by an independent consultant to determine the number of
451 available M/WBEs in the relevant market area. This information shall be used to
452 make appropriate adjustments in the goals for M/WBE participation.

453 17. Graduation from the M/WBE Program.-- Participation in the M/WBE program will
454 be dependent upon the M/WBE's need for the preferences extended to M/WBEs
455 under this Policy. Data should be maintained to determine which firms have
456 overcome the effects of discrimination sufficiently to join the competitive
457 mainstream in their respective industries. Firms that exceed the District's size
458 standards or which are otherwise graduated from the M/WBE preference program
459 shall be remain eligible for technical assistance, and their activity is counted toward
460 the attainment of the District's goals. However, these firms may not participate in
461 any of the preferential portions of this Policy.

462 18. Policy Review.-- As required by Fla. Stat. § 120.74(1), the Board shall review and
463 revise this Policy as often as necessary to ensure that it complies with legal
464 requirements, such as applicable current standards of binding decisions of the
465 Eleventh Circuit Court of Appeals and the United States Supreme Court.
466 Moreover, at least every third year, the Board will review the successes and
467 failures of the M/WBE program and make a determination as to the need for
468 M/WBE program modifications and/or continuation.

469 19. Prompt Payment Policy.—As required by Fla. Stat. § 218.735(6), when a construction
470 contractor receives payment from the District for labor, services, or materials furnished
471 by subcontractors and suppliers hired by the contractor, the contractor shall remit
472 payment due to those subcontractors and suppliers within fifteen (15) days after the

473 contractor's receipt of payment. When a subcontractor receives payment from a
474 contractor for labor, services, or materials furnished by subcontractors and suppliers
475 hired by the subcontractor, the subcontractor shall remit payment due to those
476 subcontractors and suppliers within fifteen (15) days after the subcontractor's receipt of
477 payment from the prime contractor. This statutory requirement does not, in any way,
478 create any contractual relationship between any subcontractor, subconsultant, or
479 supplier and the Board or any liability on the part of the Board for the contractor's failure
480 to make timely payment to the subcontractor, subconsultant, or supplier.

481 20. Severability.-- If any section, paragraph, sentence, clause, phrase or word of this
482 Policy is for any reason held by a Court to be unconstitutional, inoperative, or void,
483 such holding shall not affect the remainder of this Policy.

484
485 SPECIFIC RULEMAKING AUTHORITY: §§ 1001.41(2); 1001.42(22); 1001.43(2)(a), (6),
486 Fla. Stat.

487
488 LAWS IMPLEMENTED: §§ 287.055(3)(d); 287.093; 287.0931; 287.094; 287.0943;
489 287.09451; 287.09431; 288.703; 288.7031; 1001.41(1), (3); 1001.42(10)(i);
490 1001.43(2)(a); 1013.45(4); 1013.46(1)(c), Fla. Stat.

491
492 HISTORY: New ___ / ___ /04

Legal Signoff:

The Legal Department has reviewed proposed new Policy 6.143 and finds it legally sufficient for development.

Attorney

Date