

SMALL BUSINESS ENTERPRISE PARTICIPATION PROGRAM PROCEDURES

I. Objective

The School Board of Osceola County, Florida (“Board”) has implemented a Small Business Enterprise Participation Policy (“Policy”) that recognizes that small businesses are an essential part of the economy. This Small Business Enterprise (“SBE”) Participation Program (“Program”) implements the Board’s Policy and will seek to:

- promote economic growth;
- diversify the pool of qualified contractors vying for contracts to be let by the Board for construction projects, the procurement of goods and services, and professional services activities;
- increase the competitiveness for such contracts; and
- provide full and equal business opportunities to all SBEs in the Board’s construction projects, the procurement of goods and services, and professional services activities.

II. Definitions

- A. Board: The governing body of the School District.
- B. Certification: The process by which an applicant is determined to be a bona fide SBE.
- C. Construction and Construction Administrative Services: Construction services in the form of hard bid contractors, negotiated Contracts, construction managers, design-bid-build, and similar construction project delivery methods.
- D. Construction Professional Services: Professional Services relating to construction, to include bid and proposal administration, architectural and engineering services, Owner’s Authorized Representative (OAR), or other similar Professional Services.

- E. Contract: Any agreement with the Board for construction projects or for the purchase, lease or disposal of supplies or other Goods, or maintenance, installation or other Services, including Professional Services, but not including leases of real property, space use permits, employee benefits, taxes, judgments, agreements for travel, dues, pensions, utilities, subscriptions, automobile allowances, debt service requirements, artistic works, purchases from governmental entities or postage.
- F. Direct Contract: A Request for Proposal, Invitation to Bid, or other solicitation which is limited exclusively to SBEs.
- G. Domicile: The primary place of business for the entity pursuing certification as an SBE.
- H. Goods: Any and all supplies, materials, equipment, products, articles, or property that is purchased by the Board in the accomplishment of its responsibilities.
- I. Gross Profit: Sales revenue minus sales costs.
- J. Gross Revenue: The total amount of sales recognized for a reporting period, prior to any deductions.
- K. Immediate Family Member: Father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, or brother-in-law.
- L. Net Worth: The sum of the fair market value of the interest owned in all assets by the individual(s) relied upon in determining SBE status (if an asset is owned jointly as husband and wife, then fifty percent (50%) of the fair market value for that asset shall be counted if only one spouse participates in the firm being reviewed) minus the debt of the individual(s) (if debt is attributable to an asset owned jointly as husband and wife then fifty percent (50%) of the debt shall be counted if only one spouse participates in the firm being reviewed). For purposes of establishing Net Worth, the following items shall be excluded:
 - 1. the equity in the individual's Primary Residence up to \$500,000; and
 - 2. the equity of the individual in the business seeking SBE status.
- M. Net Worth Limitation: Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00), except if the construction delivery method for a construction project is Construction Management ("CM") or Construction Management at Risk ("CM@R") then the Net Worth Limitation shall be One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00). The Net Worth

Limitation may be reviewed from time to time as deemed appropriate by the Superintendent and adjusted accordingly.

- N. Ownership and Control: Individual owners who do not exceed the Net Worth Limitation, must own at least fifty-one percent (51%) of the applicant firm, and they must control and manage the operations of the applicant firm on a daily basis.
- O. Professional Services: Services rendered by an independent contracting individual having experience in a particular industry or subject matter due to specialized education, training, licensure, or skill, of advice, reports, conclusions, recommendations, or other outputs resulting from the time and effort of the service provider, as opposed to the acquisition of specific commodities or of services not requiring any specialized education, licensing, training, or skill.
- P. Revenue Limitations:
 - 1. Construction and Construction Administrative Services - \$7,500,000.00 in annual Gross Revenues averaged over the preceding three (3) years.
 - 2. Construction Professional Services and other Professional Services - \$2,000,000.00 in annual gross revenues averaged over the preceding three (3) years.
 - 3. Procurement of Goods and Services (not including construction and Professional Services included in sections (1) and (2) immediately above) - \$2,000,000.00 annual Gross Profit averaged over the preceding three (3) years.

The Revenue Limitation and Gross Profit amounts may be reviewed from time to time as deemed appropriate by the Superintendent and adjusted accordingly.

- Q. Services: The furnishing of labor, time, expertise, or effort, but does not include the rendering of Professional Services, employment or collective bargaining agreements, or the providing of a tangible end product.
- R. Small Business Enterprise (“SBE”): An active operating business that is Domiciled in the State of Florida; that meets the Revenue Limitations; and that is owned and controlled by one or more individuals whose personal net worth does not exceed the Net Worth Limitation.

- S. Superintendent: The Superintendent of the School District or the person or persons designated by the Superintendent to act on their behalf with respect to issues delegated to the Superintendent by the Board under the Small Business Enterprise Participation Policy 7.701+.

III. Determination of General Goals

In order to promote the utilization of SBEs, the Board shall establish annual percentage goals for the dollar value of work to be awarded to SBEs for construction projects, procurement of goods and services, and professional services activities. Percentage goals may be modified or waived in the event there is insufficient availability of SBEs for a particular project or procurement upon the concurrence of the Superintendent and counsel assigned to assist the Board with SBE matters.

The Board's Policy is being implemented by this Procedure.

IV. Designation of Responsibility for SBE Program

The Superintendent shall designate one (1) or more Small Business Officer(s) ("the SBE Officer"). The SBE Officer may also serve as the Veteran Business Officer(s) ("the VBE Officer"). In order to provide full and equal business opportunities to all SBEs in the Board's construction projects, procurement of goods and services, and professional services activities, the SBE Officer(s) shall be charged with:

- A. Notifying small business assistance organizations that Board contracting and subcontracting opportunities are available;
- B. Providing, upon request, plans and specifications to small business assistance organizations at a reduced cost;
- C. Scheduling seminars to acquaint SBEs with information on Board bid specifications, procurement policies, and general bidding requirements. These seminars may be combined with seminars for veteran owned businesses;
- D. Maintaining an SBE directory and ensuring that the SBE directory accurately reflects SBEs available to compete for Contracts;
- E. Assisting in monitoring contractors' and subcontractors' compliance with SBE commitments throughout the performance period of Contracts;
- F. Participating in pre-bid, pre-proposal, and pre-construction conferences to explain SBE requirements and respond to questions; and

- G. Providing assistance in resolving major procurement and contracting issues affecting SBEs.

V. Procedures to Ascertain the Eligibility of SBEs

- A. In order to ensure that only bona fide SBEs, and, if applicable, joint ventures involving SBEs, benefit from this Program, SBEs must be certified prior to submittal of their bids or proposals, and their certification must be updated upon request during Contract performance. Bids and proposals should include certification approval documentation. This information shall be used to verify the eligibility of SBE firms who are named by the apparent successful bidder/proposer, and, if applicable, joint ventures involving SBEs who are the apparent successful bidder/proposer.
- B. Prior to the award of each Contract which is subject to the procedures set forth in this Program, the Board's SBE Officer(s) shall determine whether each firm claiming SBE status for a bid, proposal, or quotation to the Board, is certified properly as an SBE in accordance with the Board's SBE Policy, and therefore eligible for award.
- C. After the bids are opened and prior to an award of the Contract, the Board may request, receive, and consider omitted and supplemental information from the bidders as to the certification status of SBE firms, if applicable, and of any subcontractor, supplier, or joint venture in order to determine SBE status.
- D. Firms who enter into Contracts with the Board should note that the Board reserves the right to approve all substitutions of subcontractors before award and during Contract performance. The Board shall require a prime contractor to make good faith efforts to replace an SBE that is terminated or has otherwise failed to complete its work on a Contract with another certified SBE. The Board shall require the contractor to notify the SBE Officer(s) immediately of the SBE's inability or unwillingness to perform and provide documentation as to the replacement firm's SBE status or as to the contractor's good faith efforts, when appropriate, to utilize an SBE to replace the non-performing SBE. Acceptance of the proposed replacement SBE subcontractor shall require the prior written approval of the Superintendent or designee.

VI. Certification

- A. Firms certified under certification programs analogous to this Program shall be deemed certified for purposes of this Program upon provision of their certification certificate or comparable evidence to the SBE Officer(s). The SBE Officer(s) shall maintain a list of such programs for which the Board shall extend reciprocity.
- B. Firms seeking certification of eligibility as an SBE must submit a completed application to the Board. Certification of eligibility must be completed, and certification must be acquired prior to submission of a bid, proposal, or quotation that includes participation of the firm seeking to contribute towards the satisfaction of SBE goals.
- C. A denial of SBE certification by the Board shall be communicated in writing, via certified mail, to the firm being denied certification.
- D. Any firm which believes that it has been wrongfully denied certification as an SBE or joint venture involving SBE(s), may file an appeal in accordance with the Appeals section of this Program.

VII. Certification Eligibility Standards

- A. The firm seeking certification has the burden of demonstrating to the Board, by a preponderance of the evidence, that it is an active operating business that meets the Domicile requirement, the Revenue Limitations, and that it is owned and controlled by one or more individuals whose personal net worth does not exceed the Net Worth Limitation.
- B. Ownership
 - 1. In determining ownership of the firm, the Board shall consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial, and arms-length practices.
 - 2. To be an eligible SBE, a firm must be at least fifty-one percent (51%) owned by individual owner(s) who meet the Net Worth Limitation set out herein. In the case of a partnership, fifty-one percent (51%) of the partnership must be owned by qualifying individual(s). Such ownership must be reflected in the firm's partnership agreement. In the case of a limited liability company, at least fifty-one percent (51%) of each class of member interest must be owned by qualifying individual(s).

3. The firm's ownership by qualifying individual(s), including their contribution of capital or expertise to acquire their ownership interest, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in the ownership documents. Insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a qualifying individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value for the firm.
4. The qualifying owner(s) must enjoy the customary incidents of ownership, and share in the risks and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. Any terms or practices that give a non-qualifying individual or firm a priority or superior right a firm's profits, compared to the qualifying owner(s), are grounds for denial.

C. Control

1. In determining whether qualifying owner(s) control a firm, the Board shall consider all the facts in the record, viewed as a whole. An SBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the qualifying owner(s). There can be no restrictions through corporate charter provisions, by-law provisions, contract or any other formal or informal devices that prevent the qualifying owners, without the cooperation or vote of any non-qualifying individual, from making any business decision of the firm.
2. The qualifying owner(s) must possess the power to direct or cause the direction of management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy, and operations. The qualifying owner(s) must hold the highest officer position in the company. In a corporation, the qualifying owner(s) must control the board of directors and in a partnership, one or more qualifying owners must serve as general partners, with control over all partnership decisions. In order for a partnership to be controlled by a qualifying individual, any non-qualifying partner(s) must not have the power to contractually bind the partnership or subject the partnership to contract or tort liability without the specific written concurrence of the qualifying partner(s). Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

3. A qualifying individual may control a firm even though one or more of the individual's Immediate Family Members, who themselves are not qualifying individuals, participate in the firm as a manager, employee, owner, or in another capacity. However, the Board shall analyze the control of the qualifying owner(s) vis-à-vis the other person(s) involved in the business without regard to whether those person(s) are Immediate Family Members. However, where the Board cannot determine that the qualifying owner(s) have control of the firm, distinct from the family as a whole, the qualifying owner(s) failed to meet their burden of proof concerning control.
4. Where a firm was formerly owned and/or controlled by a non-qualifying individual, ownership and/or control were transferred to a qualifying individual and the non-qualifying individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-qualifying individual unless the qualifying individual now owning the firm demonstrates by clear and convincing evidence that (1) the transfer of ownership and/or control to the qualifying individual was made for reasons other than obtaining certification; and (2) the qualifying individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-qualifying individual who formerly owned and/or controlled the firm.

VIII. Cooperation

- A. All participants in the Board's SBE Program, including SBE-certified firms, applicants for SBE certification, complainants and appellants, and contractors using SBE firms to meet Contract goals, are required to cooperate fully and promptly with the Board's compliance reviews, certification review, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved, including but not limited to, denial of certification or removal of eligibility and findings of non-responsibility on future Contracts.

IX. SBE Participation; Good Faith Efforts

- A. A bidder/proposer must submit to the Board at bid/proposal submission all SBE information requested by the Board in the bid/proposal documents. Continuing service contractors shall be required to submit a statement or plan to indicate how the continuing contractor plans to meet SBE goals throughout the term of the Contract.
- B. Contractors meeting the SBE participation Contract goal need not submit good faith documentation. If the bidder/proposer fails to meet the SBE goal,

the Board shall require the bidder/proposer to submit evidence of good faith efforts to reach the goal with its bid/proposal submission, which evidence includes, but is not limited to, the following:

1. The name and title of the person responsible for the bidder/proposer's good faith efforts to reach the goal;
2. Providing evidence of attendance at pre-bid/pre-proposal meeting, if any, scheduled by the Board to inform SBEs of subcontracting opportunities under a given Contract;
3. Providing a list of SBE firms contacted;
4. Providing copies of written correspondence to SBEs that their bid is being solicited, as well as certified return receipts to prove receipt or the reason for non-delivery; proof of e-mails to whom the document was sent, the date when sent, and whether the transmission was successful;
5. Providing evidence of information provided to the SBE firms about the specific work the contractor intends to subcontract. Bidders/proposers shall identify commercially useful portions of the work which are consistent with normal industry practice, which may be performed by SBEs. Bidders/proposers shall make reasonable efforts to divide the work elements into bid packages which are well-suited to SBE participation;
6. Providing evidence that the bidder/proposer provided interested SBEs with assistance in reviewing the Contract plans, specifications, and the terms and conditions of the general Contract, subcontract, and addenda;
7. Providing evidence that the bidder/proposer provided SBEs prompt notice of addenda affecting specific trade contractors;
8. Providing evidence that the bidder/proposer made follow-up inquiries after initial solicitations of interest from SBEs showing a genuine effort to engage their services. The bidder/proposer shall maintain documentation of the date, time and name of individuals contacted. A telephone log containing the name of the companies called, the specific individuals called, the date and time called is acceptable documentation of this activity;
9. Providing a list of quotes submitted by SBE firms contacted;

10. Providing documentation as to why SBEs that submitted quotes were not utilized; and
11. For those instances where a non-SBE subcontractor is selected for a scope of work for which SBE bids were submitted, the bidder/proposer shall submit records of all quotations received from SBEs and from the selected non-SBE subcontractor, documentation to evidence good faith negotiations with SBEs, and provide an explanation of the reasons why the SBEs were not selected.

X. Evaluation of Good Faith Efforts

- A. In order to ensure that bidders/proposers comply with the Board's SBE Program, successful contractors must either meet the SBE participation goal for a specific Contract or demonstrate good faith efforts to meet the SBE goal. Within two (2) business days after receipt of a request from the Board, bidders/proposers failing to meet the SBE Contract goal must submit documentation of the good faith effort they made before submission of their bid/proposal. In evaluating good faith efforts, the Board determines whether the bidder/proposer made reasonable efforts, prior to submission of the bid/proposal, to achieve the SBE goal. The Board may evaluate not only the different kinds of efforts made by a bidder/proposer, but also the quality and intensity of those efforts. An adjectival rating system may be used to assist the Board in evaluating good faith efforts. Efforts made by the bidder/proposer, after the deadline to submit the bid/proposal to meet the SBE goal, shall not be considered by the Board.
- B. In addition to the documentation listed in Section IX above, the Board may consider the following information in evaluation of the bidder's/proposer's good faith efforts:
 1. Efforts made by bidder/proposer to select portions of the work proposed to be performed by SBEs in order to increase the likelihood of achieving the stated goal; and/or
 2. Whether other bidders/proposers met the Contract goal relating to the utilization of SBE subcontractors.

XI. Appeals

- A. In the event a firm is denied SBE Certification, the SBE Officer(s) shall promptly provide a written explanation of the basis for denial. A firm denied Certification may appeal the determination to the Superintendent within five (5) business days after receipt of the written explanation of the basis for denial. The appeal must be filed in writing to the Superintendent.

- B. All appeal decisions made by the Superintendent are administratively final and are not subject to petitions for reconsideration.

XII. Procedures by Which the Board May Implement SBE Direct Contacts

- A. The Board may implement Direct Contracts exclusively for SBE participation for construction projects, the procurement of Goods and Services, and Professional Services activities. The SBE Officer(s) may recommend which construction Contracts, Goods and Services Contracts and Professional Services Contracts shall, or are likely to, attract meaningful competition from SBE firms capable of meeting the Contract specifications. Consequently, the Board may use Direct contracting techniques when necessary to meet SBE goals and/or stimulate the SBE Program provided that the following conditions exist:
 - 1. At least three (3) SBEs capable of performing the Contract are available;
 - 2. The Board has determined that the Contract should be a Direct Contract in order to meet SBE goals and/or stimulate the SBE Program, and;
 - 3. Consultation with the appropriate department (e.g. Purchasing, Engineering, Construction, Commercial Properties, Concessions, etc.) is conducted to determine if a Direct Contract shall be appropriate.
- B. The Board shall state in its solicitation if a particular Contract shall be a Direct Contract with SBEs.
- C. SBEs interested in bidding or proposing on Board Direct Contracts must submit SBE status verification in accordance with the instructions provided in the Contract documents.

XIII. Counting SBE Participation Toward Meeting SBE Goals

- A. In non-direct construction projects, the procurement of Goods and Services, and Professional Services bids/proposals which carry an SBE goal, the portion of the Contract not subcontracted by an SBE bidder/proposer shall be counted as SBE participation.
- B. When an SBE subcontracts part of the work of its Contract to another firm, the value of the subcontracted work may not be counted toward SBE participation goals unless the SBE subcontracts to another SBE firm on a Contract which allows participation in the second tier to be counted.

- C. In projects utilizing a Construction Manager (“CM”) or Construction Manager at Risk (“CM@R”) method of delivery, the CM/CM@R selection shall include an SBE participation goal as established by the Board. For satisfying the goals established, the participation to be counted shall include participation at the first and second tier subcontract levels.
- D. Where SBE subcontractors are certified material suppliers, the participation credited shall be the dollar amount equal to sixty percent (60%) of the dollar value of the Goods purchased from the SBE supplier. However, where the SBE is also certified as a manufacturer and is the manufacturer of the product supplied, bidders shall receive credit for one hundred percent (100%) of the dollar amount of the product supplied.
- E. If the SBE provides Goods, SBE participation shall be counted at one hundred percent (100%) if the supplier is certified as a manufacturer and is a manufacturer of the supplies or certified as a dealer and is a dealer that owns, operates, or maintains a store, warehouse, or other establishment which may include distribution systems for bulk items, in which the materials, supplies, articles, or equipment of the general character described in the specifications required under Contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business. There shall be no credit where the SBE simply acts as a broker of Goods.
- F. For the purposes of counting SBE participation, Veteran Business Enterprises (“VBEs”) certified in accordance with the Board’s VBE Policy shall count towards SBE participation goals if authorized by the Board in accordance with the Board’s VBE Policy.
- G. The degree of goal attainment by joint ventures between SBE and majority firms shall be calculated as follows:
 - 1. A joint venture consisting of an SBE and majority firm functioning as a prime contractor shall be credited with the SBE participation on the basis of the percentage of the dollar value of the work to be performed by the SBE;
 - 2. In joint venture bids/proposals in which all joint venture participants are SBEs, the joint venture shall be credited with SBE participation for that portion of the dollar amount of the Contract which they perform, and that portion subcontracted to SBE firms.

XIV. Monitoring and Enforcement Mechanisms

- A. The Board may require contractors to submit information certifying work performed by and payment made to SBE subcontractors on each Contract.

The Board retains the right to audit a contractor's books and records to determine the accuracy of the information reported. In the event the Board determines a contractor has failed to comply with the SBE participation submitted by contractor and accepted by the Board, the Board may, in its sole discretion, require contractor to comply, default the contractor pursuant to the Board's Contract provisions, disqualify contractor from consideration for award of future Board Contracts or proceed in any manner which the Board deems reasonable.