

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	2/6/07	<input type="checkbox"/>	Consent	<input checked="" type="checkbox"/>	Regular
		<input type="checkbox"/>	Ordinance	<input type="checkbox"/>	Public Hearing

Department: Administration

Submitted By: The Office of Small Business Assistance

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: the Palm Beach County Interlocal Certification agreement with The School Board of Palm Beach County (School Board), and The City of West Palm Beach (WPB) to provide for reciprocal certification of businesses seeking Small Business certification.

Summary: The three governmental agencies would like to establish reciprocity for Small Business Enterprise Certification, and where applicable, Minority and/or Women Business Enterprise Certification. Each Agency has a Small Business Enterprise Program and a Minority/Women Business Enterprise Program. Each agency will accept the certification of SBEs and M/WBEs except where differences in support documentation and domicile requirements occur. In the case of documentation requirements discrepancies, the three agencies have agreed to provide a cover sheet explaining what, if any additional documents will be required by the next agency. **There will be no additional cost to the County to implement this program.** Countywide (TKF)

Background and Justification: In an effort to ease the burden of multiple certification processes and documentation requirements of various agencies, PBC, The District and WPB have been meeting since August, 2005 to provide a process and agreement where a Small Business Enterprise and/or Minority/Women Business Enterprise will be able to obtain certification from one agency that will be accepted by the other agencies. The effort of these agencies was the result of multiple complaints from various small and/or minority/women businesses about the duplication of work. As a result, Palm Beach County small/minority/women businesses will save time and costs associated with the certification process. Additionally, each of the Agreement agencies will increase their vendor pool creating a more competitive bidding process in the procurement of goods and services. Palm Beach County will not accept the certification of a vendor who may have been certified by the District or WPB if that vendor is domiciled outside of Palm Beach County. This agreement allows for each member to deny reciprocity certification. It is anticipated that other agencies, such as the South Florida Water Management District, will participate in the Interlocal Agreement in the near future.

Attachments:

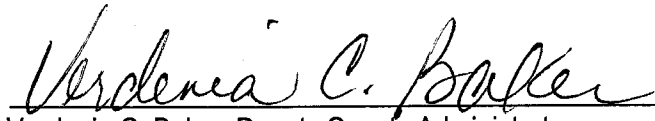
1. Interlocal Certification Agreement.
2. Certification Cover Sheet

Recommended by:


Hazel L.K. Oxendine, Director OSBA


Date

Approved by:


Verdenia C. Baker, Deputy County Administrator


Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Capital Expenditures	___	___	___	___	___
Operating Costs	___	___	___	___	___
Operating Revenues	___	___	___	___	___
Is Item Included In Current Budget?	Yes ___		No ___		
Budget Account No.:	Fund ___	Agency ___	Org ___	Object ___	
	Reporting Category ___		Various		

B. Recommended Sources of Funds/Summary of Fiscal Impact

There is no additional fiscal impact as a result of this item being approved.

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

Elizabeth Green
01/30/2007 OFMB
1-30-07
01/29/07

Dr. J. Jacoby 2/1/07
Contract Administration
6-29-2/1/07
The content of the Fiscal Agreement complies with our review requirements. At the time of our review, the Agreement was not exceeded.

B. Legal Sufficiency:

J. R. D.
Assistant County Attorney

C. Other Department Review:

Boyle Upendine
Department Director

ADM. FORM 01

(This Summary is not to be used as a basis for payment)

INTERLOCAL AGREEMENT

Between

PALM BEACH COUNTY,

THE CITY OF WEST PALM BEACH,

AND

THE SCHOOL BOARD OF PALM BEACH COUNTY

FOR

RECIPROCITY OF CERTIFICATION OF SMALL AND/OR

MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES

INTERLOCAL AGREEMENT BETWEEN
PALM BEACH COUNTY,
THE CITY OF WEST PALM BEACH,
AND

THE SCHOOL BOARD OF PALM BEACH COUNTY

FOR

RECIPROCITY OF CERTIFICATION OF SMALL AND/OR
MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES

This is an Interlocal Agreement, made and entered into this _____ day of _____, 2007,
by and between: PALM BEACH COUNTY, a political subdivision of the State of Florida,
hereinafter referred to as "COUNTY,"

THE CITY OF WEST PALM BEACH, a Florida municipality, hereinafter referred to as
"CITY,"

AND

THE SCHOOL BOARD OF PALM BEACH COUNTY, a political subdivision of the State
of Florida, hereinafter referred to as "SCHOOL BOARD,"

WHEREAS, COUNTY, CITY, and SCHOOL BOARD (the "parties") have programs
designed to increase the number of contracts awarded to Small Business Enterprises
(SBEs) and track the participation of Minority/Women-owned Business Enterprises
(M/WBEs) awarded contracts; and

WHEREAS, COUNTY, CITY, and SCHOOL BOARD wish to enter into a reciprocal
agreement for certification of Small and Minority/Women-owned Business Enterprises, to
simplify the certification process and reduce the volume of paperwork required of Small
and Minority/Women-owned Business Enterprises; and

WHEREAS, COUNTY, CITY, and SCHOOL BOARD presently employ
substantively similar processes and methods in the processing of certification
applications, making redundant the need for a subsequent review session; and

WHEREAS, COUNTY, CITY, and SCHOOL BOARD have accepted a Multi-
Agency Certification Cover Sheet for certification of Small and Minority/Women-owned

Business Enterprises although each agency will use its own Certification Application; and

WHEREAS, COUNTY, CITY, and SCHOOL BOARD are entering into this Agreement solely for the purpose of facilitating the certification of Small and Minority/Women-owned Business Enterprises; and

WHEREAS, COUNTY, CITY, and SCHOOL BOARD have determined that it is mutually beneficial and in the best interests of the citizens, residents, and/or customers of these agencies to enter into this Agreement; and

WHEREAS, other governmental agencies, such as the South Florida Water Management District, are in the process of developing Small Business Enterprise Programs, and may be interested in joining this Interlocal Agreement in the future, and such additions of agencies is encouraged;

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Part I of Chapter 163, Florida Statutes, permits "public agencies", as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and agreements hereinafter set forth, the Parties hereto agree as follows:

Section 1. RECITALS

1.01 The above recitals are true and correct and are incorporated herein.

Section 2. TERM OF AGREEMENT

2.01 This agreement shall be effective upon approval of all Parties and shall terminate pursuant to Section 9 of this Agreement.

Section 3. COMPENSATION

3.01 The Parties agree that the costs for the processing of certification applications received by the individual entities will continue to be the responsibility of each entity.

Section 4. DUTIES AND RESPONSIBILITIES

- 4.01 Each party shall be responsible for processing certification applications for Small or Minority and Women-owned Business Enterprises in accordance with the terms set forth in the certification procedures to accompany this Interlocal Agreement, as Exhibit "A" attached hereto and incorporated herein.
- 4.02 COUNTY, CITY, and SCHOOL BOARD will accept the approved certifications of the other Parties to this Agreement to the extent such certifications are consistent with the individual agencies' certification requirements.
- 4.03 COUNTY, CITY, and SCHOOL BOARD agree that appropriate care will be taken with regard to the technical requirements of the certification process, and that each party will assert to the other Parties that firms approved for certification are in keeping with the requirements of the applicable certification program, as outlined in the administrative procedures that accompany this Interlocal Agreement.
- 4.04 When requested, the Parties shall provide the other Parties with documentation, including, but not limited to supporting documentation for the certification of approved firms.
- 4.05 When requested, the parties shall provide assistance to the other parties to resolve issues that may hinder certification, or to more fully address instances where qualification for certification is unclear.

Section 5. GOVERNING LAW

- 5.01 The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida.

Section 6. GOVERNMENTAL IMMUNITY

- 6.01 The Parties are political subdivisions as defined in Chapter 768.28, Florida Statutes, and agree to be fully responsible for acts and omissions of their agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party. Nothing herein shall be construed as consent to be sued by third parties in a matter arising out of this Agreement or any other contract.

Section 7. RECORDS

- 7.01 COUNTY, CITY, and SCHOOL BOARD shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements set forth in Chapter 119, Florida Statutes.

Section 8. ASSIGNMENT; AMENDMENTS

- 8.01 The Parties agree not to assign any right, title, or interest hereunder without the prior written consent of all other parties. Any attempt by any party to assign, transfer, or sell any of the rights, duties, or obligations under this Interlocal Agreement without first obtaining such consent is null and void.
- 8.02 The Parties further agree that no modification, amendment, or alteration in the terms contained in this written document shall be effective unless contained in a written instrument executed after being duly approved by the governing board of each respective party.

Section 9. TERMINATION

- 9.01 Any party may terminate this Interlocal Agreement by providing thirty (30) days written notice of its intention to cancel this Interlocal Agreement, at which time this Agreement shall be canceled as of 30 days after the date of such notice. If only one party cancels this Interlocal Agreement, the Agreement will remain in full force and effect for the remaining parties.
- 9.02 Unless terminated pursuant to the provisions of 9.01 above, this Agreement shall terminate automatically ten (10) years from the effective date.

Section 10. THIRD PARTY BENEFICIARIES

- 10.01 The Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against the Parties based upon this Agreement.

Section 11. VENUE, WAIVER OF JURY TRIAL

- 11.01 Any claim and all legal action necessary to enforce this Agreement will be held in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.
- 11.02 The Parties to this Agreement hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the contract, arising out of, under, or in connection with the terms of this Agreement.

Section 12. ENTIRE AGREEMENT

- 12.01 This Agreement contains the entire understanding of the Parties relating to the subject matter hereof superseding all prior communications between the Parties whether oral or written, and this Agreement may not be altered, amended, modified or otherwise changed nor may any of the terms hereof be waived, except by a written instrument executed by all Parties. The failure of a party to seek redress for violation of or to insist on strict performance of any of the covenants of

this Agreement shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

Section 13. SEVERABILITY

13.01 Should any part, term or provision of this Agreement be by the courts decided to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected thereby.

Section 14. CONTRACT ADMINISTRATORS

14.01 The Contract Administrators for each party shall be as follows:

For PALM BEACH COUNTY: Hazel L.K. Oxendine, Director, Office of Small Business Assistance.

For SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA: Dr. Otelia DuBose, Director, Office of Diversity in Business Practices.

For CITY OF WEST PALM BEACH, Pamela Morrison, Manager, West Palm Beach Small Business Program.

Section 15. NOTICES

15.01 Whenever a party desires to give notice to the others, such notice must be in writing and sent by United States mail, return receipt requested, courier, evidenced by a delivery receipt, or by overnight express delivery service, evidenced by a delivery receipt, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving of notice:

Office of Small Business Assistance
Attn: Hazel L.K. Oxendine, Director
50 S. Military Trail, Suite 209
West Palm Beach, FL 33415
Phone: (561) 616-6840 Fax: (561) 616-6850

City of West Palm Beach
Attn: Pamela Morrison, Manager, West Palm Beach Small Business Program
cc: City Administrator
PO Box 3366
West Palm Beach, FL 33402
Phone: (561) 822-1276 Fax: (561) 822-1268

The School Board of Palm Beach County
Attn: Dr. Otelia Dubose, Director, Office of Diversity in Business Practices
3340 Forest Hill Blvd., A-106
West Palm Beach, FL 33406-5869
Phone: (561) 434-8508 Fax: (561) 434-7405

Section 16. RECORDATION/FILING

16.01 A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, as provided by Section 163.01 (11), Florida Statutes.

Remainder of page was left blank intentionally.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first above written.

THE SCHOOL BOARD OF PALM BEACH COUNTY

ATTEST:

**THE SCHOOL BOARD OF PALM
BEACH COUNTY, FLORIDA,**

Witness

By: _____
Chair

Witness

_____ day of _____, 2007

**REVIEWED AND APPROVED AS TO
LEGAL FORM**

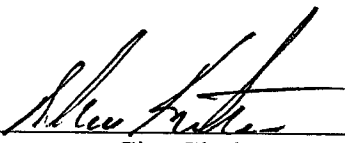
By: _____
Arthur C. Johnson, Ph.D.,
Superintendent

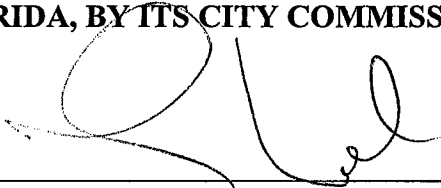
By: _____
School Board Attorney Date

THE CITY OF WEST PALM BEACH

ATTEST:

**THE CITY OF WEST PALM BEACH,
FLORIDA, BY ITS CITY COMMISSIONERS**

By: 
City Clerk

By: 
Lois J. Frankel, Mayor

(SEAL)

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

By:  1/16/07
City Attorney

PALM BEACH COUNTY

ATTEST:

**Sharon R. Bock, Clerk & Comptroller
Palm Beach County**

**PALM BEACH COUNTY, a political
Subdivision of the State of Florida**

**BOARD OF COUNTY
COMMISSIONERS OF PALM BEACH,
FLORIDA**

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

By:  _____
Assistant County Attorney

**APPROVED AS TO TERMS AND
CONDITIONS:**

By:  _____
Department Director

INTERLOCAL CERTIFICATION COVER SHEET

EXHIBIT
"A"

Initiating Agency: _____ By: _____

To be presented to: ☐ Palm Beach County Office of Small Business Assistance (SBE)
☐ Palm Beach County School District (S/M/WBE)
☐ City of West Palm Beach

Authorized Signature

BUSINESS NAME ADDRESS (include d/b/a if applicable)		BUSINESS TEL. NO:	
		BUSINESS FAX NO:	
		DATE ESTABLISHED:	
		# FULL-TIME EMPLOYEES:	
		# PART-TIME EMPLOYEES:	
CONTACT PERSON:		# CONTRACT/TEMPORARY EMPLOYEES:	
DOMICILE VERIFIED: Yes _____ No _____			
BUSINESS FUNCTION:			
BUSINESS TYPE: Construction <input type="checkbox"/> Commodities <input type="checkbox"/> Professional Services <input type="checkbox"/>			
CERTIFICATION STATUS: <input type="checkbox"/> SBE <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
BUSINESS ORG.	% OF OWNERSHIP	Gross Receipts	
<input type="checkbox"/> Corporation	<input type="checkbox"/> African American <input type="checkbox"/> Male	Year	Dollar Amount
<input type="checkbox"/> Partnership	<input type="checkbox"/> Asian American <input type="checkbox"/> Female		\$
<input type="checkbox"/> Sole Proprietor	<input type="checkbox"/> Hispanic American		\$
<input type="checkbox"/> Other _____	<input type="checkbox"/> Native American		\$
	<input type="checkbox"/> Non-Minority	Average	\$
SBE: <input type="checkbox"/> Certified <input type="checkbox"/> Denied <input type="checkbox"/> Deferred <input type="checkbox"/> Site Visit			
M/WBE: <input type="checkbox"/> Certified <input type="checkbox"/> Denied <input type="checkbox"/> Deferred <input type="checkbox"/> Site Visit			
Certification dates: _____			
Signature _____		Date _____	

Documents	OSBA	School District	City of West Palm Beach
Municipal Occupational License			
Fictitious Name Certificate	√		
Most recent three years' tax returns, signed as filed with the Internal Revenue Service	√		√
All schedules from 3 years' corporate or partnership tax returns	√		√
Schedule C from 3 years' personal tax returns			
Current Financial Statements less than 60 days old (balance sheet, income statement, statement of cash)			
Proof of Domicile	√		√
CCNA Certification	√		
Resumes of principals and/or partners and/or management personnel		√	
List of current full-time and part-time employees by start date	√		
Current 3 months' payroll	√		√
Bank signature card			
List of officers, Board of Directors and Shareholders		√	√
Minutes of first corporate organizational meeting			
Profit Sharing Agreement		√	
Partnership's distribution of profits for previous year	√		
Third Party Agreements (rental and lease agreements, management agreements, purchase agreements)		√	

INTERLOCAL CERTIFICATION COVER SHEET

Initiating Agency: _____ By: _____

Authorized Signature

- To be presented to: ☐ Palm Beach County Office of Small Business Assistance (SBE)
☐ Palm Beach County School Board (S/M/WBE)
☐ City of West Palm Beach (SBE)

BUSINESS NAME ADDRESS (include d/b/a if applicable)		BUSINESS TEL. NO:	
		BUSINESS FAX NO:	
		DATE ESTABLISHED:	
		# FULL-TIME EMPLOYEES:	
		# PART-TIME EMPLOYEES:	
CONTACT PERSON:		# CONTRACT/TEMPORARY EMPLOYEES:	
DOMICILE VERIFIED: Yes _____ No _____			
BUSINESS FUNCTION:			
BUSINESS TYPE: Construction [] Commodities [] Professional Services []			
CERTIFICATION STATUS: [] SBE [] MBE [] WBE			
BUSINESS ORG.	% OF OWNERSHIP	Gross Receipts	
[] Corporation	[] African American [] Male	Year	Dollar Amount
[] Partnership	[] Asian American [] Female		\$
[] Sole Proprietor	[] Hispanic American		\$
[] Other _____	[] Native American		\$
	[] Non-Minority	Average	\$
SBE: [] Certified [] Denied [] Deferred [] Site Visit			
M/WBE: [] Certified [] Denied [] Deferred [] Site Visit			
Certification dates: _____			
Signature _____		Date _____	
Documents		OSBA	School Board
			City of West Palm Beach
Municipal Occupational License			
Fictitious Name Certificate		✓	
Most recent three years' tax returns, signed as filed with the Internal Revenue Service		✓	✓
All schedules from three years' corporate or partnership tax returns		✓	✓
Schedule C from three years' personal tax returns			
Current Financial Statements less than 60 days old (balance sheet, income statement, statement of cash)			
Proof of Domicile		✓	✓
CCNA Certification		✓	
Resumes of principals and/or partners and/or management personnel			✓
List of current full-time and part-time employees by start date		✓	
Current three months' payroll		✓	✓
Bank signature card			
List of officers, Board of Directors and Shareholders			✓
Minutes of first corporate organizational meeting			✓
Profit Sharing Agreement			✓
Partnership's distribution of profits for previous year		✓	
Third Party Agreements (rental and lease agreements, management agreements, purchase agreements)			✓



**OFFICE OF SMALL BUSINESS
ASSISTANCE**

POLICIES AND PROCEDURES MANUAL

Section 7. CERTIFICATION

Exhibit "A"

SECTION 7 CERTIFICATION

7.1 CERTIFICATION CUSTOMERS

All businesses within Palm Beach County who consider themselves a small, minority or woman business enterprise and are interested in doing business with Palm Beach County are invited and encouraged to apply for SBE-M/WBE Certification.

7.2 CERTIFICATION PURPOSE

The certification process is used to verify the business is indeed a small business and/or an M/WBE, per the requirements set forth by Palm Beach County and as determined by OSBA.

Although preferences will not be extended to certified M/WBEs, unless otherwise provided by law, businesses eligible for certification as an M/WBE are encouraged to maintain their certification in order to assist in the tracking of M/WBE availability and awards of contracts to M/WBEs. This information is vital to determining whether race and gender neutral programs assist M/WBE firms or whether race and gender preferences are necessary in order to address any continued discrimination in the market.

7.3 CERTIFICATION PROCESS PERIOD

Upon receipt of a completed application and all required documentation, determination by an OSBA Certification Specialist and/or Technician will be made, within sixty (60) days, as to whether the vendor is eligible for certification.

7.4 CERTIFICATION ASSISTANCE

OSBA shall provide certification assistance. Within the office there will be a Certification Technician to answer all certification questions. In addition, applicants who are interested in becoming certified will be invited to attend certification workshops. The workshop shall cover new SBE Program guidelines, certification requirements, and other topics providing value to workshop participants.

7.5 CERTIFICATION STANDARDS

Applications for certification will be on standard forms provided by OSBA and will include, but will not be limited to, primary business location, evidence of ownership, control, operation, and experience. The application shall include an affidavit to be signed by the applicant; such signature to be notarized by an officer duly authorized to notarize signatures. All certified SBE firms will be required to update their listing continually including changes of addresses, telephone numbers and changes of ownership, control and operation.

If approved, certification will be granted for a period of three (3) years. All companies shall be notified of certification expiration and re-certification requirements prior to the expiration of their certification. OSBA will maintain the certification records for a period of three (3) years.

Vendors must notify the Office of Small Business of all changes in business structure during the business term of certification. If a vendor creates a new structure (ex. a sole proprietorship creates a corporation,) the new business structure must apply for and receive certification as an SBE in order to be counted as an SBE on any solicitation. Upon successful review of the application and backup documentation, a new three (3) year certification period will begin. In those instances when the vendor completely ceases operation of the business under the prior structure, the certification for the prior business structure will expire. In addition, the new business structure must apply for and become a Palm Beach County Registered Vendor with the Purchasing Department.

7.6 ELIGIBILITY STANDARDS

(A) **SBE Certification**: The SBE Program, in determining whether a firm is eligible to be certified as a Small Business Enterprise, will use the following standards:

1) To become eligible for the SBE Program a Small Business Enterprise firm must demonstrate that it meets the size requirements set forth by Section 2-80.1 through 2-80.35 of the Palm Beach County Code. On October 1st of each year, starting October 1, 2005, the maximum adjusted gross margin utilized to determine eligibility as a small business will be adjusted by multiplying the current adjusted gross margin¹ by the annual Consumer Price Index and adding that amount to the adjusted gross margin. The office of Small Business Assistance will publish the revised adjusted gross margin maximum annually on the Office of Small Business Assistance Website.

a) **Construction** -- annual adjusted gross margin may not exceed \$3,200,000 (averaged over the previous three (3) years, or if in business less than three (3) years, averaged during duration of business).

b) **Suppliers of Commodities** -- annual adjusted gross margin may not exceed \$1,600,000 (averaged

¹ **Adjusted Gross Margin** means total revenue less cost of materials, product and subcontractors, excluding cost of any leased employees.

over the previous three (3) years, or if in business less than three (3) years, averaged during duration of business).

c) **Suppliers of Professional Services** - annual adjusted gross margin may not exceed \$2,700,000 (averaged over the previous three (3) years, or if in business less than three (3) years, averaged during duration of business).

2) A business applying for certification as a Small Business Enterprise must establish that it has a permanent business location within the geographical limits of Palm Beach County as registered in official documents filed with the Secretary of State, State of Florida or Palm Beach County Courthouse. "A permanent place of business in Palm Beach County" is where business activity and/or at least 10% of the business gross receipts during the preceding twelve (12) months were generated from the Palm Beach County Location; it has a Palm Beach County occupational license bearing the same address; proof of location (e.g. lease agreement, utility bill, client invoices); must be identifiable to the general public (e.g. signage, listing in telephone directory). Mailbox facilities, telephone lines or other similar arrangements do not constitute a physical presence. On-site visits may be conducted prior to and during the term of three (3) year certification to determine continued adherence to domicile. Additional backup documentation may be requested on a case-by-case basis.

3) All Small Business Enterprises must be an independently owned and operated business concern organized to engage in commercial transactions. Ownership and control shall be real, substantial and continuing and shall go beyond the "pro forma" ownership as reflected in the ownership document. The Small Business Enterprise owners shall share in the risks and profits commensurate with their ownership interest as demonstrated by an examination of the substance rather than form of arrangements.

4) Small Business Enterprise owners shall possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy, and

operation. There shall be no restrictions through, for example, by-law provisions, partnerships, arrangements or charter requirements for cumulative voting rights or otherwise that prevent the Small Business Enterprise owners, without the cooperation or vote of any owner who is not listed, from making a business decision of the firm.

5) Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can, for the purpose of this part, be considered controlling the business.

6) All securities that constitute ownership and/or control of a corporation shall be held directly by the owners. No securities held in trust, or by any guardian for a minor, shall be considered as held by an owner in determining the ownership or control of a corporation.

7) The contributions of capital or expertise by the owners to acquire their interest in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to firm, or the mere participation as an employee, rather than as a manager.

8) In addition to the above standards, the SBE Program shall give special consideration to the following circumstances in determining eligibility under this part:

a) Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm

b) A previous and/or continuing employer-employee relationship between or among present owners is carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities discussed in this section.

c) Any relationship between a Small Business Enterprise and a business which is not a Small Business Enterprise, which has an interest in the Small Business Enterprise, is carefully reviewed to

determine if the interest of the non-Small Business Enterprise conflicts with the ownership and control requirements of this section.

9) A small business must be owned and controlled by an individual who is a citizen or a lawful permanent resident of the United States.

(B) **M/WBE Certification**: For a firm to be eligible to be certified as an M/WBE, the firm must be an independent small business concern domiciled in Palm Beach County that is both owned and controlled by minorities or by women. The ownership and control by minorities and/or women shall be real, substantial and continuing, and shall continue beyond the *pro forma* ownership of the firm as reflected in its ownership documents. The minority or women owners shall enjoy the customary incident of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form or arrangements.

Recognition of the business as a separate legal entity for tax or corporate purposes is not necessarily sufficient for recognition as an M/WBE. In determining whether a potential M/WBE is an independent business, the County shall consider all relevant factors, including but not limited to the date the business was established, the adequacy of its resources for the type of work specified, and the degree to which financial, equipment leasing and other relationships with non-minority firms vary from established industry practices. (Sec. 2-80.31)

7.7 GROUND FOR DECERTIFICATION, SUSPENSION, or DEBARMENT

If during the period of certification the County has reason to believe or receives written information that an SBE received certification improperly or that there has been such a substantial change in circumstances in the operation, ownership, control, activities, domicile or adjusted gross margin that continued certification would be contrary to the County's small business policy, then the Office of Small Business Assistance shall conduct an investigation of the allegations. In the event that the Director of the Office of Small Business Assistance finds that a SBE has made any misrepresentation in connection with a solicitation or any misrepresentation in order to obtain certification as a SBE, the Director of the Office of Small Business Assistance may refer such SBE to the Director of Purchasing for suspension or disbarment in accordance with the provisions of the Purchasing Ordinance. In the event that the Director of the Office of Small Business Assistance finds that a contractor has failed to comply with the SBE provisions of a contract or makes any misrepresentation regarding the use of a SBE on a contract or solicitation, the Director of the Office of Small Business Assistance may refer such Contractor to the Director of Purchasing for suspension or disbarment in accordance with the provisions of the Purchasing Ordinance.

OSBA shall decertify if the investigation indicates that any of the following exists:

- 1) The small business cannot be contacted at the last known Palm Beach County address;
- 2) Site visits have revealed no business being conducted at the Palm Beach County address;
- 3) The small business is no longer in business;
- 4) The small business is no longer licensed to do the type of business for which it was certified;
- 5) The small business obtained its original certification and/or recertification through false representation or deceit;
- 6) The small business has been disbarred or suspended as a vendor by the County Purchasing Department. At the expiration of any suspension, the firm may reapply for certification.

The OSBA Director shall notify the small business by certified mail that decertification is recommended. The small business may request an appeal hearing of the decertification within fifteen (15) days of receipt of the notice. The hearing shall be conducted in the manner described in Section 7.9 below. Nothing in this section shall prevent OSBA from commencing an investigation regarding the legitimacy of a small business certification based upon information received independent of a third party written request. A business decertified pursuant to this section may not re-apply for certification for one hundred-twenty (120) days from the date of decertification.

7.8 APPEAL OF CERTIFICATION DECISIONS

Applicants denied certification shall be notified by certified mail and informed of their right to appeal the denial. An applicant denied certification may not reapply for certification for one hundred twenty (120) days from the date of denial.

Any firm that believes it has been wrongly denied certification as a small business may file an appeal with OSBA in writing, signed and dated. The appeal shall be filed no later than fifteen (15) days from the date of receipt of notice of denial of certification. OSBA may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for doing so.

If an appeal is filed, an administrative hearing will be conducted with the OSBA Director acting as the hearing officer. The OSBA certification specialist shall present findings on the applicant. The Assistant County Attorney shall serve as legal advisor to the OSBA Director. The hearing will be scheduled within thirty (30) days of the filing of the request for appeal. The OSBA Director may grant a written request for extension of this hearing by an applicant if in the interest of justice.

At the hearing, the Director may not consider any new information that was not available at the time of the application. This hearing is the final step available in the County administrative process for the denial of a certification application.

The OSBA Director will provide written notice as to the outcome of the hearing within ten (10) working days of the date of the hearing.



"The Capital City of the Palm Beaches"

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT
SMALL BUSINESS DIVISION
Small Business Program Certification Procedures

Certification

To be eligible for small business certification, a business must register as a vendor with the City of West Palm Beach's Procurement Division and meet the following criteria:

- a) Meets the definition of a small business
- b) Is a business domiciled within Palm Beach County;
- c) Performs a commercially useful function and is responsible for execution of a discrete element of work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work performed; and
- d) Is not owned nor controlled by a large business

Although participation in the preferential programs is limited to small businesses only, a small business may additionally be registered as a minority- or woman-owned business. Additional registration status as a minority or woman owned business shall only be used by the city for data collection and monitoring purposes. An eligible MB/WB is a business concern which meets all of the criteria for a small business above and the following criteria:

- o Is a business that is both owned and controlled by minorities or by women or combination thereof? This means that minorities or women must own at least 51 percent of the business and that the management and daily business operations are controlled by the minorities or women who own it.

- Is an independent business. The ownership and control by minorities and/or women shall be real, substantial and continuing and shall continue beyond the pro forma ownership of the firm as reflected in its ownership documents.

Application Procedures

All applicants wishing to be considered as certified businesses for the benefits of this program must complete a small business disclosure affidavit, provided by the Small Business Division and copies of the following documentation as appropriate for their business. Documents not in English must be accompanied by a certified translation.

- 1) *Standard documents for all applicants* – Corporations, Partnerships or Sole Proprietorships
 - Palm Beach County Occupational License
 - City of West Palm Beach Occupational License
 - Copy of professional license(s) or Certificate of Competency
 - Fictitious name certificate (if applicable)
 - Proof of business location/operation in Palm Beach County (i.e., lease agreement, utility bill, or property tax bill)
 - Prior three years' federal tax returns (or for the years the business has been in existence, if less than three years), including all schedules
 - Current financial statements less than 60 days old (Balance Sheet, Income Statement, and Statement of Cash Flow), and for the most recent previous three (3) fiscal years.
 - Resumes of principals and management personnel of business showing education, training and employment with dates
 - Stock transfer agreement
 - List of current permanent full-time and part-time employees by start date
 - Bank signature card
 - Current three months payroll ledger
 - Proof of capital investment
 - Third-party agreements, such as rental and lease agreements, management agreements, or purchase agreements.
 - CCNA certification for Professional Services providers (if applicable)

- 2) *For Corporations* (in addition to standard documents for all applicants)
 - Articles of incorporation, including all subsequent amendments
 - Corporate Bylaws
 - List of Officers, Board of Directors and Shareholders
 - Copy of stock certificates issued and stock ledger
 - Minutes of first corporate organizational meeting
- 3) *For Partnerships* (in addition to standard for all applicants)
 - Partnership Agreement
 - Buy-out Rights Agreement
 - Profit Sharing Agreement
 - The partnership's distribution of profits for the previous year
- 4) *For Sole Proprietors* (in addition to standard documents for all applicants)
 - Prior three years' federal tax returns (or for the years the business has been in existence, if less than three years), including all schedules

The certification review will be completed within 60 days of receipt of disclosure affidavit and all required supporting documentation. Applicants approved for certification will be notified by mail. Certified small businesses will be listed in the city's small business computer database of certified small businesses.

Denial of Certification

All applicants denied certification will be notified by certified mail and informed of their right to appeal the denial. An applicant denied certification may not reapply for certification for 120 days from the denial of the certification.

Appeal Process

Any person or firm that believes it has been wrongfully denied certification as a small business or registration as a MB/WB may file an appeal in writing, signed and dated, with the small business division. The appeal must be filed no later than 15 days from the date of the notice of denied certification.

If an appeal is filed, an administrative hearing will be conducted with the small business committee. The hearing will be scheduled within 60 days of the filing of the request for appeal. At the hearing, the committee may not consider any new information which was not available at the time of the application. This hearing is the final step available in the city's administrative process for the denial of a certification application. The small business committee will provide written notice as to the outcome of the hearing within ten working days of the date of the hearing. Any person who is a party to the proceeding before the small business committee may appeal to the circuit court of the county in accordance with applicable state appellate rules.

Decertification

The Small Business Division will decertify the small business if:

- a) The small business cannot be contacted at the last-known address;
- b) The small business is no longer in business;
- c) The small business is no longer licensed to do the type of business for which it was certified;
- d) The small business obtained its original certification and/or recertification through false representation or deceit;
- e) The small business has experienced such a substantial change in ownership or control that continued certification would be contrary to the policy of the city's small business program;
or
- f) The small business has been disbarred or suspended as a vendor by the city's procurement official. At the expiration of any suspension, the firm may reapply for certification.

Overview of SBE and M/WBE Programs

Board Policy 6.143 as adopted by the School Board on May 11, 2005, provided extensive policy direction for the School District to establish a "narrowly tailored combination of race- and gender-neutral and race- and gender-conscious remedies for the effects of discrimination in School Board contracts. Among these remedies were several neutral measures including the establishment of a Procurement Policy Workgroup to examine and propose modifications to the District's procurement processes and practices; establishment of a Commercial Non-Discrimination Policy (subsequently adopted in Policy No. 6.144); establishment of an automated and mandatory Centralized Bidder Registration System for firms interested in selling goods and services to the District; establishment of business development assistance initiatives related to bonding waivers, insurance, and financial assistance; establishment of a debriefing procedure for losing bidders; establishment of a linked deposit program to encourage financial institutions that hold District funds to improve capital access and loan availability for SBEs and M/WBEs; establishment of procedures for advance review of contract specifications by ODBP to promote greater opportunities for SBE and M/WBE firms; establishment of a prompt payment policy; and establishment of a variety of industry-specific remedial programs for the purpose of eliminating the disparities in M/WBE contract participation in District contracts that have been caused by discrimination. Board Policy 6.143 further required that these assorted remedies be implemented in a narrowly tailored manner and that those remedies that are race- and gender-conscious, (such as the M/WBE Program) only be implemented in circumstances where it is apparent that the use of neutral means alone will likely be insufficient to remedy the effects of identified discrimination.

This Procedures Manual provides the procedures for the implementation of two of these industry-specific remedial programs: (a) the Small Business Enterprise ("SBE") Program, and (b) the Minority / Women Business Enterprise ("M/WBE") Program. In selecting which of these two remedial programs to apply to a given contract, the District shall consider past experiences by the District and other entities within the Relevant Market Place with the use of neutral remedies for similar contracts, and prepare a written justification memorandum outlining the basis for its decision for application of the M/WBE Program to contracts within a given industry. In keeping with Board Policy No. 6.143, the race- and gender-conscious M/WBE program procedures are only to be implemented in those industries where the effects of discrimination have been identified, and appear unlikely to be fully remedied through implementation of the SBE Program and other neutral means. Moreover, for those industries and contracts where the School District determines to apply the M/WBE Program, its application shall be limited to benefit only those gender and ethnic groups within those industries for which resulting disparities appear unlikely to be fully remedied by neutral means alone.

The SBE Program Procedures establish rules for the implementation of

various contract preferences to encourage greater use of Small Business Enterprises in School District contracts for construction, non-professional services, professional services, and general procurement. Among these preferences are the use of set-asides, mandatory subcontracting goals, bid preferences, evaluation preferences, and joint venture incentives. These SBE Program preferences may be applied to any contract in a manner consistent with these procedures at the discretion of the School District.

From time to time, the School District may amend this Procedures Manual or issue additional Procedures Manuals to provide rules for the implementation of other programs and policies authorized under Board Policy No. 6.143.

SBE Program Procedures

SMALL BUSINESS ENTERPRISE PROGRAM

1. **Purpose.**-- This procedure provides details and procedures for the School District of Palm Beach County Small Business Enterprise Program ("SBE program") authorized by Policy 6.143. The purpose of the SBE program is to increase participation and assist SBEs in the District's contracting and procurement activities in a race- and gender-neutral manner.
2. **Applicability.**-- Unless precluded by applicable law, the provisions of the SBE program shall apply to the procurement of construction-related services, non-professional services, professional services, and general procurement by the School District. Procurements subject to an SBE set-aside pursuant to the SBE program are not exempt from other requirements of Policy 6.143.
3. **Administration.**-- The Director of the Office of Diversity in Business Practices ("ODBP") is the Superintendent's designee to administer the SBE program. The Director's duties and responsibilities relative to the SBE program include, but are not limited to, the following:
 - a. ensuring that a representative of the ODBP is included on all selection committees for bids, contracts and professional services;
 - b. reviewing contract specifications to ensure that they are not unnecessarily restrictive to the availability and participation of SBEs;
 - c. providing information and assistance to SBEs to increase their ability to compete effectively for the award of District's business solicitations;
 - d. keeping SBEs apprised of opportunities for technical assistance and training;
 - e. monitoring the progress of the SBE program to ensure that SBEs have opportunities to participate in the District's procurement of goods and services;
 - f. serving as chairperson and coordinator of the Goal-Setting Committee;
 - g. evaluating the levels of availability and utilization in SBE participation through the establishment and use of a centralized bidder registration system;
 - h. adjusting the implementation of this Procedure to account for changing needs and circumstances and to ensure that appropriate utilization

objectives are established and achieved;

- i. monitoring procurement data regarding goods and services that District departments have recommended for SBE set-asides; and
 - j. providing reports to the School Board on at least an annual basis.
4. **Goal-Setting Committee.--** The Goal-Setting Committee, as described in Policy 6.143(7) will recommend the annual goals for SBE utilization, consistent with Policy 6.143 based on the availability of SBE's that can participate in projected subcontracting opportunities.
- a. To determine overall availability, the Goal-Setting Committee reviews the contractor list to identify contractors in the local market who are ready, willing, and able to perform on projects for which the District expects to solicit contractors or vendors in the coming year, and then the Goal-Setting Committee identifies ready, willing, and able SBE contractors or potential subcontractors by using the District's diversity directory.
 - b. The Committee will have the discretion on a contract-by-contract basis to establish mandatory subcontracting goals for the participation of certified SBE subcontractors on those general procurement contracts, nonprofessional services contracts, and construction contracts that are above the competitive bidding threshold and that have commercially useful subcontract opportunities, recognizing that some contracts will have significant subcontract opportunities, while others may not.

5. **Eligibility and Size Standards**

- a. To enjoy the benefits of preferences or set-asides in the SBE program, a firm must meet the District's eligibility standards incorporated in the definition of "small business enterprise" (SBE) in Policy 6.143(3)(ii), which requires that the business must be certified by the District as:
 - i. having received less than one million dollars (\$1 million) in contract payments from District projects or contracts in the fiscal year preceding the bid;
 - ii. having average annual gross sales that are less than fifty percent (50%) of the small business size standards as most recently defined by the U. S. Small Business Administration for the business firm's relevant industry; and
 - iii. having an average number of full-time employees over the last three years that is less than fifty percent (50%) of the small

business size standards as most recently defined by the U. S. Small Business Administration for the business firm's relevant industry. (As of this Procedure's adoption in 2006, the current standards were available at: <http://www.sba.gov/size/indexfaqs.html> and <http://www.sba.gov/size/sizetable2002.html>.)

- b. The principal place of business of the SBE must be in Palm Beach County (i.e., the firm's headquarters must be located in Palm Beach County, preferably, a majority of the firm's gross revenues or sales must be derived here, and a majority of the firm's employees must be domiciled in this county).
- c. The applicant business shall be independent (a free-standing business) and recognized as a separate entity for tax purposes. Businesses that share common ownership, space, employees, or other facilities, may be considered as a single business for this program without reference to tax status.
- d. The business must have been established and operational for a period of at least one (1) full year prior to the application.
- e. The business's address must include the street number, name of the street, suite number, if any, and correct zip code. A post office box is unacceptable without the physical street address.

6. Application for SBE Certification

- a. All applicants wishing enjoy the benefits of the SBE program must apply for SBE certification by completing an SBE Application and Disclosure Affidavit, which can be obtained through the ODBP. The ODBP will provide application directions with the application. At a minimum, the ODBP shall require applicants to submit the following documentation with the Application and Disclosure Affidavit, as applicable to their business:
 - i. verification that the business is principally domiciled in Palm Beach County (through documentation such as corporate filings, tax returns, sales receipts or contract documents, leases, utility bills, or occupational licenses);
 - ii. all required licenses to conduct business in Palm Beach County;
 - iii. fictitious name certificate if applicable;
 - iv. prior three (3) years' federal tax returns, including all schedules;

- v. last year's personal tax return of the president/owner(s) if in business less than three (3) years;
 - vi. last year's financial statement prepared by an independent CPA;
 - vii. résumé(s) of all the principal(s) and key staff; and
 - viii. IRS Form 941 and payroll records for the prior three (3) years (or for whatever period the firm has been in business if less than three (3) years).
- b. The ODBP shall advise the applicant, in writing, of any additional documentation deemed necessary to address items listed in the application. Failure to provide the additional documentation shall cause the ODBP to deem the application abandoned.
7. **Application Review.**-- The SBE certification application and supporting documents will be logged in as appropriate. A checklist of required documentation will be provided to applicants with the application form. Applications will not be processed until all documents are received.
- a. The application will be reviewed for completeness and accuracy. The ODBP will inform the applicant of any missing documentation. Any applicant failing to submit the missing documentation within 30 days of the notice shall be deemed to have abandoned its application.
 - b. Once an applicant has submitted the completed application and all supporting documentation, the ODBP will complete certification review within 60 days.
 - c. Documents not in English must be accompanied by a certified translation.
 - d. References will be contacted and information verified by third parties, when appropriate.
 - e. When deemed appropriate by the ODBP, a personal interview or site visit shall be conducted by the ODBP to discuss the documentation submitted and to verify whether the applicant meets the criteria.
8. **Approved Businesses**
- a. Applicants approved for certification will receive a certification letter stating the specialty area(s) of the business by mail. The certification will normally last for three (3) years, although the firm's eligibility for preferences or set-asides will be subject to the graduation provisions of section 17 below.

- b. Certified SBEs shall be listed as SBEs in the School District's diversity directory.
 - c. If, during the certification period, an SBE experiences changes in ownership, employment, control or location, it shall be the SBE's responsibility to report said changes to the ODBP Director. Failure to report said changes may result in revocation of certification, or denial of re-certification for a period not to exceed one (1) year.
9. **Denial of Certification.**-- Applicants denied certification shall be notified by certified mail. An applicant denied certification cannot reapply for certification for one calendar year from the denial date of the certification, but the applicant shall be informed of the right to seek reconsideration of the denial.
- a. If the applicant believes the ODBP's denial of the SBE-certification application may have been due to the ODBP's overlooking or misapprehending some aspect of its application, the applicant may file with the ODBP a written, signed, and dated request for reconsideration. The request shall be filed no later than fifteen (15) calendar days after the date of receipt of notice of denial of certification. The ODBP may extend the time for filing a request for reconsideration or waive the time limit for cause, specifying in writing the reason for so doing. Such request must be delivered to: Director, Office of Diversity in Business Practices, 3300 Forest Hill Boulevard, Suite A -106, West Palm Beach, Florida 33406.
 - b. If a request for reconsideration is filed, an informal meeting will be held with the requestor and the ODBP Director. The meeting will be scheduled within thirty (30) days after the filing of the request for reconsideration. The ODBP Director may grant an applicant's written request for extension of this meeting time for cause.
 - i. At the meeting, the Director will consider only information which was available at the time of the application.
 - ii. The ODBP Director will provide written notice as to the outcome of the meeting within ten (10) days of the date of the meeting.
 - iii. If the ODBP Director decides the denial was correct, the applicant may request a hearing under the Administrative Procedure Act. If material facts are not in dispute, an informal hearing may be held under Fla. Stat. §§ 120.569 and 120.57(2) by a local volunteer attorney. If material facts are disputed, the hearing request will be referred to the state Division of Administrative Hearings (DOAH); and an administrative law judge will conduct a formal hearing

under Fla. Stat. §§ 120.569 and 120.57(1) and issue a recommended order, which may be adopted by the School Board in the Board's final order. The Board's final order is final agency action subject to judicial review..

10. Re-Certification

- a. Certified SBEs are required to submit a re-certification application and affidavit of their continued eligibility as an SBE every three years. The criteria for re-certification shall be the same as for certification (except that as a prerequisite to re-certification, each SBE that has been in operation for less than five (5) years must also provide proof of completion of a minimum of eight (8) hours of business training during the prior two years. The business course or training must be approved or accredited by the State of Florida or a recognized leading trade association; otherwise it will not be accepted. This requirement is to enhance the SBE's business potential; the small business owner or his/her designee must take the training.).
- b. The ODBP may conduct site visits and/or review documents as often as deemed necessary by the ODBP to ensure continued compliance as an SBE. A company that fails to submit its affidavit of continued eligibility or other documentation requested by the ODBP will be denied re-certification.
- c. An applicant denied re-certification shall be notified by certified mail. The re-certification applicant may not reapply for certification for one year after the denial of the re-certification, but the applicant may request reconsideration of a denial of re-certification within fifteen (15) calendar days after receipt of notice of denial. The procedures for requesting reconsideration and a hearing are the same as under subsections (9)(a) & (b) above.

11. **Reciprocal Certification.**-- Businesses certified as SBEs by the Palm Beach County Small Business Assistance Program and/or the State of Florida's Office of Supplier Diversity and reciprocal partners shall be recognized as certified and eligible for participation in this program, unless the firm fails to meet any of the requirements or standards under section (5), above. In the event a conflict exists between a reciprocal certification and the School District's certification, the District's standards in section (5) above shall prevail.

12. Decertification

- a. The Board may revoke certification as an SBE if the business fails to maintain the qualifying characteristics upon which it was certified. If

such decertification occurs, the business may reapply for certification one (1) year after receipt of the notice of revocation.

- b. If during the period of certification, the District receives written information that the SBE received certification improperly or that there has been such a substantial change in circumstances in the operation, ownership, control, or activities of the SBE that continued certification would be contrary to Policy 6.143 or this Procedure, the ODBP shall conduct an investigation of the allegations.
 - i. Nothing in this section shall prevent the ODBP from commencing an investigation regarding the legitimacy of a firm's SBE certification based upon information received independent of a third party's written request.
 - ii. The ODBP shall advise that the Superintendent recommend that the Board decertify the SBE during the term of its three-year certification if the investigation indicates any of the following conditions:
 - A. the SBE cannot be contacted at the last known address;
 - B. the SBE is no longer in business;
 - C. the SBE is no longer licensed to conduct the type of business for which it was certified;
 - D. the SBE obtained its original certification and/or recertification through the use of a front or other false representation or deceit;
 - E. the SBE has experienced such a substantial change in ownership or control that continued certification would be contrary to Policy 6.143 or this Procedure; or
 - F. the SBE has been debarred under Policy 6.14 or Policy 6.143(9)(e) or section (15) of this Procedure. At the expiration of a debarment, the firm may reapply for certification.
 - iii. The ODBP Director or designee shall notify the SBE by certified mail that the ODBP will advise the Superintendent to recommend decertification to the School Board.
- c. A business whose representative is discovered to have made any willful misstatement or deceptive or fraudulent statement or misrepresentation in connection with the business's application for SBE certification may, in addition to any other penalties, be denied certification or re-

certification for a period not to exceed three (3) years. If the problem is discovered after certification, the certification may be revoked and the business may be debarred under Policy 6.14 or Policy 6.143(9)(e) or section (15) of this Procedure.

- d. All SBEs are expected to perform all contract requirements as directed by the District. If an SBE fails to perform as required, the ODBP will advise that the Superintendent recommend revocation of the SBE's certification for one (1) year or until such time as the SBE can demonstrate the capacity to perform similar contracts.
- e. The procedures for requesting reconsideration and a hearing are the same as under subsections (9)(a) & (b) above

M/WBE Program Procedures

MINORITY/WOMEN BUSINESS ENTERPRISE PROGRAM PROCEDURES

1. **Purpose.--** This Procedure compliments, and is incorporated by reference in, Policy 6.143, Diversity and Equitable Utilization in Business, by establishing specific procedures to implement Policy 6.143 to promote all firms' (including minority- or woman-owned and -controlled enterprises (M/WBEs)) having an equitable opportunity to compete for contracts for provision of goods and services needed by the School District.
 - a. The School Board recognizes that the school system impacts the economic viability of the community, thereby affecting students, employees, parents, and other residents of the county. It is the policy of the School Board to ensure that opportunities for participation in the economic resources of the District are afforded to all, including M/WBEs and small business enterprises (SBEs).
 - b. The overall aim of the Board's policy is to promote equitable, non-discriminatory award and administration of contracts with the Board and to promote a business environment in which all segments of the business community, including small, minority, and women-owned businesses, can compete fairly. This Procedure shall be interpreted and implemented consistent with Policy 6.143 and current legal standards.
2. **Program Administration.--** Pursuant to Policy 6.143(11), the Superintendent has overall responsibility for administering the diversity in business program. The Superintendent hereby delegates a portion of this responsibility to the Chief Operating Officer and the Office of Diversity in Business Practices (ODBP). The ODBP shall be responsible for developing, managing, and implementing the business-diversity program on a day-to-day basis.
3. **District Implementation.--** Pursuant to Policy 6.143(12), the ODBP shall take all necessary and reasonable steps permissible by law to ensure that M/WBEs have the maximum equitable opportunity to participate in the District's purchasing processes. The ODBP will utilize internal and external monitoring and reporting as the methods of implementation.
 - a. **Internal Implementation.--** At a minimum, the ODBP will implement the following internal measures:

- i. employ sufficient staff with the necessary qualifications and responsibility to implement an effective program to foster diversity in business practices within the District;
- ii. analyze and monitor the progress of the program and provide recommendations;
- iii. provide diversity training to School District employees on M/WBE issues as appropriate;
- iv. analyze M/WBEs' availability to provide the products or services identified for contracting at either the prime or subcontract levels;
- v. assist M/WBEs to register and be ready to compete;
- vi. maintain a computerized listing of certified M/WBEs and coordinate the integration of it into the District's business-software platform for bidder availability, accounts payable systems and databases for all prime contractors and subcontractors, by industry, by ethnicity, and gender of business ownership;
- vii. coordinate the Goal-Setting Committee for M/WBE procurement participation of professional services and construction contracting, and recommend and assist in meeting the established goals as part of the committee;
- viii. obtain notification from the Purchasing Director of all competitive contracting opportunities within the District;
- ix. obtain from the Purchasing, Program Management, and Maintenance and Plant Operation Departments detailed instructions on job/project performance requirements;
- x. encourage de-bundling of purchases and contracts into smaller units, areas, or quantities (except in new school construction), where feasible and likely to increase M/WBE participation without substantial adverse fiscal impact to the District;
- xi. when appropriate, encourage limiting the use of multi-year contracts and renewal provisions in contracts so as not to inhibit M/WBE participation;
- xii. ensure that bids/proposals, specifications, and plans are written in a manner that does not unreasonably limit M/WBE participation. The inclusion of proprietary specifications should be avoided without the establishment of a particular need;
- xiii. collaborate with the Purchasing Director to ensure adequate time is provided for the submission of bids/proposals to facilitate the

participation of M/WBEs; and

- xiv. recommend and assist in setting delivery schedules that do not discourage M/WBE participation.

b. **External Implementation.**-- At a minimum, the ODBP will implement the following external measures:

- i. draw upon services and assistance provided by the Small Business Administration and other agencies in locating available M/WBEs and encouraging the development of such businesses;
- ii. use the services of available community and contractor groups and local, state, or federal offices that provide assistance in the recruitment of M/WBEs for public-sector contracts;
- iii. serve as liaison with economic development organizations and agencies working in support of economic development in the minority community;
- iv. promote the District's business-diversity program with marketing and outreach;
- v. coordinate and participate in training seminars to inform potential bidders/proposers/vendors of the business opportunities available;
- vi. advertise bid notices in the M/WBE trade associations' newsletters, major local or regional newspapers, and minority- and women-focused media;
- vii. disseminate contract opportunity information via a telephone bid hotline or e-mail alerts;
- viii. provide M/WBEs with adequate information about plans, specifications, and requirements of District contracts;
- ix. schedule pre-bid or pre-proposal meetings, where appropriate, to inform potential contractors of M/WBE requirements and other bid/proposal requirements, and encourage M/WBEs to attend the pre-bid conferences;
- x. coordinate with the Purchasing Department to offer instructions and clarify bid/proposal specifications, procurement policy, procedures, and general bidding requirements;
- xi. provide information and assistance on certification procedures, subcontracting practices, and bonding requirements to M/WBEs;
- xii. where applicable, provide referrals and technical assistance for

obtaining bonding, lines of credit and insurance;

- xiii. maintain and provide access to a diversity directory for prime contractors to use in identifying subcontractors and materials suppliers;
- xiv. maintain a file of successful bid/proposal documents from past procurements and permit M/WBEs to review and evaluate such documents;
- xv. when requested or at the discretion of the Board, conduct debriefing sessions on awarded contracts to explain why bids/proposals may have been unsuccessful; and
- xvi. provide technical assistance to majority firms that receive in excess of 51% of their funding from the School District, to establish a program to increase M/WBE participation.

c. **Conducting Business-Development Assistance Initiatives.--** The ODBP will seek to assist M/WBEs in developing their businesses through activities such as:

- i. investigating the possibility of the District using owner-controlled insurance plans or self-insurance that will cover all contractors as they work on individual District projects;
- ii. establishing a mentor-protégé program where majority businesses and other appropriate organizations will "adopt," advise, and assist M/WBE and SBE firms on overcoming weaknesses and becoming more efficient and effective in operating their businesses with the objective of increased revenue and expansion of firm operations;
- iii. serving as a one-stop center providing bid information, training, and technical assistance for M/WBE and SBE firms; and
- iv. seeking lending institutions, including those owned by minorities and women, for a possible linked-deposit system to encourage financial institutions that hold District funds to improve capital access and loan availability for SBEs and M/WBEs.

d. **Monitoring and Reporting.--** The ODBP will implement the following measures to monitor the business-diversity program and issue relevant reports:

- i. monitor and maintain records sufficient for verification of good faith efforts and results achieved to maximize equitable M/WBE participation;
- ii. monitor and evaluate program performance and compliance including, but not be limited to, review of previous work records for

the District, contacting references, and investigating complaints made against a contractor by District staff;

- iii. collect data, maintain information, and generate reports to provide guidance to staff and report goal attainment to the Board. These reports will be used to reflect progress and adherence to the program standards of Policy 6.143;
- iv. assist the Superintendent in evaluating key administrators' ability to assist in achieving the M/WBE participation goals;
- v. continue to investigate race- and gender-neutral alternatives to reduce barriers to participation by M/WBEs wishing to do business with the School District; and
- vi. prepare other reports as required by Policy 6.143 or section (21) of this Procedure.

4. **M/WBE Certification Standards**

- a. **Size Standards.**-- As stated in Policy 6.143(3)(x)(i), one qualification for M/WBE certification is that the firm:
 - i. employs not more than 200 permanent full-time employees and has, together with its affiliates, a net worth of not more than five million dollars (\$5 million); or
 - ii. has a Small Business Administration 8(a) certification and is located in the State of Florida. All financial statements shall be submitted to SDPBC for review of net worth of the applicant business owners.
- b. Employee size standards shall vary by industry as follows:
 - Manufacturing; Maximum number of employees may not exceed 1500, depending on the type of product manufactured;
 - Wholesaling; Maximum number of employees not exceed 500 depending on the particular product being provided;
 - Services; Annual receipts may not exceed \$21.5 million, depending on the service being provided;
 - Retailing; Annual receipts may not exceed \$21.5 million, depending on the particular product being provided;
 - General and Heavy Construction; General construction annual receipts may not exceed \$17 million, depending on the type of construction;
 - Special Trade Construction; Annual receipts may not exceed \$7 million; and
 - Agriculture; Annual receipts may not exceed \$9.0 million,

depending on the agricultural product.

c. Revenue or Sales Size Standards

- i. Professional Services.-- Any firm that has had revenues or average gross sales or revenues of greater than two million dollars (\$2 million) over the last three (3) years shall not be considered eligible to participate in the School District's M/WBE program for professional services.
- ii. Procurement Program.-- Any firm that has had revenues or average gross sales or revenues of greater than three million dollars (\$3 million) over the last three (3) years shall not be considered eligible to participate in the School District's M/WBE program for procurement.
- iii. Construction Services.-- Any firm that has had revenues or average gross sales or revenues of greater than seven million dollars (\$7 million) over the last three (3) years shall not be considered eligible to participate in the School District's M/WBE program for construction.

d. Ownership and Control Standards.—M/WBE is defined as a minority-owned business enterprise or a women/owned business enterprise or a designated combination of minority-and woman-owned business enterprises in a specified industry that:

1. Satisfies the size standards of this procedure; and
2. Has minority and/or women owners that own at least 51% of the business, and exercise daily management, and control of the business; and
3. Is domiciled in the Palm Beach County, Miami-Dade County, or Broward County metropolitan statistical areas (MSA), or is domiciled in the State of Florida and can demonstrate that it routinely bids on and/or performs contracts in Palm Beach County; and
4. Is lawfully organized to engage in commercial transactions.

e. Ownership

- i. In determining minority or woman ownership of the business as defined in Policy 6.143(3)(w), (x), & (z), the contribution of capital or expertise by the minority and women to acquire his/her interest

in the firm shall be real and substantial. Examples of insufficient contributions include, but are not limited to: a promise to contribute capital; a note payable to the firm or its owners who are not minorities or women; or mere participation as an employee, rather than as an owner.

- ii. An M/WBE that has had a transfer of ownership or control from a non-minority (who maintains any interest in the business) to a minority or woman, shall not be considered for certification until one (1) year after the transfer.

f. Control

1. All minority or women business owners seeking M/WBE certification subsequent to the adoption of this Procedure shall be at the time of application the qualifier/licensor of the firm for which they are seeking certification (and all minority/woman owners of currently-certified firms for which they are not the license holder shall be required to become the license holder to qualify the firm as a minority/woman-owned entity within three years subsequent to the adoption of this Procedure). Failure to obtain the license to qualify the firm as a certified M/WBE will result in the denial or revocation of certification.
2. The minority or woman must have operational and managerial control of the business as defined in Policy 6.143(3)(k). The primary considerations in determining operational control and the extent to which the minority or woman actually operates the business will vary based upon the specific nature of the industry to which the business belongs. Accordingly, in order to clarify the level of operational involvement and managerial control of the minority or woman to be deemed an M/WBE, the following examples are set forth but are not all-inclusive:
 - i. the minority or woman should be able to demonstrate that basic decisions pertaining to the daily operation of the business are independently made;
 - ii. the minority or woman should have some experience in the industry for which certification is sought sufficient to make knowledgeable decisions about the course and conduct of the business,
 - iii. the minority or woman must have technical competence in, and a working knowledge of the technical requirements of, the industry for which certification is sought;
 - iv. the minority or woman must have the demonstrable ability to make independent and unilateral business decisions needed

to guide the future and destiny of the business;

- v. corporate by-laws or partnership agreements or other agreements should be free of restrictive language, super-majority language, or negative control provisions which dilutes or undermines the authority of the minority or women business owners, thus preventing him/her from making those decisions which affect the destiny of the business; and
- vi. the minority or woman-owned business should be able to clearly show, through production of documents, the areas of control such as, but not limited to:
 - 1. authority and responsibility to sign payroll checks and letters of credit;
 - 2. authority for negotiations and signature responsibility for insurance and/or bonds; and
 - 3. authority for negotiations and/or signature services.
- 3. Where the actual management of the firm is contracted out to individuals other than the owner, those persons will be considered as controlling the business. The firm shall not be considered an M/WBE within the meaning of this program if owners who are not minorities or women are disproportionately responsible for the operation of the firm.
- g. **Independent Structure.**-- As a requirement for eligibility for M/WBE certification, the applicant firm must be an independent business. Recognition of the business as a separate legal entity for tax or corporate purposes is not necessarily sufficient for recognition as an M/WBE. In determining whether a potential M/WBE is an independent business, the ODBP shall consider all relevant factors such as, but not limited to, the date the business was established, the adequacy of its resources for the type of work specified, and the degree to which financial, equipment leasing, and other relationships with non-minority firms vary from established industry practices, and the technical credentials and historical experience of the owner and staff.
- 5. **Application Procedures.**-- All applicants wishing to be certified as M/WBEs and receive the benefits of this program must apply for M/WBE certification by completing the M/WBE Certification Application (PBSD 1179), available from the ODBP with the following contact information: Director, Office of Diversity in Business Practices, 3300 Forest Hill Blvd., Suite A-106, West Palm Beach, Florida, 33406-5813. Phone: (561) 434-8508; Fax: (561) 434-7405; Web site: www.palmbeach.k12.fl.us/mwbe. The ODBP will provide certification directions, which will be attached to the M/WBE certification application. The scope and nature of the information may vary as necessary

to document the legitimacy of the applicant firm. Failure to provide all of the required information may be grounds for the rejection of the application. At a minimum, applicants must submit the following documentation (in addition to the M/WBE Certification Application), as appropriate for their business:

a. Corporations

- i. the number of permanent, full-time employees;
- ii. a list of the corporation's current full-time and part-time employees by length of service;
- iii. proof of minority/woman status as defined in Policy 6.143(3)(w), e.g., copy of birth certificate, drivers license, and/or other required documentation;
- iv. articles of incorporation, including date filed with the State, and any subsequent amendments;
- v. corporate by-laws;
- vi. minutes of the first corporate organizational meeting;
- vii. prior three years' financial statement prepared by an independent CPA or accountant. If in business less than three (3) years, a personal tax return shall be required;
- viii. documentation of net worth (and current Small Business Administration 8(a) certification, if any);
- ix. prior three years' federal corporate tax returns including all schedules;
- x. résumés of principals and management personnel of business showing education, training, professional licensure, and employment with dates;
- xi. stock transfer agreement(s);
- xii. license(s) to do business in Palm Beach County and any other necessary licenses;
- xiii. copies of last three months corporate payroll;
- xiv. copies of the corporation's distribution of profits for the previous year;
- xv. copies of third party agreements such as rental and lease agreements management agreements, or purchase agreements;
- xvi. copies of stock certificates issued;

- xvii. proof of stock purchase; and
- xviii. stock ledger.

b. Partnerships

- i. the number of permanent full-time employees;
- ii. a list of the partnership's current full-time and part-time employees by length of service;
- iii. proof of minority/woman status as defined in Policy 6.143(3)(w), e.g., copy of birth certificate, driver's license, and/or other required documentation;
- iv. partnership agreement;
- v. prior two years' financial statements prepared by an independent CPA or accountant (if in business less than two (2) years, a personal tax returned shall be required);
- vi. documentation of net worth (and current Small Business Administration 8(a) certification, if any);
- vii. prior two years' federal tax returns including all schedules;
- viii. résumés of all partners and management personnel showing education, training, professional licensure, and employment with dates;
- ix. license(s) to do business in Palm Beach County and any other necessary licenses;
- x. buyout rights agreement;
- xi. profit-sharing agreement;
- xii. copies of last three months' partnership payroll;
- xiii. proof of capital invested;
- xiv. copies of the partnership's distribution of profits for the previous year; and
- xv. copies of third-party agreements such as rental and lease agreements, management agreements, or purchase agreements.

c. Sole Proprietorships

- i. license(s) to do business in Palm Beach County and any other necessary licenses;

- ii. fictitious name registration if applicable;
- iii. owner and management personnel résumés;
- iv. prior two years' federal tax returns including all schedules;
- v. documentation of net worth, including the amount of both personal and business investments, pursuant to Policy 6.143(3)(x)(i) (and current Small Business Administration 8(a) certification, if any);
- vi. the number of permanent full-time employees;
- vii. a list of current full-time and part-time employees by length of service; and
- viii. proof of minority/woman status as defined in Policy 6.143(3)(w), e.g., copies of birth certificate, driver's license, or other required documentation.

d. **Limited Liability Companies**

- i. the number of permanent full-time employees;
- ii. list of the company's current full-time and part-time employees by length of service;
- iii. proof of minority/woman-owned status as defined in Policy 6.143(3)(w), e.g., copy of birth certificate, drivers license, or other records;
- iv. articles of organization, including date approved by State, and any subsequent amendments;
- v. operating agreement;
- vi. prior three years' financial statement prepared by an independent CPA or accountant. If in business less than three (3) years, a personal tax returned shall be required;
- vii. documentation of net worth (and current Small Business Administration 8(a) certification, if any);
- viii. prior three years' federal tax returns including all schedules;
- ix. résumés of principals and management personnel of business showing education, training, professional licensure, and employment with dates;
- x. license to do business in Palm Beach County and any other necessary licenses;

- xi. minutes of first organizational meeting;
 - xii. interest certificates;
 - xiii. copies of last three months' company payroll;
 - xiv. copies of the company's distribution of profits for the previous year;
and
 - xv. copies of third-party agreements such as rental and lease agreements, management agreements, or purchase agreements.
- e. **Joint Ventures** The same process as required for certification of M/WBEs shall certify the joint venture, except that joint-venture certification shall be given only a bid-by-bid basis. A joint venture desiring M/WBE certification shall submit an application for approval prior to the bid opening or receipt of proposals for that particular project. Please see SBE procedures Page 5 for further information.
6. **Application Review.--** The M/WBE certification application and supporting documentation will be logged in as appropriate. A list of required documentation will be provided with the application. Applications will not be processed until all documents are received.
- a. The ODBP will inform the applicant of any missing documentation. Any applicant failing to submit the documentation within 30 days of the notice shall be deemed to have abandoned its application. Documents not in English shall be submitted to ODBP with a certified translation.
 - b. Once an applicant has submitted the completed M/WBE application and all supporting documentation, certification review will be completed within 60 days.
 - c. The application will be reviewed for completeness and accuracy. References will be contacted and information will be verified by third parties, when appropriate. If deemed appropriate by the ODBP, a personal interview or site visit will be conducted by the ODBP to discuss the documentation submitted and verify whether the M/WBE applicant meets the criteria established under Policy 6.143 and this Procedure.
7. **Certification**
- a. Only M/WBE firms certified by the School District's ODBP or by the State of Florida's Office of Supplier Diversity (or its successors) shall be recognized as certified and eligible for participation in this program. In

the event a conflict exists between a reciprocal certification and the School District's certification, the School District's decision shall prevail.

- b. Approved applicants will receive a certification letter stating the certification area(s) of the business. Approved vendors will be certified for three years. Certified M/WBEs shall be listed in the diversity directory. Annual questionnaires shall be provided to all vendors to ascertain the current status of their firms.
 - c. If there is a change in ownership interest and/or control, the M/WBE must notify the ODBP within 30 days of the change. Supporting documentation may be required for continued certification.
 - d. The ODBP shall have the right to take the following actions with regard to certified M/WBEs:
 - i. make site visits to verify operational control;
 - ii. require the submission of annual questionnaires regarding the status of the firm;
 - iii. investigate and advise the Superintendent to recommend to the Board the suspension or revocation of certification for cause under section (10) below or debarment under section (18) below; or
 - iv. graduate the firm from the M/WBE program pursuant to section (19) below.
8. **Denial of Certification.**-- Applicants denied certification shall be notified by certified mail. An applicant denied certification cannot reapply for certification for one calendar year from the denial date of the certification, but the applicant shall be informed of the right to seek reconsideration of the denial.
- a. If the applicant believes the ODBP's denial of the M/WBE-certification application may have been due to the ODBP's overlooking or misapprehending some aspect of its application, the applicant may file with the ODBP a written, signed, and dated request for reconsideration. The request shall be filed no later than fifteen (15) calendar days after the date of receipt of notice of denial of certification. The ODBP may extend the time for filing or waive the time limit if in the interests of justice, specifying in writing the reason for so doing. Such request must be delivered to: Director, Office of Diversity in Business Practices, 3300 Forest Hill Boulevard, Suite A -106, West Palm Beach, Florida 33406.
 - b. If a request for reconsideration is filed, an informal meeting will be held with the requestor and the ODBP Director. The meeting will be scheduled within thirty (30) days after the filing of the request for reconsideration. The ODBP Director may grant an applicant's written

request for extension of this meeting time if in the interests of justice.

- i. At the meeting, the Director will consider only information which was available at the time of the application.
- ii. The ODBP Director will provide written notice as to the outcome of the meeting within ten (10) days of the date of the meeting.
- iii. If the ODBD Director decides the denial was correct, the applicant may request a hearing under the Administrative Procedure Act. If material facts are not in dispute, an informal hearing may be held under Fla. Stat. §§ 120.569 and 120.57(2) by a local volunteer attorney. If material facts are disputed, the hearing request will be referred to the state Division of Administrative Hearings (DOAH), and an administrative law judge will conduct a formal hearing under Fla. Stat. §§ 120.569 and 120.57(1) and issue a recommended order, which may be adopted by the School Board in the Board's final order. The Board's final order is final agency action subject to judicial review.

9. **Re-Certification**

- a. Certified M/WBEs are required to submit a re-certification application and affidavit of their continued eligibility as an M/WBE every three years. The criteria for re-certification shall be the same as for certification. The ODBP may conduct site visits and/or review documents to ensure continued compliance as an M/WBE. A company that fails to submit its affidavit of continued eligibility or other documentation requested by the ODBP will be recommended for decertification.
- b. An applicant denied re-certification shall be notified by certified mail. The re-certification applicant may not reapply for certification for one year after the denial of the re-certification, but the applicant may request reconsideration of a denial of re-certification within fifteen (15) calendar days after receipt of notice of denial. The procedures for requesting reconsideration and a hearing are the same as under subsections (8)(a) & (b) above.

10. **Decertification.--** If during the period of certification, the District receives written information that the M/WBE received certification improperly or that there has been such a substantial change in circumstances in the operation, ownership, control, or activities of the M/WBE that continued certification would be contrary to Policy 6.143 or this Procedure, the ODBP shall conduct an investigation of the allegations.

- a. Nothing in this section shall prevent the ODBP from commencing an investigation regarding the legitimacy of a firm's M/WBE certification based upon information received independent of a third party's written

request.

- b. The ODBP shall decertify the M/WBE during the term of its three-year certification if the investigation indicates any of the following conditions:
 - i. the M/WBE cannot be contacted at the last known address;
 - ii. the M/WBE is no longer in business;
 - iii. the M/WBE is no longer licensed to conduct the type of business for which it was certified;
 - iv. the M/WBE obtained its original certification and/or recertification through the use of a front or other false representation or deceit;
 - v. the M/WBE has experienced such a substantial change in ownership or control that continued certification would be contrary to Policy 6.143 or this Procedure; or
 - vi. the M/WBE has been debarred under Policy 6.14 or Policy 6.143(9)(e) or section (19) of this SBE Procedure. At the expiration of a debarment, the firm may reapply for certification.
- c. The Director of the ODBP or designee shall notify the M/WBE by certified mail that the ODBP will advise the Superintendent to recommend decertification to the School Board. The procedures for requesting reconsideration and a hearing are the same as under subsections (8)(a) & (b) above.