



Policy 3330

Supplier Diversity Outreach Program

I. General Provisions

A. Effective July 2017, The School Board of Broward County, Florida ("SBBC") authorized and directed the Superintendent to establish and implement a Supplier Diversity Outreach Program ("SDOP") through Standard Operating Procedures ("SOP") that are consistent with the factual predicate, purposes, and objectives stated below and containing the following elements:

1. Factual Predicate and Purpose

- a. This policy is adopted to establish a Supplier Diversity Outreach Program to remedy the ongoing effects of identified marketplace discrimination that SBBC has found continue to adversely affect the participation of Small/Minority and/or Women Business Enterprises ("S/M/WBE") in SBBC contracts.
- b. In October 2015, SBBC received, reviewed, and accepted the final report of a Disparity Study conducted by Mason Tillman Associates, Ltd. ("MTA") prepared on behalf of SBBC. The MTA Disparity Study used a variety of methodologies to undertake a comprehensive examination of the relevant marketplace for SBBC purchases for the Study period from July 1, 2008, through June 30, 2013. The MTA Disparity Study identified a number of barriers, including various forms of marketplace discrimination that undermine the formation, growth, and equitable participation of minority- and women-owned businesses in SBBC purchases and contracts. Among the numerous findings that formed a strong basis in evidence to support the initial adoption of this Policy were the following:
 - i. There was evidence of ongoing effects of past discrimination in the relevant local marketplace in Broward County, Palm Beach County, and Miami- Dade County as previously reflected in the 2010 Broward County Disparity Study and the 2013 Miami-Dade County Public Schools Disparity Study, and as reflected in SBBC purchases examined in the 2015 SBBC Disparity Study. The opportunities for Minority/Women Business Enterprise ("M/WBE") participation in the local marketplace and in School Board contracts were affected by past discrimination in the private sector. For example, regression analysis conducted as part of the 2015 Disparity

Study for SBBC observed large, adverse, and statistically significant disparities in business formation and business earnings for M/WBEs in the construction sector and in commodities and other contractual services sectors, even while controlling for independent variables such as age, experience, finances, marital status, homeownership, and education. Moreover, a regression analysis of data from the 2003 National Survey of Small Business Finances found that when Minority Business Enterprises (“MBE”) applied for loans, their requests were substantially more likely to be denied than non-MBEs, even after accounting for differences like firm size and credit history.

- ii. MTA found contemporary evidence of discrimination against M/WBEs in the relevant marketplace. Some practices within the marketplace had the effect of causing disadvantage to M/WBE firms and undermine their ability to compete. MTA found particularized evidence of negative stereotypes against M/WBEs, and qualitative evidence obtained through interviews of business owners and searches of judicial opinions in Broward County confirmed a history of fraud and collusion and other exclusionary practices of prime contractors to avoid utilizing M/WBE subcontractors and sub-consultants. Such practices were found to have adversely affected M/WBE contract participation, growth, and competitiveness. As noted above, the MTA Disparity Study contained extensive evidence of discrimination against M/WBE business owners when seeking commercial credit within the local market. Credit is a necessary attribute for a firm to be successful in each of the industries from which the SBBC makes purchases, especially in the construction industry, wherein credit availability affects access to bonding. Bonding is often a prerequisite to being able to bid on SBBC construction contracts.
- iii. The MTA Disparity Study’s threshold analysis of M/WBE participation on smaller contracts ruled out differences in capacity as the explanation for significant disparities in the underutilization of M/WBE firms in SBBC contracts. However, significant anecdotal evidence supported a finding that unequal access to capital leads to unequal access to bonding. Unequal access to bonding reduces the size of bid opportunities and the magnitude of business earnings for M/WBE firms competing for SBBC contracts. Accordingly, such discrimination adversely affects the availability, growth, capacity, and size of M/WBE firms.
- iv. Other forms of marketplace discrimination identified by the MTA Disparity Study such as slow payment by prime

contractors, “good old boy” networks that exclude M/WBEs from prime contract and subcontract opportunities, manipulation of the bidding process to deny M/WBE firms adequate time to respond to bid requests, and unfair denial of contract awards also adversely affect the ability of M/WBE firms to compete for SBBC contracts.

2. 2023 Disparity Study Update

In November 2022, Keen Independent Research (“KIR”) was commissioned to conduct a Disparity Study Update. The study aimed to determine if evidence demonstrated a disparity among ready, willing, and available (RWA) M/WBEs in construction, architecture & engineering, professional services, goods, and other services. The study period covered July 1, 2017, to June 30, 2022.

Based on statistical findings in the KIR Disparity Study Update, the utilization of qualified vendors as reflected by the percentage of contracts or purchase orders awarded, appear to be less inclusive than warranted, when compared to the RWA firms. The following race, ethnicity, and gender groups showed statistically significant disparity in the following business categories:

Business Categories	Race, Ethnicity & Gender
Construction	African American-Owned and Asian American-Owned
Architecture & Engineering	Women (White Woman-Owned)
Professional Services	Asian American-Owned
Goods	African American-Owned, Asian American-Owned, Hispanic American-Owned, and Women (White Woman-Owned)
Other services	African American-Owned, Asian American-Owned, Hispanic American-Owned, Native American-Owned, and Women (White Woman-Owned)

Anecdotal analysis data in the KIR Disparity Study Update illustrated barriers, which may exist, for minority and women business owners. The barriers included the process with paperwork, timely payment, and subcontractor utilization.

This Policy further seeks to exercise the spending powers of the SBBC in a manner that promotes economic inclusion of all segments of the business population, regardless of race or gender, to maximize the economic vitality and development of the region that the SBBC serves, and to maximize future economic opportunities for the students that SBBC is responsible for educating.

II. Policy Objectives

- A. This Policy, and the SDOP Standard Operating Procedures established pursuant to this Policy, shall serve the School District's compelling interest to remedy the various ongoing effects of marketplace discrimination against E/S/M/V/WBEs that are ready, willing, and able to sell goods and services to SBBC.
- B. The narrowly tailored remedial efforts established in this Policy are designed to promote greater availability, capacity development, and contract participation by E/S/M/V/WBEs in SBBC contracts.
- C. This Policy is intended, in part, to further the School District's compelling interest in ensuring that it is neither an active nor passive participant in private sector marketplace discrimination and to actively promote equal opportunity for all segments of the contracting and business community to participate in SBBC contracts.
- D. SBBC shall resort to the use of race- and gender-conscious means for addressing disparities within its contract participation only when it is apparent that the use of race- and gender-neutral means alone will likely be insufficient to remedy the effects of identified discrimination.
- E. Having found that it has a compelling governmental interest to remedy the effects of discrimination upon its contracts, SBBC directs the Superintendent or designee, the Director of Procurement & Warehousing Services or designee, and the Officer, Economic Development & Diversity Compliance (EDDC) or designee to collaborate in periodically recommending to SBBC possible future amendments necessary to fully effectuate the purposes and objectives established in this Policy. Such proposed amendments shall also be narrowly tailored in accordance with applicable law and the specific barriers to E/S/M/V/WBEs participation identified within the School District's factual predicate as described above in Section A. 2. of this Policy.
- F. It is the policy of SBBC to take all necessary, reasonable, and legal action to prevent discrimination and to ensure that all businesses, including E/S/M/V/WBEs, are afforded the maximum practicable opportunity to participate in the School District's purchasing and contracting processes.
- G. As referenced in Section D, it is SBBC's policy to ensure that the firms it engages in business with, do not discriminate in the solicitation, selection, or treatment of subcontractors, suppliers, vendors, or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners.
- H. The EDDC Department Program shall have primary oversight responsibility with the full support and cooperation of all other School District offices and departments in the administration of the SDOP policy, as well as the SDOP

Standard Operating Procedures established pursuant to this Policy.

- I. The EDDC Department will notify SBBC and appropriate School District advisory committees of any substantive changes to the Standard Operating Procedures. A substantive change is any change that alters the responsibilities, roles, duties, processes, or procedures for the administration of this Policy in a material way. Minor alterations to timeframes for the performance of tasks and duties under the Standard Operating Procedures shall, in general, not be deemed to be substantive changes. Similarly, changes to the Standard Operating Procedures that are intended merely as more detailed clarifications of existing Standard Operating Procedures shall not be considered to be substantive changes. However, to the extent there is any uncertainty as to whether a change to the Standard Operating Procedures is substantive or material, the EDDC shall err on the side of providing notification of such changes to SBBC and appropriate School District advisory committees.

III. Scope and Exclusions / Definitions - Supplier Diversity Outreach Program

- A. This Policy shall apply to all solicitations and awards of contracts for the purchase of services, goods, or supplies that are awarded by, or on behalf of SBBC, including, but not limited to, every contract or other agreement between SBBC and any governmental agency, quasi-governmental agency, corporation, vendor, or contractor, under which the agency, corporation, vendor, or contractor directly or indirectly receives any fiscal assistance or remuneration from SBBC for the purpose of contracting with businesses to perform construction, renovation, maintenance or other services, or for the purpose of directly or indirectly purchasing goods or goods for use by the School District. As such, SBBC shall require the agency, corporation, vendor, or contractor to comply with this Policy in the solicitation, the award, and administration of that contract or agreement, provided, however, that the following categories of contracts shall be excluded from the scope and application of this Policy:
 1. Contracts for the purchase of goods or supplies of a unique nature for which the School District's Procurement & Warehousing Services Department determines and confirms there is only a sole source of supply;
 2. Contracts for electricity or water and sewage services from a municipal utility district or governmental agency;
 3. Emergency contracts for goods or supplies that the Superintendent or designee determines are necessary for the preservation of public health or safety and whose immediacy of need is so great that it is impractical for the School District to apply the terms of this Policy to the contract;
 4. Contracts for the School District's lease or purchase of real property where School District is lessee or purchaser; and

5. Contracts for personal services involving the unique abilities or style of a particular individual.

IV. Definitions

- A. Affirmative Procurement Initiatives (“API”) – refers to various SDOP tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals, and joint venture incentives. (For full descriptions of these and other SDOP tools, see, Section E of this Policy and the SDOP Standard Operating Procedures.)
- B. Annual Aspirational Goal – a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation in School Board contracts is established each year for construction, architecture & engineering, professional services, goods, and other services industry categories. This annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (“GSC”) based upon the M/WBE availability by industry in accordance with the District’s 2023 KIR Disparity Study Update findings, along with relative M/WBE availability data to be collected by SBBC 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 Participation, Points or Price Preference 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.
- C. Award – the final selection of a respondent for a specified prime contract or subcontract dollar amount. Contract awards are made by SBBC to prime contractors or vendors and by prime contractors or vendors to subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract.)
- D. Best Value Contracting – a purchasing solicitation process through which the originating department may evaluate factors other than price. Evaluation criteria for selection may include a respondent’s previous experience and quality of product or services procured and other factors identified in the applicable statute.

- E. Centralized Bidder Registration (CBR) System – an electronic system of hardware and software programs by which the School District requires all prospective respondents and subcontractors that are ready, willing, and able to sell goods or services to the District to register. All businesses awarded a SBBC contract shall be required to register in the CBR system. The CBR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the School District. The CBR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of E/S/M/V/WBE firms by industry or commodity codes and for establishing annual Aspirational Goals and contract-by-contract subcontracting goals.
- F. Certification – the process by which the Supplier Diversity Outreach Program staff determines a firm to be a bona-fide small, minority, women-owned, veteran, or emerging business enterprise. Any firm may apply for multiple certifications that cover each and every status category, e.g., Emerging Business Enterprise (“EBE”), Small Business Enterprise (“SBE”), Minority Business Enterprise (“MBE”), Veteran Business Enterprise (“VBE”), or Women Business Enterprise (“WBE”) for which it satisfy eligibility standards. The SDOP staff may contract these services to a regional certification agency or other entity. For certification purposes, the School District may accept any firm certified by local government entities and other organizations identified herein that have adopted certification standards and procedures similar to those followed by the SDOP, provided the prospective firm satisfies the eligibility requirements outlined in the SOP, Section 6.
- G. Certification Application – the online submittal process shall be completed by vendors when applying for certification and tri-county reciprocal certification for participation as E/S/M/V/WBE firms in the School District’s SDOP policy. This form shall be submitted to the School District’s certifying agency, every three (3) years by each certified vendor by the anniversary date of its original certification. For renewals, vendors must upload an E/S/M/V/WBE Tri-Annual Affidavit and supporting documentation.
- H. Commercially Useful Function – an E/S/M/V/WBE firm performs a commercially useful function when it is responsible for the execution of the contract and carries out its responsibilities by actually performing, staffing, managing, and supervising the work involved. To perform a commercially useful function, the S/M/V/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an E/S/M/V/WBE firm is performing a commercially useful function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the E/S/M/V/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/V/WBE

credit claimed for its performance of the work and other relevant factors. Specifically, an E/S/M/V/WBE firm does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed to obtain the appearance of meaningful and useful S/M/V/WBE participation when in similar transactions in which E/S/M/V/WBE firms do not participate, there is no such role performed.

- I. Compliance – The level of performance at which the SBBC and the prime contractor utilize vendors in meeting diversity and inclusion objectives.
- J. Control – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business, and have the primary authority to direct a business enterprise's day-to-day management and operation without interference from others.
- K. Debarment – The exclusion of a vendor or contractor, for cause, from bidding and/or doing business with SBBC.
- L. Economic Inclusion – efforts to promote and maximize commercial transactions within, between, and among all segments of the business population, regardless of race or gender, within the relevant marketplace.
- M. Emerging Business Enterprise – a certified EBE corporation, partnership, sole proprietorship, or other legal entity for the purpose of making a profit, which is independently owned and operated by individuals legally residing in, or that are citizens of, the United States or its territories who has average annual receipts under \$4 million and 50 employees or fewer”) and meets the Significant Business Presence requirements as defined herein.
- N. Evaluation Preference – an API that may be applied by the Goal Setting Committee to construction, architecture & engineering, professional services, goods and other goods contracts that are to be awarded on a basis that includes factors other than lowest price and wherein responses that are submitted to the School District by E/S/M/V/WBEs firms may be awarded additional points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime respondents.
- O. Formal Solicitation – an Invitation to Bids (“ITB”), Request For Proposals (“RFP”), Request For Qualifications (“RFQ”), or other competitive solicitation documents issued by an SBBC department for a contract that requires SBBC approval, in accordance with the procurement procedures established by the Superintendent or designee through a memorandum issued by the Superintendent or designee, an administrative directive or a procurement manual issued under the authority of the Superintendent or designee, and/or

pursuant to requirements established by applicable law, rules, or School Board Policies.

- P. Goal Setting Committee (GSC) – a committee appointed and chaired by the Superintendent or designee that includes, at a minimum, the Economic Development & Diversity Compliance Officer, or designee, the Director of Procurement & Warehousing Services or designee, the Chief of Facilities and Construction Management or designee, the Executive Director, or designee, Capital Programs or designee, the Director or designee of the originating department (if the originating department is neither Procurement & Warehousing Services or Facilities and Construction), a designee from the Business Support Center all without duplication of designees.
- Q. The Superintendent or designee may also appoint two (2) ex-officio members of the Small Business Advisory Committee to serve on any GSC purely in an advisory and non-voting capacity. All GSC members including any such non-voting ex officio members shall be subject to the requirements of the Sunshine Law. The GSC establishes E/S/M/V/WBE program goals for the School District (e.g. Mandatory Goals, Contract-by-Contract Subcontracting Goals, and determines which MBE and WBE segments are eligible for Segmented Subcontracting Goals or other Affirmative Procurement Initiatives) based upon industry categories, vendor availability, project-specific characteristics, and MBE and WBE utilization.
- R. Good Faith Efforts – documentation of the respondent's intent to comply with E/S/M/V/WBE program goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the respondent's commitment to comply with E/S/M/V/WBE goals as established under the SDOP by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the E/S/M/V/WBE program goals (e.g., solicitations of bids/proposals/qualification statements from all qualified E/S/M/V/WBE firms listed in the SDOP's directory of certified Emerging Business Enterprise ("EBE"), Small Business Enterprise ("SBE"), Minority Business Enterprise ("MBE"), Veteran Business Enterprise ("VBE"), or Women Business Enterprise ("WBE") firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a prime contractor's posting of a bond covering the work of E/S/M/V/WBEs subcontractors; documentation of efforts to assist E/S/M/V/WBEs firms with obtaining financing, bonding, or insurance required by the respondent; and documentation of consultations with trade associations and consultants that represent the interests of E/S/M/V/WBEs in order to identify qualified and available E/S/M/V/WBEs subcontractors).
- S. Graduation – an E/S/M/V/WBE firm permanently graduates from the School District's E/S/M/V/WBE program when it meets the criteria for graduation set

forth in Section (7) of the Standard Operating Procedures for this Policy. A firm's graduation or temporary suspension from participation as an E/S/M/V/WBE firm in the SDOP does not necessarily affect its eligibility to be recertified and to participate in the District's SDOP policy as an E/S/M/V/WBE. Graduated E/S/M/V/WBE firms shall be eligible to apply for E/S/M/V/WBE two-year transitional renewal immediately following graduation. Such application for S/M/V/WBE two (2) year transitional renewal shall only be granted on condition that the graduated E/S/M/V/WBE firm presents documentation as required by the SDOP that establishes that the E/S/M/V/WBE firm's annual revenues and number of employees is below the SBA's small business size standards for the relevant industry. A S/M/V/WBE firm permanently graduates from the SDOP when it meets the criteria for graduation as outlined in Section (7) of the Standard Operating Procedures for this Policy. However, a graduated E/S/M/V/WBE firm may continue to participate in and benefit from other race-neutral, non-industry-specific remedies of the SDOP policy described in Section D of this Policy.

- T. Independently Owned and Operated – ownership of an E/S/M/V/WBE firm must be direct, independent, and by individuals only. Ownership of an E/S/M/V/WBE firm may be by individuals and/or by other businesses provided the ownership interests in the E/S/M/V/WBE firm can satisfy the E/S/M/V/WBE eligibility requirements for ownership and control as specified in Section (6) of the Standard Operating Procedures for this Policy. The E/S/M/V/WBE firm must also be independently owned and operated because it cannot be the subsidiary of another firm that does not (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for E/S/M/V/WBE Certification.
- U. Individual – an adult person that is of legal majority age.
- V. Industry Categories – procurement groupings for the SBBC inclusive of construction, professional services, other services, and goods (i.e., manufacturing, wholesale, and retail distribution of goods). This term may sometimes be referred to as “business categories.”
 - 3. Construction: New construction, remodeling, renovations, leasing, lease- purchasing, day labor projects, additions to any educational building, or ancillary facility projects.
 - 4. Architecture & Engineering: Services within the scope of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment practice.
 - 5. Professional Services: Services within the scope of accounting,

advertising, and marketing, legal services, consulting, information technology, web development and design, software development, and user experience development. Professional services require specialized knowledge and skill, usually of a mental or intellectual nature, and often require a license, certification, or registration in connection with his or her professional employment practice.

6. Other Services: Services rendered by individuals and firms who are independent contractors, which may include evaluations, consultations, maintenance, security, management systems, management consulting, educational training programs, research and development studies, or reports on the findings of consultants engaged there under, and professional, technical, and social services.
 7. Goods: Supplies, materials, goods, merchandise, food, equipment, information technology, and other personal property, including a mobile home, trailer, or other portable structure with less than 5,000 square feet of floor space, purchased, leased, or otherwise secured by contract.
- W. Informal Solicitations – solicitations for contracts that exceed \$5,000 but do not require formal solicitations.
- X. Leases and Concessions – the renting of SBBC-owned space on a contractual basis for the purpose of making a profit by selling a commodity/service.
- Y. Local Bidder Pricing Preference – After all other Bidding Preference Laws have been applied, Responsive, Responsible, SBBC Certified E/S/M/V/WBE bidder/proposer(s), meeting requirements, and whose bid comes within two percent (2%) of the lowest non-SBBC certified bidder shall be awarded a local pricing preference.
- Z. Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and controlled by one or more minority group members, and that is ready, willing, and able to sell goods or services that are purchased by the SBBC. To qualify as an MBE, the enterprise annual revenues and number of employees shall be no greater than fifty percent (50%) of the small business size standards for its primary industry as established by the U.S. Small Business Administration and meets the significant business presence requirements as defined herein. In addition, for purposes of being a certified MBE that is eligible to benefit from race- and gender-conscious APIs in this Policy, the enterprise shall meet the size standards for being “small” as defined herein. Unless otherwise stated, the term MBE as used in this Policy is not inclusive of women-owned business enterprises (WBE).

AA. Minority Group Members – African Americans, Hispanic Americans, Asian-Pacific Americans, and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

1. African Americans: Persons with origins in any of the black racial groups of Africa.
2. Hispanic Americans: Persons of; Mexican, Puerto Rican, Cuban, Dominican, or other Spanish or Portuguese culture or origin, regardless of race, or Central and South American origin.
3. Asian Americans: Persons having origins in any of the original peoples of Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong; India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.
4. Native Americans: Persons having no less than one-sixteenth (1/16th) percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

BB. **MBE Subcontracting Program** – an API in which prime contractors or vendors are required to make good faith efforts to subcontract a specified percentage of the value of prime contract dollars to certified MBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing commercially useful functions wherein:

1. There have been ongoing disparities in the utilization of available MBE subcontractors; or
2. Race-neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to MBEs in a particular industry category or industry segment (e.g., construction contracts, architecture & engineering, professional services contracts, goods, and other services contracts) and subcontract opportunities are limited outside of SBBC contracts.

When specified by the GSC, the MBE Subcontracting Program may also be required to reflect good faith efforts that a prime contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a

detailed scope of work or those in which price cannot be considered a factor in evaluation) towards attainment of subcontracting goals for MBE firms.

- CC. **Originating Department** – the School District department or authorized representative of the School District which issues solicitations or for which a solicitation is issued for the purchase of goods or services.
- DD. **Payment** – funds actually paid to prime contractors and/or subcontractors and vendors for SBBC-contracted goods and/or services.
- EE. **Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some construction, architecture & engineering, professional services, goods, and other goods contracts (e.g., between 15-20 points out of a total of 100 points assigned for E/S/M/V/WBE participation as stated in response to a Request for Proposals.)
- FF. **Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the SBBC for purposes of providing goods or services for the School District.
- GG. **Race/Gender Conscious** – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to MBE and WBE programs and APIs that are listed herein under the heading of “Race-Conscious”).
- HH. **Race-Neutral** – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to E/SBE/VBE programs and APIs that are listed herein under the heading of “Race-Neutral”).
- II. **Relevant Marketplace** – the geographic market area affecting the SDOP policy as determined for purposes of collecting data for the 2023 KIR Disparity Study Update, and for determining eligibility for participation under various programs established by this Policy, is defined as Southern Florida, currently including the counties of Broward, Palm Beach, and Miami-Dade and all political subdivisions contained therein.
- JJ. **Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the School District.
- KK. **Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.
- LL. **Responsive** – a firm’s submittal (bid, response, or proposal) conforms in all material respects to the competitive solicitation (Invitation to Bid, Request for Qualifications, or Request for Proposals) and shall include compliance with SDOP policy requirements.
- MM. **SDOP Directory** – a listing of small businesses that have been certified for

participation in the School District's SBE program.

- NN. **SBE Subcontracting Program** – a race- and gender-neutral API in which prime contractors or vendors are required to make good faith efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing commercially useful functions. When specified by the GSC, the SBE Subcontracting Program may also be required to reflect good faith efforts that a prime contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation) towards attainment of subcontracting goals for SBE firms.
- OO. **School District** – refers to the School District of Broward County, Florida, which is governed by The School Board of Broward County, Florida.
- PP. **Segmented MBE Goals** – the application of multiple goals for MBE participation within the within annual Aspirational Goals or for MBE subcontracting goals on an individual School District contract wherein an overall combined MBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and controlled by MBEs or certain minority group members (e.g., African Americans or Hispanic Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and minority group member categories of MBEs. The application of Segmented MBE goals is intended to ensure that those segments of MBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.
- QQ. **Significant Business Presence** – to qualify for participation as an E/S/M/V/WBE firm in this SDOP policy, an E/S/M/V/WBE must be headquartered or have a *significant business presence* for at least one (1) year within the relevant marketplace, defined as: an established place of business in one (1) or more of the three (3) counties that make up the Southern Florida relevant marketplace, from which at least fifty percent (50%) of its full-time, part-time, and contract employees are domiciled and regularly based, and from which a substantial role in the E/S/M/V/WBE's performance of a commercially useful function is conducted. A location utilized solely as a post office box, mail drop or telephone message center, or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.
- RR. **Small Business Advisory Committee (SBAC)** – an eleven (11) member citizens committee made up of representatives of trade groups and members of the general business community and appointed by SBBC as an advisory committee to:

1. assist the Officer, EDDC or designee, the Superintendent or designee, and SBBC in reviewing the continuing programs for contractors and prime contractors and subcontractors that promote E/S/M/V/WBE participation;
 2. coordinate activities and actions with SBBC or any advisory committees designated or established by SBBC or the Superintendent; and
 3. make recommendations to the Officer, EDDC, the Superintendent or designee, and SBBC concerning modifications of such programs and procedures established pursuant to this Policy. Advisory committee members may participate as advisory non-voting members of Goal Setting Committees. Regardless of their voting status, all members of Goal Setting Committees are subject to the requirements of the Sunshine Law.
- SS. **Small Business Enterprise** – a corporation, partnership, sole proprietorship, or other legal entity for the purpose of making a profit, which is independently owned and operated by individuals legally residing in, or that are citizens of, the United States or its territories, and has average annual receipts under \$7.5 million and 100 employees or fewer and meets the significant business presence requirements as defined herein.
- TT. **Emerging/Small/Minority/Veteran/Women Business Enterprise** – any for-profit business firm certified as either emerging, small, minority, veteran and/or women-owned, controlled, and managed per the certification eligibility standards established herein.
- UU. **Emerging/Small/Minority/Veteran/Women Business Enterprise Directory** – a listing of E/S/M/V/WBEs certified for participation in the School District's Supplier Diversity Outreach Program.
- VV. **Competitive Solicitation Incentives** – additional inducements or enhancements in the competitive solicitation process that are designed to increase the chances for the selection of E/S/M/V/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These competitive solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for construction, professional services, other services, and goods contracts, including change orders and amendments.
- WW. **Subcontractor** – any vendor or contractor that is providing goods or services to a prime contractor in furtherance of the prime contractor's performance under a contract or purchase order with the School District. A copy of the binding agreement between the prime contractor and the subcontractor shall be submitted prior to the School District's issuance of a notice to proceed.

- XX. **Supplier Diversity Outreach Program (SDOP)** – refers to the program established by this Policy and the department that falls under the office of Economic Development & Diversity Compliance is primarily responsible for administering this Policy and promoting the economic inclusion of emerging, small, minority, veterans, and/or women-owned businesses in prime contracts and subcontracts that are solicited by, or on behalf of, the School District.
- YY. **Suspension** – the temporary stoppage of an EBE, SBE, MBE, VBE or WBE firm’s beneficial participation in the School District’s SDOP for a finite period of time due to cumulative contract payments the EBE, SBE, MBE, VBE or WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section (7) of the Standard Operating Procedures for this Policy or pursuant to the penalties and sanctions set forth in Section 13 of the Standard Operating Procedures for this Policy.
- ZZ. **Utilization Documentation** – a binding part of the contract which includes the name of all subcontractors to be utilized in the contract, specifying the E/S/M/V/WBE certification category for each, as approved by the Officer, EDDC or designee. Additions, deletions, or modifications of the utilization amounts, or substitutions or deletions of E/S/M/V/WBE subcontractors, require an amendment to be approved by the Officer, EDDC or designee.
- AAA. **White Woman-Owned Business Enterprise (WBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of this Policy as being at least fifty-one percent (51%) owned, managed, and controlled by one (1) or more non-minority women individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing, and able to sell goods or services that are purchased by the SBBC and that meets the significant business presence requirements as defined herein. In addition, for purposes of being a certified WBE that is eligible to benefit from race and gender-conscious APIs in this Policy, the enterprise has average annual receipts under \$7.5 million and 100 employees or fewer and meets the significant business presence requirements defined herein. Unless otherwise stated, the term WBE, as used in this Policy, does not include MBEs.
- BBB. **Veteran Business Enterprise** – a corporation, partnership, sole proprietorship, or other legal entity to make a profit, which is at least fifty-one percent (51%) owned, managed, and controlled by one or more veterans or service-disabled veterans that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing, and able to sell goods or services that are purchased by SBBC and that meets the significant business presence requirements as defined herein. In addition, for being a VBE eligible to benefit from race-neutral APIs in this Policy, the enterprise has average annual receipts under \$7.5 million and 100 employees or fewer and meets the significant business presence requirements defined herein.

V. **Administrative Reforms and Non-Industry-Specific Remedies**

- A. In furtherance of the policies and objectives of this Policy, the Superintendent or designee shall be responsible for implementing the following procurement policy reforms and non-industry-specific remedies to address ongoing effects of discrimination that adversely affect MBE and WBE access to public and private sector contracting opportunities and that will further facilitate the efficient implementation and successful enforcement of the SDOP:

1. Commercial Nondiscrimination Policy

It is SBBC's policy to not enter into a contract or to be engaged in a business relationship with any business entity that has discriminated in the solicitation, selection, hiring, or commercial treatment of vendors, suppliers, subcontractors, or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's employees or owners; provided that nothing in this policy shall be construed to prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that have occurred or are occurring in the relevant marketplace.

The EDDC Department shall implement this policy by periodically conducting outreach and distributing educational materials to the School District's contracting and vendor community and related trade associations to advise such contractors, vendors, and prospective respondents of this policy and the procedures to be followed in submitting complaints alleging violations of this policy. In addition, the Superintendent or designee, the Office of the Chief Financial Officer, Financial Management, the Executive Director, Operations, the Director of the Department of Purchasing & Warehousing Services, Officer, Economic Development & Diversity Compliance, the Executive Director, Capital Programs, and the Office of the General Counsel shall ensure that the following commercial nondiscrimination clause language is set forth in, and incorporated into, all SBBC contracts that result from competitive solicitations:

Every contract and subcontract shall contain a nondiscrimination clause that materially reads as follows:

"As a condition of entering into this agreement, the company represents and warrants that it will comply with the District's Commercial Nondiscrimination Policy, as described under, Section D.1 of the District's Policy No. 3330 – Supplier Diversity Outreach Program.

As part of such compliance, the company shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company

shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the School District's relevant marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in SBBC contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party."

All competitive solicitations issued for SBBC contracts shall include the following certification to be completed by the respondent:

The undersigned respondent hereby certifies and agrees that the following information is correct:

In preparing its response on this project, the respondent has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in the District's Policy No. 3330 – Supplier Diversity Outreach Program, Section D.1; to wit: Discrimination in the solicitation, selection, or commercial treatment of any subcontractor, vendor, supplier, or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or other unlawful forms of discrimination. Without limiting the foregoing, "discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination." Without limiting any other provision of the solicitation for responses on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the School District to reject the response submitted by the respondent on this project, and terminate any contract awarded based on the response. As part of its response, the respondent shall provide to the School District a list of all instances within the immediate past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Florida that the respondent discriminated against its subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken. As a condition of submitting a response to SBBC, the respondent agrees to comply with the School District's Commercial Nondiscrimination Policy as described under its School Board Policy No. 3330 – Supplier Diversity Outreach Program, Section D.1.

2. Centralized Bidder Registration Policy

SBBC shall establish an electronic Centralized Bidder Registration (“CBR”) system to provide the elements and functionalities necessary to advance and facilitate the program objectives of the SDOP policy stated herein. The CBR shall, at a minimum, include the following:

- a. The CBR shall allow a prospective vendor to electronically enter, maintain, and update its vendor registration and profile data. The CBR shall capture relevant vendor contact information, nationally recognized industry/commodity identification codes, ownership status, length of time in business, number of employees, and the unique identifiers deemed necessary by the School District. Vendors shall be required to update critical fields, as defined by the Officer, EDDC or designee, within seventy-two (72) hours of any changes. Vendors shall be required to update any changes to their entire registration and profile and confirm their interest in performing work for the School District on an annual basis.
- b. Every vendor that seeks to respond to SBBC solicitations, to receive an SBBC prime contract or subcontract, or to receive payment for work performed, and/or to receive payment for goods or services delivered on behalf of SBBC, is recommended to register through the CBR System. All businesses awarded a School District contract shall be required to register in the CBR. The School District shall designate the acceptable methods for the unique identification of vendors. Each respondent/vendor must complete registration on the CBR to be eligible to respond to any SBBC solicitations, to receive a contract award, or to receive a payment from the School District.
- c. The School District shall use the CBR for electronic outreach purposes and to send alerts to CBR registrants of upcoming solicitation opportunities based upon the identified industry/commodity codes of CBR registrants or vendor-identified areas of interest unless such notification is declined.
- d. The CBR shall track all payments, by industry/commodity classification codes that are made to each CBR registrant.
- e. Upon payment by the School District to a vendor for goods or services provided, vendors shall be required to provide and aver at such times and in the format required by the School District:
 - i. Their CBR vendor identifiers;
 - ii. The CBR vendor identifiers for all subcontractors and

suppliers;

- iii. The claimed value of the respective goods or services provided by the vendor and any subcontractor or supplier; and
- iv. The nationally recognized industry/commodity identification codes for all goods or services provided by the vendor and any subcontractors or suppliers.

SBBC shall electronically notify such identified subcontractors and suppliers and require that they confirm and aver payment from prime contractors for goods and services for which the SBBC has paid the prime contractor.

f. The CBR shall provide users the ability to identify prospective respondents, subcontractors, and vendors that are ready, willing, and able to sell specific types of goods or services. Consistent with applicable law regarding privacy and public records, SBBC may establish policies regarding the access and use of the CBR system by vendors and by the general public.

g. SBBC shall strive to ensure this registration process is integrated with any other registrations required by law or available by common practice. The Superintendent shall recommend any inter-local, intergovernmental, and data-sharing agreements, as necessary for the development of this CBR, in a manner that promotes integration with other registrations. The CBR shall contain links to such other mandatory on-line business registration systems, business-licensing applications, and business ownership status certification applications that are not directly integrated with the CBR, as deemed appropriate by the School District.

3. Respondent De-briefings

For any contract in which SBBC has undertaken a formal solicitation and subsequent evaluation of responses in accordance with a “Best Value Contracting” method of procurement, the Director of the department issuing the competitive solicitation, or of the department on whose behalf the competitive solicitation was issued, or their designees, shall provide a de-briefing to any non-recommended respondent, upon request. At a minimum, de-briefings shall include disclosures of scoring criteria and scores from the evaluation panel responsible for making the selection for each response that was evaluated. To the extent possible, the de-briefing should also identify for each non-recommended respondent those areas where its submittal was not as competitive as others, with an explanation as to why.

VI. Industry-Specific Remedial Affirmative Procurement Initiatives

- A. The GSC shall be established by the Superintendent or designee in accordance with this Policy and shall have the responsibility of evaluating categories of informal solicitations and each prospective competitive solicitation document in advance of its advertised posting to the public to determine which of the following APIs it should apply to a given contract within a particular industry. Once any API is selected for application by the GSC, then it shall be applied to the bid solicitation language in advance of advertised posting to the public, and also to the resultant contract language for that awarded contract as follows:

1. Race-Neutral Construction Program Elements

a. Direct Owner Purchasing Program

Under this Program element, the Office of Facilities and Construction shall continue and expand its practice of directly purchasing large dollar item equipment and supply purchases for its construction projects that are valued at \$200,000 or less (e.g., heating, ventilation and air conditioning units, kitchen equipment, pool pump, sprinkler systems) so as to level the playing field for smaller contractors that may not be able to negotiate as low of a price with suppliers or vendors. In this way, contractors will not need to provide bonding for that portion of the contract that would normally require them to purchase those large dollar equipment and supply items. The Executive Director, Capital Programs or designee shall be responsible for establishing systems and procedures for coordinating the warehousing of such items that are purchased directly by SBBC and for managing efficient and accountable delivery of the inventory of the purchased items to the correct job sites for installation by selected contractors.

b. SBE Prime Contract Program

Under this Program element, the GSC may establish an SBE prime contractor capacity-building initiative to enhance long-term competition and to provide SBBC with its “Best Value” on Construction projects valued at \$500,000 or less using alternative construction delivery methods of contracting in accordance with Florida law. Under this Program, the GSC may allocate from fifteen percent up to a maximum of twenty percent (15%-20%) of weighted selection criteria in favor of the selection of a respondent that is a certified SBE firm. A SBE prime contractor that is awarded a prime contract under this Program may not subcontract more than forty-nine percent (49%) of the contract value to a non-SBE firm. In determining whether the SBE Prime Contract Program should be applied to

a particular contract, the GSC shall consider: the relative availability of SBEs, with a preference for at least three (3) SBEs that are likely to bid as a prime contractor for the contract; and the degree of underutilization of the SBEs in the specific industry categories. In addition, under this Program element, the GSC may elect to waive bonding on contracts valued under \$200,000 and may further exclusively reserve prime contracts valued at under \$50,000 for bids by SBE firms only.

c. EBE Prime Contract Program

Under this Program element, the GSC may establish an Emerging Small Business Enterprise prime contract capacity-building initiative to enhance long-term competition and to provide SBBC with its “Best Value” on construction projects valued at \$500,000 or less using alternative construction delivery methods of contracting in accordance with Florida law. Under this program, the GSC may allocate from fifteen percent up to a maximum of twenty percent (15%-20%) of weighted selection criteria in favor of the selection of a respondent that is a certified EBE. An EBE contractor that is awarded a prime contract under this program may not subcontract more than forty-nine percent (49%) of the contract value to a non-EBE firm. In determining whether a particular contract is eligible for this program, the GSC shall consider: a) the relative availability of EBEs, with a preference for at least three (3) EBEs that are likely to bid as a prime contractor for the contract; and b) the degree of underutilization of EBEs in the specific industry categories. In addition, under this Program element, the GSC may elect to waive bonding on contracts valued under \$200,000 and may further exclusively reserve prime contracts valued at under \$50,000 for bids by EBE firms only.

d. SBE Subcontracting Program

Under this Program element, the GSC may, at its discretion, and on a contract-by-contract basis, require that a predetermined percentage of a specific contract, up to forty percent (40%) be subcontracted to eligible SBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of SBE firms to perform commercially useful functions on the specific contract.

A prospective respondent, to a School District solicitation for which price and scope are defined, shall submit at the time as required in the solicitation such documentation as required by SBBC that provides:

- i. The name(s) of the SBE subcontractor(s) it intends to use on the project;

- ii. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each SBE;
- iii. A description of the work that each SBE subcontractor shall perform; and
- iv. Documentation confirming the subcontractor's commitment to perform the work at the stated price.

A prospective respondent on a School District competitive solicitation for which respondents are not initially evaluated based on price or for which the project scope is not predefined, shall submit as required in the competitive solicitation such documentation as required by the SBBC to affirm its intent to meet the subcontracting requirements indicated in the competitive solicitation. Failure of a respondent to commit as required in the competitive solicitation to satisfying the SBE subcontracting goal, shall render its response non-responsive. During the price proposal negotiation phase, respondents shall be required to submit:

- v. Subcontractor(s) it intends to use on the project;
- vi. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each SBE;
- vii. A description of the work that each SBE subcontractor shall perform; and
- viii. Documentation confirming the subcontractor's commitment to perform the work at the stated price.

A respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation at the time as required in the solicitation. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the respondent and careful review by the SDOP. The SDOP shall base its determination of a waiver request on criteria such as, but not limited to:

- ix. Whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available SBEs;
- x. Whether subcontracting would be inappropriate and/or not provide a “commercially useful function” under the scope of the contract; and
- xi. Whether there are no certified SBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SDOP, failure of a prime contractor to commit as required in the solicitation to satisfying the SBE subcontracting goal, shall render its response non-responsive. Provided, however, that on any prime contract valued under \$10 million, if the prime contractor is a certified SBE firm, then the prime contractor is allowed to self-perform up to the entire SBE subcontracting goal amount with its own forces. To the extent that the certified SBE prime contractor does not self-perform a portion of the SBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted. This self-performance option for certified SBE prime contractors may be suspended at the discretion of the Officer, EDDC or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

In the absence of a waiver granted by the SDOP or the self-performance of a portion or all of the SBE subcontracting goal by a certified SBE prime contractor, the failure of a prime contractor to attain a subcontracting goal for SBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract terms with SBBC, or by law.

A prime contractor is required to notify and obtain prior written approval from the SDOP in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a School District-mandated change order or contract amendment, or the SBBC has mandated the de-certification, suspension, graduation, or termination of a designated SBE subcontractor. However, under such circumstances, the prime contractor shall undertake good faith

efforts to replace the de-certified, suspended, graduated, or terminated SBE with one or more other certified SBE subcontractors and shall submit a waiver request to the SDOP in the event such good faith efforts are unsuccessful.

Upon award of the prime contract to a respondent, the prime contractor shall be required to submit accurate progress payment information with each invoice regarding each of its subcontractors, including SBE subcontractors. The originating department shall audit the reported payments to SBE and non-SBE subcontractors to ensure that the prime contractor's reported subcontract participation is accurate. SBBC contracts with prime contractors shall include clauses requiring prime contractors to pay subcontractors in compliance with Florida prompt payment laws, and such clauses shall mandate that in the event of a prime contractor's non-compliance regarding such payments, the prime contractor shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract terms with SBBC, or by law.

e. EBE Subcontracting Program

Under this Program element, the GSC may, at its discretion, and on a contract-by-contract basis, require that a predetermined percentage of a specific contract, up to forty percent (40%), be subcontracted to eligible EBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of EBE firms to perform commercially useful functions on the specific contract. A prospective respondent, to a School District solicitation for which price and scope are defined, shall submit at the time as required in the solicitation such documentation as required by SBBC that provides:

- i. The name(s) of the EBE subcontractor(s) it intends to use on the project;
- ii. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each EBE;
- iii. A description of the work that each EBE subcontractor shall perform; and
- iv. Documentation confirming the subcontractor's commitment to perform the work at the stated price.

A prospective respondent on a School District competitive

solicitation for which respondents are not initially evaluated based on price or for which the project scope is not predefined, shall submit as required in the competitive solicitation such documentation as required by SBBC to affirm its intent to meet the subcontracting requirements indicated in the competitive solicitation. Failure of a respondent to commit as required in the competitive solicitation to satisfying the EBE subcontracting goal, shall render its response non-responsive.

During the price proposal negotiation phase, respondents shall be required to submit:

- v. Subcontractor(s) it intends to use on the project;
- vi. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each EBE;
- vii. A description of the work that each EBE subcontractor shall perform; and
- viii. Documentation confirming the subcontractor's commitment to perform the work at the stated price.

A respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation at the time as required in the solicitation. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the respondent and careful review by the SDOP. The SDOP shall base its determination of a waiver request on criteria such as, but not limited to:

- ix. Whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available EBEs;
- x. Whether subcontracting would be inappropriate and/or not provide a "commercially useful function" under the scope of the contract; and
- xi. Whether there are no certified EBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SDOP failure of a prime contractor to commit as required in the solicitation to satisfying the EBE subcontracting goal, shall render its response non-responsive. Provided, however, that on any

prime contract valued under \$1 million, if the prime contractor is a certified EBE firm, then the prime contractor is allowed to self-perform up to the entire EBE subcontracting goal amount with its own forces. To the extent that the certified EBE prime contractor does not self-perform a portion of the EBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted. This self-performance option for certified EBE prime contractors may be suspended at the discretion of the Officer, EDDC or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

In the absence of a waiver granted by the SDOP, or the self-performance of a portion or all of the EBE subcontracting goal by a certified EBE prime contractor, the failure of a prime contractor to attain a subcontracting goal for EBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract terms with SBBC, or by law.

A prime contractor is required to notify and obtain prior written approval from the SDOP in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a School District-mandated change order or contract amendment, or SBBC has mandated the de-certification, suspension, graduation, or termination of a designated EBE subcontractor. However, under such circumstances, the prime contractor shall undertake good faith efforts to replace the de-certified, suspended, graduated, or terminated EBE with one or more other certified EBE subcontractors and shall submit a waiver request to the SDOP in the event such good faith efforts are unsuccessful.

Upon award of the prime contract to a respondent, the prime contractor shall be required to submit accurate progress payment information with each invoice regarding each of its subcontractors, including EBE

subcontractors. The originating department shall audit the reported payments to EBE and non-EBE subcontractors to ensure that the prime contractor's reported subcontract participation is accurate. SBBC contracts with prime contractors shall include clauses requiring prime contractors to pay subcontractors in compliance with Florida prompt payment laws, and such clauses shall mandate that in the event of a prime contractor's non-compliance regarding such payments,

the prime contractor shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract terms with SBBC, or by law.

f. EBE, SBE and VBE Mentor-Protégé Program

Under this Program element, the SDOP shall consult with the Small Business Advisory Committee to establish an EBE, SBE and VBE Mentor-Protégé Program that provides technical assistance to EBEs, SBEs and VBEs to build their capacity by pairing EBE, SBE and VBE protégé firms with a more established, successful mentor firm that can provide the EBE, SBE and VBE protégé with knowledge to further grow their business. The Officer, EDDC shall examine various “best practices” of other mentor-protégé programs including, but not limited to, incentives for mentor firms to pair with protégé firms; approval and monitoring of written mentor-protégé team agreements that outline the respective objectives and responsibilities of the mentor-protégé teams; maintaining the independence and business autonomy of the protégé firms from mentor team members; terms for dissolution of mentor-protégé teams; and objective criteria for quantifying the success of mentor-protégé relationships. The Officer, EDDC or designee shall seek to establish the guidelines for this program within one (1) year of the effective date of this Policy and shall have discretion to modify the Mentor-Protégé Program as necessary to address weaknesses or unintended consequences.

2. Race-Conscious Construction Program Elements

GSC shall consider establishment of an overall M/WBE annual Aspirational Goal in accordance with subsection “a” below and, in addition, shall review each prospective SBBC construction formal solicitation in advance of its public release and advertisement, and shall make a determination whether to apply any of the other race-conscious APIs to those construction solicitations and resultant contracts based upon the following criteria:

- i. Whether the most recent data on M/WBE utilization in the absence of race-conscious APIs indicate that construction contracts of this type have exhibited significant disparities in the utilization of M/WBE subcontractors and/or M/WBE prime contractors;
- ii. Whether race and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of M/WBE subcontractors and/or M/WBE prime contractors based upon past contract award and payment data;

iii. Whether a particular API is the least burdensome available remedy to non-M/WBE Respondents that is narrowly tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in construction contracts; and whether the particular API is appropriate for the specific type of construction contract being procured. Whenever the GSC uses its discretion to apply any of the following race-conscious APIs to construction competitive solicitations, it shall provide an explanation in the competitive solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the District's relevant marketplace for construction services.

a. MBE/WBE Annual Aspirational Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall M/WBE prime and subcontract participation on SBBC construction contracts.

This annual Aspirational Goal for M/WBE participation in SBBC construction contracts has initially been established at fifty percent (51%) MBE contract participation (10% African American, 5% Asian American, 35% Hispanic American, and .5% Native American) and three percent (3%) WBE based upon the industry availability estimates in accordance with the District's 2023 Disparity Study findings.

This annual Aspirational Goal is to be reviewed on an annual basis for potential adjustment by the GSC based upon the School District's relative MBE/WBE availability data to be collected by SBBC through its CBR system once established for at least one (1) year and the utilization of MBE/WBE s.

Annual Aspirational Goals are not to be routinely applied to individual solicitations but are intended to serve as a benchmark against which to measure the overall effectiveness of the SDOP policy on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of race-conscious and race-neutral remedies and APIs being applied pursuant to this Policy.

MBE/WBE annual Aspirational Goals may be stated only in those SBBC solicitations that do not contain contract-specific goals, and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Policy.

b. MBE/WBE Subcontracting Program

Under this Program element, the GSC may, on a contract-by-contract basis, at its discretion, require that a predetermined percentage of a specific construction contract, up to forty percent (40%), be subcontracted to eligible MBE/WBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of M/WBE firms to perform commercially useful functions on the specific contract.

A prospective respondent on a School District competitive solicitation, for which price and scope are defined, shall submit at the time as required in the solicitation such documentation as required by SBBC that provides:

1. The name(s) of the MBE/WBEs subcontractor(s) it intends to use on the project;
2. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each MBE/WBEs;
3. A description of the work that each MBE/WBEs subcontractor shall perform; and
4. Documentation confirming the subcontractor's commitment to perform the work at that price.

A prospective respondent to a School District competitive solicitation, for which respondents are not initially evaluated based on price or for which project scope is not predefined, shall submit at the time as required in the competitive solicitation such documentation as required by SBBC to affirm its intent to meet the subcontracting requirements indicated in the competitive solicitation.

In the absence of a waiver granted by the SDOP, failure of a respondent to commit as required in the solicitation to satisfying the MBE/WBEs subcontracting goal, shall render its response non-responsive.

During the price proposal negotiation phase, respondents shall be required to submit:

5. The name(s) of the MBE/WBEs subcontractor(s) it intends to use on the project;
6. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each MBE/WBEs; and

7. A description of the work that each MBE/WBEs subcontractor shall perform.

A respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation at the time as required in the solicitation. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the respondent and careful review by the SDOP. The SDOP shall base its determination on a waiver request on criteria such as, but not limited to:

8. Whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available MBE/WBEs;
9. Whether subcontracting would be inappropriate and/or not provide a “commercially useful function” under the scope of the contract; and
10. Whether there are no certified MBE/WBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SDOP, failure of a prime contractor to commit as required in the competitive solicitation to satisfying the MBE/WBE subcontracting goal, shall render its response non-responsive. Provided, however, that on any prime contract valued under \$10 million, if the prime contractor is a certified MBE/WBE firm, then the prime contractor is allowed to self-perform up to the entire MBE/WBE subcontracting goal amount with its own forces. To the extent that the certified MBE/WBE prime contractor does not self-perform a portion of the MBE/WBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted. This self-performance option for certified MBE/WBEs prime contractors may be suspended at the discretion of the Office, EDDC or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

In the absence of a waiver granted by the SDOP, or the self-performance of a portion or all of the MBE/WBE subcontracting goal by a certified MBE/WBE prime contractor, the failure of a prime contractor to attain a subcontracting goal for MBE/WBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a

material breach of contract, grounds for termination of that contract with SBBC and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract with the SBBC, or by law.

With the exception of certified MBE/WBE prime contractors that are self-performing a portion or all of a subcontracting goal, in the absence of a waiver granted by the SDOP, failure of a prime contractor to attain a subcontracting goal for MBE/WBE participation in the performance of its contract shall be considered a material breach of contract, shall be grounds for termination of that contract with SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, the terms of its contract with SBBC, or by law.

A prime contractor is required to notify and obtain prior written approval from the SDOP in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a School District-mandated change order or contract amendment, or the SBBC has mandated the de-certification, suspension, graduation, or termination of a designated MBE/WBE subcontractor. However, under such circumstances, the prime contractor shall undertake good faith efforts to replace the de-certified, suspended, graduated, or terminated MBE/WBE subcontractor(s) with one (1) or more other certified MBE/WBE subcontractor(s) and shall submit a waiver request to the SDOP in the event such good faith efforts are unsuccessful.

Upon award of the prime contract to a respondent, the prime contractor shall be required to submit accurate progress payment information with each invoice regarding each of its subcontractors, including MBE/WBE subcontractors. The originating department shall audit the reported payments to MBE/WBE and non-MBE/WBE subcontractor to ensure that the prime contractors' reported subcontract participation is accurate. Absent a waiver from the SDOP, a prime contractor's failure to reach the required level of MBE/WBE subcontracting shall be considered a material breach of contract. SBBC Invitations to Bid, RFPs, RFQs, and/or contracts shall include language pertaining to responsibilities for prime contractors or vendors regarding invoicing and payment schedules. Prime contractors shall include clauses requiring them to pay subcontractors in compliance with Florida prompt payment laws (the "Prompt Payment Act"), and such clauses shall mandate that in the event of prime contractor non-compliance regarding such payments, the prime contractor shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract with SBBC, or by law.

c. MBE/WBE Segmented Subcontracting Goals

The GSC may establish segmented MBE/WBE goals within the annual Aspirational Goal based upon the MBE/WBE availability by industry in accordance with the SBBC's 2023 KIR Disparity Study Update findings, along with relative MBE/WBE availability data to be collected by SBBC through its CBR system, and the utilization of MBE/WBEs. The GSC may also establish MBE/WBE segmented subcontracting goals on an individual SBBC contract wherein an overall combined MBE/WBE goal is accompanied by subsets of one or more smaller goals that specifically target the participation of a particular segment of minority group member categories or the WBE segment based upon relative availability. Such segmented goals shall specifically target the participation of a particular segment of business enterprises owned and controlled by WBEs or certain minority group members (e.g., African Americans or Hispanic Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and minority group member categories of MBE/WBEs. The application of segmented MBE/WBE goals is intended to ensure that those segments of MBE/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance. Segmented MBE/WBE goals shall operate in the same manner as the MBE/WBE Subcontracting Program set forth in Section E. 2. C. of this Policy.

d. MBE/WBE Mentor-Protégé Program

Under this Program element, the SDOP shall consult with the Small Business Advisory Committee to establish an MBE/WBE Mentor-Protégé Program that provides technical assistance to MBE/WBEs to build their capacity by pairing MBE/WBE protégé firms with a more established successful mentor firm that can provide the MBE/WBE business knowledge to further grow their business. The Officer, EDDC shall examine various "best practices" of other mentor-protégé programs including, but not limited to, incentives for mentor firms to pair with protégé firms; approval and monitoring of written mentor-protégé team agreements that outline the respective objectives and responsibilities of the mentor-protégé team members; maintaining the independence and business autonomy of the protégé firms from mentor team members; terms for dissolution of mentor-protégé teams; and objective criteria for quantifying the success of mentor-protégé relationships. The Officer,

EDDC or designee shall seek to establish the guidelines for this program within one (1) year of the effective date of this Policy and shall have discretion to modify the MBE/WBE Mentor-Protégé Program as necessary to address weaknesses or unintended consequences.

e. Minority Inclusion Language in RFPs

Under this Program element, in “Best Value” contracts that are issued pursuant to RFPs rather than lowest responsible bid Invitation to Bid (e.g., construction manager or design-build contracts), the GSC may include language in the RFP to include diversity in participation on a respondent’s team and its plans to encourage M/WBE subcontract participation as one (1) element in the selection criteria. An additional element in such selection criteria may be past performance of the respondent in achieving diversity in subcontract awards on similar projects, as well as inclusion of MBE/WBE primes, MBE/WBE suppliers, and MBE/WBE professional services firms in prior projects.

f. MBE/WBE Evaluation Preference for “Best Value” RFPs

Under this Program element, the GSC may establish an MBE/WBE prime contractor capacity-building initiative to enhance long-term competition and to provide SBBC with its “Best Value” on construction projects using alternative construction delivery methods of contracting in accordance with Florida law. The GSC may allocate from fifteen percent up to a maximum of twenty percent (15%-20%) of weighted selection criteria in favor of the selection of a respondent that is a certified MBE/WBE firm. An MBE/WBE prime contractor that is awarded a prime contract under this program may not subcontract more than forty-nine percent (49%) of the contract value to a non-MBE/WBE firm. In determining whether the MBE/WBE Evaluation Preference for “Best Value” RFPs should be applied to a particular contract, the GSC shall consider: a) the relative availability of MBE/WBEs, with the preference for at least three (3) MBE/WBEs that are likely to bid as a prime contractor for the contract; and b) the degree of underutilization of the MBE/WBEs in the specific industry categories.

3. Race-Neutral Professional Services Program Elements

The Goal Setting Committee (GSC) shall consider the application of one (1) or more of the following race-neutral Affirmative Procurement Initiatives for each SBBC professional services solicitation:

a. Emerging/Small Business Enterprise Vendor Rotation

Under this Program element, the GSC may use vendor rotation

of a pre-qualified panel of certified EBE/SBE professional services firms for smaller SBBC contracts valued at less than \$50,000. Work tasks are rotated among this pre-qualified panel of EBE/SBE professional services firms. The order of the vendor rotation is periodically adjusted by the EDDC Department or designee to account for ranking from the lowest dollar volume of work tasks assigned to the highest dollar volume of work tasks assigned to each EBE/SBE vendor that is listed on the pre-qualified panel of vendors. Participation on vendor rotation panel is contingent on vendor having no negative history of unsatisfactory performance on prior SBBC contracts.

b. Evaluation Preference for EBE/SBE Prime Bidders

Under this Program element, on “Best Value” contract solicitations where low price is not the only factor considered in contract award, the GSC may reserve from fifteen percent up to a maximum of twenty percent (15%- 20%) of the total available evaluation points for award to those prime bidders or respondents that are certified as EBE/SBE s. Out of those fifteen to twenty percent (15%-20%) of the total evaluation preference points, the GSC may limit EBE/SBE bidders that have prior experience performing work on behalf of SBBC to half of the evaluation preference points seven and a half to ten percent (7.5%-10%) out of the total fifteen to twenty percent (15%-20%) evaluation preference points that are reserved for EBE/SBE firms.

EBE/SBEs that have never before received SBBC work may be eligible for the entire fifteen to twenty percent (15%-20%) of reserved EBE/SBE evaluation preference points. Alternatively, the GSC may, at its discretion, reserve all of the fifteen to twenty percent (15%-20%) of evaluation preference points for those EBE/SBE firms that have never previously performed any professional services work on behalf of the SBBC.

c. Evaluation Panel Diversity

Under this Program element, on “Best Value” contract solicitations where low price is not the only factor considered in contract awards, the Officer, EDDC may appoint a voting representative to serve on the evaluation panel to ensure that scoring is fair and to guard against inherent bias against non-incumbent firms and Emerging/Small/Minority/Veteran/Women Business Enterprise firms.

d. EBE/SBE Reserve of Contracts Up to \$50,000

Under this Program element, the GSC may reserve some

smaller professional services contracts valued at less than \$50,000 for competition solely among EBE/SBE professional services firms. The GSC shall determine whether there are at least three (3) qualified EBE/SBE firms that are available to compete for the work prior to applying this API.

e. EBE/SBE Subcontracting Goals Program

Under this Program element, the GSC may, at its discretion, and on a contract-by-contract basis, require that a predetermined percentage of a specific contract, up to forty percent (40%), be subcontracted to eligible EBE/SBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of EBE/SBE firms to perform commercially useful functions on the specific contract.

A prospective respondent to a School District competitive solicitation for which price and scope are defined, shall submit at the time as required in the competitive solicitation such documentation as required by SBBC that provides:

- i. The name(s) of the EBE/SBE subcontractor(s) it intends to use on the project;
- ii. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each EBE/SBE;
- iii. A description of the work that each EBE/SBE subcontractor shall perform; and
- iv. Documentation confirming the subcontractor's commitment to perform the work at the stated price.

A prospective respondent on a School District competitive solicitation for which respondents are not initially evaluated based on price or for which the project scope is not predefined, shall submit as required in the competitive solicitation such documentation as required by SBBC to affirm its intent to meet the subcontracting requirements indicated in the competitive solicitation. Failure of a respondent to commit as required in the competitive solicitation to satisfying the EBE/SBE subcontracting goal, shall render its response non-responsive.

During the price proposal negotiation phase, respondents shall be required to submit:

- v. Subcontractor(s) it intends to use on the project;
- vi. The percentage of prime contract dollars and the

absolute dollar value of subcontracting services to be provided by each E/SBE;

- vii. A description of the work that each EBE/SBE subcontractor shall perform; and
- viii. Documentation confirming the subcontractor's commitment to perform the work at the stated price.

A respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation at the time as required in the competitive solicitation. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the respondent and careful review by the SDOP. The SDOP shall base its determination of a waiver request on criteria such as, but not limited to:

- ix. Whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available EBE/SBEs;
- x. Whether subcontracting would be inappropriate and/or not provide a "commercially useful function" under the scope of the contract; and
- xi. Whether there are no certified EBE/SBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SDOP, failure of a prime contractor to commit as required in the competitive solicitation to satisfying the EBE/SBE subcontracting goal, shall render its response non-responsive. Provided, however, that on any prime contract valued under \$10 million, if the prime contractor is a certified EBE/SBE firm, then the prime contractor is allowed to self-perform up to the entire EBE/SBE subcontracting goal amount with its own forces. To the extent that the certified EBE/SBE prime contractor does not self-perform a portion of the EBE/SBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted. This self-performance option for certified EBE/SBE prime contractors may be suspended at the discretion of the Director of Procurement & Warehousing Services or designee in the event it determines that the adverse cumulative effect of the use of this self- performance option upon subcontractor opportunities is too great.

In the absence of a waiver granted by the SDOP or the self-performance of a portion or all of the EBE/SBE subcontracting goal by a certified EBE/SBE prime contractor, the failure of a prime contractor to attain a subcontracting goal for EBE/SBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract terms with SBBC, or by law.

A prime contractor is required to notify and obtain prior written approval from the SDOP in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a School District-mandated change order or contract amendment, or SBBC has mandated the de-certification, suspension, graduation, or termination of a designated EBE/SBE subcontractor. However, under such circumstances, the prime contractor shall undertake good faith efforts to replace the de-certified, suspended, graduated, or terminated EBE/SBE with one (1) or more other certified EBE/SBE subcontractors and shall submit a waiver request to the SDOP in the event such good faith efforts are unsuccessful.

Upon award of the prime contract to a respondent, the prime contractor shall be required to submit accurate progress payment information with each invoice regarding each of its subcontractors, including EBE/SBE subcontractors. The originating department shall audit the reported payments to EBE/SBE and non-EBE/SBE subcontractors to ensure that the prime contractor's reported subcontract participation is accurate. SBBC contracts with prime contractors shall include clauses requiring prime contractors to pay subcontractors in compliance with Florida prompt payment laws, and such clauses shall mandate that in the event of a prime contractor's non-compliance regarding such payments, the prime contractor shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract terms with SBBC, or by law.

4. Race-Conscious Professional Services Program Elements

The GSC shall consider establishment of an overall MBE/WBE annual Aspirational Goal in accordance with subsection "a" below and, in addition, shall review each prospective SBBC professional services formal solicitation in advance of its public release and advertisement, and shall determine whether to apply any of the other race-conscious APIs to those professional services solicitations and resultant

contracts based upon the following criteria:

- i. Whether the most recent data on MBE/WBE utilization in the absence of race-conscious APIs indicate that professional services contracts of this type have exhibited significant disparities in the utilization of MBE/WBE subcontractors and/or MBE/WBE prime contractors;
- ii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of MBE/WBE subcontractors and/or MBE/WBE prime contractors based upon past contract award and payment data;
- iii. Whether a particular API is the least burdensome available remedy to non-MBE/WBE respondents that is narrowly tailored and that can effectively eliminate the disparities in the utilization of MBE/WBEs in professional services contracts; and
- iv. Whether the particular API is appropriate for the specific type of professional services contract being procured. Whenever the GSC uses its discretion to apply any of the following race-conscious APIs to professional services competitive solicitations, it shall provide an explanation in the solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the School District's relevant marketplace for professional services.

a. MBE/WBE Annual Aspirational Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall MBE/WBE prime and subcontract participation on SBBC professional services contracts.

This annual Aspirational Goal for MBE/WBE participation in SBBC professional services contracts has initially been established at thirty-six percent (36%) MBE contract participation (5% African American, (22%) Asian American, (9%) Hispanic American) MBE contract participation and twenty-nine percent (29%) WBE contract participation based upon the industry availability estimates in accordance with the District's 2023KIR Disparity Study Update findings.

This annual Aspirational Goal is to be reviewed on an annual basis for potential adjustment by the GSC based upon the School District's relative MBE/WBE availability data to be

collected by the SBBC through its CBR system once established for at least one (1) year and the utilization of MBE/WBEs.

Annual Aspirational Goals are not to be routinely applied to individual solicitations but are intended to serve as a benchmark against which to measure the overall effectiveness of the SDOP policy on an annual basis and to gauge the need for future adjustments to the mix and aggressiveness of race-conscious and race-neutral remedies and APIs being applied pursuant to this Policy.

MBE/WBE annual Aspirational Goals may be stated only in those SBBC solicitations that do not contain contract-specific E/S/M/V/WBE goals, and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Policy.

b. MBE/WBE Evaluation Preference for “Best Value” RFPs

Under this Program element, the GSC may establish an MBE/WBE prime contractor capacity-building initiative to enhance long-term competition and to provide SBBC with its “Best Value” on professional services contracts in accordance with Florida law. The GSC may reserve from fifteen percent up to a maximum of twenty percent (15%-20%) of the total available evaluation points for award to a respondent that is a certified MBE/WBE firm. Out of those fifteen to twenty percent (15%-20%) of the total evaluation preference points, the GSC may limit MBE/WBE bidders that have prior experience performing work on behalf of SBBC to half of the evaluation preference points seven and a half to ten percent (7.5%-10%) out of the total fifteen to twenty percent (15%-20%) evaluation preference points that are reserved for MBE/WBE firms. MBE/WBEs that have never before received SBBC work, may be eligible for the entire fifteen to twenty percent (15%-20%) of reserved MBE/WBE evaluation preference points. Alternatively, the GSC may, at its discretion, reserve all of the fifteen to twenty percent (15%-20%) of evaluation preference points for those M/WBE firms that have never previously performed any professional services work on behalf of SBBC. An MBE/WBE prime contractor that is awarded a prime contract under this program element may not subcontract more than forty-nine percent (49%) of the contract value to a non-MBE/WBE firm. In determining whether the MBE/WBE Evaluation Preference for “Best Value” RFPs should be applied to a particular contract, the GSC shall consider: a) the relative availability of MBE/WBEs, with a preference for at least three (3) MBE/WBEs that are likely to bid as a prime contractor for the contract; and b) the degree of underutilization of the MBE/WBEs in the specific industry categories.

c. MBE/WBE Subcontracting Program for Professional Services

Under this Program element, the GSC may, on a contract-by-contract basis, at its discretion, require that a predetermined percentage of a specific professional services contract, up to forty percent (40%) be subcontracted to eligible MBE/WBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of MBE/WBE firms to perform commercially useful functions on the specific contract.

A prospective respondent on a School District competitive solicitation, for which price and scope are defined, shall submit at the time as required in the competitive solicitation such documentation as required by SBBC that provides:

- v. The name(s) of the MBE/WBE subcontractor(s) it intends to use on the project;
- vi. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each MBE/WBE;
- vii. A description of the work that each MBE/WBE subcontractor shall perform; and
- viii. Documentation confirming the subcontractor's commitment to perform the work at that price.

A prospective respondent to a School District competitive solicitation, for which respondents are not initially evaluated based on price or for which project scope is not predefined, shall submit at the time as required in the competitive solicitation such documentation as required by SBBC to affirm its intent to meet the subcontracting requirements indicated in the competitive solicitation. In the absence of a waiver granted by the SDOP, failure of a respondent to commit as required in the solicitation to satisfying the MBE/WBE subcontracting goal shall render its response non-responsive.

During the price proposal negotiation phase, respondents shall be required to submit:

- ix. The name(s) of the MBE/WBE subcontractor(s) it intends to use on the project;
- x. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each MBE/WBE; and

- xi. A description of the work that each MBE/WBE subcontractor shall perform.

A respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation at the time as required in the competitive solicitation. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the respondent and careful review by the SDOP. The SDOP shall base its determination on a waiver request on criteria such as, but not limited to:

- xii. Whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available MBE/WBEs;
- xiii. Whether subcontracting would be inappropriate and/or not provide a “commercially useful function” under the scope of the contract; and
- xiv. Whether there are no certified MBE/WBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SDOP, failure of a prime contractor to commit as required in the solicitation to satisfying the MBE/WBE subcontracting goal, shall render its response non-responsive. Provided, however, that on any prime contract valued under \$10 million, if the prime contractor is a certified MBE/WBE firm, then the prime contractor is allowed to self-perform up to the entire MBE/WBE subcontracting goal amount with its own forces. To the extent that the certified MBE/WBE prime contractor does not self-perform a portion of the MBE/WBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted. This self-performance option for certified M/WBE prime contractors may be suspended at the discretion of the Director of the Procurement & Warehousing Services or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

In the absence of a waiver granted by the SDOP, or the self-performance of a portion or all of the MBE/WBE subcontracting goal by a certified MBE/WBE prime contractor, the failure of a prime contractor to attain a subcontracting goal for MBE/WBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a

material breach of contract, grounds for termination of that contract with SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract with SBBC, or by law.

With the exception of certified MBE/WBE prime contractors that are self-performing a portion or all of a subcontracting goal, in the absence of a waiver granted by the SDOP, failure of a prime contractor to attain a subcontracting goal for MBE/WBE participation in the performance of its contract shall be considered a material breach of contract, shall be grounds for termination of that contract with SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, the terms of its contract with SBBC, or by law.

A prime contractor is required to notify and obtain prior written approval from the SDOP in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a School District-mandated change order or contract amendment, or SBBC has mandated the de-certification, suspension, graduation, or termination of a designated MBE/WBE subcontractor. However, under such circumstances, the prime contractor shall undertake good faith efforts to replace the de-certified, suspended, graduated, or terminated M/WBE subcontractor(s) with one or more other certified MBE/WBE subcontractor(s) and shall submit a waiver request to the SDOP in the event such good faith efforts are unsuccessful.

Upon award of the prime contract to a respondent, the prime contractor shall be required to submit accurate progress payment information with each invoice regarding each of its subcontractors, including MBE/WBE subcontractors. The originating department shall audit the reported payments to MBE/WBE and non-MBE/WBE subcontractor to ensure that the prime contractors' reported subcontract participation is accurate. Absent a waiver from the SDOP, a prime contractor's failure to reach the required level of MBE/WBE subcontracting shall be considered a material breach of contract. SBBC contracts with prime contractors shall include clauses requiring prime contractors to pay subcontractors in compliance with Florida prompt payment laws (the "Prompt Payment Act"), and such clauses shall mandate that in the event of prime contractor non-compliance regarding such payments, the prime contractor shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract with SBBC, or by law.

d. MBE/WBE Vendor Rotation

Under this Program element, the GSC may use vendor rotation of a pre-qualified panel of certified MBE/WBE professional services firms for smaller SBBC contracts valued at less than \$50,000. Work tasks are rotated among this pre-qualified panel of MBE/WBE professional services firms. The order of the vendor rotation is periodically adjusted by the SDOP or designee to account for ranking from the lowest dollar volume of work tasks assigned to the highest dollar volume of work tasks assigned to each MBE/WBE vendor that is listed on the pre-qualified panel of vendors. Participation on vendor rotation panel is contingent on vendor having no negative history of unsatisfactory performance on prior SBBC contracts.

5. Race-Neutral Goods Program Elements

a. EBE/SBE/VBE Vendor Rotation

Under this Program element, the GSC may use vendor rotation of a pre-qualified panel of certified EBE/SBE/VBE goods vendors for smaller SBBC contracts valued at less than \$50,000. Supply orders are rotated among this pre-qualified panel of EBE/SBE/VBE goods vendors. The order of the vendor rotation is periodically adjusted by the SDOP or designee to account for ranking from the lowest dollar volume of purchase orders assigned to the highest dollar volume of purchase orders assigned to each EBE/SBE/VBE vendor that is listed on the pre-qualified panel of vendors. Participation on vendor rotation panel is contingent on vendor having no negative history of unsatisfactory performance on prior SBBC contracts.

b. EBE/SBE/VBE Reserve for Contracts Up \$50,000

Under this Program element, the GSC may reserve some smaller goods contracts valued at less than \$50,000 for bid competition solely among EBE/SBE/VBE goods firms. The GSC shall determine whether there are at least three (3) qualified EBE/SBE/VBE firms that are available to compete for the sale of the goods to SBBC prior to applying this API.

6. Race-Conscious Goods Program Elements

The GSC shall consider establishment of an overall MBE/WBE annual Aspirational Goal in accordance with subsection “a” below and, in addition, shall review each prospective SBBC goods competitive solicitation in advance of its public release and advertisement and shall make a determination whether to apply any of the other race-conscious APIs to those goods competitive solicitations and resultant contracts based upon

the following criteria:

- i. Whether the most recent data on MBE/WBE utilization in the absence of race-conscious APIs indicate that goods contracts of this type have exhibited significant disparities in the utilization of MBE/WBE subcontractors and/or MBE/WBE prime contractors;
 - ii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of MBE/WBE subcontractors and/or MBE/WBE prime contractors based upon past contract award and payment data;
 - iii. Whether a particular API is the least burdensome available remedy to non-MBE/WBE respondents that is narrowly tailored and that can effectively eliminate the disparities in the utilization of MBE/WBEs in goods contracts; and
 - iv. Whether the particular API is appropriate for the specific type of goods contract being procured. Whenever the GSC uses its discretion to apply any of the following race-conscious APIs to goods competitive solicitations, it shall provide an explanation in the competitive solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the School District's relevant marketplace for goods.
- a. MBE/WBE Annual Aspirational Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall MBE/WBE participation on SBBC goods contracts.

This annual Aspirational Goal for MBE/WBE participation in SBBC goods contracts has initially been established at fifty-six (56%) MBE contract participation (9% African American, (4%) Asian American, (43%) Hispanic American) and eight percent (8%) WBE contract participation based upon the industry availability estimates in accordance with the School District's 2023 KIR Disparity Study Update findings.

This annual Aspirational Goal is to be reviewed on an annual basis for potential adjustment by the GSC based upon the School District's relative MBE/WBE availability data to be collected by the SBBC through its Centralized Bidder Registration system once established for at least one (1) year and the School District's utilization of MBE/WBEs.

Annual Aspirational Goals are not to be routinely applied to individual solicitations but are intended to serve as a benchmark against which to measure the overall effectiveness of the SDOP policy on an annual basis and to gauge the need for future adjustments to the mix and aggressiveness of race-conscious and race-neutral remedies and APIs being applied pursuant to this Policy.

MBE/WBE annual Aspirational Goals may be stated only in those SBBC solicitations that do not contain contract-specific E/S/M/WBE goals and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Policy.

b. MBE/WBE Vendor Rotation

Under this Program element, the GSC may use vendor rotation of a pre-qualified panel of certified MBE/WBE goods firms for smaller SBBC contracts valued at less than \$50,000. Purchase orders are rotated among this pre-qualified panel of MBE/ WBE firms.

The order of the vendor rotation is periodically adjusted by the SDOP or designee to account for ranking from the lowest dollar volume of purchase orders assigned to the highest dollar volume of purchase orders assigned to each MBE/WBE vendor that is listed on the pre-qualified panel of vendors. Participation on vendor rotation panel is contingent on vendor having no negative history of unsatisfactory performance on prior SBBC contracts.

c. MBE/WBE Subcontracting Program for Goods

Under this Program element, the GSC may, on a contract-by-contract basis, at its discretion, require that a predetermined percentage of a specific goods contract, up to forty percent (40%) be subcontracted to eligible MBE/WBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of MBE/WBE firms to perform commercially useful functions on the specific contract.

A prospective respondent on a School District competitive solicitation, for which price and scope are defined, shall submit at the time as required in the competitive solicitation such documentation as required by SBBC that provides:

- i. The name(s) of the MBE/WBE subcontractor(s) it intends to use on the project;

- ii. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each MBE/WBE;
- iii. A description of the work that each MBE/WBE subcontractor shall perform; and
- iv. Documentation confirming the subcontractor's commitment to perform the work at that price.

A prospective respondent to a School District competitive solicitation, for which respondents are not initially evaluated based on price or for which project scope is not predefined, shall submit at the time as required in the competitive solicitation such documentation as required by SBBC to affirm its intent to meet the subcontracting requirements indicated in the competitive solicitation. In the absence of a waiver granted by the SDOP, failure of a respondent to commit as required in the competitive solicitation to satisfying the MBE/WBE subcontracting goal shall render its response non-responsive.

During the price proposal negotiation phase, respondents shall be required to submit:

- v. The name(s) of the MBE/WBE subcontractor(s) it intends to use on the project;
- vi. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each MBE/WBE; and
- vii. A description of the work that each MBE/WBE subcontractor shall perform.

A respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation at the time as required in the solicitation. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the respondent and careful review by the SDOP. The SDOP shall base its determination on a waiver request on criteria such as, but not limited to:

- viii. Whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available MBE/WBEs;

- ix. Whether subcontracting would be inappropriate and/or not provide a “commercially useful function” under the scope of the contract; and
- x. Whether there are no certified MBE/WBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SDOP, failure of a prime contractor to commit as required in the competitive solicitation to satisfying the MBE/WBE subcontracting goal, shall render its response non-responsive. Provided, however, that on any prime contract valued under \$10 million, if the prime contractor is a certified MBE/WBE firm, then the prime contractor is allowed to self-perform up to the entire MBE/WBE subcontracting goal amount with its own forces. To the extent that the certified MBE/WBE prime contractor does not self-perform a portion of the MBE/WBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted. This self-performance option for certified M/WBE prime contractors may be suspended at the discretion of the Director of the Procurement & Warehousing Services or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

In the absence of a waiver granted by the SDOP, or the self-performance of a portion or all of the MBE/WBE subcontracting goal by a certified MBE/WBE prime contractor, the failure of a prime contractor to attain a subcontracting goal for MBE/WBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract with SBBC, or by law.

With the exception of certified MBE/WBE prime contractors that are self-performing a portion or all of a subcontracting goal, in the absence of a waiver granted by the SDOP, failure of a prime contractor to attain a subcontracting goal for MBE/WBE participation in the performance of its contract shall be considered a material breach of contract, shall be grounds for termination of that contract with SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, the terms of its contract with SBBC, or by law.

A prime contractor is required to notify and obtain prior written approval from the SDOP in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a School District-mandated change order or contract amendment, or SBBC has mandated the de-certification, suspension, graduation, or termination of a designated MBE/WBE subcontractor. However, under such circumstances, the prime contractor shall undertake good faith efforts to replace the de-certified, suspended, graduated, or terminated M/WBE subcontractor(s) with one or more other certified MBE/WBE subcontractor(s) and shall submit a waiver request to the SDOP in the event such good faith efforts are unsuccessful.

Upon award of the prime contract to a respondent, the prime contractor shall be required to submit accurate progress payment information with each invoice regarding each of its subcontractors, including MBE/WBE subcontractors. The originating department shall audit the reported payments to MBE/WBE and non-MBE/WBE subcontractor to ensure that the prime contractors' reported subcontract participation is accurate. Absent a waiver from the SDOP, a prime contractor's failure to reach the required level of MBE/WBE subcontracting shall be considered a material breach of contract. SBBC contracts with prime contractors shall include clauses requiring prime contractors to pay subcontractors in compliance with Florida prompt payment laws (the "Prompt Payment Act"), and such clauses shall mandate that in the event of prime contractor non-compliance regarding such payments, the prime contractor shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract with SBBC, or by law.

d. Voluntary MBE/WBE Distributorship Development Program

Under this Program element, where there is low availability of MBE/WBE distributorships that are able to sell particular goods to the SBBC, the GSC may apply incentives to encourage manufacturers to establish authorized dealerships or distributorships with MBE/WBE suppliers of their products on a non-discriminatory basis. Such incentives may include two (2) or three (3) additional option years in supply contracts that may be exercised by SBBC when the manufacturer sells its products through its authorized MBE/WBE distributorship and demonstrates that its distributorship with that MBE/WBE vendor is established and operated in a non-discriminatory fashion as compared to its other distributorships. When this API is applied by the GSC to a goods program solicitation, the SDOP shall review the distributorship agreements of the

selected manufacturer that accepts the incentives as part of its bid to ensure that the terms of the designated authorized MBE/WBE's distributorship agreement are similar to that of non- MBE/WBE distributors for that manufacturer. Specifically, as a condition of the application of the incentives under this API, the SDOP will review relevant documentation to determine whether the MBE/WBE distributor is in no way more limited in geographic territory, credit terms, marketing support, public and private sector customer allocations and access, pricing, rebates, volume discounts, etc. as compared to the terms of similar non-MBE/WBE distributorship agreements for that manufacturer. The SDOP will also determine whether the MBE/WBE distributorship is performing a commercially useful function on behalf of the SBBC prior to exercising each additional option year under the contract. An additional incentive that may be provided by the GSC to the manufacturer and MBE/WBE distributorship under this API is accelerated payment terms of invoices for payment from the SBBC within fifteen (15) calendar days of receipt of goods and invoices.

7. Race-Neutral Other Services Program Elements

a. Direct Contracting for Other Services

Under this Program element, the GSC may direct the originating department to separate out certain other services categories (e.g., trucking, hauling, surveying, demolition, environmental consulting, testing, and landscaping) that normally would be bundled within much larger construction contracts or architecture and engineering design contracts, and issue separate bid solicitations to permit SBBC to directly award contracts for those specialty or non-license services. This API is intended to expand opportunities for such E/S/M/V/WBE firms to gain experience as prime vendors and prime contractors.

b. EBE/SBE/VBE Vendor Rotation

Under this Program element, the GSC may use vendor rotation of a pre-qualified panel of certified EBE/SBE/VBE other services vendors for smaller SBBC contracts valued at less than \$50,000. Work tasks are rotated among this pre-qualified panel of EBE/SBE/VBE other services vendors. The order of the vendor rotation is periodically adjusted by the SDOP or designee to account for ranking from the lowest dollar volume of work tasks assigned to the highest dollar volume of work tasks assigned to each EBE/SBE/VBE vendor that is listed on the pre-qualified panel of vendors.

Participation on vendor rotation panel is contingent on vendor

having no negative history of unsatisfactory performance on prior SBBC contracts.

c. EBE/SBE/VBE Evaluation Preference for Prime Bidders

Under this Program element, on “Best Value” contract solicitations where low price is not the only factor considered in contract award, the GSC may reserve from fifteen percent up to a maximum of twenty percent (15%- 20%) of the total available evaluation points for award to those prime bidders or respondents that are certified as EBE/SBE/VBEs. Out of those fifteen to twenty percent (15%-20%) of the total evaluation preference points, the GSC may limit EBE/SBE/VBE bidders that have prior experience performing work on behalf of SBBC to half of the evaluation preference points seven and a half to ten percent (7.5%-10%) out of the total fifteen to twenty percent (15%-20%) evaluation preference points that are reserved for EBE/SBE/VBE firms. EBE/SBE/VBEs that have never before received SBBC work may be eligible for the entire fifteen to twenty percent (15%-20%) of the reserved EBE/SBE/VBE evaluation preference points. Alternatively, the GSC may, at its discretion, reserve all of the fifteen to twenty percent (15%-20%) of evaluation preference points for those EBE/SBE/VBE firms that have never previously performed any other services work on behalf of SBBC.

8. Race-Conscious Other Services Program Elements

The GSC shall consider establishment of an overall MBE/WBE annual Aspirational Goal in accordance with subsection “a” below and, in addition, shall review each prospective SBBC other services formal solicitation in advance of its public release and advertisement, and shall make a determination whether to apply any of the other race-conscious APIs to those other services solicitations and resultant contracts based upon the following criteria:

- i. Whether the most recent data on MBE/WBE utilization in the absence of race-conscious APIs indicate that other services contracts of this type have exhibited significant disparities in the utilization of MBE/WBE subcontractors and/or MBE/WBE prime contractors;
- ii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of MBE/WBE subcontractors and/or MBE/WBE prime contractors based upon past contract award and payment data;
- iii. Whether a particular API is the least burdensome available

remedy to non-MBE/WBE respondents that is narrowly tailored and that can effectively eliminate the disparities in the utilization of M/WBEs in other services contracts; and

- iv. Whether the particular API is appropriate for the specific type of other services contract being procured. Whenever the GSC uses its discretion to apply any of the following race-conscious APIs to other services solicitations, it shall provide an explanation in the solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the School District's relevant marketplace for other services.

a. MBE/WBE Annual Aspirational Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall MBE/WBE prime participation on SBBC other services contracts.

This annual Aspirational Goal for MBE/WBE participation in SBBC other services contracts has initially been established at forty-five (45%) MBE contract participation (22% African American, (1%) Asian American, (21%) Hispanic American, and (1%) Native American) contract participation and ten percent (10%) WBE contract participation based upon the industry availability estimates in accordance with the District's 2023 KIR Disparity Study Update findings.

This annual Aspirational Goal is to be reviewed on an annual basis for potential adjustment by the GSC based upon the School District's relative MBE/WBE availability data to be collected by SBBC through its CBR system once established for at least one (1) year and the School District's utilization of MBE/WBEs.

Annual Aspirational Goals are not to be routinely applied to individual solicitations but are intended to serve as a benchmark against which to measure the overall effectiveness of the SDOP policy on an annual basis and to gauge the need for future adjustments to the mix and aggressiveness of race-conscious and race-neutral remedies and APIs being applied pursuant to this Policy.

MBE/WBE annual Aspirational Goals may be stated only in those SBBC solicitations that do not contain contract-specific E/S/M/WBE goals, and when provided, shall be advisory only, and must also be accompanied by the full definition of the term

as stated in this Policy.

b. MBE/WBE Vendor Rotation

Under this Program element, the GSC may use vendor rotation of a pre-qualified panel of certified MBE/WBE other services vendors for smaller SBBC contracts valued at less than \$50,000. Work tasks are rotated among this pre-qualified panel of MBE/WBE other services vendors. The order of the vendor rotation is periodically adjusted

by the SDOP or designee to account for ranking from the lowest dollar volume of work tasks assigned to the highest dollar volume of work tasks assigned to each EBE/SBE/VBEBE vendor that is listed on the pre-qualified panel of vendors. Participation on vendor rotation panel is contingent on vendor having no negative history of unsatisfactory performance on prior SBBC contracts.

c. MBE/WBE Evaluation Preference for Prime Bidders

Under this Program element, on “Best Value” contract solicitations where low price is not the only factor considered in contract award (i.e., Request for Proposal), the GSC may reserve from fifteen points up to a maximum of twenty points(15- 20) of the total available evaluation points for award to those prime bidders or respondents that are certified as MBE/WBEs. Out of those fifteen to twenty points(15-20) of the total evaluation preference points, the GSC may limit MBE/WBE bidders that have prior experience performing work on behalf of SBBC to half of the evaluation preference points seven and a half to ten points(7.5-10) out of the total fifteen to twenty points(15-20) evaluation preference points that are reserved for MBE/WBE firms. MBE/WBEs that have never before received SBBC work may be eligible for the entire fifteen to twenty points(15-20) of the reserved MBE/WBE evaluation preference points. Alternatively, the GSC may, at its discretion, reserve all of the fifteen to twenty points(15- 20) of evaluation preference points for those MBE/WBE firms that have never previously performed any other services work on behalf of SBBC.

9. Race-Neutral Architecture & Engineering Program Elements

The Goal Setting Committee (GSC) shall consider the application of one or more of the following race-neutral Affirmative Procurement Initiatives for each SBBC Architecture & Engineering solicitation:

a. Emerging/Small Business Enterprise Vendor Rotation

Under this Program element, the GSC may use vendor rotation

of a pre-qualified panel of certified EBE/SBE Architecture & Engineering firms for smaller SBBC contracts valued at less than \$50,000. Work tasks are rotated among this pre-qualified panel of EBE/SBE Architecture & Engineering firms. The order of the vendor rotation is periodically adjusted by the EDDC Department or designee to account for ranking from the lowest dollar volume of work tasks assigned to the highest dollar volume of work tasks assigned to each SBE vendor that is listed on the pre-qualified panel of vendors. Participation on vendor rotation panel is contingent on vendor having no negative history of unsatisfactory performance on prior SBBC contracts.

b. Evaluation Preference for EBE/SBE Prime Bidders

Under this Program element, on “Best Value” contract solicitations where low price is not the only factor considered in contract award, the GSC may reserve from fifteen percent up to a maximum of twenty percent (15%- 20%) of the total available evaluation points for award to those prime bidders or respondents that are certified as EBE/SBE s. Out of those fifteen to twenty percent (15%-20%) of the total evaluation preference points, the GSC may limit EBE/SBE bidders that have prior experience performing work on behalf of SBBC to half of the evaluation preference points seven and a half to ten percent (7.5%-10%) out of the total fifteen to twenty percent (15%-20%) evaluation preference points that are reserved for EBE/SBE firms.

EBE/SBEs that have never before received SBBC work may be eligible for the entire fifteen to twenty percent (15%-20%) of reserved EBE/SBE evaluation preference points. Alternatively, the GSC may, at its discretion, reserve all of the fifteen to twenty percent (15%-20%) of evaluation preference points for those EBE/SBE firms that have never previously performed any architecture & engineering services work on behalf of SBBC.

c. Evaluation Panel Diversity

Under this Program element, on “Best Value” contract solicitations where low price is not the only factor considered in contract awards, the Officer, EDDC may appoint a voting representative to serve on the evaluation panel to ensure that scoring is fair and to guard against inherent bias against non-incumbent firms and Emerging/Small/Minority/Veteran/Women Business Enterprise firms.

d. EBE/SBE Reserve of Contracts Up to \$50,000

Under this Program element, the GSC may reserve some smaller professional services contracts valued at less than \$50,000 for competition solely among EBE/SBE architecture & engineering firms. The GSC shall determine whether there are at least three (3) qualified EBE/SBE firms that are available to compete for the work prior to applying this API.

e. EBE/SBE Subcontracting Goals Program

Under this Program element, the GSC may, at its discretion, and on a contract-by-contract basis, require that a predetermined percentage of a specific contract, up to forty percent (40%), be subcontracted to eligible EBE/SBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of EBE/SBE firms to perform commercially useful functions on the specific contract.

A prospective respondent, to a School District competitive solicitation for which price and scope are defined, shall submit at the time as required in the competitive solicitation such documentation as required by SBBC that provides:

- i. The name(s) of the EBE/SBE subcontractor(s) it intends to use on the project;
- ii. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each EBE/SBE;
- iii. A description of the work that each EBE/SBE subcontractor shall perform; and
- iv. Documentation confirming the subcontractor's commitment to perform the work at the stated price.

A prospective respondent on a School District competitive solicitation for which respondents are not initially evaluated based on price or for which the project scope is not predefined, shall submit as required in the competitive solicitation such documentation as required by SBBC to affirm its intent to meet the subcontracting requirements indicated in the solicitation. Failure of a respondent to commit as required in the competitive solicitation to satisfying the EBE/SBE subcontracting goal, shall render its response non-responsive.

During the price proposal negotiation phase, respondents shall

be required to submit:

- v. Subcontractor(s) it intends to use on the project;
- vi. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each EBE/SBE;
- vii. A description of the work that each EBE/SBE subcontractor shall perform; and
- viii. Documentation confirming the subcontractor's commitment to perform the work at the stated price.

A respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation at the time as required in the competitive solicitation. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the respondent and careful review by the SDOP. The SDOP shall base its determination of a waiver request on criteria such as, but not limited to:

- ix. Whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available EBE/SBEs;
- x. Whether subcontracting would be inappropriate and/or not provide a "commercially useful function" under the scope of the contract; and
- xi. Whether there are no certified EBE/SBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SDOP, failure of a prime contractor to commit as required in the solicitation to satisfying the EBE/SBE subcontracting goal, shall render its response non-responsive. Provided, however, that on any prime contract valued under \$10 million, if the prime contractor is a certified EBE/SBE firm, then the prime contractor is allowed to self-perform up to the entire EBE/SBE subcontracting goal amount with its own forces. To the extent that the certified EBE/SBE prime contractor does not self-perform a portion of the EBE/SBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted. This self-performance option for certified EBE/SBE prime contractors

may be suspended at the discretion of the Director of Procurement & Warehousing Services or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

In the absence of a waiver granted by the SDOP or the self-performance of a portion or all of the EBE/SBE subcontracting goal by a certified EBE/SBE prime contractor, the failure of a prime contractor to attain a subcontracting goal for EBE/SBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract terms with SBBC, or by law.

A prime contractor is required to notify and obtain prior written approval from the SDOP in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a District-mandated change order or contract amendment, or SBBC has mandated the de-certification, suspension, graduation, or termination of a designated EBE/SBE subcontractor. However, under such circumstances, the prime contractor shall undertake good faith efforts to replace the de-certified, suspended, graduated, or terminated EBE/SBE with one (1) or more other certified EBE/SBE subcontractors and shall submit a waiver request to the SDOP in the event such good faith efforts are unsuccessful.

Upon award of the prime contract to a respondent, the prime contractor shall be required to submit accurate progress payment information with each invoice regarding each of its subcontractors, including EBE/SBE subcontractors. The originating department shall audit the reported payments to EBE/SBE and non-EBE/SBE subcontractors to ensure that the prime contractor's reported subcontract participation is accurate. SBBC contracts with prime contractors shall include clauses requiring prime contractors to pay subcontractors in compliance with Florida prompt payment laws, and such clauses shall mandate that in the event of a prime contractor's non-compliance regarding such payments, the prime contractor shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract terms with SBBC, or by law.

10. Race-Conscious Architecture & Engineering Program Elements

- i. The GSC shall consider establishment of an overall MBE/WBE

annual Aspirational Goal in accordance with subsection “a” below and, in addition, shall review each prospective SBBC architecture & engineering formal solicitation in advance of its public release and advertisement, and shall make a determination whether to apply any of the other race-conscious APIs to those architecture & engineering solicitations and resultant contracts based upon the following criteria:

- ii. Whether the most recent data on MBE/WBE utilization in the absence of race-conscious APIs indicate that professional services contracts of this type have exhibited significant disparities in the utilization of MBE/WBE subcontractors and/or MBE/WBE prime contractors;
 - iii. Whether race- and/or gender-neutral remedies alone are likely to fully eliminate any such disparities in the utilization of MBE/WBE subcontractors and/or MBE/WBE prime contractors based upon past contract award and payment data;
 - iv. Whether a particular API is the least burdensome available remedy to non-MBE/WBE respondents that is narrowly tailored and that can effectively eliminate the disparities in the utilization of MBE/WBEs in architecture & engineering contracts; and
 - v. Whether the particular API is appropriate for the specific type of architecture & engineering contract being procured. Whenever the GSC uses its discretion to apply any of the following race-conscious APIs to architecture & engineering competitive solicitations, it shall provide an explanation in the competitive solicitation documents of its reasons for doing so based upon its determinations pursuant to these criteria. In making such determinations, the GSC may also take into consideration the experiences of other jurisdictions within the District’s relevant marketplace for architecture & engineering services.
- a. MBE/WBE Annual Aspirational Goals

For each fiscal year, the GSC may establish a non-mandatory annual aspirational percentage goal for overall MBE/WBE prime and subcontract participation on SBBC architecture & engineering contracts.

This annual Aspirational Goal for MBE/WBE participation in SBBC architecture & engineering contracts has initially been established at thirty-eight percent (38%) MBE contract participation (2% African American, 5% Asian American, 31% Hispanic American) MBE contract participation and twenty percent (20%) WBE contract participation based upon the

industry availability estimates in accordance with the School District's 2023 KIR Disparity Study Update findings.

This annual Aspirational Goal is to be reviewed on an annual basis for potential adjustment by the GSC based upon the School District's relative MBE/WBE availability data to be collected by SBBC through its CBR system once established for at least one (1) year and the utilization of MBE/WBEs.

Annual Aspirational Goals are not to be routinely applied to individual solicitations but are intended to serve as a benchmark against which to measure the overall effectiveness of the SDOP policy on an annual basis and to gauge the need for future adjustments to the mix and aggressiveness of race-conscious and race-neutral remedies and APIs being applied pursuant to this Policy.

MBE/WBE annual Aspirational Goals may be stated only in those SBBC solicitations that do not contain contract-specific E/S/M/V/WBE goals, and when provided, shall be advisory only, and must also be accompanied by the full definition of the term as stated in this Policy.

b. MBE/WBE Evaluation Preference for "Best Value" RFPs

Under this Program element, the GSC may establish an MBE/WBE prime contractor capacity-building initiative to enhance long-term competition and to provide SBBC with its "Best Value" on architecture & engineering contracts in accordance with Florida law. The GSC may reserve from fifteen percent up to a maximum of twenty percent (15%-20%) of the total available evaluation points for award to a respondent that is a certified MBE/WBE firm. Out of those fifteen to twenty percent (15%-20%) of the total evaluation preference points, the GSC may limit MBE/WBE bidders that have prior experience performing work on behalf of SBBC to half of the evaluation preference points seven and a half to ten percent (7.5%-10%) out of the total fifteen to twenty percent (15%-20%) evaluation preference points that are reserved for MBE/WBE firms. MBE/WBEs that have never before received SBBC work, may be eligible for the entire fifteen to twenty percent (15%-20%) of reserved MBE/WBE evaluation preference points. Alternatively, the GSC may, at its discretion, reserve all of the fifteen to twenty percent (15%-20%) of evaluation preference points for those M/WBE firms that have never previously performed any architecture & engineering work on behalf of SBBC. An MBE/WBE prime contractor that

is awarded a prime contract under this program element may not subcontract more than forty-nine percent (49%) of the contract value to a non-MBE/WBE firm. In determining whether the MBE/WBE Evaluation Preference for “Best Value” RFPs should be applied to a particular contract, the GSC shall consider: a) the relative availability of MBE/WBEs, with a preference for at least three (3) MBE/WBEs that are likely to bid as a prime contractor for the contract; and b) the degree of underutilization of the MBE/WBEs in the specific industry categories.

c. MBE/WBE Subcontracting Program for Architecture & Engineering

Under this Program element, the GSC may, on a contract-by-contract basis, at its discretion, require that a predetermined percentage of a specific Architecture & Engineering contract, up to forty percent (40%) be subcontracted to eligible MBE/WBEs. Factors to be considered by the GSC in making this determination shall include the relative availability of MBE/WBE firms to perform commercially useful functions on the specific contract.

A prospective respondent on a School District competitive solicitation, for which price and scope are defined, shall submit at the time as required in the competitive solicitation such documentation as required by SBBC that provides:

- xii. The name(s) of the MBE/WBE subcontractor(s) it intends to use on the project;
- xiii. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each MBE/WBE;
- xiv. A description of the work that each MBE/WBE subcontractor shall perform; and
- xv. Documentation confirming the subcontractor’s commitment to perform the work at that price.

A prospective respondent to a School District competitive solicitation, for which respondents are not initially evaluated based on price or for which project scope is not predefined, shall submit at the time as required in the competitive solicitation such documentation as required by SBBC to affirm its intent to meet the subcontracting requirements indicated in the solicitation. In the absence of a waiver granted by the SDOP, failure of a respondent to commit as required in the

solicitation to satisfying the MBE/WBE subcontracting goal shall render its response non-responsive.

During the price proposal negotiation phase, respondents shall be required to submit:

- xvi. The name(s) of the MBE/WBE subcontractor(s) it intends to use on the project;
- xvii. The percentage of prime contract dollars and the absolute dollar value of subcontracting services to be provided by each MBE/WBE; and
- xviii. A description of the work that each MBE/WBE subcontractor shall perform.

A respondent may request a full or partial waiver of this mandatory subcontracting requirement for good cause by submitting the appropriate form(s) and documentation at the time as required in the solicitation. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the respondent and careful review by the SDOP. The SDOP shall base its determination on a waiver request on criteria such as, but not limited to:

- xix. Whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available MBE/WBEs;
- xx. Whether subcontracting would be inappropriate and/or not provide a “commercially useful function” under the scope of the contract; and
- xxi. Whether there are no certified MBE/WBE firms that are qualified and available to provide the goods or services required.

In the absence of a waiver granted by the SDOP, failure of a prime contractor to commit as required in the solicitation to satisfying the MBE/WBE subcontracting goal, shall render its response non-responsive. Provided, however, that on any prime contract valued under \$10 million, if the prime contractor is a certified MBE/WBE firm, then the prime contractor is allowed to self-perform up to the entire MBE/WBE subcontracting goal amount with its own forces. To the extent that the certified MBE/WBE prime contractor does not self-perform a portion of the MBE/WBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted. This self-performance option for certified M/WBE prime contractors may

be suspended at the discretion of the Director of the Procurement & Warehousing Services or designee in the event it determines that the adverse cumulative effect of the use of this self-performance option upon subcontractor opportunities is too great.

In the absence of a waiver granted by the SDOP, or the self-performance of a portion or all of the MBE/WBE subcontracting goal by a certified MBE/WBE prime contractor, the failure of a prime contractor to attain a subcontracting goal for MBE/WBE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract with SBBC, or by law.

With the exception of certified MBE/WBE prime contractors that are self-performing a portion or all of a subcontracting goal, in the absence of a waiver granted by the SDOP, failure of a prime contractor to attain a subcontracting goal for MBE/WBE participation in the performance of its contract shall be considered a material breach of contract, shall be grounds for termination of that contract with SBBC, and shall be subject to any penalties and sanctions available under the terms of the SDOP policy, the terms of its contract with SBBC, or by law.

A prime contractor is required to notify and obtain prior written approval from the SDOP in advance of any reduction in subcontract scope, unless such reduction in scope is the direct and immediate result of a District-mandated change order or contract amendment, or SBBC has mandated the de-certification, suspension, graduation, or termination of a designated MBE/WBE subcontractor. However, under such circumstances, the prime contractor shall undertake good faith efforts to replace the de-certified, suspended, graduated, or terminated MBE/WBE subcontractor(s) with one or more other certified MBE/WBE subcontractor(s) and shall submit a waiver request to the SDOP in the event such good faith efforts are unsuccessful.

Upon award of the prime contract to a respondent, the prime contractor shall be required to submit accurate progress payment information with each invoice regarding each of its subcontractors, including MBE/WBE subcontractors. The originating department shall audit the reported payments to MBE/WBE and non-MBE/WBE subcontractor to ensure that the prime contractors' reported subcontract participation is accurate. Absent a waiver from the SDOP, a prime contractor's

failure to reach the required level of MBE/WBE subcontracting shall be considered a material breach of contract. SBBC contracts with prime contractors shall include clauses requiring prime contractors to pay subcontractors in compliance with Florida prompt payment laws (the "Prompt Payment Act"), and such clauses shall mandate that in the event of prime contractor non-compliance regarding such payments, the prime contractor shall be subject to any penalties and sanctions available under the terms of the SDOP policy, its contract with SBBC, or by law.

d. MBE/WBE Vendor Rotation

Under this Program element, the GSC may use vendor rotation of a pre-qualified panel of certified MBE/WBE architecture & engineering firms for smaller SBBC contracts valued at less than \$50,000. Work tasks are rotated among this pre-qualified panel of MBE/WBE professional services firms. The order of the vendor rotation is periodically adjusted by the SDOP or designee to account for ranking from the lowest dollar volume of work tasks assigned to the highest dollar volume of work tasks assigned to each MBE/WBE vendor that is listed on the pre-qualified panel of vendors. Participation on vendor rotation panel is contingent on vendor having no negative history of unsatisfactory performance on prior SBBC contracts.

VII. Periodic Review and Factual Predicate

SBBC shall issue a Request for Proposals to undertake a comprehensive update of the full disparity study when deemed necessary, by the Superintendent or SBBC. The existing Policy shall remain in effect through the complete, SBBC review of the Disparity Study update and implementation of the Policy. Upon completion of each disparity study update, present disparity study results to 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 SBBC, as appropriate, modifications to the procedures or substantive provisions of this Policy and submit any necessary draft amendments to policies and procedures to SBBC for adoption as appropriate to effectuate the continuation, modification, or termination of the SDOP's EBE, MBE, SBE, VBE and WBE program elements.

VIII. SDOP Policy Review, Modification, and Sunset

The SBBC shall issue a Request for Proposals to undertake a comprehensive update of the full disparity study when deemed necessary by the Superintendent and SBBC, and upon completion of each disparity study update, present disparity

study results to SBBC, and following SBBC review and a public comment period regarding those study findings and recommendations, 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 SBBC as appropriate, modifications to the procedures or substantive provisions of this Policy and submit any necessary draft amendments to policies and procedures to SBBC for adoption as appropriate to effectuate the continuation, modification, or termination of the SDOP's EBE, SBE, MBE, VBE, and M/WBE program elements. The existing Policy shall remain in effect through the completion and SBBC review of the Disparity Study update. Absent SBBC implementation and approval prior to the sunset date for this amended SDOP policy by SBBC, the provisions of this Policy shall be void and may not be enforced after December 31, 2028.

IX. Severability Clause

If any section, paragraph, sentence, clause, phrase, or word of this SDOP policy, or the application thereof, to any person or circumstance is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, invalid, or void, such holding shall not affect the remainder of this Policy or the application of any other provisions of this Policy which can be given effect without the invalid provision or application, and to this end, all the provisions of this Policy are hereby declared to be severable.

Policy Custodian: Economic Development & Diversity Compliance (EDDC)

Policy Status [Active/Inactive]: Active

Authority: Sections 120.52(6), 120.54, 120.81(1)(a), 1001.41(1) and (2), and 1001.42(29), Florida Statutes.

History: Adopted/Amended: 1/18/17; Amended 4/21/2020; 01/23/2024.