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TO: Honorable Chairwoman Perla Tabares Hantman
and Members of the School Board of Miami-Dade County, Florida

Alberto Carvalho, Superintendent, Miami-Dade County Public Schools

FROM: Mary T. Cagle, Inspector General 

DATE: February 2, 2018

SUBJECT: OIG Observations, Comments, and Recommendations relating to the Draft
Revision of the *Office of Economic Opportunity Administrative Procedures
Manual*, Ref. GOBIG – 0016

BACKGROUND

In response to complaints and formal requests for review by the Superintendent of Schools, the Miami-Dade County Public Schools (M-DCPS) Office of the Inspector General (OIG) has conducted, and is conducting, multiple investigations, reviews, and evaluations regarding the process and procedures for certification of Small and Micro Business Enterprise (S/MBE) and Minority/Women Business Enterprise (M/WBE) firms. Evidence of willful “fronting” (deceptive ownership representation) done with the intent to secure the contracting advantages of M/WBE firms was detailed in a recent report issued by this office.¹

The OIG has been working in tandem with the M-DCPS Administration to ensure the integrity of the S/MBE and M/WBE programs. The Administration has openly sought input as improvements to the programs are formulated. A current activity being performed by the OIG involves reviewing the work, conclusions, and recommendations of the Administration’s Certification Review Team. The Superintendent asked the OIG in October 2017 to review this work effort, which involved reviewing the eligibility of over 300 firms participating in the S/MBE or M/WBE programs. The OIG’s review is in progress and our assessment will be forthcoming. OIG staff has also met with M-DCPS staff (from both the Office of Facilities and the Office of Economic Opportunity) to assess sub-contractor substitution procedures. Staff has been very receptive to the OIG’s concerns and recommendations to date, and we are pleased with the new procedures that have been implemented.

At the January 18, 2018, meeting of the Small Business Enterprise Advisory Committee (SBEAC), the members were provided a draft document revising the *Office of Economic Opportunity Administrative Procedures Manual (Manual)*. They were encouraged to submit

¹ OIG Final Report of Investigation – Fronting by M/WBE Electrical Subcontractor, Complete Power Systems; SB1516-1006, October 24, 2017.

comments and observations—no later than February 1, 2018.² This 57-page draft *Manual* is perhaps the most critical document of the program and certainly worthy of considerable input from stakeholders before final submission and adoption by the School Board. The short timeline to receive input from the SBEAC is apparently driven by a desire to present the revised *Manual* to the School Board for approval at its February 21, 2018, meeting.

RECOMMENDATION

The OIG respectfully recommends additional time be allowed for the SBEAC to evaluate this draft document, prior to formal consideration by the School Board. In order to assist the SBEAC members in their review of the *Manual*, a policy discussion and the OIG’s detailed observations are presented below. We would welcome the opportunity to further explain our concerns to the SBEAC at its next meeting.

In concert with the adoption of the revised *Manual*, it may be necessary to amend School Board Policy 6320.02 to address one significant feature of the program. To protect the S/MBE and M/WBE programs from incidents of fronting, the OIG strongly encourages the adoption of more precise guidelines governing the eligibility of firms seeking certification. To the point, the SBEAC should be encouraged to deliberate and develop clear policy recommendations for the School Board to establish the minimum percentage of ownership for the owner who possesses the required professional license.

POLICY vs. PROCEDURES

Internal consistency (or the lack thereof) between Policy 6320.02 and the current *Administrative Procedures Manual* is an issue relative to the requirements of licensing and ownership. There has been a prolonged dispute as to the Board’s intentions and the implementing criteria utilized by the Office of Economic Opportunity when certifying firms for the S/MBE and M/WBE programs. Board Policy 6320.02 stipulates that “the owner of the business must have the required professional license(s) and contractor qualification license.”³ There are two inter-related issues with regards to this policy. The first involves the word “have” and the second relates to the requirement of “the owner.” Each are addressed below.

First, much debate has centered on what the meaning of the word “have” is. Does it mean an owner seeking to be certified within the program must personally “have” the required license; or does it mean the owner must “have an employee” who possesses the required license?

² The next scheduled meeting of the SBEAC is March 15th, 2018.

³ School Board Policy 6320.02, *S/MBE Eligibility and Certification*, A. 5., and B. *M/WBE Eligibility and Certification 1.e.*

The current *Administrative Procedures Manual* adopts the latter definition. When the School Board approved the existing *Manual* on May 7, 2014, the following sentence was included on Page 10 of 28: “Any license or permit required for the business must be held personally by an owner of the company and/or qualifier of the company.” (Italics and underline added for emphasis.) This language enabled applicants to be certified as S/MBE or M/WBE firms even though the owner-applicant did not personally “have” the required license, as long as the applicants “have” an affiliation with someone willing to put forward a license to qualify the firm. This debate about whether a license holder for the firm should have a specific ownership interest has taken many turns.

In the case of D. Stephenson Construction, Inc., M-DCPS concluded that an African-American owner (albeit owning a 1% share in the company) did “have” the required general contractor license. The M/WBE certification was renewed as the licensed general contractor/owner and other African American owners constituted a majority ownership share of the business. The resolution of this matter appears to comport with Board Policy 6320.02, and was supported by a legal opinion rendered by Franklin M. Lee, an attorney with the Maryland firm of Tydings & Rosenberg.

The opinion of Franklin M. Lee properly noted that D. Stephenson Construction, Inc. was an eligible M/WBE firm in accordance with Board Policy 6320.02, because an African-American owner, though he only owned 1% of the firm, did have the license. However, given the “and/or qualifier” language inserted in the *Administrative Procedures Manual*, the firm could have been certified even if the general contractor was not an African American, nor a 1% owner. This open-ended provision in the current *Manual* is a policy matter that warrants careful consideration and clear guidance from the School Board.

Another implication of the lack of ownership standards for a required license holder is the inability to effectuate true reciprocity with other certifying entities. M-DCPS purportedly maintains reciprocity with other entities. These other entities require a specific percentage of ownership by the firm’s license holder. Depending on the type of license and which certifying agency, ownership requirements for the license holder range from 10% to 51%.

This brings us to the second issue with the current policy language, which reads “the owner.” Who is “the owner” when an entity can have multiple owners? Even if the language were amended to read “an owner” would that owner be required to own a minimum percentage of the company? Would an owner that qualifies the company with his/her license have to be in the same gender/racial class in which the certification is sought? Given the importance of the revised *Manual*, the OIG strongly believes that now is the time to clarify these lingering ambiguities and inconsistencies.

It is worth noting that a minimum percentage ownership requirement for a qualifying license holder as part of certification for S/MBE or M/WBE status is a common feature of such

programs. Such a requirement does not unfairly burden a minority or woman-owned firm interested in competing with non-minority firms in the open market. Outside of these programs that are designed to address historic contracting disparities, anyone may own a business and hire licensed professionals in order to compete. A licensing/ownership percentage requirement for certification in these programs is not an impairment; it should be considered a qualifying factor for a firm interested in participating in a program established to address historic contracting disparities.

To strengthen the S/MBE and M/WBE policies, the SBEAC should recommend the School Board adopt a percentage ownership requirement to limit the likelihood of fronting. To select the level of minimum percentage requirements, the standards adopted by reciprocating certification entities may provide guidance.

Detailed Observations

In the event the draft revised *Manual* is fast-tracked for Board approval, without an opportunity for further review by SBEAC, the OIG submits the following detailed observations for the Board's consideration:

1. See Page 8 of 57. "Construction Contractor – the company that is qualified by a contractor, or the qualifier who holds a contractor's license."

OIG Observation: This language seems to be open to the possibility that the license holder is not necessarily an owner.

2. See Page 8 of 57. "Contractor – the person, firm or corporation that is authorized to do business in the State of Florida and that is properly licensed or registered for the work to be performed with whom a contract may be made for the performance of Board work."

OIG Observation: This definition of a Contractor references the "person, firm or corporation...that is properly licensed" without regard to ownership status.

3. See Page 16 of 57. Section 4-Control. Applicants are instructed to "list current licenses/permits held by an owner and/or employer of your firm (e.g. contractor, engineer, architect, etc.)..."

OIG Observation: The difference between an owner and an employer of a firm is not explained. Once again, it would appear an individual other than an owner is permitted to have the license.

4. See Page 18 of 57, Small/Micro Business Enterprise Program, eligibility criterion nos. 4 and 5:
 - 4. The business has an applicable local business tax receipt (Miami-Dade County) and all required professional licenses, contractor qualifier licenses, and/or Certificate of Competency.
 - 5. The owner of the business must have the required professional and contractor qualification license.

OIG Observation: The definition of “have” is still subject to debate with these provisions. Is a business eligible if an employee is the contractor qualifier, as criteria #4 suggests? Is an owner considered to “have” the required professional and contractor qualification license by virtue of employing an individual who possesses the license?

5. See Pages 20-21 of 57, the fifth and sixth bullets under heading Minority / Women Business Enterprise Eligibility:
 - The Business has an occupational license and all required professional licenses and/or contractor qualifier licenses.
 - The owner of the business must have the required professional license(s) and contractor qualification license.

OIG Observation: Same as above.

6. See Page 15 of 57. “M-DCPS offers the following certification applications: *New Certification Application; Renewal Certification Application; and Interlocal/Partnership Certification Recognition Application (Reciprocity).*”

OIG Observation: Reciprocity suggests that the conditions for certification are aligned, and that both agencies recognize each other’s certification procedures. The programs referenced in this document have specific criteria regarding a license holder’s ownership interest in a firm (specific percentages of ownership; or a requirement that the owner/applicant have a required license). Does M-DCPS recognize the certifications of these other entities even though the criteria do not align? And, do these other entities recognize the M-DCPS certifications?

7. See Page 22 of 57. Interlocal/Partnership Certification Recognition Application “Any business certified by the State of Florida Office of Supplier Diversity as a Minority/Women Business Enterprise, or certified as a Small/Micro Business Enterprise by Miami-Dade County, may apply for certification with M-DCPS.”

OIG Research:

- The State of Florida M/WBE program requires applicants to “have a professional license, if required by the industry, *in the name of the woman, veteran or minority business owner.*” (Italics and underline added for emphasis)
 - Miami-Dade County requirements:
 - SBE firms providing Goods and Services – a minimum 10% ownership share by the business license holder
 - SBE Construction firms – a minimum 10% ownership share by the business license holder
 - SBE Architectural and Engineering firms – a minimum 25% ownership share by the business license holder
8. See Page 15 of 57. The first sentence under the heading SBE, MBE and M/WBE Certification Designations reads: “M-DCPS will not issue multiple certifications.” The remainder of the paragraph, however, goes on to give examples where a firm can be both a Small Business and a Minority-Owned Business; but if owned by a woman, the enterprise cannot apply to be a Minority-Owned Business and a Woman-Owned Business.

OIG Observation: We believe the text could be clarified. Also, as it is not captured in the heading, it is unclear whether an entity can be certified as a Small Business and a Service Disabled Veteran Enterprise.

9. See Page 23 of 57. Service Disabled Veteran Enterprise Program

OIG Observation: There is no direct reference to the license holder/qualifier for this category of certification, only a requirement that the applicant provide “the mandatory documents as required as an applicant for M/WBE certification...”

10. Multiple pages within Board Policy 6320.02 and in the draft *Manual* referring to Principal Place of Business vs. Actual Place of Business.

Passages from Board Policy 6320.02

- The policy for S/MBE Eligibility and Certification (see page 11 of 26) requires that “The business must have an actual place of business in Miami-Dade County for at least one (1) year preceding the application and be registered as a vendor with the District.” (Emphasis added) The same is true for M/WBE Eligibility and Certification (see page 16 of 26).

- However, on page 8 of 26 (Micro) and on page 10 of 26 (Small), the policy requires: “any contractor, subcontractor, manufacturer or service company (a) that has been doing business under the same ownership or management and has maintained its principal place of business in Miami-Dade County, Florida, for a period of at least one (1) year immediately prior to the date of application for certification under this section...” (Emphasis added)
- Moreover, on page 12 of 26 regarding renewals of S/MBE certification, the Policy states: “upon application for re-certification, an SBE/MBE firm must be an independently owned and operated business concern, and maintain its principal place of business or have a significant employment presence in Miami-Dade County in accordance with this policy... (Emphasis added).

Related Passages from the draft Manual

- On page 12 of 57 in the draft Manual there is a placeholder for the term Principal Place of Business – with a notation that this needs to be defined.
- However, on page 18 of 57, eligibility criterion no. 2 for the Small/Micro Business Enterprise Program requires that the “business must have an actual place of business in Miami-Dade County for one (1) year preceding the application . . .” Again, the same “actual place of business” requirement is found on page 21 of 57 for M/WBEs.

OIG Observation: This discrepancy must be resolved at the policy level prior to implementation of this revised Manual. The intent of the Board must be clarified.

These are the OIG’s initial concerns identified within the time frame requested by OEO that we provide any comments. With additional time and an opportunity for more extensive interaction with the M-DCPS staff and the SBEAC, we remain confident that the certification policies and procedures for the S/MBE and M/WBE programs can be modified to remove any confusion or uncertainty regarding policy intent. The final revised Manual should be internally consistent, precise and unambiguous before presentation to the Board for adoption.

cc: Yoni Markhoff, Chairman of SBEAC
 Lisa Martinez, Chief Strategy Officer, Office of the Superintendent
 Jaime G. Torrens, Chief Facilities Officer, Office of School Facilities
 Walter Harvey, School Board Attorney
 Jose F. Montes de Oca, Chief Auditor
 Torey Alston, Executive Director, Office of Economic Opportunity