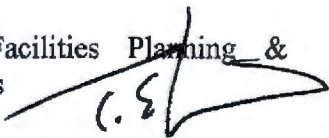


LEGISLATIVE FILE

File ID No. 08-1134
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By AJ

OAKLAND UNIFIED SCHOOL DISTRICT

December 10, 2008

To: Board of Education
From: Timothy E. White, Assistant Superintendent of Facilities Planning & Management, Buildings & Grounds and Custodial Services 
Subject: **Resolution Creating the Local, Small Local and Small Local Resident Business Enterprise (L/SL/SLRBE) Program / Policy**

ACTION REQUESTED

0807-

That the Board of Education adopts Resolution No. 0073 in order to create the Local, Small Local and Small Local Resident Business Enterprise (L/SL/SLRBE) Program / Policy 2008-2009.

BACKGROUND/DISCUSSION

The Board of Education has determined that it is in the best interests of the District and the citizens of Oakland to implement several programs and policies which will stimulate economic opportunity for local residents and businesses, encourage local economic development and insure that competitive prices are paid for goods and services. The major program developed by the Board of Education to serve these respective groups is hereinafter referred to as the Local, Small Local and Small Local Resident Business Enterprise (L/SL/SLRBE) Program.

The L/SL/SLRBE Program is aimed at rectifying certain inequities suffered by small local businesses when competing with big and/or out-of-town businesses for work on public contracts.

Small local businesses and resident small business owners drive our economy and form the backbone of our neighborhoods. Small businesses and the residents of Oakland who own them have the capacity to generate hundreds of millions of dollars in revenue each year. Through payroll taxes alone, small local businesses make a significant contribution to the economic health of our City and the quality of life of its citizens and visitors.

Because Oakland's small local businesses and resident small business experience higher costs, they suffer disadvantage in any competition with big and/or out-of-town businesses. Small local businesses and resident small business owners are at a competitive disadvantage in competing for work on public contracts, both as prime contractors and as subcontractors and under professional services agreements.

The citizens of Oakland have an interest in fostering a strong and vibrant network of local, small local and small local resident businesses. The District can do its part to accomplish this goal by ensuring that small local businesses and resident small business owners can compete for District contracts on a level playing field.

The disadvantages suffered by small local businesses in competing on public contracts can be reduced by creating programs and policies that make some level of local, small local and small local resident business participation on public works projects mandatory. Under the District's L/SL/SLRBE Program, all formally bid contracts will require the lowest responsive bidder to include, at a minimum, twenty percent (20%) local, small local and/ or resident small business owner involvement. In exchange for exceeding the 20% threshold, bidders will receive bid incentives in the form of discounts and/or preference points, marking down their bids and ratings by up to 5 percent (5%).

Requiring a minimum of 20% small local business participation does not unduly burden non-local prime contractors and businesses in that they are rewarded for their efforts and are granted up to a five percent discount for exceeding compliance thresholds.

The 20% small local business participation requirement is similar to the corrective adjustments given to small local businesses programs in other jurisdictions.

FISCAL IMPACT

There will be a fiscal impact associated with the adoption and implementation of L/SL/SLRBE Program. Most of the costs will be attributed to the initial certification process and then to monitoring compliance and implementing the Program. In 2002 the Board of Education considered adopting a similar local business program, and recognized that up to 3 FTE positions might need to be created to effectively administer that program. Presently, the City of Oakland has a number of staff positions, at least one full time, that monitor the City's Local/Small Local Business Enterprise Program, which is comparable in content to the L/SL/SLRBE Program. OUSD staff has discussed collaborating with City staff for assistance and to assure compliance during preliminary Program implementation. It may also be appropriate to engage an outside consulting firm to monitor the Program during its early stages and while the District determines its staffing needs. Depending on the amount of outside consulting services used and the level of District staff involvement, it is estimated that the cost of compliance monitoring could exceed \$150,000 per annum.

RECOMMENDATION

That the Board of Education adopt the Resolution and create the Local, Small Local and Small Local Resident Business Enterprise (L/SL/SLRBE) Program / Policy.

ATTACHMENTS

0807-

Resolution No. 0073 OF THE OAKLAND UNIFIED SCHOOL DISTRICT
LOCAL, SMALL LOCAL AND SMALL LOCAL RESIDENT BUSINESS ENTERPRISE
PROGRAM (L/SL/SLRBE); EXHIBIT "A." (L/SL/SLRBE Program / Policy).

RESOLUTION NO. 0809-0073
OF THE OAKLAND UNIFIED SCHOOL DISTRICT
LOCAL, SMALL LOCAL AND SMALL LOCAL RESIDENT BUSINESS ENTERPRISE
PROGRAM (L/SL/SLRBE)

WHEREAS, the Board of Education has determined that it is in the best interests of the District and the citizens of Oakland to implement several programs and policies which will stimulate economic opportunity for local residents and businesses, encourage local economic development and insure that competitive prices are paid for goods and services; and

WHEREAS, these policies are aimed at using the power of the public purse to stimulate economic development through the support and empowerment of the local community, especially those aspects of it that have been placed at a disadvantage in the past; and

WHEREAS, the District's goal is to partner with the local community and demonstrate its leadership through these progressive policies, aimed at harnessing local resources to achieve maximum local benefits; and

WHEREAS, the major program that has been created by the Board of Education to serve these respective groups is hereinafter referenced as the Local, Small Local and Small Local Resident Business Enterprise (L/SL/SLRBE) Program; and

WHEREAS, in developing the L/SL/SLRBE Program the Board of Education has made several findings, to wit:

1. The Board of Education finds that Oakland's small local businesses and resident small business owners drive our economy and form the backbone of our neighborhoods. Small businesses and the residents of Oakland who own them have the capacity to generate hundreds of millions of dollars in revenue each year. Through payroll taxes alone, small local businesses make a significant contribution to the economic health of our City and the quality of life of its citizens and visitors.
2. Because Oakland's small local businesses and resident small business experience higher costs, they suffer disadvantage in any competition with big and/or out-of-town businesses. The Board of Education finds that small local businesses and resident small business owners are at a competitive disadvantage in competing for work on public contracts, both as prime contractors and as subcontractors or under professional service agreements.
3. The Board of Education finds that the public has an interest in fostering a strong and vibrant network of local, small local and small local resident businesses in Oakland. In part, the District can accomplish this goal by ensuring that small local businesses and resident small business owners can compete for public contracts on a level playing field.
4. The Board of Education finds that the disadvantages suffered by small local businesses in competing on public contracts can be reduced by creating programs and policies that make some level of local, small local and small local resident business participation on public works projects

mandatory. To that end, the District shall henceforth require that all formally bid contracts require the lowest responsive bidder to include, at a minimum, twenty percent (20%) local, small local and/ or resident small business owner involvement. In exchange for exceeding the 20% threshold, bidders will receive bid incentives in the form of discounts and/or preference points, marking down their bids and ratings by up to 5 percent (5%).

5. The Board of Education finds that requiring a minimum of 20% small local business participation does not unduly burden non-local prime contractors and businesses in that it rewards their efforts by granting up to a five percent discount for meeting compliance and that the requirement is similar to the corrective adjustments given to small local businesses programs in other jurisdictions.

WHEREAS, the Board of Education will continue to support and complement the L/SL/SLRBE Program through the continuation and/or imminent adoption of a variety of diverse programs and policies, including:

- Local Hiring Program;
- Prevailing Wage Policy, as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771;
- Living Wage Policy for non-public works Projects;
- The Project Labor Agreement with local trade unions and pending modifications thereto;
- Implementation of an Owner Controlled Insurance Program (“OCIP”);
- Prompt Payment Policy in accord with Public Contract and Business and Professions Code requirements;
- Apprenticeship Programs; and
- Equal Benefits for domestic partners.

WHEREAS, the intended impacts of the L/SL/SLRBE include:

- Increasing the number of Oakland certified businesses participating in all aspects of District construction contracting projects and professional services agreements;
- Increasing the circulation of local dollars within the Oakland community and thus stimulating a stronger economic base; and
- Promoting the development business capacity enhancement of Oakland certified businesses through joint ventures and mentor/protégé relationships.

WHEREAS, the Board of Education is mindful that to remain effective, the L/SL/SLRBE Program must, through best practices, be adaptable change; with the adoption of this Resolution, the Board will direct District staff to meet with community stakeholders on a quarterly basis in order to assess the Program's progress which shall include the preparation of a report outlining its effectiveness and including any recommendations to the Board on how the Program can be enhanced or improved.

NOW, THEREFORE, the Board of Education of the Oakland Unified School District hereby finds, determines, declares, orders, and resolves as follows:

Section 1. That the above recitals and findings are true and correct.

Section 2. That the Board of Education hereby creates the Local, Small Local and Small Local Resident Business Enterprise (L/SL/SLRBE) Program. (A true and correct copy of the L/S/SLRBE Program is attached to this Resolution as Exhibit "A" and fully incorporated by reference herein.)

Section 3. That through the implementation of L/S/SLRBE Program, the District will:

- Increase the number of Oakland certified local, small local and small local resident businesses participating in all aspects of District construction contracting projects, purchasing and professional services agreements;
- Increase the circulation of local dollars within the Oakland community and thus stimulate a stronger local economic base; and
- Promote, develop and enhance the capacity of small local and small local resident business through joint venture associations and mentor/protégé relationships.

Section 4. The Board of Education hereby directs District staff to meet with community stakeholders on a quarterly basis in order to assess the Program's progress and thereafter prepare a report for the Board outlining the Program's effectiveness including any recommendations to the Board on how the Program can be enhanced or improved.

Section 5. That the District's Superintendent and/or her designee is authorized pursuant to this Resolution to take any action which is necessary to carry out, give effect to, and comply with the terms and intent of this Resolution.

PASSED AND ADOPTED by the State Administrator and the Board of Education of the Oakland Unified School District this 17th day of December, 2008; by the following vote, to wit:


AYES: Kerry Hamill, Gregory Hodge, Gary Yee, Noel Gallo, Christopher Dobbins, Vice President
Alice Spearman, President David Kakishiba

NOES: None

ABSTAINED: None

CERTIFICATION

I, Edgar Rakestraw, Jr., Secretary of the Board of Education of the Oakland Unified School District, Alameda County, State of California, do hereby certify that the foregoing Resolution was duly approved and adopted by the Board of Education of said district at a meeting thereof held on the 17th day of December, 2008 with a copy of such Resolution being on file in the Administrative Office of said district.


Edgar Rakestraw, Jr.

Part I.

**Local, Small Local and Small Local Resident Business Enterprise Program
(L/SL/SLRBE)**

In order to provide economic opportunity for its residents and businesses and stimulate economic development, the Oakland Unified School District ("District") is in the process of implementing several policies that will directly impact how public funds are spent. These policies are aimed at using the power of the public purse to stimulate economic development through the support and empowerment of the local community, especially those aspects of it that have been placed at a disadvantage in the past. The District's goal is to partner with the local community and demonstrate its leadership through these progressive policies, aimed at harnessing local resources to achieve maximum local benefits. The major program that has been created to serve these respective groups is the Local, Small Local and Small Local Resident Business Enterprise (L/SL/SLRBE) Program. Supporting and/or complementing this program are policies regarding local hiring, living wage, prevailing wage, the District's Project Labor Agreement with local trade unions, an Owner Controlled Insurance Program ("OCIP"), Prompt Payment Policy, certifications, apprenticeship programs, and equal benefits for domestic partners.

The L/SL/SLRBE program / policy establishes a twenty percent (20%) local participation requirement and a minimum bid discount of two percent (2%) for meeting that requirement. In addition to bid discounts, the program provides for additional points in negotiated professional services contracts and increased points and discounts as the level of local, small local and small local resident business participation enterprise increases. Specifics of the new policy are detailed under the "Program Guidelines" section below.

Intended Impacts of the L/SL/SLRBE Program

The intended impacts include:

- Increasing the number of Oakland certified businesses participating in all aspects of District construction contracting projects and professional services agreements;
- Increase the circulation of local dollars within the Oakland community and thus stimulate a stronger economic base; and
- Promote the development of and enhance the capacity of Oakland certified businesses through joint ventures and mentor/protégé relationships.

The new policies provide economic opportunity to local residents and businesses by supporting local economic development while paying competitive prices for goods and services.

Definitions

- 1) **Availability** - The number of certified L/SL/SLRBE firms, by trade, ready and willing to compete for work within the District's geographical boundaries (interchangeable with that of the City of Oakland).
- 2) **Business Suppliers/Prefabricators** - An individual or business entity that makes available a certain commodity for meeting demand or for purchase at a given price.

- 3) **Commercially useful function** - The business is directly responsible for providing the materials, equipment, supplies or services to the City as required by the solicitation or request for quotes, bids or proposals. LBEs, SLBEs and SLRBE's that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the District.
- 4) **Contractor/Consultant/Vendor** - The individual, partnership, corporation, joint venture or other legal entity entering into a contractual agreement with the District.
- 5) **Dealer** - A firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers.
- 6) **District** – Refers to the District's geographical boundaries which are interchangeable with that of the City of Oakland. Depending upon context, reference to District may also include the Oakland Unified School District, its Board of Education, Superintendent and other authorized representatives.
- 7) **Emergency Work** - A public works contract awarded because of imminent danger (e.g. fires, floods, earthquakes) or immediate threat to health safety and welfare of Oakland residents and meeting the District's requirements for waiving normal bidding procedures
- 8) **Fixed office** – A fixed office is dedicated office space, owned or leased by the local business, in an established, non-portable building where regular work pertinent to the contract is conducted. For small local business certifications, the fixed office shall be the primary business location of the business. For small local business and small local resident business certifications, a residence may qualify as a fixed office provided that all the following conditions are met: (a) the business conducted in the residence complies with all applicable City of Oakland zoning regulations relating to Home Occupations; and (b) the residence is the primary business location of the business and contributes not less than 51% of the gross receipts of business. A fixed distribution point is a non-portable warehouse or an outside shipping yard owned or leased by the local business, where shipping, receiving and the owner and employees regularly and exclusively conduct distribution of goods and commodities on behalf of the business.
- 9) **Informal professional services contracts** – For purposes of establishing a threshold for determining the application of the L/SL/SLRBE Program only, informal professional service contracts are valued at or under the current year's threshold pursuant to Public Contract Code Section 20111. (For 2008 the threshold is \$72,400, subject to change in 2009). For informal professional services contracts, 75% of the work must be awarded to small local firms or small local resident firms.

- 10) **Local Business Enterprise (LBE)** – An Oakland business (a) with a substantial presence in the District’s geographic boundaries (b) fully operational for 12 consecutive months and (c) a valid business tax certificate.
- 11) **Local Certified Trucker** – A business, locally owned and operated within the District’s geographic boundaries, engaged in transporting goods on trucks to or from a specified location and holds a valid certification as a trucking contractor.
- 12) **Local Manufacturer** - A firm that operates or maintains a factory or establishment located within the District’s geographic boundaries that produce on the premises the materials or supplies purchased.
- 13) **Non-profit/Not for Profit Corporation** - A nonprofit corporation is a corporation formed for purposes other than generating a profit and in which no part of the organization's income is distributed to its directors or officers. A nonprofit corporation can be a church or church association, school, charity, medical provider, legal aid society, volunteer services organization, professional association, research institute, museum, or in some cases a sports association. Nonprofit corporations must apply for and have been granted tax-exempt status at both the federal and state level.
- 14) **Public works contract** - Any construction, alteration, demolition, or repair work done under contract and paid for in whole or in part with public funds.
- 15) **Size Standard** - One factor used to determine a small business. For the District, a small business is one with three-year average gross receipts at or below thirty percent (30%) of the United States Small Business Administration’s size standard. The District follows the Size Standard utilized by the City of Oakland’s certification process.
- 16) **Small construction contracts** - For purposes of establishing a threshold for determining the application of the L/SL/SLRBE Program only, small construction contracts are valued at \$15,000 and under. For informally bid small construction contracts, 75% of the work must be awarded to small local or small local resident firms.
- 17) **Small Local Business Enterprise (SLBE)** –A business that (a) meets the Size Standard set by the District for small businesses; (b) is an independent business headquartered in the District’s geographical area; (c) has a substantial presence within the District’s geographic boundaries; (d) is a full operation conducting business for at least 12 consecutive months, and; (e) holds a valid business tax certificate..
- 18) **Small Local Resident Business Enterprise (SLRBE)** –A business that (a) meets the Size Standard set by the District for small businesses; (b) is an independent business headquartered in the District’s geographical area; (c) is wholly owned and operated by persons whose principal place of residence is located within the boundaries of District’s geographical area; (d) is a full operation conducting business for at least 12 consecutive months, and; (e) holds a valid business tax certificate.
- 19) **Subcontractor/Sub-consultant** - The individual, partnership, corporation or other legal entity that contracts to perform part of or all of the obligations of another’s contract.

- 20) **Subsidiary/Affiliate** - Part of a larger company with national offices located in other cities outside Oakland, and controlled by a home office or headquarters outside Oakland.
- 21) **Substantial Presence** – A fixed and established place where work is carried on of a clerical, administrative, professional or production nature directly pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify. Businesses with offices both within and outside of the District that seek certification as a local business must demonstrate the existence of a bona fide local office in accordance with the following criteria:
- a) **Independent Office Site:** The local office can and does function as an independent office site. The local office is not merely a sham operation set up by a non-local business for the purpose of gaining L/SL/SLRBE certification;
 - b) **Fixtures and Equipment:** The local office contains all fixtures and/or equipment, including but not limited to, as appropriate, computer(s) software, copy machine(s), furniture, vehicle(s), tools, appliances and/or machinery necessary to operate the business for which the certification is sought;
 - c) **Space:** The local office contains all space necessary to operate the business for which certification is sought, including but not limited to, as appropriate, office space, warehouse space, parking, yard area and/or shop area;
 - d) **Dedicated Personnel:** The local office must be the main office for assigned personnel who conduct a full range of the business' activities out of the local office including but not limited to, as appropriate, professional, clerical and/or administrative staff assigned and dedicated to the local office as necessary to operate the business for which certification is sought;
 - e) **Daily Function:** The local office functions on a daily basis, or a regular basis as otherwise appropriate, providing all services to operate the business for which certification is sought.
- 22) **Tier** - The level of the relationship between the prime contractor and subcontractors, or between subcontractors.
- 23) **Waiver** - An intentional action by the Board of Education, excusing a contractor or a department from (1) adhering to and/or complying with a District policy.

Program Requirements

There is a 20% minimum participation requirement for all construction contracts over \$15,000 and all professional services contracts over \$72,400. (Subject to annual increases pursuant to Public Contract Code.) All construction contracts below \$15,000 and all professional services contracts below \$72,400 must include outreach to certified local firms such that a minimum of three local firms are included in the solicitation.

The 20% local business participation requirement must be met with a **maximum** participation of 10% for Local Business Enterprises (LBE) and a **minimum** participation of 10% for Small Local and Small Local Resident Business Enterprises (SLBE / SLRBE). Any percentage combination of SLBE's and SLRBE may be used to calculate the full 20% requirement. In the case of construction projects where trucking is warranted, 20% of the total trucking dollars must be allotted to certified (Oakland) Local Truckers.

Prior to the issuance of a formal invitation for bid, the District shall insure that there are at least three certified businesses listed in the industry, trade or profession that constitutes a major category of work. If at least three L/SL/SLRBEs are not certified, then the requirement may, subject to the discretion of the District, be waived, or the 20% requirement may be re-set from 19 % to 0%, depending on the particular circumstances at time of bid.

The District's awarding authority shall request an availability analysis if there is reason to believe that the availability of certified firms will not satisfy the 20% requirement. The request must be made in time for completion prior to issuing an invitation for bids, request for proposals or any other solicitation.

Contractors are required to submit a completed Subcontractor Listing on the form provided by the District with the bid solicitation. The Subcontractor Listing provides the District with a formal list of subcontractors, the trade or service area to be provided, bid amounts and certification status on businesses that will be used on the project.

The Subcontractor Listing will be used by the District to calculate the level of certified local business participation. Unless a requirement is waived due to limited availability, the determination of responsive and responsible will include meeting the 20% minimum participation requirement.

For purposes of determining that the 20% L/SL/SLRBE business participation minimum is met and is valid, the District is currently utilizing the certification process developed by the City of Oakland pursuant to its Local and Small Local Profit and Not for Profit business Enterprise Program.

Each prime or lead contractor is urged to obtain, from each certified subcontractor, a copy of either the certification letter or certificate issued by the City of Oakland. The certification letter and certificate include the certification number and date of expiration.

Certifications must be current and valid prior to the submittal due date in order for the local participation to count toward meeting the 20% businesses participation requirement. Certification status is confirmed during the compliance evaluation process.

Program Incentives

Bid discounts are applied at a rate of one percent (1%) or one (1) preference point for every 10% of additional contract dollars attributable to certified firms over the 20% minimum threshold requirement for responsive bids. No more than five percent (5%) in bid discounts or five (5) preference points may be earned.

The three examples below demonstrate:

(#1) the 20% minimum requirement at a rate of maximum 10% LBE and minimum 10% SLBE/SLRBE;

(#2) additional bid discounts and preference point values when participation is above and beyond the minimum 20% requirement; and

(#3) the maximum allowable bid discount and preference points.

The maximum allowable incentives are not designed to limit participation.

Example 1: 20% Minimum Requirement

	LBE <i>Maximum</i> Participation	SLBE/SLRBE <i>Minimum</i> Participation		Bid Discounts	Preference Points
	10%	10%*			
Total	0% to 10%	10% to 20%		2%	2

*20% SLBE or 20% SLRBE participation (or any % combination of the two) *also* satisfies the 20% requirement.

Participation over and above the 20% requirement earns additional bid discounts and points up to a maximum of a 5% bid discount and 5 preference points as long as the participation increases in equal increments between LBE/SLBE's *and* SLRBE's or additional participation is achieved entirely with SLRBE's.

Example 2: Additional bid discounts and preference points.

	L/SL SLRBE Additional Participation				Bid Discounts	Preference Points
	L/SLBE	SLRBE	=Requisite%			
Additional (10% L/SL/SLR)	5% max	5% min	30%	To Earn	3%	3
Additional (10% L/SL/SLR)	5% max	5% min	40%	To Earn	4%	4
Additional (10% L/SL/SLR)	5% max	5% min	50%	To Earn	5%	5

****Maximum 5% LBE/SLBE *plus* Minimum 5% SLRBE participation for a total of 10% is used to calculate each additional 1% or 1 point discount/preference.**

In order to take advantage of additional bid discounts and preference points for participation **OVER** the 20% threshold, the bidder must utilize Small Local Residents Businesses for **AT LEAST** 50% of the additional participation work.

Example 3: Maximum Allowable

Threshold	Up To 50% participation	Earns	5% Bid Discount	5 Preference Points
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Maintaining Participation

Incentives are earned based on the level of participation proposed prior to the award of a contract. Once a project begins, it is important to achieve and maintain the participation for which incentives were earned. Prime Contractors and consultants must maintain the L/SL/SLRBE percentages indicated at the time of a contract award and throughout the term of the contract.

Should the prime contractor fail to maintain the L/SL/SLRBE participation listed at the time the contract is awarded; the District may impose a penalty equal to the amount that should have been awarded to the listed L/SL/SLRBE businesses, and/or may stop the work upon approval by the full Board of Education. Prime contractor shall be afforded the opportunity to request a due process hearing before the assessment of penalties and/or any decision to stop the work.

If the District modifies the original scope of work, the contractor must make reasonable efforts to maintain the time of bid L/SL/SLRBE participation for which incentives were earned. If change orders affect only one discipline, staff may use their discretion to allow adjustments to L/SL/SLRBE percentages for the change order portion of the work. Upon request, District staff will help firms to determine methods of maintaining percentages.

Substitution of Listed Subcontractors

In accord with California law, Prime consultants or contractors who have entered into a contract agreement with the District cannot substitute a listed subcontractor or sub-consultant, including any listed **L/SL/SLRBE used to meet participation requirements**, without prior approval of the District. Public Contract Code Section 4107 *et seq.*

The District will grant substitution of a listed subcontractor or consultant on the following conditions:

1. A written statement from the listed sub consultant agreeing to the substitution,
2. When the listed sub consultant has been given a reasonable opportunity to execute a contract, yet fails to, or refuses to execute a written contract when such written contract is based upon the District's conditions and scope of work,
3. When a listed sub consultant becomes insolvent,
4. When the listed sub consultant fails or refuses to satisfy contractual agreements,
5. When the listed sub consultant fails to meet contract insurance requirements, or
6. When the District or the duly authorized officer determines that the work performed by the listed Sub consultant is substantially unsatisfactory, or not in accordance with the contract agreement or that the sub consultant is substantially delaying or disrupting the progress of the work.

Prior to the approval of the prime consultant's request for substitution, the District shall give notice, in writing, to the listed sub consultant, of the prime consultant's request for substitution and/or the reason for such request. Such notice shall be served by certified or registered mail to the last known address of the sub consultant. The sub consultant who has been so notified shall have five (5) working days in which to submit to the District written objections to the substitution. Failure to file such written objection shall constitute the sub consultants consent to the substitution.

If written objections are filed, the District shall give written notice of a hearing date to the prime and sub consultant within five (5) working days. At the hearing, the prime and sub consultant will present their cases and the Hearing Officer will make a determination.

Emergency Contracts

Local businesses will be given first priority in the performance of emergency work as defined in Public Contract Code Section 20300, which formulates and establishes procedures for bidding, contracting, and purchasing goods and services.

The District establishes a goal wherein 75% of emergency contract dollars must be spent with local firms, as identified herein. Of that amount, at least two thirds must be spent with small local businesses. District agencies are required to solicit from Oakland certified local firms for all informally bid emergency work whenever feasible.

Compliance Monitoring and Penalties

To ensure compliance with the program, the contractor or consultant shall provide records upon request (within ten calendar days) and permit the District to review all pertinent records and documents of the contractor and subcontractors. The contractor or consultant shall provide a copy of all subcontractor agreements, purchase orders and/or other verification of the total amount to be paid to each subcontractor, supplier, etc., prior to commencement of work. A penalty of one percent (1%) of the contract amount or one thousand dollars (\$1,000) per day (whichever is less) may be applied if records or documents are not provided within the specified time. The District shall deem such refusal a material breach of contract, in which case the District may terminate the contract and/or stop the work until compliance is met. In addition, the contractor or subcontractors may be debarred from participating in future District contracts for a period of six months to five years, and may lose certification.

The subcontractor's progress payment report must be submitted with each progress payment in order for the progress payment to be processed. Also, prime contractors and/or prime consultants will provide the District with executed copies of its subcontractor/sub consultant agreements to verify dollar amounts stated for all L/ SL/SLRBEs. Contractors must also provide information with each progress payment indicating payments made to L/SL/SLRBEs in order to receive subsequent progress payments.

Prevailing Wages

State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771. Workers employed on construction, alteration or demolition projects in California that use public funds are paid the prevailing wage, which is the basic hourly rate the majority of workers in a particular craft or classification earn. The prevailing wage also is based on the locality and nearest labor market. The California Department of Industrial Relations, (Divisions of Labor Statistics and Research) annually determines prevailing wages and may be reached at www.dir.ca.gov/DLSR/PWD.

The Contractor shall ensure that all workers performing construction work for the project are employed by the Contractor and shall include in its contracts with its contractors, requirements that its contractors' employees and their subcontractors' employees shall be compensated in an amount no less than the general prevailing wage rate of per diem wages pursuant to the California Labor Code Sections 1770, et seq.

The Contractor shall comply with, and shall include in its contracts with its contractors, requirements that its contractors and their subcontractors shall ensure that its contractors and subcontractors comply

with all reporting and record keeping requirements of the applicable prevailing wage statutes and regulations. The Contractor is aware of and shall comply with the provisions of Oakland Unified School District's prevailing wage requirements contained in the District's Labor Compliance Program ("LCP"). Copies of the LCP are on file with the District and can be obtained from the District's Labor Compliance Officer.

The prevailing wage requirement will be monitored and enforced by the District in accordance with the LCP. In addition to any other rights provided by California law to recover compensation, a worker that has been paid less than the prevailing wage rates shall have a right to commence an action or proceeding against the employer of the worker for the difference between the prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which the worker was paid less than the compensation required to be paid under the provisions of this agreement.

Winning Compliance

Local Subcontracting Outreach

To ensure full disclosure of contracting and subcontracting opportunities available through the Oakland Unified School District, each of the District's awarding departments must post contracting opportunities on the District's website, www.ousd.org

The District is in collaboration with the City of Oakland, Office of Contract Compliance & Employment Services, which maintains a list of **certified** for profit and not-for profit businesses and organizations. The list is divided by trade or profession and includes contact information as and if the certification type is either Local Business Enterprise (LBE) or a Small Local Business Enterprise (SLBE). In addition, the District, through its Labor Compliance Officer, maintains a list of Small Local Business Enterprises (SLBE's) which are also owned by residents of City of Oakland (SLRBE). Each agency is required to solicit responses from certified firms appropriate to the nature and scope of the particular solicitation. Upon request, mailing lists of certified firms will be provided to using agencies and contractors/consultants.

Additional Considerations

Mentor Protégé Agreements

The Oakland Unified School District strongly supports "Mentor-Protégé" relationships because they help to build capacity in underutilized service areas. Typically, prime contractors and established consultants help develop the technical and business capabilities of small local and small local resident businesses. On a case-by-case basis, the District will afford the maximum bid discount credit to Mentor – Protégé teams on construction and professional services contracts, as detailed in the Program Incentives Section of this Policy, above.

If a prime contractor or prime consultant is able to develop a "Mentor-Protégé" relationship with a certified SLBE or SRLBE, the mentor will enjoy the benefit of credits against District participation thresholds, particularly under circumstances where it has been demonstrated that certified firm participation is limited. In order to earn credit for Mentor-Protégé relationships, the Mentor-Protégé Agreement must be submitted for approval to the District's awarding agency or Labor Compliance Officer prior to the project bid date for construction, and by the proposal due date for professional

services contracts. Although an approved Mentor-Protégé agreement removes the 20% L/SL/SLRBE participation requirement, Mentor-Protégé teams are encouraged to utilize additional L/SL/SLRBE participation. In the case where approved Mentor-Protégé teams are competing for the same contract, the team with the greatest percentage of additional L/SL/SLRBE participation will prevail.

A written Mentor-Protégé agreement must be completed by both parties and executed before a notary public. The agreement must delineate the rights and responsibilities of each mentor and protégé. The parties must agree to enter into the relationship for the life of the project.

During the duration of the contract, both the mentor and protégé must each provide the appropriate District agency with a monthly report of the kinds of mentor skills provided to the protégé, which shall include but not limited to:

- Number of hours expended in the fulfillment of the project by each mentor and protégé partner;
- Managerial assistance provided by mentor (*e.g. bookkeeping services, personnel, payroll, etc.*);
- Technological assistance provided by mentor (*e.g. computer hardware/software, training, etc.*);
- Bonding assistance provided;
- Public works and public school construction bidding and project management assistance provided;
- Financial assistance provided; and
- Additional capacity building services.

No officer, director, employee or member of the mentor-protégé team shall be allowed to bid or otherwise participate independently on a District contract where the mentor-protégé team is bidding or otherwise participating. Each party is prohibited from submitting multiple bids on District contracts.

The protégé must be able to demonstrate that it is an independent business operation prior to submittal of a Mentor-Protégé Agreement and throughout the term of the Agreement. Unless specifically defined as one of the benefits to the protégé and spelled out in the Agreement, the mentor and protégé must maintain separate office spaces while the Mentor-Protégé Agreement is in effect.

Joint Venture Agreements

A business that is bidding or competing for District contracts may associate with a certified Small Local or Small Local Resident business to compete for contracts as a joint venture. (The association of a Local Business Enterprise with a non-local business will not qualify as a joint venture under this Program, however, an LBE that associates with a SLBE or SLRBE will receive an additional 2% - 2 point preference over a non-local / SL/SLRBE joint venture association.) A joint venture should be between two entities with the same discipline or license as required by the awarding department. Approved Joint ventures will receive up to the maximum bid discount credit on construction and professional services contracts, as detailed in the Program Incentives Section of this Policy, above. For example, the SL/SLRBE partner must own, at a minimum, a 20% stake in the joint venture.

The parties must agree to enter into the relationship for at least the life of the project.

Basic Elements of the Joint Venture Agreement:

A Joint Venture must submit a Joint Venture Agreement two weeks prior to the bid due date.

Each agreement must include, but not limited to the following:

1. Detailed explanation of the financial contribution of each partner;
2. List of the personnel and equipment used by each partner;
3. Detailed breakdown of the responsibilities of each partner;
4. Explanation of how the profits and losses will be distributed;
5. Description of the bonding capacity of each partner; and
6. Management or incentive fees available for any one of the partners (if any).

Commercially Useful Functions Performed by Joint Venture Partners:

Each JV partner must perform a "commercially use function" as that term is defined herein. A SL/SLRBE that relies on the resources and personnel of a non-SL/SLRBE firm will not be deemed to perform a "commercially useful function".

Joint Venture License Requirements: Each joint venture partner must possess licenses appropriate for the discipline for which a proposal is being submitted. If a joint venture is bidding on a single trade project, at the time of bid submittal, each of the joint venture partners must hold a Joint Venture License (or demonstrate that a Joint Venture License application is pending with the Contractors State License Board) and possess the requisite specialty license for that trade bid.

Delineation of Joint Venture Work:

The SL/SLRBE partner must clearly define the portion of the work it will perform during the project. This work must be of the similar type of work the SL/SLRBE partner performs in the normal course of its own business. The Joint Venture Agreement must specify the project bid items to be performed by each individual joint venture partner. Lump sum joint venture participation is not acceptable.

Responsibilities of the SL/SLRBE Joint Venture Partners:

1. The SL/SLRBE partner must share in the ownership, control, management responsibilities, risks, and profits of the joint venture in proportion with level of participation in the project;
2. The SL/SLRBE partner must perform work that is commensurate with its experience.
3. The SL/SLRBE partner must use its own employees and equipment to perform its portion of the project.
4. For construction contracts only, one of the partners must be a Small Local Resident Business Enterprise. The SLRBE partner must own, at a minimum, a forty-five percent 45% stake in the joint venture and the joint venture as a whole must perform bid item work that equals or exceeds twenty-five percent (25%) of the total value of the contract, excluding the cost of manufactured items, in order to be eligible for a joint venture discount.

Application of Bid Discounts for Joint Venture Agreements

To be eligible for a bid discount, at the time of bid submittal, each joint venture partner must hold a Joint Venture License (in the case of construction contracts only, successfully demonstrate that a Joint Venture License application is pending with the Contractors State License Board) and each must have the license that is appropriate for the project as required in

the contract document of the contract award authority. Unless permission is granted by the District's Facilities Director or designee for good cause shown, based on sudden and unexpected necessity, the following actions are not permitted: i) the non-SL/SLRBE partner performing work for the SL/SLBE partner; ii) leasing of equipment or property by the SL/SLBE partner from the non-L/SL/SLBE partner; and iii) the hiring of the non-SL/SLBE partner's employees by the SL/SLRBE partner.

Other Joint Venture Conditions

The District's Facilities Director or designee must first approve the SL/SLRBE Joint Venture Agreement before the joint venture is eligible for bid discounts. Any changes must also receive the prior approval of the District's Facilities Director or designee. In addition to any other information required by conditions specified herein, each SL/SLRBE joint venture must provide upon request, cancelled checks and any other financial records to the District.

Other Program Considerations

Prime contractors shall not impose any unreasonable additional criteria on subcontractors that are not required by the District. Any demand on an L/SL/SLRBE subcontractor that would change the way the subcontractor does business will be deemed unreasonable. The prime contractor shall not selectively impose criteria upon local certified businesses that are not applied to other business in similar contractual relationships with the prime.

All bids submitted shall be made available to the public upon bid opening as required by the Public Contract Code.

END Part I

Part II.

Certification

The following is the certification process utilized by the City of Oakland. It is printed in its entirety, adopted without modification and incorporated by reference into the Oakland Unified School District's Local Business Policy. The Board of Education reserves the right, as deemed appropriate, to develop the District's own, independent certification process, which shall supersede the City of Oakland's criteria. In addition, the District shall adopt a proof of residency process (similar to that used for enrolling students in Oakland Unified School District schools) to verify that the criteria for Small Local **Resident** Business Enterprise certifications are met. (A list of documents that will be required by the District as proof of residency can be found at the end of this Part II.)

City of Oakland Certification Criteria

The City of Oakland now certifies both for-profit and not-for-profits operations. Certification criteria apply to both for profit and not-for-profit organizations.

1. An established operation located and doing business or operating within the geographical boundaries of the City of Oakland.
2. Fully operational for at least twelve (12) consecutive months prior to applying for certification.
3. A valid City of Oakland Business Tax certificate issued no less than twelve (12) months prior to applying for certification. All payments must be current and the certificate must reflect the address of the local business.
4. A fixed office that reflects a substantial presence in the geographical boundaries of the City of Oakland. Post Office boxes, temporary locations, and moveable work sites will not establish status as a local business. In the case of trucking firms, the truck inventory must be located within the city limits. A fixed office is a dedicated office space, owned or leased by the local business, in an established, non-portable building where regular work pertinent to the contract is conducted. For SLBE certification, the fixed office shall be the primary business location of the business. A residence may qualify as a fixed office provided the following conditions are met: (a) the business conducted in the residence complies with Oakland Zoning Regulations relating to Home Occupations; and (b) the residence is the primary business location of the business and contributes not less than 51% of the gross receipts of business. A fixed distribution point is a non-portable warehouse or an outside shipping yard owned or leased by the local business, where shipping, receiving and the owner and employees regularly and exclusively conduct distribution of goods and commodities on behalf of the business.
5. The owner or employees (person hired and paid directly by the local business to conduct work solely on behalf of the business at its fixed office or distribution point) shall be available during normal operating hours.

6. A LBE/SLBE must comply with all applicable Federal, State and local regulations, including, but not limited to the City of Oakland Zoning Regulations.
7. All taxes, fees, permit fees, and fines shall be current.
8. Upon request by the City's certifying officer, a LBE/SLBE must possess and make available for inspection the following documentation citing the Oakland business street address:
 - a. Executed (i.e. signed by all parties) copies of past/current contracts;
 - b. Oakland Business Tax Certificate and federal tax identification number;
 - c. Executed lease or other written agreement for occupancy of the Oakland office;
 - d. Business cards and Utility bills (including but not limited to telephone, gas, electric, or water bills)
9. A business requesting certification shall supply the City with all such additional information, as the City may deem relevant to make a determination on its eligibility for certification. The City may wish to review additional documents that may include, but may not be limited to:
 - a. Commercial advertising
 - b. On-site signage
 - c. Letterhead
 - d. Previous Lease Agreements
 - e. Marketing materials
 - f. Listing in the telephone book.
10. Small local businesses must present or make available copies of federal tax returns showing gross revenues for the three most recent fiscal years in order for the City to determine compliance with established business size standards.

Certification Eligibility Standards

Ownership and Control for Small Local Business Enterprise

The following standards shall be used by the City to determine if a firm is owned and controlled by one or more owners or businesses and eligible for certification as a Small Local Business Enterprise:

1. An eligible small local business shall be an independent business. The ownership and control of the SLBE shall be real, substantial and continuing and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The small local business owner shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements. Recognition of the business as a separate entity for tax, corporate or local status purposes is not necessarily sufficient for recognition as an SLBE. In determining whether a potential SLBE is an independent business, the City shall consider all relevant factors, including the date the business started, the adequacy of its resources for the work of the contract, and the degree to which financial, equipment leasing and other relationships with non local firms.

2. The owner(s) of the small local business must also possess the power to direct or cause the direction of the management and policies of the firm. Also, the owner shall make the day-to-day, as well as major decisions on matters of management, policy and operations. The firm shall not be subject to any formal or informal restrictions, which limit the customary discretion of the owners. There shall be no restrictions that would prevent the local business owners, without the cooperation or vote of any non-local owners, from making a business decision of the firm. (i.e. bylaws provisions, partnership agreements or charter requirements for cumulative voting rights)
- Where the actual management of the firm is contracted out to individuals other than the owners, those persons who have the ultimate power to hire and fire the managers are, for the purposes of this part, considered controlling the business.
 - The contribution of capital or expertise by the local owner(s) to acquire their interests in the firm shall be real and substantial.
 - Newly formed firms and firms whose ownership and/or control have changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.
 - A previous and/or continuing employer-employee relationship between or among present owners are carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities.
 - Any relationship between a SLBE and non- SLBE, which has an interest in the SLBE, is carefully reviewed to determine if the interest of the non-SLBE conflicts with the ownership and control requirements.
 - SLBEs will be considered bona fide if the ownership interests are real and continuing, and not created solely to meet the City goals for SLBEs participation. The SLBEs included in the contract must perform commercially useful services and/or supplies and not merely act as a passive conduit. In the event the City has reason to question the ownership of SLBEs, the burden of proof is on the claimant and/or contractor to provide documentation to substantiate the SLBE business enterprise status.

Size Standards for Small Businesses

The City has established a size limit in order to set forth criteria and define small local businesses. In making the determination relative to size, the City will use thirty percent (30%) of the United States Small Business Administration's Small Business Size standards. Size is based on gross revenues realized by the firm for the three most recent fiscal years that the firm is doing business.

LBE/SLBE Certification Process

Step 1 – The Application: Down load Applications from the web site maintained by Contract Compliance & Employment Services (CC & ES). From Oaklandnet.com, select Contract Compliance

on the “go to” link. Requests for certification applications can be made by phone, facsimile, electronic mail, in writing or in person. When submitting the application, remember to attach a copy of the most recent Business Tax Certificate and have the application notarized. If you are applying as a small business, attach the last three most recent business tax returns.

Step 2 – The Review Process: The City of Oakland employs a three-tier certification process as standard operating procedure. This process is used to determine the degree of difficulty and time necessary to complete the review.

- ✓ **Tier I** – The application, upon review by staff, is complete and accurate, and requires no further action. Analysis, recommendation and notification as to the status of the application to certify or deny certification will be conducted within 10 working days. Tier I applications are typically LBE re-certifications.
- ✓ **Tier II** – The application, upon review by staff, requires additional information (e.g. application information is incomplete or requires clarification, supporting documents missing, etc.) If the application is incomplete, additional documentation will be requested and must be submitted within 10 working days. Analysis, recommendation and notification as to the status of the application to certify or deny certification will be conducted within 10 working days.
- ✓ **Tier III** - The application, upon review by staff, necessitates a desk audit and site visit. The desk audit and site visit will be conducted within 15 working days. All parties are asked to cooperate fully with the investigation. Failure or refusal to furnish requested information or failure to cooperate voids the application. If the audit and review results in a satisfactory determination, analysis, recommendation and notification as to the status of the application to certify or deny certification will be conducted within 10 working days after the site visit.

During the process of certification, the City may review any documentation or information it deems necessary to determine whether the applicant meets the definition of a local business set forth in the section 2.01 of this document.

To ensure complete and accurate determination in a timely fashion, it is requested that all potential LBE/SLBE participants submit an application for certification a minimum of three (3) weeks prior to a bid opening or submittal of a proposal. In order to receive LBE or SLBE credit for listed subcontractors and suppliers certifications must be complete and existing at the date and time of bid opening or submittal due dates.

Certification with another agency does not constitute certification with the City of Oakland. The City reserves the right to approve LBE/SLBE status from other government or City agencies. Firms or individuals who knowingly submit false information concerning their LBE/SLBE business status are subject to action or actions for fraud under the State and Federal False Claims Act and will be debarred from bidding on future City work for a period of three (3) years.

Other Considerations

In addition to the above the City shall give special consideration to the following circumstances in determining eligibility:

- Newly formed firms and firms whose ownership and/or control have changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.
- Previous and/or continuing employer-employee relationships between or among present owners are carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities.
- Any relationship between an LBE/SLBE and a business that is not an LBE/SLBE, which has an interest in the LBE, is carefully reviewed to determine if the interest of the non-LBE conflicts with the ownership and control requirements.
- A joint venture is eligible for certification if the LBE/SLBE partner of the joint venture meets the standards for an eligible LBE. The LBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks and profits of the joint venture. The City Attorney's office must approve joint venture agreements.
- The mentor and protégé must be certified prior to the submittal of a mentor-protégé agreement for approval.

Re-Certification

A City of Oakland certification is valid for a period of two years, unless otherwise specified. At the end of the certification period (October and April) the business may apply for re-certification. Notwithstanding the above, the City may require re-submittal of current documentation and information in the event a LBE/SLBE certification is challenged.

Appeal

Any firm that believes that it has been wrongfully denied certification as an LBE/SLBE or joint venture may file an appeal in writing. The written appeal must be signed and dated.

The appeal shall be filed no later than 30 days after the date of denial. The City may extend the time for filing, or waive the time limit in the interest of justice. The City may specify in writing the reason for so doing.

Third parties, who have reason to believe that another firm has been wrongfully denied or granted certification as an LBE/SLBE or joint venture, may advise the City in writing. This information is not considered an appeal.

The City ensures a prompt investigation, and may at its discretion; decertify the LBE/SLBE or joint venture pending the outcome of the investigation.

END Part II

OAKLAND UNIFIED SCHOOL DISTRICT

Small Local Resident Business Enterprise
("SLRBE")

Supplemental Certification Documentation

The following will be required to qualify as a SLRBE under OUSD's Local Business Program:

Any three (3) of the following dated **within 90** days. Must reflect the business owners' **CURRENT** residential address:

a.) One to three utility bills from different agencies,

i.e., PG&E, home telephone, water, garbage or cable; and/or

b.) Both automobile registration and automobile insurance; and/or

c.) Homeowner's/renter's insurance policy; and/or

d.) Property tax statement; and/or

e.) Official letter from a social service/government agency; and/or

f.) Rental/Lease Agreement or Grant Deed or Title