

Notice of Proposed Rule

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE NOS.:RULE TITLES:

- 40E-7.668 Policy
- 40E-7.669 Definitions
- 40E-7.670 Competitive Solicitation Preferences
- 40E-7.671 District Implementation
- 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 Small Business Enterprise Program is designed to help small businesses participate in District procurement and contract activities in support of the South Florida Water Management District's (District) mission. The purpose of the program is to spur economic development and support small businesses to successfully expand in the marketplace. The purpose of the rule amendments is to further clarify and define the intent of the Small Business Enterprise Program.

SUMMARY: The District is proposing changes to augment definitions, refine solicitation preferences, enhance the eligibility requirements for increased participation, combine the certification and recertification review procedures for simplicity and to eliminate duplicative information, amend the decertification clause for clarity, and update program forms. The proposed revisions to Forms 0956, 0957, 1231, and 1373 are located at <https://www.sfwmd.gov/doing-business-with-us/procurement>.

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 or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. 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 statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The District completed the Governor's Office of Fiscal Accountability and Regulatory Reform (OFARR) form "Is a SERC Required?" and prepared a summary of the proposed rule amendments, both of which are available upon request. Based on the completed "Is a SERC Required?" form and the District's summary and analysis performed to prepare and complete said documents, the proposed rule amendment does not 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 FS

LAW IMPLEMENTED: 373.1135 FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jennifer Kilian, Section Leader-Master Data, jkilian@sfwmd.gov, (561)682-6018.

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-7.668 Policy.

(1) The rules under this Small Business Enterprise ("SBE") ~~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) It is the purpose of the Program to spur economic development and support small businesses, ~~including woman-owned and minority-owned businesses~~, to successfully expand in the marketplace.

(3) No Change

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 12-9-20, _____.

40E-7.669 Definitions.

(1) "Affiliate Business" is defined as an entity or entities that the Applicant controls or has the power to control, whether or not control is exercised; or an entity or entities that controls, or has the power to control the Applicant, whether or not control is exercised. "Control" means the power to direct or cause the direction of management or policies. In determining whether an affiliation exists, it is necessary to consider whether one entity impacts another by examining several factors, including, but not limited to, sharing resources, common ownership (direct or indirect), management, officers, directors, trustees, employees, and contract employees; common use of facilities, equipment, licenses, and contractual obligations; family interest in the Business; or a business entity organized by a debarred entity, individual, or affiliate following the debarment of a contractor that has the same or similar management, ownership, or principal employees as the contractor that was debarred or suspended. Affiliated entities shall be considered together in terms of Gross Receipts in determining whether a Business meets the Program's eligibility criteria. ~~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 any percentages 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" is defined as the ~~B~~business that is seeking District Certification or Recertification.

(3) "Business" is defined as any entity which complies with all statutes and regulations; ~~specifically, any corporation, limited liability company, partnership partnerships, general partnership partnerships, limited partnership partnerships, sole proprietor, or other for-profit entity entities, engaging in commerce, including, but not limited to, construction, commodities, or services manufacturing a service with a federal tax identification number.~~

(4) "Certification" or "Recertification" ~~is means~~ the process by which the District determines that a ~~B~~business meets the Program's ~~District's~~ criteria of a District for a Small Business Enterprise (SBE).

(5) "Commodity Code" ~~is a~~ A numeric system or identifier 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), or including the contractual services by class and sub-class.

(6) "Decertification" is the process ~~by in~~ which the District shall determine that ~~a District an~~ SBE no longer complies with the Program's ~~District~~ Certification criteria.

(7) "District ~~SBE Small Business Enterprise~~" ~~is defined as means~~ a small ~~B~~business certified by the District in either construction, commodities, services, or a combination thereof whose ~~three- 3-~~year average ~~Gross R~~ceipts, including Affiliate Businesses, shall not exceed ~~\$21 \$13~~ million if the ~~B~~business provides construction, ~~\$8 \$5~~ million if the ~~B~~business provides commodities, and ~~\$10 \$6~~ million if the ~~B~~business provides services. A District SBE ~~shall be is~~ registered and in good standing to do business with the State of Florida Department of State through the Division of Corporations and holds the appropriate license(s) or certification(s) required by law to do business and perform work in the state of Florida.

(8) "Government Agency" ~~is defined as means~~ any state, county, regional, or local government in Florida, including water management districts.

(9) "Gross Receipts" ~~is defined as means~~ the total sales for the Applicant and its Affiliate Businesses from all sources during its annual accounting period 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 costs, expenses, returned items, allowances, and discounts as reflected in federal income tax returns or financial statements as set forth in paragraph 40E-7.673(2)(a), F.A.C.

(10) "Industry ~~Categories~~" ~~is defined as means~~ construction, commodities, and services.

(11) "Non-Responsive" with respect to bidders, bids, or proposals is defined as a Business's bid or proposal that does not conform in material respects to the invitation to bid or request for proposal including all SBE goals set forth.

~~(12)(11)~~ "Non-SBE Prime" ~~is defined as means~~ a ~~B~~business not currently certified as a District SBE by the District

~~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 price in accordance with a agreed-upon terms and conditions with the District.

~~(13)(12)~~ “Prime Contractor” ~~is defined as~~ means any individual or contracting entity with whom the District has entered into a ~~legally binding~~ legally binding agreement for performance of work at a mutually agreed-upon price in accordance with a agreed-upon terms and conditions.

~~(14)~~ “Program Graduate” ~~is defined as a District SBE that has exceeded the Program’s Gross Receipts eligibility requirement. Does not include District SBEs decertified for cause.~~

~~(15)(13)~~ “Reciprocal Certification” ~~is defined as District~~ means the SBE Certification by the District of an Applicant who is actively certified by another Florida ~~Government Agency, provided that the agency has a small business program.~~

~~(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.~~

~~(15)~~ “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.~~

~~(16)~~ “SBE Prime” ~~is defined as a~~ means a business certified by the District SBE as a small business that submits a bid or proposal for the purpose of being awarded a legally binding agreement as a ~~an SBE Prime Contractor~~ for the performance of work at a mutually agreed-upon price in accordance with a agreed-upon terms and conditions with the District.

~~(17)~~ “SBE Subcontractor” ~~is defined as a~~ means a business certified by the District SBE having a direct contract with a ~~Prime Contractor or with any other Subcontractor~~ for the performance of a ~~portion part~~ of the work.

~~(18)~~ “SBE Utilization Plan” ~~details the type and percentage of work that will be performed for the specified project. The SBE Utilization Plan consists of~~ means Form No. 0956, “Small Business Enterprise Subcontractor Participation Schedule” (effective date) (insert URL), which identifies all Businesses which will be utilized as subcontractors, and Form No. 0957, “Statement of Intent to Perform as a Small Business Enterprise Subcontractor” (effective date) (insert URL), which is completed by all SBE Subcontractors detailed on Form No. 0956, and reflects the intent of the parties’ to establish a formal agreement conditioned upon the Non-SBE Prime’s execution of a contract with the District for said project. The SBE Utilization Plan is both forms are incorporated by reference herein and is available at no cost by contacting the District’s SBE Office, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800)432-2045, ext. 6446, or (561)682-6446, or via email sbep@sfwmd.gov, in paragraph (2)(a) of Rule 40E-7.670, F.A.C.

~~(19)~~ “Subsidiary” ~~is defined as a Business that another company has any ownership interest in.~~
Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 8-29-07, 8-29-13, 12-9-20, _____.

40E-7.670 Competitive Solicitation Preferences.

The ~~SBE Small Business Enterprise Contracting Rule in this part~~ provides for ~~two 2 c~~ Competitive solicitation ~~p~~Preferences designed to assist ~~District SBEs small businesses.~~ Sheltered Market and Subcontracting Requirements are outlined below.

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

(2) Subcontracting Requirements. ~~The District shall set SBE goals for all solicitations, unless otherwise provided in paragraph (2)(c). SBE goals are based on the availability of District SBEs in relation to all vendors registered with the District able to perform work within specific Commodity Codes.~~

(a) Bids – ~~For solicitations where a contract is awarded based on price as the primary selection criteria, and where the scope is clearly defined. The District shall set subcontracting goals for all bids based on a 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 District SBEs as provided in this subsection 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 ~~District SBEs SBE’s in order~~ to meet the SBE goal. At the time

of submittal of its bid, the bidder shall submit an SBE Utilization Plan. The SBE Utilization Plan is incorporated by reference in subsection 40E-7.669(18), F.A.C. If the prime bidder is an SBE Prime, an SBE Utilization Plan is not required to be submitted with its bid. 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_12410). ~~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_12422).~~ 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 the SBE Utilization Plan or to meet the established SBE goal Form Nos. 0956 and 0957 shall lead to the bidder bid being deemed Non-Responsive. Form Nos. 0956 and 0957 are incorporated by reference herein and are available at no cost by contacting the South Florida Water Management District's SBE 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. Any bidder failing to meet the established goal shall be deemed non-Responsive. If the prime bidder is an SBE Prime, only Form 0956 must be submitted with its bid.

(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 SBE subcontracting goals for each solicitation based on a availability of District SBEs SBE firms as provided in this subsection stated above paragraph (2)(a). The maximum SBE 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 submit an SBE Utilization Plan. The SBE Utilization Plan is incorporated by reference in subsection 40E-7.669(18), F.A.C. If the prime proposer is an SBE Prime, an SBE Utilization Plan is not required to be submitted with its proposal. 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)(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)(a) herein. Form No. 0957 shall be signed by the SBE subcontractor. 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. Failure to submit any of the information as required on the SBE Utilization Plan or to meet the established SBE goal shall lead to the proposer being 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. ~~The goal for individual work orders will be based on a availability of SBE firms as provided in paragraph (2)(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 submit an SBE Utilization Plan. The SBE Utilization Plan is incorporated by reference in subsection 40E-7.669(18), F.A.C. If the prime proposer is an SBE Prime, an SBE Utilization Plan is not required to be submitted with its proposal. Failure to submit any of the information as required on the SBE Utilization Plan shall lead to the proposer being deemed Non-Responsive. identify all proposed SBE firms that will be utilized as subcontractors.

(d) Work Orders Issued – The SBE goal for individual work orders will be based on a availability of District SBEs as provided in this subsection (2). The maximum SBE 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 SBE goal may exceed 25%. When At the time a work order with an SBE goal is assigned, the Prime Contractor shall submit a cost proposal and an SBE Utilization Plan. The SBE Utilization Plan is incorporated by reference in subsection 40E-7.669(18), F.A.C. If the Prime Contractor is a District SBE, an SBE Utilization Plan is not required to be submitted with its cost proposal. 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)(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)(a) herein. Form No. 0957 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 SBE goal for that work order. The District will set the SBE goal in any particular work order based on the availability of SBE firms. In addition, failure to meet the SBE goal set by the District for an executed work order will result in a breach of contract by the Prime Contractor.~~

(e) The Procurement Bureau Chief or designee has the ability to grant a partial or complete waiver of any SBE goal whenever it is determined that such modification or waiver would be in the best interest of the District.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 8-29-07, 8-29-13, 12-9-20, _____.

40E-7.671 District Implementation.

The District shall ensure all small businesses have the maximum opportunity to participate in the District’s contracting and procurement processes. The following are examples of efforts to be taken by the District:

(1) Establish an SBE a Small Business Enterprise Program to implement the rules established herein under this Part.

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

(3) Analyze District SBE availability to provide the products or services identified for contracting at either the prime contract or subcontract levels.

(4) Maintain a database of all District SBEs.

(5) Monitor and maintain records of steps taken and results achieved to maximize District SBE participation.

(6) Monitor the District’s efforts to achieve Program ~~SBE~~ objectives.

(7) No Change

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

40E-7.672 Compliance.

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

(1) Each District contract shall contain a provision requiring the Prime Contractor, during the term of the contract, to comply with, as to tasks and proportionate dollar amounts throughout the term of the contract, all commitments made in their bids or proposals for use of District SBEs.

(2) Each District contract shall contain a provision requiring the Prime Contractor and any of its Subcontractor’s maintenance of records, and information necessary to document compliance with the rules herein under this Part and shall include the right of the District to inspect such records.

(3) Each District contract shall contain a provision prohibiting any agreements between a Prime Contractor and an a-SBE in which the SBE promises not to provide subcontracting quotations to other respondents or potential respondents.

(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 (effective date August 29, 2013) (insert URL) (<https://www.fl.rules.org/Gateway/reference.asp?No+Ref+03067>), which contains an explanation of the addition or replacement of the SBE Subcontractor. Form No. 1373 is incorporated by reference herein and a copy can be obtained at no cost by contacting the District’s SBE 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. 6446 6805, or (561)682-6446, or via email sbep@sfwmd.gov 6805. In addition, a completed Form No. 0957, “Statement of Intent to Perform as a Small Business Enterprise Subcontractor,” incorporated by reference in subsection 40E-7.669(18) paragraph 40E-7.670(2)(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 making the District makes its responsibility determinations for future District contract awards and when considering the District considers whether to place a Prime Contractor on the Temporary or Pemanent Suspension List under Rule 40E-7.218, F.A.C.

(6) Each District contract awarded with an SBE goal participation shall contain a provision incorporating the rules herein 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 the ~~Prime Contractor~~ shall be considered a material breach of contract which may result in suspension or debarment of the ~~Businesses~~ firms or individuals involved pursuant to Chapter 40E-7, F.A.C.

(7) If a ~~District~~ ~~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 ~~District SBE Prime contractor~~ shall be decertified.

(8) If an SBE ~~Subcontractor~~ causes a 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, 12-9-20, _____.

40E-7.673 Certification/Recertification Eligibility – Small Business Enterprise.

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

(1) Applicants shall submit applications for ~~SBE Certification/Recertification~~ using Form No. 1231, “~~Small Business Enterprise SBE Certification/Recertification Application~~” (“Application”), (effective date) (insert URL), (<http://www.fl.rules.org/Gateway/reference.asp?No=Ref 12424>), effective August 3, 2006), which is incorporated by reference herein and is available at no cost by contacting the ~~District’s SBE 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. ~~6446 6805~~, or (561)682-6446, or via email sbep@sfwmd.gov ~~6446~~. The Application must be signed by the individual with the authority to bind the Applicant.

(2) To establish ~~Program SBE~~ eligibility, the Applicant shall:

(a) Provide documentation to demonstrate that the ~~three- 3-~~ year average ~~Gross R~~ receipts of the Applicant, together with its Affiliate ~~Businesses Business~~, does not exceed ~~\$21 \$13~~ million if the business provides for Construction, \$8 \$5 million if the business provides for Commodities, and \$10 \$6 million if the business provides for Services. In determining the ~~Gross R~~ receipts of the ~~B~~usiness and its Affiliate ~~Businesses Business~~, the District shall consider the ~~three 3~~ federal income tax returns filed by the Applicant and its Affiliate Businesses for the ~~three 3~~ years immediately preceding Application submittal. If ~~three 3~~ federal income tax returns have not been filed for the ~~three 3~~ years immediately preceding Application submittal, then the Applicant must submit a financial statements (balance sheet and income statement) statement for any of the ~~three 3~~ years immediately preceding the Application submittal in which the Applicant or its Affiliate Businesses did not file a federal income tax return(s). Applicants or its Affiliate Businesses in business less than one year shall submit financial statements for the months in which it was in business. The Financial statements statement must be prepared by a Certified Public Accountant as defined by Section 473.301, F.S., not employed by the Applicant or its Affiliate Businesses, but retained for the purpose of preparing financial statements for the Applicant or its Affiliate Businesses. Financial statements Applicants in business less than 1 year shall submit an opening balance sheet and income statement for the months in which it was in business. The opening balance sheet and income statement must be submitted on letterhead from the Applicant’s or its Affiliate Businesses’ Certified Public Accountant.

(b) The Applicant must hold and provide demonstrate that the appropriate license(s) or certification(s) business, is licensed as required by law to do business and perform work in the State of Florida if the business requires a license. Licenses and certifications must be valid at the time of submittal and remain active throughout the Certification period.

(c) Applicants must have the authority to conduct business in the State of Florida in accordance with the Florida Department of State Division of Corporations, including the use of Fictitious Names, if applicable. Applicants must remain in good standing throughout the Certification period.

(d)(e) An Applicant shall have only one 1 Business, including its Affiliate Businesses, certified with the ~~South Florida Water Management District~~.

(3) An Applicant that has been debarred or suspended, or organized by an entity, individual, or Affiliate Business that has been debarred or suspended, is ineligible to be a District SBE.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 12-9-20, _____.

40E-7.674 Certification/Recertification Review Procedures.

(1) Upon receipt by the District, all ~~Applications for SBE Certification~~ shall be given an initial screening ~~screened~~ to ensure appropriate signature and completeness. If an Application for Recertification is timely submitted, the District SBE shall remain certified until the District has made a determination concerning eligibility. The application must be signed by the individual with the authority to bind the Applicant.

(2) Within 60 days following receipt of the ~~Application~~, the District will request that the Applicant furnish omitted items or additional information, if any. All requested information must be received by the District within 60 days from the date of the request or the ~~Application Applicant~~ will be deemed incomplete ~~ineligible for Certification~~. Applicants may ~~however~~, re-apply by submitting a new Application meeting Certification requirements detailed in Rule 40E-7.673 F.A.C.

(3) Applicants ~~deemed determined~~ eligible for Certification/Recertification shall receive a letter via email certifying them Certification as a District an SBE from District staff. The Once certified, Applicant shall remain certified for a period of three 3 years, unless decertified. If the Applicant does not adhere to the ~~District's SBE Program~~ they will be subject to ~~Decertification~~. The District retains the right to re-evaluate the Certification of any District SBE business at any time.

(4) Applicants ~~deemed determined~~ ineligible for Certification/Recertification shall receive a letter via email citing which specific criteria of Rule 40E-7.673, F.A.C., that they failed to meet and advising that they ~~notification from the District. Ineligible Applicants shall not be eligible to submit a new Application until for 180 days after the date of the letter or the District's final agency order denying Certification/Recertification District notification.~~

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History--New 8-3-06, Amended 8-29-07, 8-29-13, 12-9-20, _____.

40E-7.675 Recertification Review Procedures.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History--New 8-3-06, Amended 8-29-13, 12-9-20, Repealed, _____.

40E-7.676 Decertification.

(1) Decertification of a District SBE shall occur when:

(a) The District determines that the District SBE no longer complies with the Program's Certification criteria, including, but not limited to, Program graduation. Program Graduates may complete their work under all current District projects under their previous Certification status provided that the bid or proposal submission date of those projects occurred prior to the date of Program graduation; or

(b) The District learns that the District SBE submitted false information to obtain Certification/Recertification;
or,

(c) The District SBE Prime is in material breach of its contract with the District as defined in subsection 40E-7.215(5), F.A.C.; or,

(d) The SBE Subcontractor causes a Prime Contractor to be in material breach its contract with the District as defined in subsection 40E-7.215(5), F.A.C., including, but not limited to, performance delay.

~~The Decertification of an SBE shall occur when the District determines that an SBE no longer complies with the District's Certification criteria. The District will also Decertify an SBE if the District learns that the SBE submitted false information in order to obtain SBE Certification. 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.~~

(2)(1) District staff shall inform the District SBE in writing via email by certified mail, return receipt requested, of the facts or conduct which formed the basis for Decertification. The Decertification letter issued by the District shall contain:

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

(a) The statutory provision(s) provisions(s) or rule(s) rules(s) of the Florida Administrative Code (F.A.C.) which the District alleges that the District SBE violated; and

(b) No Change

(c) A statement that the Business 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 ~~after~~ of receipt of the Decertification ~~letter notice~~; and,

(d) A statement that the Decertification shall become conclusive and final agency action if no request for a hearing is filed with the 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~~ within 21 days ~~after~~ ~~from~~ receipt of the Decertification ~~letter notice~~.

(3) If the District SBE fails to file a request for a hearing within 21 days after receipt of the Decertification letter notice, the Decertification shall become final agency action.

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

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 12-9-20, _____.

40E-7.677 Reciprocity.

Reciprocal Certification shall be granted to an Applicant that is certified by another Florida ~~G~~overnment ~~A~~gency, provided that the ~~Government A~~gency has a small business program, ~~including those owned by women and minorities~~. The Applicant shall provide the District with official documentation from the other ~~G~~overnmental ~~A~~gencies stating the Certification and expiration dates. Once certified, ~~the~~ Applicant shall remain certified with the District for a period of three ~~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, 12-9-20, _____.

40E-7.678 Administrative Hearings.

If an Applicant believes it has been wrongly denied Certification/~~or~~ Recertification, or that it has been inappropriately ~~d~~Decertified as a District ~~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 ~~after~~ of receipt of the denial or Decertification letter ~~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 12-9-20, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Candida Heater, Director, Administrator Services

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 13, 2025

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: November 14, 2024