

Section III
Notices of Changes, Corrections and
Withdrawals

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NOS.:	RULE TITLES:
12A-1.001	Specific Exemptions (municipally-owned utilities)
12A-1.005	Admissions
12A-1.001	Specific Exemptions (conform to communications services tax)
12A-1.016	Sales; Installation Charges
12A-1.046	Telephone, Telegraph, and Other Telecommunication Services
12A-1.051	Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property
12A-1.060	Registration
12A-1.064	Sales in Interstate and Foreign Commerce; Sales to Nonresident Dealers; Sales to Diplomats
12A-1.0911	Self-Accrual Authorization
12A-1.085	Exemption for Qualified Production Companies
12A-1.097	Public Use Forms
12A-1.095	Revocation of Sales Tax Exemption Certificates

NOTICE OF PUBLIC HEARING ON PROPOSED RULES

Notice is hereby given that the Governor and Cabinet, sitting as the head of the Department of Revenue, announce a public hearing to which all persons are invited.

DATE AND TIME: Tuesday, August 28, 2001, 9:00 a.m. – conclusion

PLACE: Cabinet Meeting Room, The Capitol, Lower Level, Monroe Street and Apalachee Parkway, Tallahassee, Florida

GENERAL SUBJECT MATTER TO BE CONSIDERED: The Governor and Cabinet, sitting as the Department of Revenue, on August 28, 2001, will consider the following proposed rule amendments:

A) Rule 12A-1.001, F.A.C. (Specific Exemptions/municipally owned utilities): The proposed rule was noticed for a Rule Development Workshop in the Florida Administrative Weekly on December 22, 2000 (Vol. 26, No. 51, p. 5843). A rule development workshop was held on January 9, 2001. No one attended the workshop to provide comments on this proposed rule; and no written comments were received by the Department. Technical changes were made to reflect the changes to Rule 12A-1.001, F.A.C., effective June 19, 2001. Subsequently, a Notice of Proposed Rulemaking was published in the Florida Administrative Weekly on July 6, 2001 (Vol. 27, No. 27, pp. 3100-3101). A public hearing was held on July 31,

2001. No one attended the hearing to provide comments regarding this proposed rule, and no written comments were received.

B) Rule 12A-1.005, F.A.C.: The proposed rule was noticed for a Rule Development Workshop in the Florida Administrative Weekly on May 4, 2001 (Vol. 27, No. 18, pp. 2204-2205). A rule development workshop was held on May 24, 2001, regarding the proposed amendments to Rule 12A-1.005, F.A.C. Comments were received at the workshop regarding subsections of Rule 12A-1.005, F.A.C., that are not currently being considered by the Department for revision. No written comments were received by the Department. Subsequently, a Notice of Proposed Rulemaking was published in the Florida Administrative Weekly on July 6, 2001, (Vol. 27, No. 27, pp. 3101-3102). A public hearing was held on July 31, 2001. No one attended the hearing to provide comments regarding this proposed rule, and no written comments were received.

C) Rules 12A-1.001, 12A-1.016, 12A-1.046, 12A-1.051, 12A-1.060, 12A-1.064, and 12A-1.0911, F.A.C. (conforming sales and use tax rules to the communications services tax statutes): The proposed rules were noticed for a Rule Development Workshop in the Florida Administrative Weekly on April 20, 2001 (Vol. 27, No. 16, pp. 1828-1832). A rule development workshop was held on May 8, 2001, regarding these proposed amendments and proposed rule repeal. No one attended the workshop to provide comments on these proposed rule changes; and no written comments were received by the Department. Technical changes were made to the proposed amendments to Rules 12A-1.001, 12A-1.060, and 12A-1.064, F.A.C., to reflect the changes to these rules, effective June 19, 2001. The proposed effective date of October 1, 2001, for all proposed rule changes to become effective has been removed. Subsequently, a Notice of Proposed Rulemaking was published in the Florida Administrative Weekly on July 6, 2001, (Vol. 27, No. 27, pp. 3102-3107). A public hearing was held on July 31, 2001. No one attended the hearing to provide comments regarding these proposed rule changes, and no written comments were received.

D) Rules 12A-1.085 and 12A-1.097, F.A.C.: The proposed substantial rewording of Rule 12A-1.085, F.A.C., and the proposed amendments to Rule 12A-1.097, F.A.C., were noticed for a Rule Development Workshop in the Florida Administrative Weekly on December 22, 2000 (Vol. 26, No. 51, pp. 5843-5845). A rule development workshop was held on January 9, 2001, regarding these proposed rule changes. No one attended the workshop to provide comments on these proposed rules; and no written comments were received by the Department. Technical changes were made to Rule 12A-1.097, F.A.C., to incorporate amendments to that rule, effective June 19, 2001, and to correctly title the forms being incorporated by reference. Subsequently, a Notice of Proposed Rulemaking was published in the Florida Administrative Weekly on July 6, 2001, (Vol. 27, No. 27, pp. 3107-3109). A public hearing was

held on July 31, 2001. No one attended the hearing to provide comments regarding these proposed rules, and no written comments were received.

E) Rule 12A-1.095, F.A.C.: The proposed rule was noticed for a Rule Development Workshop in the Florida Administrative Weekly on May 4, 2001 (Vol. 27, No. 18, pp. 2212-2213). A rule development workshop was held on May 24, 2001, regarding the proposed amendments to this rule. No one attended the workshop to provide comments on this proposed rule; and no written comments were received by the Department. Subsequently, a Notice of Proposed Rulemaking was published in the Florida Administrative Weekly on July 6, 2001, (Vol. 27, No. 27, pp. 3109-3110). A public hearing was held on July 31, 2001. No one attended the hearing to provide comments regarding this proposed rule, and no written comments were received.

A copy of the Department of Revenue’s agenda for the August 28, 2001, Cabinet meeting may be obtained by contacting: Debbie Thomas, Florida Department of Revenue, Room 104, 501 South Calhoun Street, Tallahassee, Florida 32314, telephone number (850)487-1453.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NOS.:	RULE TITLES:
12A-15.003	Imposition and Payment of Tax
12A-15.004	Specific Exemptions
12A-15.007	Records
12A-15.014	Transition Rule

NOTICE OF PUBLIC HEARING ON PROPOSED RULES

Notice is hereby given that the Governor and Cabinet, sitting as the head of the Department of Revenue, announce a public hearing to which all persons are invited.

DATE AND TIME: Tuesday, August 28, 2001, 9:00 a.m. – conclusion.

PLACE: Cabinet Meeting Room, The Capitol, Lower Level, Monroe Street and Apalachee Parkway, Tallahassee, Florida

GENERAL SUBJECT MATTER TO BE CONSIDERED: The Governor and Cabinet, sitting as the Department of Revenue, on August 28, 2001, will consider the proposed amendments to Rules 12A-15.003, 12A-15.004, 12A-15.007, and 12A-15.014, F.A.C. The proposed amendments to these rules were noticed for a Rule Development Workshop in the Florida Administrative Weekly on April 20, 2001 (Vol. 27, No. 16, pp. 1832-1834). A rule development workshop was held on May 8, 2001, regarding the proposed amendments to these rules. No one attended the workshop to provide comments on these proposed rules, and no written comments were received by the Department. A technical change to Rule 12A-15.003, F.A.C., has been made to reflect the changes to that rule, effective June 19, 2001. The proposed effective date of October 1, 2001, for all proposed rule changes to become effective has been removed. Subsequently, a Notice of Proposed Rulemaking was

published in the Florida Administrative Weekly on July 6, 2001, (Vol. 27, No. 27, pp. 3110-3112). A public hearing was held on July 31, 2001. No one attended the hearing to provide comments regarding these proposed rules, and no written comments were received.

A copy of the Department of Revenue’s agenda for the August 28, 2001, Cabinet meeting may be obtained by contacting: Debbie Thomas, Florida Department of Revenue, Room 104, 501 South Calhoun Street, Tallahassee, Florida 32314, telephone number (850)487-1453.

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
40E-7	PART VI Supplier Diversity & Outreach M/WBE Contracting Rule
RULE NOS.:	RULE TITLES:
40E-7.611	Policy
40E-7.621	Definitions
40E-7.623	Policy Review & Goal Setting Committee
40E-7.628	Bid Incentive Program
40E-7.631	Proposal Evaluation & M/WBE Criteria
40E-7.633	Sheltered Market Program
40E-7.635	Annual Long-Term and Project-Specific Goals
40E-7.637	District Implementation
40E-7.639	Emergency Waiver of Participation Goals
40E-7.645	Compliance
40E-7.647	Good Faith Efforts
40E-7.651	Reciprocal Certification
40E-7.653	Certification Eligibility
40E-7.655	Certification Review Process
40E-7.659	Graduation from M/WBE Program
40E-7.661	Recertification Review Procedures
40E-7.664	Suspension, Debarment, Revocation or Decertification
40E-7.6645	Penalties for Fraudulent M/WBE Representation
40E-7.665	Application for Additional Areas of Certification
40E-7.667	Administrative Hearings

NOTICE OF CORRECTION

Notice is hereby given that the following corrections have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in the June 8, 2001 issue of the Florida Administrative Weekly.

SUBJECT AREA TO BE ADDRESSED: The proposed rule making concerns changes to the South Florida Water Management District's ("District") existing Chapter 40E-7 Part VI, F.A.C. Supplier Diversity & Outreach M/WBE contracting Rule.

SPECIFIC AUTHORITY: 373.113 FS.

LAW IMPLEMENTED: 373.607 FS.

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., Thursday, September 13, 2001

PLACE: South Florida Water Management District, B-1 Auditorium, 3301 Gun Club Road, West Palm Beach, FL 33406

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Sandy Hammerstein, Procurement Division, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045, Extension 2847 or (561)682-2847
The specific correction is as follows:

40E-7.611 Policy.

(1) The rules under this Part establish policies and procedures designed to remedy documented disparities in District contracting and the present effects of past marketplace discrimination. The rules under this Part implement specific recommendations of the District's Minority Business Availability and Utilization Study ("Study") as developed by MGT of America, Inc., dated August, 1995 and made a part of the District's Supplier Diversity & Outreach Program ("Program"). ~~The rules under this Part shall apply to all competitive solicitations for commodities, construction, professional and other contractual services, including change orders and amendments.~~

~~(2) It is the objective of the District to provide incentives to increase the participation of M/WBEs which are experiencing the effects of marketplace discrimination and have sought to do business in the District's relevant market area.~~

~~(2)(3) The District shall evaluate the progress of its Program using accumulated availability and utilization data to determine specific program provisions that require modification, expansion, and/or curtailment.~~

~~(4) An internal Policy Review and Goal Setting Committee shall be established to guide the implementation of the rules under this Part. The Office of the Inspector General shall review and verify the accuracy of statistical data and reports relative to the attainment of established agency goals. A Regional Advisory Council on Small Business shall be established as a citizens' advisory group to assist the District in communicating and implementing Program initiatives within the various counties comprising the District's relevant market area.~~

~~(5) After five (5) years, the District shall evaluate Program results to determine if the District shall continue, modify, expand or end its Program. Any changes to the Program which necessitate the amendment or repeal of this Part shall be made using the Chapter 120, F.S. rulemaking process.~~

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History--New 9-25-96, Amended _____.

40E-7.621 Definitions.

~~(1) "Affirmative Procurement Initiatives" means bid incentives, sheltered market, and M/WBE points in proposal evaluations.~~

~~(1)(2) "Annual Contract Forecast Report" (ACFR) means a preliminary summary report estimating the number, probable dollar value and the planned solicitation date for budgeted contracts and purchases proposed for each fiscal year.~~

~~(3) "Bid Incentive" means an affirmative procurement initiative which is race, ethnic and gender specific and designed to remedy documented disparity in District contracting and the present effects of past marketplace discrimination by fostering increased M/WBE participation and goal attainment.~~

~~(2) "Certified Minority Business Enterprise" means a firm certified by the District pursuant to Rules 40E-7.651 and 40E-7.653, F.A.C. and Section 287.0943(1) & (2), Florida Statutes.~~

~~(3) "Control" means to direct with primacy or cause the direction of all phases of the management and daily operations of the business, including, but not limited to, standard management practices and principles such as policy development, establishment of personnel reporting lines and operational procedures, problem solving, etc.~~

~~(4) "Domicile" means the state in which the business has its principal place of business and as it relates to corporations it also means the state under whose laws the corporation was formed.~~

~~(5) "Family member" means any person who is a spouse, parent, step-parent, grandparent, step-grandparent, child, step-child, grandchild, step-grandchild, sibling, half-brother, half-sister, step-sister, including adopted persons and those persons who are married to family members.~~

~~(6) "Federally recognized Indian Tribe" means an Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or other organized group or community, including any Alaskan Native Village, which is recognized by the Secretary of the Interior as having special rights and is recognized as eligible for the services provided by the United States to Indians because of their status as Native Americans. Indians.~~

~~(7)(4) "Front" means a business concern which falsely claims to be owned and controlled by minority persons or women as defined herein.~~

~~(8)~~⁽⁵⁾ “Industry categories” mean construction, CCNA professional services, non-CCNA professional services, commodity/services procurement (manufacturing, wholesale, retail), and contractual (other) services.

~~(9)~~ “Independently Operated” means not dependent on the support, influence, guidance, control or not subject to restriction, modification or limitation from a non-minority, except for customary business auxiliary services, e.g., legal, banking, etc.

~~(10)~~⁽⁶⁾ “Joint Venture” means an association of two or more persons or businesses carrying out a single business enterprise for which purpose they combine their capital, efforts, skills, knowledge and/or property. Joint ventures must be established by written agreement.

~~(7)~~ “Minority/Woman Business Enterprise” or “M/WBE” means a firm certified by the District pursuant to Rules 40E-7.651 and 40E-7.653, F.A.C.

~~(11)~~ “Minority Business Enterprise” or “MBE” is as defined in Section 288.703(2), Florida Statutes.

~~(12)~~⁽⁸⁾ “Minority” person means an individual who is a citizen or lawful permanent resident of the State of Florida United States who is:

(a) African American: a person having origins in any of the ~~black~~ racial groups of the African dispora.

(b) Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands, including the Hawaiian Islands prior to 1778. “Far East” is defined to include China, Hong Kong, Macao, Japan, Korea, Taiwan, and the Philippines. “Southeast Asia” is defined to include Burma, Kampuchea, Laos, Thailand, Vietnam, Malaysia, Brunei, Borneo, Indonesia, and Cambodia. “Indian Subcontinent” is defined to include India, Bangladesh, Sikkim, Nepal, Pakistan, and Bhutan. “Pacific Islands” is defined to include Micronesia, Polynesia, Melanesia, and the area consisting of the Hawaiian Islands prior to 1778.

(c) Hispanic American: a person ~~of Spanish or Portuguese culture~~ with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean Islands, regardless of race.

(d) Native American: a person who is a member of, ~~or is eligible to be member of,~~ a federally recognized Indian tribe. ~~A “federally recognized Indian tribe” means an Indian tribe, band, nation, rancheria, pueblo, colony, or other organized group or community, including any Alaskan native village, which is recognized by the Secretary of the Interior as having special rights and is recognized as eligible for the services provided by the United States to Indians because of their status as native Americans.~~

~~(e) An American woman.~~

~~(13)~~ “Non-minority” means any person who does not meet the eligibility requirements of a minority person related to ethnicity, race or gender, permanent Florida residency or

origins, even though such person has self-designated to be a member of a statutorily designated ethnic, racial or gender group.

~~(14)~~⁽⁹⁾ “Office of the Inspector General” – The District office which provides a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government as referenced in Section 20.055(2), F.S.

~~(15)~~⁽¹⁰⁾ “Origins” means the minority owner’s racial or cultural and geographic derivations, as substantiated by at least one grandparent’s birth.

~~(16)~~ “Permanent resident” means a resident whose true, fixed and permanent home and principal establishment is within the State of Florida, who has lived in the State of Florida for at least six (6) months out of the last twelve (12) months and who does not routinely and habitually establish occupancy in a personally owned, mortgaged or leased residence outside of Florida.

~~(17)~~⁽¹¹⁾ “Program” means a blend of business initiatives, administered by the District, which include race, ethnic and gender neutral; and race, ethnic and gender specific provisions designed to:

(a) Increase diversity in District contracting and procurement; and

(b) Remedy disparity and the present effects of past marketplace discrimination.

~~(12)~~ “Regional Advisory Council on Small Business” means a citizen’s advisory group representing diverse industries and targeted business groups. The Council will assist the District in sourcing M/WBE firms and communicating Program initiatives in the relevant market area.

~~(18)~~⁽¹³⁾ “Relevant Market Area” means the following Florida counties: Broward; Charlotte; Collier; Dade; Glades; Hendry; Highlands; Lee; Martin; Monroe; Okeechobee; Orange; Osceola; Palm Beach; Polk; St. Lucie; Alachua; Brevard; Duval; Hillsborough; Indian River; Leon; Pinellas; Seminole; and Volusia.

~~(19)~~⁽¹⁴⁾ “Responsible” means a firm is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance.

~~(20)~~⁽¹⁵⁾ “Responsive” means a firm’s bid or proposal conforms in all material respects to the invitation to bid or request for proposal and shall include compliance with MBE M/WBE goals or good faith efforts.

~~(16)~~ “Sheltered Market” means an affirmative procurement initiative designed to remedy documented disparity in District contracting and the present effects of past marketplace discrimination by fostering increased participation

by ~~M/WBE prime contractors and goal attainment. Participation in the Sheltered Market shall be limited to M/WBEs.~~

~~(21)(17) "A Small Business" means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has with a net worth of not more than \$5 3 million, or any firm based in this state which has a Small Business Administration 8(a) Certification, and an average net income after federal income taxes, excluding any carryover losses, for the preceeding 2 years of not more than \$2 million. As applicable to sole proprietorships, the \$5 3 million net worth requirement shall include both personal and business investments.~~

~~(22) "Sole Proprietorship" means a business concern owned by one minority person.~~

~~(23) "Supplier" means a firm that sells goods and commodities.~~

~~(24)(18) "Third-Party Development Assistance Provider" means local, regional, state or federal agencies, institutions and business development organizations that provide technical, management, financial and other related assistance to small, minority-owned and women-owned businesses.~~

~~(19) "Woman" means a person of the female sex, regardless of race or ethnicity.~~

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History--New 9-25-96, Amended _____.

40E-7.623 Policy Review and Goal Setting Committee.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History--New 9-25-96, Repealed _____.

40E-7.628 Bid Incentive Program.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History--New 9-25-96, Repealed _____.

40E-7.631 Proposal Evaluations and MBE ~~M/WBE~~ Criteria.

(1) For contracts awarded based on evaluation criteria, there shall be a MBE ~~M/WBE~~ participation criterion of at either 10% or 20% of the total points awarded. The District shall award points as reflected in Table 7.6-3 below. Maximum points will be awarded to the proposer if 30% or more of the total project work is performed by MBE firms. Percentages reflect the amount of total contract value proposed to be assigned to MBE firms. In the case of CCNA contracts, the percentages reflect the amount of total project work which shall be equated to the project dollars assigned to MBE firms.

Table 7.6-3

10 POINTS FOR MBE PARTICIPATION

>30% =	10 points
>27% =	9 points
>24% =	8 points
>21% =	7 points
>18% =	6 points
>15% =	5 points
>12% =	4 points
> 9% =	3 points
> 6% =	2 points
> 3% =	1 point

20 POINTS FOR MBE PARTICIPATION

>30% =	20 points
>27% =	18 points
>24% =	16 points
>21% =	14 points
>18% =	12 points
>15% =	10 points
>12% =	8 points
> 9% =	6 points
> 6% =	4 points
> 3% =	2 points

~~The percentage for each contract shall be determined by considering:~~

- ~~(a) The M/WBE criterion with the other evaluation criteria;~~
- ~~(b) Subcontract opportunities, M/WBE utilization within industry categories; and~~
- ~~(c) M/WBE availability and progress toward established annual agency goals.~~

(2) The proposer shall identify all certified MBE ~~M/WBE~~ firms which will be utilized as subcontractors, and delineate for each the specific elements of work each MBE ~~M/WBE~~ firm will be responsible for performing and the dollar value of the work as a percentage of the total contract value. All proposals with MBE ~~M/WBE~~ participation shall contain documentation, signed by both the proposer and the selected MBE ~~M/WBE~~ subcontractors which: confirms their intent to establish a business relationship and confirms the MBE ~~M/WBE~~ participation percent. All MBEs ~~M/WBE~~ must submit proof of certification with the proposal.

~~(3) The District shall award points as reflected in Table 7.6-3. Maximum points will be awarded to the proposer if 51% or more of the total project work is performed by M/WBE~~

firms. Percentages reflect the amount of total contract value proposed to be assigned to M/WBE firms. In the case of CCNA contracts, the percentages reflect the amount of total project work which shall be equated to the project dollars assigned to M/WBE firms.

Table 7.6-3

10 POINTS FOR M/WBE PARTICIPATION

≥51% =	10 points
≥45% =	9 points
≥40% =	8 points
≥35% =	7 points
≥30% =	6 points
≥25% =	5 points
≥20% =	4 points
≥15% =	3 points
≥10% =	2 points

20 POINTS FOR M/WBE PARTICIPATION

≥51% =	20 points
≥45% =	18 points
≥40% =	16 points
≥35% =	14 points
≥30% =	12 points
≥25% =	10 points
≥20% =	8 points
≥15% =	6 points
≥10% =	4 points

(3)(4) The proposers must meet the certification criteria established by the District for utilizing MBE M/WBE firms to ensure participation as described in Rule 40E-7.653, F.A.C.

(4)(5) The percentage of MBE M/WBE participation will be calculated by dividing the proposer's expenditures to a MBE M/WBE subcontractor for providing direct labor or a bona fide service by the total project dollars as identified in the proposal.

(5)(6) A proposer may count toward its MBE M/WBE participation goal the fees or commissions charged for providing direct labor or a bona fide service, such as professional, technical, consultant or managerial services.

(6)(7) For the purposes of this rule, the District will not count toward a proposer's MBE M/WBE participation goal attainment any portion or portions of the MBE M/WBE subcontractor's work that is subcontracted back to:

(a) The proposer, either directly to, or through any other company or firm owned and/or controlled by the proposer, or

(b) Any non-MBE M/WBE firm with which the MBE M/WBE firm has a present business relationship. A present business relationship is defined as both firms having some of the same owners or the sharing of space, equipment, financing or employees.

(7)(8) For the purposes of this rule, a MBE M/WBE subcontractor shall not be allowed to subcontract all or a majority of the subcontractual portion of the work to another non-MBE M/WBE firm or firms. A MBE M/WBE subcontractor shall be prohibited from engaging in a subcontractual agreement with the intent of collecting a broker's fee or commission, and whose employees perform none of the direct labor or service activities specified in the contract.

(8)(9) Participation by a MBE M/WBE firm shall not be considered toward ~~project goal attainment~~ and the MBE M/WBE firm shall be disqualified if the owner or owners of the MBE M/WBE firm engages in an agreement with a non-MBE M/WBE firm with the intent of securing employment with that non-MBE M/WBE firm during the course of performing a District contract.

Specific Authority 287.055, 373.607 FS. Law Implemented 287.055, 373.607 FS. History--New 9-25-96, Amended _____.

40E-7.633 Sheltered Market Program.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History--New 9-25-96, Repealed _____.

40E-7.635 Annual, Long-Term, and Project-Specific Goals.

Specific Authority 287.055, 373.607 FS. Law Implemented 287.055, 373.607 FS. History New 9-25-96, Repealed _____.

40E-7.637 District Implementation.

The District shall make affirmative efforts to ensure all businesses have the maximum opportunity to participate in the District's contracting and procurement processes. The following are examples of affirmative efforts by the District:

(1) Establish an office ~~Office of Supplier Diversity and Outreach~~ with sufficient staff and the necessary authority and responsibility to implement the rules established under this Part.

(2) Identify all competitive contracting opportunities within the District budget.

~~(3) Analyze M/WBE availability to provide the products or services identified for contracting at either the prime contract or subcontract levels.~~

(3)(4) Include MBEs M/WBEs on contract solicitation lists or vendor lists.

~~(5) Establish goals for District procurement, professional services, and construction contracting for M/WBE participation.~~

~~(4)(6)~~ Monitor and maintain records sufficient for verification of steps taken and results achieved to maximize MBE M/WBE participation.

~~(5)(7)~~ Evaluate the District's efforts to achieve MBE M/WBE participation goals.

~~(6)(8)~~ When requested by an unsuccessful bidder, ~~or at the discretion of the District's Office of Supplier Diversity,~~ conduct debriefing sessions on awarded contracts to explain why bids/proposals may have been unsuccessful.

~~(7)(9)~~ Coordinate outreach with ~~the Procurement Division~~ and contracting departments to offer instructions and clarify bid/proposal specifications, procurement policy, procedures, and general bidding requirements.

~~(8)(10)~~ Divide purchases and contracts into smaller units, areas, or quantities where feasible and likely to increase MBE M/WBE participation without substantial adverse fiscal impact to the District.

~~(9)(11)~~ Ensure that bid/proposals, specifications, and plans are written so as not to unreasonably limit MBE M/WBE participation.

~~(10)(12)~~ Maintain a database of MBEs M/WBEs and encourage MBEs M/WBEs to participate in training programs offered by the District and/or third party development assistance providers, ~~as a condition for participating in affirmative procurement initiatives.~~

~~(13)~~ ~~Recommend and assist in setting delivery schedules that encourage M/WBE participation.~~

~~(11)(14)~~ Encourage the development of MBEs M/WBEs by using services and assistance provided by the Small Business Administration and other third party development assistance providers.

~~(12)(15)~~ Refer businesses to third party development assistance providers for bonding, financial and technical assistance.

~~(13)(16)~~ Promote the District's Program internally and externally, through the use of an annual marketing and outreach communication plan.

~~(14)(17)~~ Collect and maintain information and reports to provide guidance to the Governing Board and staff regarding MBE participation progress toward goal attainment.

~~(18)~~ ~~Disseminate contract opportunity information via a telephone bid hotline.~~

~~(15)(19)~~ Schedule pre-bid or pre-proposal meetings, where appropriate, to inform potential contractors of Program requirements and other bid/proposal requirements.

~~(16)(20)~~ Maintain a file of successful bid/proposal documents from past procurement and encourage MBEs M/WBEs to review and evaluate such documents.

~~(17)(21)~~ Provide instructions on job performance requirements.

~~(18)(22)~~ Provide information and assistance on continued certification procedures, subcontracting practices, and bonding requirements.

~~(19)(23)~~ Provide supplier diversity training to District staff.

~~(20)(24)~~ Review multi-year contracts, amendments, and change orders for opportunities to increase MBE M/WBE participation.

~~(21)(25)~~ Continue to investigate race, ethnic, and gender-neutral provisions to lessen barriers for participation by any business wishing to do business with the District.

~~(22)(26)~~ Place notices of contract opportunities and bids at District service centers, in the Dodge report, MBE M/WBE trade association newsletters, major local or regional newspapers, and minority – and woman – focused media.

~~(23)(27)~~ Plan and participate in vendor training seminars for the purpose of informing potential bidders/proposers/vendors of the District's Program and the business opportunities available.

~~(24)(28)~~ Serve as liaison with economic development organizations and agencies working in support of economic development in the minority community.

~~(25)(29)~~ Provide notices of bids/business proposals to facilitate the participation of MBEs M/WBEs.

~~(26)(30)~~ Create and disseminate MBE M/WBE directories to contractors for use in identifying subcontractors and material suppliers.

~~(27)(31)~~ Consider reducing bonding and insurance requirements for smaller projects.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History--New 9-25-96, Amended _____.

40E-7.639 Emergency Waiver of Participation Goals.

Specific Authority 373.119, 373.607 FS. Law Implemented 373.119, 373.607 FS. History--New 9-25-96, Repealed _____.

40E-7.645 Compliance.

(1) The District shall monitor and evaluate Program performance and compliance. Failure to comply with the MBE M/WBE requirements of an awarded contract shall result in suspension or debarment of the firms or individuals involved.

(2) Suspension or debarment of firms for activity contrary to the Program, and the appeal process, shall be carried out pursuant to Rule 40E-7.664, F.A.C.

(3) Each District contract awarded with points provided for MBE participation shall contain a provision incorporating the rules under this Part by reference and a statement that failure to comply with any of the requirements by a contractor shall ~~will~~ be considered a breach of contract.

(4) Each District contract shall contain a provision requiring the contractor, during the term of the contract, to comply with, as to tasks and proportionate dollar amounts throughout the term of the contract, all plans made in their proposal ~~or bid~~ for use of MBEs ~~M/WBEs~~.

(5) Each District contract shall contain a provision requiring maintenance of records, and information necessary to document compliance with the rules under this Part and shall include the right of the District to inspect such records.

(6) Each District contract shall contain a provision prohibiting any agreements between a contractor and a MBE ~~M/WBE~~ in which the MBE ~~M/WBE~~ promises not to provide subcontracting quotations to other bidders or potential bidders.

(7) The District shall ensure program compliance by a contractor or its participating subcontractors through contract provisions. Contractor compliance provisions include:

(a) Withholding from the contractor ten percent (10%) of all future payments, exclusive of any retainage, under the contract until it is determined that the contractor is in compliance;

(b) Withholding from the contractor all future payments under the contract until it is determined that the contractor is in compliance;

~~(c) Adjusting the contract price by all or a portion of the bid incentive amount under the contract until it is determined that the contractor is in compliance.~~

~~(c)(d)~~ Refusal of all future bids or offers submitted to the District by the Contractor for a period of three (3) years;

~~(d)(e)~~ Initiation of decertification action;

~~(e)(f)~~ Cancellation of the eligible project/contract for cause.

(8) Any individual who falsely represents any entity as a MBE ~~M/WBE~~ or does not fulfill the contractual obligations is subject to the penalties under Section 287.094, F.S. To ensure that all obligations under contracts awarded to a MBE ~~M/WBE~~ are met, the contractor's MBE ~~M/WBE~~ efforts throughout the performance of the contract shall be reviewed. The contractor shall advise the District of any situation in which regularly scheduled progress payments are not made to MBE ~~M/WBE~~ subcontractors.

(9)(a) After the date of contract execution, prime contractors shall make good faith efforts to maintain the level of MBE ~~M/WBE~~ participation established in the contract by substituting a non-complying MBE ~~M/WBE~~ subcontractor with another MBE ~~M/WBE~~ subcontractor.

(b) Prime contractors must notify ~~contact~~ the District's ~~Office of Supplier Diversity and Outreach~~ when the need to replace a MBE ~~M/WBE~~ subcontractor arises. ~~After this initial contact, the prime contractor must submit to the District's Office of Supplier Diversity and Outreach:~~

1. One revised copy of Form No. 0956, "Schedule of Subcontractor/Minority Business Enterprise (MBE) Participation", dated August, 1996; and

~~2. One copy of Form No. 0957, "Statement of Intent to Perform as an MBE Subcontractor", dated August, 1996, for each substitute firm listed on the form referenced in subsection 1., above.~~

~~3. The forms listed in subsections 1. and 2., above, are hereby incorporated by reference and are available from the District upon request.~~

(10) The District will not transact business with any vendor placed on the discriminatory vendor list maintained by the Department of Management Services pursuant to section 287.134, Florida Statutes.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History--New 9-25-96, Amended _____.

40E-7.647 Good Faith Efforts.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History--New 9-25-96, Repealed _____.

40E-7.651 Reciprocal Certification.

~~(1) Only firms certified by the District will be used in determining goal attainment and will have the advantage of the District's affirmative procurement initiatives contained within the rules under this Part.~~ Reciprocal certification shall be granted to applicant businesses which have been certified by other jurisdictions and meet the District certification standards. An applicant business shall provide an affidavit attesting that the applicant business has sought to do business within the District's relevant market area prior to the time a bid or proposal is submitted.

(2) An applicant business is not eligible for reciprocal certification if the business exceeds a net worth of ~~\$5~~ \$3 million, ~~and an average net income after federal income taxes, excluding any carryover losses, for the preceding 2 years of \$2 million.~~ As applicable to sole proprietorships, the ~~\$5~~ \$3 million net worth requirement shall include both personal and business investments.

(3) Eligibility for reciprocal certification shall be contingent upon ~~(1) an agreement between the District and another certifying jurisdiction within the state of Florida, and (2) any additional requirements, pursuant to this Rule.~~ ~~a determination by the District that the standards of the certifying jurisdiction meet the certification standards of the District.~~ The applicant businesses seeking reciprocal certification must submit to the District a copy of the current certification from the certifying jurisdiction and a copy of the completed application submitted to the certifying jurisdiction along with affidavits of continued eligibility.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History--New 9-25-96, Amended _____.

40E-7.653 Certification Eligibility.

~~(1) For purposes of this rule, a firm shall be considered a District certified M/WBE only if the firm has applied for and been granted certification by the District after September 25,~~

1996. Firms certified prior to September 25, 1996 shall be counted toward M/WBE goal attainment only if: the firm is either a prime contractor or a subcontractor for a particular District contract executed prior to the effective date of this rule; or the firm is listed on the M/WBE vendor list for a particular District solicitation issued prior to the effective date of this rule. In either case, the firm shall only be counted toward M/WBE goal attainment for that particular contract or solicitation.

(1) The District shall have the authority to accept, review, approve, and or deny applications for MBE certification. The District shall also have the authority to decertify, suspend and/or debar firms pursuant to Rule 40E-7.664, F.A.C.

(2) Applicant businesses shall submit applications for MBE M/WBE certification using Form No. 0964, "Application for Certification", ~~dated August, 1996~~, which is hereby incorporated by reference and which can be obtained from the District upon request. Mailing addresses must include the number, name of the street, suite number, if any, and correct zip code. A post office box will not be acceptable absent a street address. An applicant business shall provide an affidavit attesting that the applicant business has sought to do business within the District's relevant market area prior to the time a bid or proposal is submitted.

(3) An applicant business must satisfy subsection (4) below in order to be considered 51% owned by minority/~~woman~~ persons. The ownership exercised by minority/~~woman~~ persons shall be real, substantial, and continuing, and shall go beyond mere pro forma ownership of the firm as reflected in its ownership documents. In its analysis, the District may also consider the transferal of ownership percentages with no exchanges of capital at fair market value.

(4) If applicant business was obtained by transfer, the minority/~~woman~~ person on whom eligibility is based must own 51% of the applicant firm for a minimum of two (2) years when any previous majority ownership interest in the firm was by a non-minority who is or was a relative, former employer, or current employer of the minority/~~woman~~ person on whom eligibility is based. This requirement shall not apply to minority/~~woman~~ persons who are otherwise eligible who take a 51% or greater interest in a firm that requires professional licensure to operate and who will be the qualifying licensure for the firm when certified. A transfer made within a related immediate family group from a non-minority person to a minority/~~woman~~ person in order to establish ownership by a minority/~~woman~~ person shall be deemed to have been made solely for purposes of satisfying certification criteria and shall render such ownership invalid for purposes of qualifying for such certification if the combined total net asset value of all members of such family group exceeds \$1 million. For purposes of this subparagraph, the term "related immediate

family group" means one or more children under 16 years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.

(a) The applicant business must satisfy either subparagraphs 1., 2., or 3. below:

1. In a corporate form of organization, the minority/~~woman~~ shareholders of the corporation must own at least 51% of all issued stock. Minority/~~woman~~ shareholders who own at least 51% of each and every class of stock will be presumed to have satisfied the conditions of this rule. Where the minority/~~woman~~ shareholders do not own at least 51% of each class of stock, the applicant shall establish that the aggregate of all stock owned by minority/~~woman~~ shareholders is equal to at least 51% of all issued shares. The applicant may establish that the aggregate of all stock owned by minority/~~woman~~ shareholders is equal to at least 51% of all issued shares by:

- a. Using the par value of the stock, but only where each class of stock has a par value;
- b. Using the fair market value of each class of stock;
- c. Showing the numerical ratio of stock ownership where all shares, regardless of class, have the same par value or fair market value; or

2. In a partnership form of organization, the minority/~~woman~~ partners must own at least 51% of the partnership, or

3. In any other form of organization, the minority/~~woman~~ owners must own at least 51% of the business interest of the organization, including, but not limited to 51% of the ownership of assets, dividends, and intangible assets such as copyrights and patents.

(b) The minority/~~woman~~ owners must demonstrate that they share income, earnings and any other benefits from the business concern which are accorded to any other owner. The minority/~~woman~~ owners' share of income, earnings and benefits shall be commensurate with the percentage of their ownership in the business concern, including salaries, draws, bonuses, commissions, insurance coverage, proceeds from business investments and properties, and profit-sharing.

(c) The minority/~~woman~~ owners must demonstrate that they share in all the risks assumed by the business firm. Such sharing of business risks shall be demonstrated through the minority/~~woman~~ owners' primary role in decision-making, and negotiation and execution of related transaction documents either as individuals or as officers of the business. The minority/~~woman~~ owners' sharing in business risks shall be commensurate with their percentage of ownership, including start-up costs and contributions, acquisition of additional ownership interests, third-party agreements, and bonding applications. Start-up contributions may be space, cash, equipment, real estate, inventory or services estimated at fair market value. All contributions of capital by the

minority/~~woman~~ owners must be real and substantial. The following are presumed not to be real and substantial capital contributions:

1. Promises to contribute capital;
2. Notes payable to the applicant business;
3. Notes payable to the non-minority owners or to the non-minority family members of any owner; and
4. Past services rendered by the minority/~~woman~~ person as an employee, rather than as a decision-maker.

(d) The business firm cannot at any time enter into any agreement, option, scheme, or create any rights of conversion, which, when exercised, would result in less than 51% minority/~~woman~~ ownership or in the loss of the minority/~~woman~~ owners' control of the business firm.

(5) An applicant must establish that the minority/~~woman~~ owner seeking certification be the license holder, qualifying agent, and/or the professional license holder and possess the authority to control and exercise dominant control over the management and daily operations of the business.

(a) The discretion of the minority/~~woman~~ owners shall not be subject to any formal or informal restrictions (including, but not limited to, by-law provisions, purchase agreements, employment agreements, partnership agreements, trust agreements or voting rights, whether cumulative or otherwise), which would vary or usurp managerial discretion customary in the industry.

~~(b) If the applicant business is a corporation and the business and affairs of the corporation are managed under the direction of a board of directors as provided by the Articles of Incorporation or bylaws of the corporation or Section 607.0824, F.S., a majority of the directors must be minority/~~woman~~ owners, notwithstanding whether directors are required to be elected by a majority vote of the outstanding shares of the corporation.~~

~~(b)(c)~~ The minority/~~woman~~ owners must exercise sufficient management and technical responsibilities and capabilities to maintain control of the business. If the owners of the business who are not minority/~~woman~~ persons are disproportionately responsible for the operations of the business, then the business shall not be considered to be controlled by minority/~~woman~~ owners.

~~(c)(d)~~ The control exercised by the minority/~~woman~~ owners shall be real, substantial and continuing. In instances where the applicant business is found to be a family-operated business, with duties, responsibilities and decision-making occurring either jointly or mutually among owners and principals, or severally along managerial and operational lines between minority/~~woman~~ owners and non-minority owners or principals, the minority/~~woman~~ owners shall not be considered as controlling the business. Where the minority/~~woman~~ owners substantiate that the assumption of duties is not based on their lack of knowledge or capability to independently make decisions regarding the business' management and day-to-day

operations, the minority/~~woman~~ owners' control may not be affected. The minority/~~woman~~ owners shall establish that they have dominant responsibility for the management and daily operations of the business as follows:

1. The minority/~~woman~~ owners shall control the purchase of goods, equipment, business inventory and services needed in the day-to-day operation of the business. The minority/~~woman~~ owners' control of purchasing shall be evidence of their knowledge of products, brands, manufacturers, types of equipment and products and their uses, etc., rather than merely reflective of the minority/~~woman~~ owners' ministerial execution of the ordering/acquisition of goods.

2. The minority/~~woman~~ owners shall control the hiring, firing and supervision of all employees, and the setting of employment policies, wages, benefits and other employment conditions. In instances where minority/~~woman~~ owners have delegated the hiring and firing of employees, the minority/~~woman~~ owners shall demonstrate that their knowledge and capability is sufficient to evaluate the employees' performance in the given industry.

3. The minority/~~woman~~ owners shall have knowledge and control of all financial affairs of the business. The ability of any non-minority owner or employee to sign checks and enter into financial transactions on behalf of the business shall be considered in determining financial control. The minority/~~woman~~ owners shall expressly control the investments, loans to/from stockholders, bonding, payment of general business loans, payroll and establishment of lines of credit.

4. The minority/~~woman~~ owners shall have managerial and technical capability, knowledge, training, education and experience required to make decisions regarding that particular type of work. In determining the applicant business' eligibility, the District will review the prior employment and educational requirements for the given industry, the previous and existing managerial relationship between and among all owners, especially those who are familiarly related, and the timing and purpose of management changes. If the minority/~~woman~~ owners have delegated management and technical responsibility to others, the minority/~~woman~~ owners must substantiate that they have caused the direction of the management of the business and each phase of the technical operations of the business through their demonstrable knowledge of and capability in the delegated areas.

5. The minority/~~woman~~ owners shall display independence and initiative in seeking and negotiating contracts, accepting and rejecting bids and in conducting all major aspects of the business in regard to any and all bidding and contracting. In instances where the minority/~~woman~~ owners do not directly seek or negotiate contracts, prepare estimates, or coordinate with contracting officials, but claim to approve or reject bids and contractual agreements, the

minority/~~woman~~ owners shall demonstrate that they have the knowledge and expertise to independently make contractual decisions.

6. The minority/~~woman~~ owners shall substantiate personal direction and actual involvement with all major aspects of the applicant business. The major aspects shall be defined as those tasks essential to accomplish all objectives and operations related to those services or commodities for which the applicant business requests certification.

(6) To establish that it is a small minority/~~woman~~ business concern, the applicant shall:

(a) Demonstrate that it is an independently owned and operated business concern. In assessing business independence, the District shall consider all relevant factors, including the date the firm was established, the adequacy of its resources, and the degree to which financial, managerial and/or operational relationships exist with other persons and/or business concerns. For purposes of this rule, the District's consideration of such financial relationships, managerial and/or operational relationships shall not be affected by arrangements made out of necessity or due to the business' inability to secure traditional capitalization through banks, lending institutions or others.

(b) Demonstrate that it is not an affiliate of a non-minority business nor share (on an individual or combined basis) common ownership, directors, management, employees, facilities, inventory, financial resources and expenses, equipment or business operations with a non-minority person and/or business concern which is in the same or an associated field of operation.

(c) To establish that it is a small business concern, the applicant shall demonstrate that the net worth of the business concern, together with its affiliates, does not exceed five (5) million dollars and an average net worth after federal income taxes, excluding any carryover losses, for the proceeding two years of not more than two (2) million dollars. In determining the net worth of the business and its affiliates, the District shall consider the most recent annual financial statements for the business and business owner. If no annual financial statement is available, the applicant shall submit a financial statement for any quarter during the previous six (6) months. In determining the business' income, the District shall consider the two most recent financial statements for the business and/or the most recent federal income tax returns. Demonstrate that the firm is a small business pursuant to Rule 40E 7.621(17), F.A.C.:

(d) To establish that it is a small business concern, the applicant shall provide documentation to demonstrate that it employs two-hundred (200) or fewer permanent, full-time employees. The number of permanent, full-time employees shall be determined by adding the number of employees the applicant acknowledges to be permanent, full-time employees to the number of permanent positions the applicant needs in order to carry out its business is based upon the quantity of

work performed and the annual gross receipts of the business concern. In determining whether the applicant meets the criteria for a small business, the District shall consider such documentation as:

1. Personnel records.
2. Florida Quarterly Unemployment Reports.
3. Annual Federal Unemployment Report.
4. Payroll ledgers.
5. Employee leasing agreement.

(e) The applicant must demonstrate that it is domiciled in Florida. In determining whether the applicant is domiciled in Florida, the District shall consider such documentation as:

1. Articles of Incorporation.
2. Partnership Agreement.
3. Certification required to be filed pursuant to Section 620.108, Florida Statutes.
4. Business licenses.

(7) The applicant business must demonstrate that it is at least 51% owned by minority/~~woman~~ persons who are permanent residents of Florida, pursuant to subsections (2),(3),(4) and (5):

(8) The applicant business must provide evidence of the minority/~~women~~ status of owners who are claiming to be minority/~~woman~~ persons, as follows:

(a) Demonstrate that the applicant business owners' ethnicity qualifies them as an eligible person pursuant to Rule 40E-7.621(8), F.A.C. In determining the ethnicity of a person, the District shall consider any of the following:

1. Birth certificate.
2. Passport.
3. Citizenship papers.
4. Driver license.
5. Voter registration card.
6. Death certificate.
7. Membership or eligibility for membership in a federally recognized Indian tribe.
8. Membership or eligibility for membership in an Indian tribe recognized by the Government of Canada.
9. A letter issued by the Bureau which certifies eligibility to share in a distribution of judgment funds resulting from an aboriginal land claims settlement, i.e., docket number.
10. An Alaskan Native Corporation Shareholder Certificate.
11. A schedule of the U.S. Census, complete with year, book, and page number.
- 8.12. Tribal registration.
- 9.13. Any other documentation that tends to substantiate the person's claim of minority status.

(b) Demonstrate that the applicant business owners' gender qualifies them as an eligible person pursuant to Rule 40E-7.621(19), F.A.C. In determining the gender of a person, the District shall consider any of the following:

1. Birth Certificate.
2. Passport.
3. Citizenship papers.
4. Driver license.
5. ~~Voter registration card.~~

5.6. Any other documentation that tends to substantiate the person's claim of minority status.

(c) Demonstrate that the applicant business owners' origin qualifies them as an eligible person pursuant to Rule 40E-7.621(8), F.A.C. When determining a person's origins, the District shall accept any of the following documentation in order to clearly establish a direct line of descent:

1. Marriage licenses.
2. Divorce decrees.
3. Adoption papers, to show the adopted person's original, not adopted, origins.
4. Court orders which have the effect of changing a person's name.
5. An Affidavit, except that of an official of the federal government, a state government or a municipality.
6. A "family tree" or "family chart".

(9) The applicant business shall establish that it is currently performing or seeking to perform a useful business function in each specialty area requested by the applicant. For purposes of this rule, "currently" means three months prior to the District's receipt of the application for certification. The applicant business is considered to be performing a useful business function when it is responsible for the execution of a distinct element of the work of a contract and carrying out its responsibilities in actually performing, managing and supervising the work involved. The useful business function of an applicant business shall be determined in reference to the products or services for which the applicant business requested certification. When the applicant business is required by law to hold a license, other than an occupational license, in order to undertake its business activity, the applicant business shall not be considered to be performing a useful business function unless it has the required license(s).

(a) In determining if an applicant business is acting as a regular dealer and that it is not acting as a conduit to transfer funds to a non-minority business, the District shall consider the applicant business' role as agent or negotiator between buyer and seller or contractor. Though an applicant business may sell products through a variety of means, the District shall consider the customary and usual method by which the majority of sales are made in its analysis of the applicability of the regular dealer requirements. Sales shall be made regularly from stock on a recurring basis constituting the usual operations of the

applicant business. The proportions of sales from stock and the amount of stock to be maintained by the applicant business in order to satisfy the requirements of this rule will depend on the business' gross receipts, the types of commodities sold, and the nature of the business' operation. The stock maintained shall be a true inventory from which sales are made, rather than be a stock of sample, display, or surplus goods remaining from prior orders or by a stock maintained primarily for the purpose of token compliance with this rule. Consideration shall be given to the applicant's provision of dispensable services or pass-through operations which do not add economic value, except where characterized as common industry practice or customary marketing procedures for a given product. An applicant business acting as broker or packager shall not be regarded as a regular dealer absent showing that brokering or packaging is the normal practice in the applicant business' industry. Manufacturer's representatives, sales representatives and non-stocking distributors shall not be considered regular dealers for purposes of the rules under this Part.

(b) Documentation to substantiate a useful business function may include but not be limited to the following:

1. Executed purchase orders.
2. Paid invoices.
3. Executed contracts.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History--New 9-25-96, Amended 6-16-98, _____.

40E-7.655 Certification Review Procedures.

(1) Upon receipt, all applications for MBE M/WBE certification shall be given an initial screening to ensure appropriate signature and completeness. The application must bear the original signature of the minority/~~woman~~ owner who is submitting the application for review. If the application is submitted by means of a facsimile machine, the signature page of the application, with the original signature of the minority/~~woman~~ owner, must be submitted to the District within thirty (30) days of facsimile submission.

(2) Within sixty (60) days following initial receipt of the application, the District will request the applicant business to furnish omitted items or additional information. If all requested information or items are not received by the District within thirty (30) days from the date of the request, the District will deny the applicant business certification as a MBE M/WBE.

(3) The on-site verification review may be conducted by the District upon receipt of the completed application. Failure to cooperate with the scheduling of the on-site review or during the on-site review shall result in the denial of the application.

(4) Applicants determined eligible shall receive a certification letter stating the length of time for which the business has been certified, the specialty areas of the business, the minority/~~woman~~ status categories in which the business is certified, and the business' responsibilities set out in Section 287.0943(1) & (2), F.S. Once certified, an applicant shall

remain certified for a period of one (1) ~~three (3)~~ years unless otherwise revoked for cause. The District retains the right to reevaluate the certification of any business at any time.

(5) Applicants determined ineligible shall receive a letter stating the basis for the denial of certification and citing applicable rules and shall not be eligible to submit new applications until 180 days ~~one (1) year~~ after the date of the notice of denial of certification or the District's final agency order denying certification.

Specific Authority 120.53, 120.54(1), 120.60(2), 373.607 FS. Law Implemented 120.53, 120.54(1), 120.60(2), 373.607 FS. History--New 9-25-96, Amended _____.

40E-7.659 Graduation from MBE M/WBE Program.

(1) Participation in the District's Program will be dependent upon the MBE's M/WBEs need for the affirmative procurement initiatives extended to MBE's M/WBEs under this Part. The MBE M/WBE shall be graduated and shall not be eligible for continued participation in the affirmative procurement initiatives contained in the rules under this Part as a prime contractor if the business exceeds a net worth of \$5 ~~3~~ million, and an average net income after federal income taxes, excluding any carryover losses, for the preceding 2 years of \$2 million. As applicable to sole proprietorships, the \$5 ~~3~~ million net worth requirement shall include both personal and business investments.

(2) A MBE M/WBE which is considered graduated under this section shall be counted towards prime contractor's goal attainment when utilized as a subcontractor or joint venture partner.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History--New 9-25-96, Amended _____.

40E-7.661 Recertification Review Procedures.

(1) Applications for recertification shall be submitted using form No. 0958, "Application for Recertification", ~~dated August, 1996,~~ which is hereby incorporated by reference and available from the District upon request.

(2) The District will notify MBE's M/WBEs no later than sixty (60) days before the end of the certification period. If the minority owner is unable to use the recertification affidavit because changes in the applicant's business have occurred, the minority owner shall notify the District in writing. Recertification requests must be filed in the District no later than the last effective date of the current certification period. Recertification requests received by the District after the expiration of the certification period shall be given a ten (10) day grace period. Recertification requests received by the District after the ten (10) day grace period will not be processed for a period of 90 days.

(3) Upon receipt, all recertification requests shall be given an initial screening to ensure appropriate signature and completeness. Within sixty (60) days following initial receipt of the applicant's recertification request, the District will

request the applicant to furnish omitted or additional information. If the requested information or items are not received by the District within thirty (30) days from the date of the request, the District will deny the applicant recertification as A MBE M/WBE.

(4) The on-site verification review may be conducted by the District upon receipt and review of the recertification request. Failure to cooperate with the scheduling of the on-site review or during the on-site review shall result in the denial of recertification.

(5) Recertification shall be granted when the applicant has complied with this rule and substantiates eligibility for MBE M/WBE status.

(6) Applicants deemed eligible shall receive a recertification letter stating the length of time for which the business has been certified, the specialty areas of the business, and the minority status categories in which the business is certified. Once recertified, an applicant shall remain certified for a period of one (1) ~~three (3)~~ years unless otherwise revoked for cause. The District retains the right to reevaluate the certification of any business at any time.

(7) Applicants determined ineligible shall receive a letter stating the basis for the denial of recertification and shall not be eligible to submit a new application for 180 days ~~one (1) year~~ after the date of the notice of denial of recertification or the District's final agency order denying recertification.

(8) If an application for recertification is timely submitted, a MBE M/WBE shall remain certified until the District has made a determination concerning eligibility.

(9) Applicant businesses failing to submit the District recertification application as required by Subsection (1) of this section, shall not be considered certified immediately subsequent to the anniversary date of the last certification. Applicant businesses shall receive written notification of the expiration of prior certification.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History--New 9-25-96, Amended _____.

40E-7.664 Suspension, Debarment, Revocation or Decertification.

(1) Prior to suspending, debarment, revoking or decertifying a firm from the Program, the District shall inform the firm in writing by certified mail, return receipt requested, of the facts or conduct which warrant such action.

(2) Facts or conduct that could warrant suspension, decertification, or debarment include but are not limited to:

(a) Failure to meet qualifying criteria.

(b) Fraud, deceit, or misrepresentation for the purpose of obtaining MBE status.

(c) Refusal to permit on-site inspections.

(d) Failure to report changes in the status or activities of the business entity or its minority/~~woman~~ ownership which affects the MBE's eligibility for certification.

~~(3)(2)~~ The written notice issued by the District shall contain:

(a) The statutory provision(s) or rule(s) of the Florida Administrative Code which is alleged to have been violated;

(b) The specific facts or conduct relied upon to justify the suspension, debarment, revocation or decertification; and

(c) A statement that the firm has the right to file a request for an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, within 14 ~~15~~ days of receipt of the notice.

(d) A statement that the suspension, debarment, revocation or decertification shall become conclusive and final agency action if no request for a hearing is filed within 14 ~~15~~ days of receipt of the notice.

~~(4)(3)~~ All requests for a hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, shall be made in the form of a Petition in accordance with Chapter 28-106, Florida Administrative Code, ~~shall be made in writing and shall be filed with the Clerk of the District within 15 days of receipt of notice. The request shall include:~~

~~(a) The name and address of the firm making the request;~~

~~(b) A statement that the firm is requesting a formal proceeding pursuant to section 120.57(1) Florida Statutes, or an informal proceeding pursuant to Section 120.57(2), Florida Statutes; and~~

~~(c) A reference to the notice received from the District and a statement of the specific grounds on which the proposed action is being challenged.~~

~~(5)(4)~~ If the firm fails to file a request for a hearing within the time frames prescribed in Chapter 120, Florida Statutes, and Chapter 28-106, Florida Administrative Code, ~~15 days after receipt of the notice,~~ the suspension, debarment, revocation or decertification shall become conclusive and final agency action.

Specific Authority 120.53, 373.607 FS. Law Implemented 120.53, 373.607 FS. History—New 9-25-96, Amended _____.

40E-7.6645 Penalties for Fraudulent MBE ~~M/WBE~~ Representation.

Applicant businesses are advised that criminal penalties can be imposed under Section 775.082, Section 775.083, or Section 775.084, F.S., for fraudulent MBE ~~M/WBE~~ representation. It is the intent of the District to notify the proper law enforcement agency in all such instances.

Specific Authority 373.607 FS. Law Implemented 373.607 FS. History—New 9-25-96, Amended _____.

40E-7.665 Application for Additional Areas of Certification.

(1) Any business that is currently certified shall submit a written request when requesting certification as a MBE ~~M/WBE~~ in additional specialty areas.

(2) Within sixty (60) days following initial receipt of the request, the District will request the applicant business to furnish omitted or additional information. If all the requested information or items are not received by the District within thirty (30) days from the date of the request, the District will deny the applicant business certification as a MBE ~~M/WBE~~ in the requested additional specialty areas.

(3) The on-site verification review may be conducted by the District upon receipt and review of the request. Failure to cooperate with the scheduling of the on-site review or during the on-site review shall result in the denial of certification in the requested additional specialty areas.

(4) Certification in the additional specialty areas shall be granted when the applicant business has complied with this rule and substantiates eligibility for MBE ~~M/WBE~~ status.

(5) Applicant businesses determined eligible shall receive a certification letter stating the length of time for which the business has been certified, all the specialty areas of the business, and the minority/~~woman~~ status categories in which the business is certified.

(6) Applicant businesses determined ineligible shall receive a letter stating the basis for the denial of certification in the additional specialty areas and shall not be eligible to submit a new application for certification for 180 days ~~one (1) year~~ after the date of the notice of denial of certification or the District's final agency order denying certification. If a firm is denied twice within a year the firm shall not be able to reapply for a period of one (1) year from the date of the second denial, or if appealed, the date of the decision to deny is upheld.

(7) Submittal of a request for certification in additional specialty areas shall not extend the applicant business' original certification period.

Specific Authority 120.53, 373.607 FS. Law Implemented 120.53, 373.607 FS. History—New 9-25-96, Amended _____.

40E-7.667 Administrative Hearings.

~~(4)~~ If an applicant business believes it has been wrongly denied certification or recertification as a MBE ~~M/WBE~~, the applicant business may file a request for hearing pursuant to Sections 120.569 and 120.57, F.S. in the form of a petition in accordance with Chapter 28-106 F.A.C. within 21 days of receipt of Notice of Denial of certification, ~~an appeal in writing, signed and dated, with the District. The appeal shall be filed no later than 15 consecutive days from the date of notice of denial of certification.~~

~~(2) The petition should be sent to the following address:~~
~~South Florida Water Management District~~
~~Office of Counsel~~
~~3301 Gun Club Road~~
~~West Palm Beach, FL 33406~~

~~(3) The administrative proceedings shall be in accordance with Chapter 120, Florida Statutes and Title 60Q, F.A.C.~~

Specific Authority 120.53, 373.607 FS. Law Implemented 120.53, 373.607 FS. History—New 9-25-96, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Jock Merriam, Deputy Executive Director, Corporate Resources

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Governing Board of the South Florida Water Management District

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 27, 2000

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Engineers

RULE NO.: RULE TITLE:
61G15-20.001 Definitions

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 26, No. 49, December 8, 2000, Florida Administrative Weekly has been withdrawn.

THE PERSON TO BE CONTACTED REGARDING THE RULE WITHDRAWAL IS: Natalie Lowe, Administrator, Board of Professional Engineers, 1201 Hays Street, Tallahassee, Florida 32301.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Engineers

RULE NOS.: RULE TITLES:
61G15-20.0010 Application for Licensure by Examination
61G15-20.0015 Application for Licensure by Endorsement
61G15-20.0017 Application for Retired Status

NOTICE OF CHANGE

Pursuant to subparagraph 120.54(3)(d)1., F.S., notice is hereby given that the following changes have been made to the proposed rule, as published in Vol. 26, No. 49, December 8, 2001, issue of the Florida Administrative Weekly. The changes are in response to comments provided by staff of the Joint Administrative Procedures Committee. The rules shall now read as follows:

61G15-20.0010 Application for Licensure by Examination.

(1) Any person desiring to be licensed as a professional engineer shall submit a completed application to the Board. The instructions and application Form FBPE/001(06-01), entitled, "Application For Licensure By Examination", which is hereby incorporated by reference, effective _____, copies of which may be obtained from the Board office. The

Board shall certify as eligible to take the licensure examination only those applicants who have completed the application form, remitted the application and examination fee required by Chapter 61G15-24, and who have demonstrated to the Board that they:

- (a) Are graduates of a "Board approved engineering program" as defined by Rule 61G15-20.001(2), and
- (b) Have four (4) years of acceptable engineering experience as defined by Rule 61G15-20.002.

(2) Any person desiring to take an examination for the purpose of determining whether he or she is qualified to practice as an engineering intern in this state shall submit a completed application to the Board. There are two engineer intern applications from which to choose, the instructions and application Form FBPE/003(06-01), entitled, "Application For Engineer Intern, which is hereby incorporated by reference, effective _____, copies of which may be obtained from the Board office, or the instructions and application Form FBPE/004(06-01), entitled, "Application For Foreign Engineer Intern", which is hereby incorporated by reference, effective _____, copies of which may be obtained from the Board office. The Board shall certify as eligible to take the Fundamentals examination only those applicants who have completed the application form, remitted the application and examination fee required by Chapter 61G15-24 and who have demonstrated to the Board that they are in the final year of, or have graduated from, a "Board approved engineering program" as defined by rule 61G15-20.

61G15-20.0015 Application for Licensure by Endorsement.

(1) Any person desiring to be licensed as a professional engineer by endorsement shall submit a completed application form to the Board. The instructions and application Form FBPE/002(06-01), entitled "Application For Licensure By Endorsement", which is hereby incorporated herein by reference, effective _____, copies of which may be obtained from the Board office. The Board shall certify as eligible for licensure by endorsement applicants who have completed the application form, remitted the application fee for licensure by endorsement required by Chapter 61G15-24, and who have demonstrated to the Board that:

- (a) The applicant meets the current criteria listed in Section 471.013, F.S. (the burden of proving the equivalency of any examination shall rest with the applicant); or
- (b) The applicant holds a valid license to practice engineering issued by another state or territory of the United States, provided that the criteria for issuing the license was substantially the same as the licensure criteria which existed in Florida at the time the license was issued.

(2) If an applicant for licensure by endorsement satisfies any one of the conditions found in Section 471.015(5)(a)1., 2., or 3., F.S., then the Board shall deem that the applicant has passed an examination substantially equivalent to part I,

fundamentals, of the engineering examination. If an applicant for licensure by endorsement satisfies the conditions found in Section 471.015(5)(b), F. S., then the Board shall deem that the applicant has passed an examination substantially equivalent to part I, fundamentals, and part II, principles and practice, of the engineering examination.

(3) An applicant for licensure by endorsement who has taken either the fundamentals or the principles and practice examinations more than five (5) times after October 1, 1992 must document compliance with rule 61G15-21.007(2), F.A.C., as a condition of eligibility for licensure by endorsement.

(4) An applicant for licensure by endorsement whose only educational deficiency under rule 61G15-20.007(2) involves humanities and social sciences and who has held a valid license and practiced in another state or territory of the United States for two (2) years or more shall be deemed to have satisfied that requirement.

(5) An applicant for licensure by endorsement who previously held licensure in the State of Florida and whose license became null and void because of non-renewal must establish that he or she meets all current requirements for initial licensure. Such applicants, if otherwise eligible, shall be subject to disciplinary sanctions as a condition of licensure if it is demonstrated that they practiced engineering during any period their license was delinquent and/or null and void.

61G15-20.0017 Application for Retired Status.

(1) A person wishing to apply for Retired Status shall submit a completed application to the Board. The instructions and application Form FBPE/005(06-01), entitled "Application For Retired Status", which is incorporated by reference, effective _____, copies of which may be obtained from the Board office. The Board shall certify as eligible for Retired Status any applicant who has completed the application form and who has chosen to relinquish or not to renew his or her license.

(2) Engineers who have been approved for Retired Status shall be carried on the records of the Board as "P.E., Retired."

(3) Engineers on Retired Status may use the term "Professional Engineer, Retired" or "P.E., Retired;" however, such engineer shall refrain from the active practice of engineering and the use of his or her seal. Any engineer in Retired Status who wishes to become active shall make application for licensure and meet the licensure criteria in effect at the time of application.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Natalie Lowe, Administrator, Board of Professional Engineers, 1908 Hays Street, Tallahassee, Florida 32301

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE NO.: 64B15-12.007
 RULE TITLE: Inactive Status License

NOTICE OF ADDITIONAL PUBLIC HEARING

The Board of Osteopathic Medicine hereby gives notice of an additional public hearing on the above-referenced rule to be held on September 21, 2001, 1:00 p.m., at the Tampa Airport Hilton, 2225 Lois Avenue, Tampa, Florida 33607, (813)877-6688. The rule was originally published in Vol. 26, No. 51, of the December 22, 2000 Florida Administrative Weekly and a Notice of Change was published in Vol. 27, No. 29 of the July 20, 2001, Florida Administrative Weekly.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: John Taylor, Executive Director, Board of Osteopathic Medicine/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399

Any person requiring a special accommodation at this hearing because of a disability or physical impairment should contact the Board's Executive Director at least five calendar days prior to the hearing. If you are hearing or speech impaired, please contact the Board office using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

**Section IV
 Emergency Rules**

DEPARTMENT OF LEGAL AFFAIRS

Division of Victim Services and Criminal Justice Programs

RULE TITLE: Claims
 RULE NO.: 2AER01-1

SPECIFIC REASON FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: The Attorney General considers the Domestic Violence Relocation Program, authorized by Section 960.198, F.S., to be in immediate need of establishing a minimal audit trail due to the exponential increase in the number of claims and the rapid depletion of the Crimes Compensation Trust Fund. Since inception in January 2000, this program has grown beyond all expectations. The Attorney General has a fiduciary responsibility to analyze the fiscal impact that additional benefits have on the Crimes Compensation Trust Fund in order to assure availability of funding for all victims of crime. The Domestic Violence Relocation Program is threatening the stability of the Crimes Compensation Trust Fund and the availability of funding for all victim compensation benefits.

In Fiscal Year 2000/2001 the total budget for the Crimes Compensation Trust Fund was \$22,500,000. Because of the Domestic Violence Relocation Program, the Attorney General found it was necessary to get an additional budget authority due to the Domestic Violence Relocation Program, increasing