

**NOTICE OF INTENT TO AMEND RULES OF
THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

AFFECTED RULES: Chapter 40E-7.668, 40E-7.669, 40E-7.670, 40E-7.672, 40E-7.673, 40E-7.674, 40E-7.675, 40E-7.676, 40E-7.677, 40E-7.678, F.A.C., Small Business Enterprise Rule “SBE”

SUMMARY: The purpose of the amendment is to further clarify and define the intent of the District's Small Business Enterprise (“SBE”) Contracting Program, which supports small businesses.

The changes include refining the definitions, modifying competitive solicitation preferences to remove Bid Equalization, allowing for the waiver or deferring of goals in certain solicitations and work order proposals, decertification of an SBE if the SBE is in material breach of its contract or if the SBE causes its prime contractor to be in material breach, add registration requirement with the Florida Department of State, Division of Corporations, clarify the documentation required to demonstrate certification eligibility, enhance the process for certification and recertification review, provide that any District SBE certified as a result of reciprocity with another Florida government agency is certified for a 3-year period.

STATEMENT OF ESTIMATED REGULATORY COST:

The District has determined that the rule amendments do not result in an increase on the impact on small businesses and do not increase regulatory costs. A Statement of Estimated Regulatory Cost has not been prepared.

A copy of the Notice of Proposed Rule may be found on the Department of State's website at <http://www.flrules.org>, where you may subscribe to receive copies of further notices for this or other rule chapters or types of notices of interest.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THE NOTICE PUBLISHED IN FAR, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

The Governing Board of the South Florida Water Management District will discuss and consider District business, including regulatory and non-regulatory matters. The public and stakeholders will have an opportunity to view and comment on the meeting by utilizing the Governing Board Monthly Meeting link provided on the District's website www.SFWMD.gov/meetings, which will go live shortly before 9:00 AM on August 13, 2020. All of this meeting will be conducted via media technology. The Governing Board may take official action at the meeting on any item appearing on the agenda and on any item that is added to the agenda as a result of a change to the agenda approved by the presiding officer of the meeting pursuant to Section 120.525, Florida Statutes. Date/Time: Thursday, August 13, 2020, 9:00 AM Governing Board Monthly Meeting Location: This meeting will be conducted via Zoom, a media technology free for the public

to use. A link will be provided on the District's website at www.SFWMD.gov/meetings.

For further information please contact Johanna Labrada, Bureau Chief Procurement, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1-800-432-2045 x2520 or 561-682-2520, or by email to jlabad@sfwmd.gov. For procedural questions, please contact Charron Follins, Senior Paralegal, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1-800-432-2045 x6293 or 561-682-6293 or by email cfollins@sfwmd.gov. Appeals of any South Florida Water Management District Board decision require a record of the proceedings. Affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including the testimony and evidence upon which the appeal is to be based. Persons with disabilities or handicaps who need assistance may contact the District Clerk at (800) 432-2045, ext. 6805 or (561) 682-6805 at least five business days in advance to make appropriate arrangements.

Notice of Proposed Rulemaking

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE NO.: RULE TITLE:

[40E-7.668](#): Policy

[40E-7.669](#): Definitions

[40E-7.670](#): Competitive Solicitation Preferences

[40E-7.672](#): Compliance

[40E-7.673](#): Certification Eligibility - Small Business Enterprise

[40E-7.674](#): Certification Review Procedures

[40E-7.675](#): Recertification Review Procedures

[40E-7.676](#): Decertification

[40E-7.677](#): Reciprocity

[40E-7.678](#): Administrative Hearings

PURPOSE AND EFFECT: The purpose of this amendment is to further clarify and define the District's Small Business Enterprise Contracting Program, which supports small businesses.

SUMMARY:

The changes include: refining the definitions, modifying competitive solicitation preferences to remove Bid Equalization, allowing for the waiver or deferring of goals in certain solicitations and work order proposals, decertifying an SBE if the SBE is in material breach of its contract or if SBE causes its prime contractor to be in material breach, adding registration requirement with the Florida Department of State, Division of Corporations, clarifying the documentation required to demonstrate certification eligibility, enhancing the process for certification and recertification review, providing that any District SBE certified as a result of reciprocity with another Florida government agency is certified for a 3-year period.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business and is unlikely to increase, directly or indirectly, regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. Therefore, a SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the information expressly relied upon and described herein: The District has completed the form "Is a SERC Required?" for the Governor's Office of Fiscal Accountability and Regulatory Reform (OFARR), and has prepared a summary of the proposed rule amendments, which are both available upon request. Based on the completed "Is a SERC Required?" form, the summary, and the analysis performed by the District in preparing and completing those documents, the proposed rule amendments are not expected to require legislative ratification pursuant to subsection 120.541(3), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: [373.044](#), [373.113 F.S.](#)

LAW IMPLEMENTED: [373.1135 F.S.](#)

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Date/Time: Thursday, August 13, 2020, 9:00 AM Governing Board Monthly Meeting
Location: This meeting will be conducted via Zoom, a media technology free for the public to use. A link will be provided on the District's website at www.SFWMD.gov/meetings.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE, IS: Johanna Labrada, Procurement Bureau Chief, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33416-4680, telephone 1-800-432-2045 ext. 2520 or 5621-682-2520, or by email at jlabrad@sfwmd.gov. For Procedural questions please contact Charron Follins Senior Paralegal, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33416-4680, telephone 1-800-432-2045 ext. 6293 or 561-682-6293 or by email cfollins@sfwmd.gov.

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-7.668 Policy.

(1) The rules under this Small Business Enterprise Contracting Program (the “Program”) establish policies and procedures designed to help small businesses, including those owned by women and minorities, to participate in the South Florida Water Management District’s (“District”) procurement and contract activities.

(2) through (3) No Change.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History--New 8-3-06 Amended _____.

40E-7.669 Definitions.

(1) “Affiliate Business” means a business that is a subsidiary of or owned in part by another business concern. Entities are affiliates of each other when one impacts the other by sharing resources, officers, or directors that have a percentage of ownership, or controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.

(2) “Applicant” ~~an~~ is defined as the business entity that is seeking District Certification or Recertification. A business is any entity which complies with all statutes and regulations, specifically, any corporation, limited liability company, partnerships, general partnerships, limited partnerships, other for-profit entities, engaging in commerce, including but not limited to manufacturing or a service with a federal tax identification number.

(3) “Certification” or “Recertification” means the process by which the District determines that a business meets the District’s criteria for a Small Business Enterprise (SBE).

(4) “Commodity Code” A numeric system designed to list commodities or services by classes and sub-classes. A numeric identifier of supplies, materials, goods, merchandise, equipment or other tangible personal property (purchase or lease), including ~~the~~ contractual services.

(5) “Decertification” is the process in which the District shall determine that an SBE no longer complies with the District Certification criteria.

(6) “District Small Business Enterprise” means a business certified by the District in either construction, commodities, services or a combination thereof whose 3-year average gross receipts, including Affiliate Businesses, shall not exceed \$13 million if the business provides construction, \$5 million if the business provides commodities, and \$6 million if the business provides services. A District SBE is registered to do business with the State of Florida through the Division of Corporations and holds the appropriate license(s) required by law to do business in the state of Florida.

(7)(5) “Government Agency” means any state, county, regional or local government in Florida.

(8)(6) “Gross Receipts” means the total sales for the Applicant as specified in its Federal tax return or if ~~it is~~ a new company which has not filed a Federal tax return, in its audited financial statement before deductions for returned items, allowances, and discounts.

(9)(7) “Industry Categories” means construction, commodities and services.

(10)(8) “Non SBE Prime” means a business not currently certified by the District as a Small Business Enterprise which submits a bid or proposal for the purpose of being awarded a legally-binding ~~legally binding~~ agreement as a Prime Contractor for the performance of work at a mutually agreed-upon ~~agreed upon~~ price in accordance with agreed-upon ~~agreed upon~~ terms and conditions with the District.

(11)(9) “Prime Contractor” means any individual or contracting entity with whom the District has entered into a legally binding agreement for performance of work at a mutually agreed-upon ~~agreed upon~~ price in accordance with

~~agreed-upon~~ agreed-upon terms and conditions.

~~(12)~~ (12) “Reciprocity” means the SBE Certification by the District of an Applicant who is actively certified by another Florida government agency.

~~(13)~~(14) “Responsible” means a business that is capable in all respects of fully performing the contract requirements and which has the integrity and reliability that will assure good faith performance.

~~(14)~~(14) “Responsive” with respect to bidders, bids, or proposals means a business’s bid or proposal conforms in all material respects to the invitation to bid or request for proposal including all SBE goals set forth. ~~means a business’s bid or proposal conforms in all material respects to the invitation to bid or request for proposal.~~

~~(12)~~ “(12) “District Small Business Enterprise (SBE)” means a business certified by the District, whose three (3) year average gross receipts, including affiliates, shall not exceed \$13 million if the business provides construction, \$5 million if the business provides commodities, and \$6 million if the business provides services. Additionally, a District Small Business Enterprise is licensed to do business in the State of Florida if the business requires a license.

~~(15)~~(13) “SBE Prime” means a business certified by the District as a small business that submits a bid or proposal for the purpose of being awarded a legally binding agreement as an SBE Prime Contractor for the performance of work at a mutually ~~agreed-upon~~ agreed-upon price in accordance with ~~agreed-upon~~ agreed-upon terms and conditions with the District.

~~(16)~~ “(16) “SBE Subcontractor” means a business certified by the District having a direct contract with a contractor or with any other Subcontractor for the performance of a part of the work.

~~(17)~~ “(17) “SBE Utilization Plan” means Form No. 0956 Small Business Enterprise Subcontractor Participation Schedule and Form No. 0957, Statement of Intent to Perform as a Small Business Enterprise Subcontractor, both forms are incorporated by reference in paragraph (2)(a) of Rule 40E-7.670 F.A.C.

~~(18)~~ “(18) “Subsidiary” is defined as a company that is owned or controlled by another company.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 8-29-07, 8-29-13 Amended _____.

40E-7.670 Competitive Solicitation Preferences.

The Small Business Enterprise Contracting Rule in this part provides for ~~2~~ three types of Competitive Solicitation Preferences designed to assist small businesses. ~~The Bid Equalization, Sheltered Market and Subcontracting Requirements are outlined below. The District may waive or adjust SBE requirements in any solicitation.~~

~~(1) Bid Equalization. This process enables the District to award a contract to an SBE Prime even though the SBE Prime was not the low bidder as long as the SBE Prime's bid was within a predetermined percentage of the lowest Non SBE Prime's responsive, and responsible bid. Bid Equalization preferences are used only in construction solicitations.~~

~~Prior to solicitation, the District must determine whether to use the Bid Equalization preference. Should the District choose to use this preference, the District must first obtain the District engineer's estimate for the construction work being contemplated in the solicitation. Based on the estimate, the District will establish the percentage preference to apply in the solicitation.~~

~~The percentages will be applied as follows:~~

~~(a) For contracts with an estimated value of \$2,000,000 or more, the District shall implement a maximum bid adjustment of one percent (1%).~~

~~(b) For contracts with an estimated value of more than \$500,001 but less than \$2,000,000, the District shall implement a maximum bid adjustment of five percent (5%).~~

~~(c) For contracts valued at \$500,000 or less, the District shall implement a maximum bid adjustment of ten percent (10%).~~

~~(d) The solicitation language shall clearly state that based on the District's estimate, a certain percentage preference will be applied to an SBE Prime, if the SBE Prime meets all of the requirements for the preference. For example, if the District engineer's estimate for a construction project is \$100,000, the District shall establish a 10% preference for an SBE Prime. If a Non SBE Prime is the lowest responsive and responsible bidder at \$100,000 and the next lowest responsive and responsible bid is by an SBE Prime at \$103,000, the SBE would be provided the ten~~

~~percent preference and be awarded the contract at \$103,000. The SBE Prime's bid was only \$3,000 greater than the Non SBE Prime. Therefore the SBE Prime was 3% over and well within 10% of the lowest Non SBE Prime's responsive and responsible bid and able to take advantage of the preference to obtain the contract award.~~

~~(e) The Bid Equalization does not apply to bids let under the Sheltered Market Program or when all bids received are from SBE Primes.~~

~~(1)(2) Sheltered Market Program. The District may provide for sheltered markets to allow only SBE's to bid on designated solicitations. In order to designate a sheltered market, the District must identify at least 3 SBEs available to perform work within the industry identified in the solicitation.~~

~~(2)(3) Subcontracting Requirements.~~

~~(a) Bids – The District shall set subcontracting goals for all bids based on availability of vendors registered with the District, including SBE firms able to perform work within specific Commodity Codes. The SBE goals shall be applied as a percentage of the total contract value to be assigned to SBE firms. The maximum SBE goal that will be applied to any solicitation will be 25%. When an SBE goal is set bidders shall provide work to one or more SBEs in order to meet the goal. At the time of submittal of its bid, the bidder shall identify all SBE firms which will be utilized as subcontractors, by using Form No. 0956, "Small Business Enterprise Subcontractor Participation Schedule" effective (August 29, 2013) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-03066>). All bids submitted where SBE participation is required, shall include Form No. 0957, "Statement of Intent to Perform as a Small Business Enterprise Subcontractor" effective (August 29, 2013), (<http://www.flrules.org/Gateway/reference.asp?No=Ref-12034>). This Form No. 0957 shall be signed by the SBE subcontractor, Form Nos. 0956 and 0957, together called the SBE Subcontractor Utilization Plan, must reflect the parties' intent to establish a business relationship as well as the type of work and percentage of work that the SBE subcontractor will perform. Failure to submit any of the information as required on Form Nos. 0956 and 0957 herein shall lead to the bid being deemed non-responsive. Forms Nos. 0956 and 0957 are incorporated by reference herein and are available at no cost by contacting the South Florida Water Management District Clerk's Office, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 68056436, or (561) 682-6805682-6436.~~

~~Any bidder failing to meet the established goal shall be deemed non-Responsive nonresponsive. If an SBE Prime intends to subcontract work to an SBE subcontractor, the SBE Prime must submit the aforementioned forms at the time of submitting its bid or be deemed non-responsive. If the prime bidder is an SBE Prime, only Form 0956 must be submitted with its bid. intends to perform 100% of the work, the SBE Prime does not have to submit the aforementioned forms.~~

~~(b) Standard Proposals – For solicitations where a contract is awarded based on an evaluation criteria, and where the scope of work is clearly defined, the District shall determine subcontracting goals for each solicitation based on availability of SBE firms as stated above in Subsection Section (2)(3)(a). The maximum goal that will be applied to any solicitation will be 25%. The goals shall be applied as a percentage of the total contract value to be assigned to SBE firms. Any proposer failing to meet the established goal shall be deemed non-Responsive. At the time the proposal is submitted, the proposer shall identify all SBE firms (if any) which will be utilized as subcontractors, by using Form No. 0956, "Small Business Enterprise Subcontractor Participation Schedule," incorporated by reference in paragraph (2)(3)(a) herein. All proposals with SBE subcontractor participation shall include Form No. 0957, "Statement of Intent to Perform as an Small Business Enterprise Subcontractor," also incorporated by reference in paragraph (2)(3)(a) herein. Form 0957 This form shall be signed by the SBE subcontractor. Form Nos. 0956 and 0957 together called the SBE Subcontractor Utilization Plan must reflect the parties' intent to establish a business relationship as well as the type of work and percentage of work that the SBE subcontractor will perform. If the prime proposer is an SBE Prime only Form No. 0956 must be submitted with its bid. If an SBE Prime intends to subcontract work to an SBE subcontractor, the SBE Prime must submit the aforementioned forms at the time of submitting its proposal. Any non SBE Prime contractor who fails to meet the established goal shall be deemed non responsive.~~

~~(c) Work Order Proposals – For solicitations where a contract is awarded based on evaluation criteria and where the scope of work is not clearly defined resulting in work order contracts, such solicitations shall require proposers to commit to SBE goals assigned to individual work orders issued throughout the term of the contract. will not contain a goal, but shall require proposers to commit to goals assigned to individual work orders issued throughout the term~~

~~of the contract.~~ The goal for individual work orders will be based on availability of SBE firms as provided stated above in paragraph (2)(3)(a). The maximum goal that will be applied to any work order will be 25% unless the Prime Contractor has failed to meet prior SBE goals, in which case the maximum goal may exceed 25%. At the time the proposal is submitted, the proposer shall identify all proposed SBE firms that will be utilized as subcontractors. At the time a work order with an SBE goal is assigned, the Prime Contractor shall submit a cost proposal, and identify all SBE subcontractors and the percentage of work that the SBE subcontractor(s) will perform by using Form No. 0956, "Small Business Enterprise Subcontractor Participation Schedule," incorporated by reference in paragraph (2)(3)(a) herein. All cost proposals shall also include Form No. 0957, "Statement of Intent to Perform as a Small Business Enterprise Subcontractor," also incorporated by reference in paragraph (2)(3)(a) herein. Form No. 0957 This form shall be signed by the SBE subcontractor. A work order will not be executed with a Prime Contractor whose cost proposal does not meet the established goal for that work order. The District may waive or defer the SBE goal in any particular work order at its discretion. If the District defers the SBE goal, the Prime Contractor will be required to increase SBE participation in subsequent work orders to compensate for the lack of participation in the initial assigned work order. In addition, failure to meet the goal set by the District for an executed work order will result in a breach of contract by the Prime Contractor.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 8-29-07, 8-29-13 Amended _____.

40E-7.672 Compliance.

The District shall monitor and evaluate Program performance and compliance as follows:

(1) through (3) No Change.

(4) Prime Contractors must notify the District when the need to add or replace an SBE subcontractor arises and shall provide a completed Form No. 1373, "Small Business Enterprise Subcontractor Revised Participation Schedule" effective, (August 29, 2013) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-03067>), which contains an explanation of the addition or replacement of the SBE subcontractor. Form 1373 is incorporated by reference herein and a copy can be obtained at no cost by contacting the South Florida Water Management District Clerk's Office, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6805 6436, or (561)682-6805 (561)682-6436. In addition, a completed Form No. 0957, "Statement of Intent to Perform as a Small Business Enterprise Subcontractor," incorporated by reference in paragraph 40E-7.670(2)(3)(a), F.A.C., must be submitted if applicable.

(5) Failure of the Prime Contractor to meet its SBE requirements in a District contract will be a factor considered by the District when the District makes its responsibility determinations for future District contract awards and when the District considers whether to place a contractor on the Temporary or Permanent Suspension List under Rule 40E-7.218, F.A.C.

(6) Each District contract awarded with SBE participation shall contain a provision incorporating the rules under this part by reference and a statement that failure to comply with the requirements of the bid or proposal submitted to the District by a contractor shall be considered a material breach of contract which may result in suspension or debarment of the firms or individuals involved pursuant to Chapter 40E-7, F.A.C.

(7) If an SBE Prime contractor is in material breach of its contract with the District, as defined in subsection 40E-7.215(5) F.A.C., the SBE Prime contractor shall be decertified.

(8) If an SBE subcontractor causes Prime Contractor to be in material breach of its contract with the District, as defined in subsection 40E-7.215(5) F.A.C., including, but not limited to, performance delay, the SBE subcontractor shall be decertified.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 8-29-13 Amended _____.

40E-7.673 Certification Eligibility – Small Business Enterprise.

District staff shall have the authority to accept, review, approve, certify, decertify and deny applications for SBE Certification. ~~An~~ Applicants business must be registered with the District as a vendor prior to submitting an

application for Certification.

(1) Applicants ~~businesses~~ shall submit applications for SBE Certification using Form No. 1231, “SBE Certification Application”, (<http://www.flrules.org/Gateway/reference.asp?No=Ref-12032>) effective August 3, 2006, which is incorporated by reference herein and is available at no cost by contacting the South Florida Water Management District Clerk’s Office, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6805, or (561) 682-6805, ~~which is herein 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, city and correct zip code. A post office box will not be acceptable absent a street address.~~

(2) To establish small business eligibility, ~~that it is a small business,~~ the Applicant shall:

(a) Provide documentation to demonstrate that the ~~3- three (3)~~ 3 year average gross receipts of the Applicant, ~~business concern,~~ together with its Affiliate Business, ~~affiliates,~~ does not exceed \$13 million for Construction, \$5 million for Commodities, and \$6 million for Services. In determining the gross receipts of the business and its Affiliate Business, ~~affiliates,~~ the District shall consider the ~~3three (3)~~ 3 federal tax returns filed by the Applicant for the ~~3three (3)~~ 3 years immediately preceding ~~their~~ application submittal. If ~~3 the Applicant has not filed three (3) federal income tax returns have not been filed for the 3 three (3) years immediately preceding their application submittal,~~ then the Applicant must submit a financial statement, for any of the ~~3 three (3)~~ 3 years immediately preceding the application in which the Applicant did not file a federal income tax return(s). The financial statement must be prepared by a Certified Public Accountant as defined by Section 473.301, F.S., not employed by the Applicant, but retained for the purpose of preparing financial statements for the Applicant. Applicants in business less than ~~1one (1) year shall are to~~ submit an opening balance sheet and income statement for the months in which ~~it was they were~~ in business. The opening balance sheet and income statement must be submitted on letterhead from the Applicant’s Certified Public Accountant.

(b) The Applicant must demonstrate that ~~the business is~~ it is licensed as required by law to do business in the State of Florida if the business requires a license.

(c) ~~An The Applicant shall may only have only 1 one (1) business certified with the South Florida Water Management District.~~

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended _____.

40E-7.674 Certification Review Procedures.

(1) Upon receipt by the District, all applications for SBE Certification shall be screened to ensure appropriate signature and completeness. The application must be signed by the individual with the authority to bind the Applicant.

(2) Within ~~60 sixty (60) days~~ following receipt of the application, the District will request that the Applicant ~~business to~~ furnish omitted items or additional information, if any. All requested information must be received by the District within ~~60 sixty (60) days~~ from the date of the request or the Applicant will be deemed ineligible for Certification. Applicants may however, re-apply.

(3) Applicants determined eligible shall receive Certification as an SBE from District staff. Once certified, an Applicant shall remain certified for a period of ~~3 three (3) years. If the Applicant does not adhere to the District’s SBE Program they will be subject to decertification, unless the applicant fails to follow this rule and is sanctioned pursuant to the rule.~~ The District retains the right to re-evaluate the Certification of any business at any time.

(4) Applicants determined ineligible shall receive a notification from the District. Ineligible Applicants ~~receiving this notification of ineligibility shall not be eligible to submit a new applications until for 180 days after District notification. the date of the notice denying certification.~~

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 8-29-07, 8-29-13, Amended _____.

40E-7.675 Recertification Review Procedures.

(1) Applications for Recertification shall be submitted using Form No., 1232 “SBE Application for Recertification”, effective August 3, 2006, (<http://www.flrules.org/Gateway/reference.asp?No=Ref-12033>), which is incorporated by reference herein and is available at no cost by contacting the South Florida Water Management District Clerk’s Office, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800)

~~432-2045, ext. 6805, or (561) 682-6805. which is hereby incorporated by reference and available from the District upon request.~~

~~(2) The District may will-notify SBEs no later than 60 sixty (60) days before the end of the Ceertification period that the SBE's Ceertification is about to expire. Regardless of notification, SBE is responsible to timely apply for Recertification. If the Recertification application document is no longer applicable because of changes to the Applicant's business, the SBE shall notify the District in writing of the changes to its company. If the SBE is unable to use the recertification document because of changes to the applicant's business, the SBE shall notify the District in writing of the changes to its company.~~ The District shall determine if the company still complies with the Ceertification criteria set forth in Rule 40E-7.673, F.A.C. Recertification requests must be filed with the District no later than the last effective date of the current Ceertification period.

(3) Upon receipt, all Rrecertification requests shall be given an initial screening to ensure appropriate signature and completeness. Within ~~60 sixty (60)~~ days following initial receipt of the Applicant's Rrecertification 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 ~~60 sixty (60)~~ days from the date of the request, the District will deny the application for Rrecertification.

(4) Recertification shall be granted when the Applicant has complied with recertification and review procedures ~~this rule~~ and substantiates continued eligibility for SBE status.

(5) Applicants deemed eligible shall receive a Rrecertification letter, ~~stating the length of time for which the business has been re-certified and the specialty areas of the business. The Once recertified, an Applicant shall remain certified for a period of 3 three (3) years unless the Applicant is decertified. District determines that the applicant no longer meets the eligibility requirement of this Rule.~~ The District retains the right to reevaluate the Ceertification of any SBE business at any time.

(6) Applicants determined ineligible for Rrecertification shall receive a letter citing which ~~the~~ specific criteria of ~~Rulesubsection~~ 40E-7.673, F.A.C., that they failed to meet and advising that they shall not be eligible to submit new applications until 180 days after the date of the notice or the District's final agency order denying Rrecertification.

(7) If an application for Rrecertification is timely submitted, an SBE shall remain certified until the District has made a determination concerning eligibility.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History--New 8-3-06, Amended 8-29-13 Amended

40E-7.676 Decertification.

~~Decertification is the process by which the District shall take steps to retract a business's certification as an SBE. The Ddecertification of an SBE shall occur when the District determines that an SBE no longer complies with the District's Ceertification criteria. The District will also Ddecertify an SBE if the District learns that the SBE submitted false information in order to obtain SBE Ceertification. The District may also decertify an SBE if the SBE materially breaches its contract with the District as defined in subsection 40E-7.215(5) F.A.C. Further, an SBE subcontractor will be decertified if it causes a Prime Contractor to materially breach its contract with the District as defined in subsection 40E-7.215(5) F.A.C., including, but not limited to, performance delay.~~

(1) District staff shall inform the SBE in writing by certified mail, return receipt requested, of the facts or conduct which formed the basis for Ddecertification.

(2) The Ddecertification notice issued by the District shall contain:

(a) The statutory provisions(s) or rules(s) of the Florida Administrative Code which the District alleges the SBE violated; and

(b) The specific facts or conduct relied upon to justify the Ddecertification; 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, F.S., within 21 days of receipt of the Ddecertification notice; and

(d) A statement that the Ddecertification shall become conclusive and final agency action if no request for a hearing is filed with the District Clerk's office within 21 days from receipt of the Ddecertification notice.

(3) If the Applicant ~~firm~~ fails to file a request for a hearing within 21 days after receipt of the notice, the Ddecertification shall become ~~conclusive and~~ final agency action.

(4) If the SBE files a request for an administrative hearing, the SBE firm shall remain certified unless and until a Final Order is issued by the District Decertifying the SBE firm after an administrative hearing.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History--New 8-3-06 Amended

40E-7.677 Reciprocity.

Reciprocal Certification shall be granted to an Applicant businesses that is which are certified by another other Florida government agency, Agencies provided that the agency has a small business program, including those owned by women and minorities, and that the applicant business is certified as a small business by that agency. The Applicant shall provide the District with official documentation stating that provides the Certification and expiration dates. Once certified, Applicant shall remain certified with the District for a period of 3 years. The District reserves the right to request any additional documentation to verify or clarify the authentication of the information provided.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History--New 8-3-06, Amended 8-29-13 Amended

40E-7.678 Administrative Hearings.

If an Applicant business believes it has been wrongly denied Certification, or Recertification, or that it has been inappropriately Decertified as an SBE, it may file a request for hearing pursuant to Sections 120.569 and 120.57, F.S., by submitting a petition in accordance with Chapter 28-106, F.A.C., within 21 days of receipt of Notice of Denial of Certification or Recertification or Notice of Decertification as a District SBE.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History--New 8-3-06 Amended

NAME OF PERSON ORIGINATING PROPOSED RULE: Johanna Labrada

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: South Florida Water Management
District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 11, 2020

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: April 30, 2020