

**OAKLAND UNIFIED SCHOOL DISTRICT
OFFICE OF THE SUPERINTENDENT
January 29, 2014**

LEGISLATIVE FILE

File ID No. 13-2935
Introduction Date 1/29/14
Enactment No. 14-0129
Enactment Date 1-29-14
By _____

TO: Board of Education

FROM: Gary Yee, Ed.D, Superintendent
Timothy White, Associate Superintendent for Facilities Planning & Management
Vice President James Harris
Director Rosie Torres

SUBJECT: ADOPTION OF RESOLUTION AMENDING THE 2008 LOCAL, SMALL LOCAL AND SMALL LOCAL RESIDENT BUSINESS ENTERPRISE PROGRAM (L/SL/SLRBE) AND INCREASING THE MANDATORY LOCAL PARTICIPATION REQUIREMENT FROM TWENTY (20%) TO FIFTY (50%) PERCENT FOR ALL CAPITAL PROGRAM / CONSTRUCTION RELATED CONTRACTS AND PROFESSIONAL SERVICES AGREEMENTS, AND APPROVAL OF BOARD POLICY IMPLEMENTING ADMINISTRATIVE REGULATIONS.

ACTION REQUESTED:

Adoption and Approval by the Board of Education of the Resolution Amending the 2008 Local, Small Local and Small Local Resident Business Enterprise Program (2014 L/SL/SLRBE) and Increasing the Mandatory Local Participation Requirement From Twenty (20%) to Fifty (50%) percent for all construction contracts over \$45,000 and all construction related professional services contracts over \$84,100. (Subject to annual increases pursuant to Public Contract Code section 20111(a).), and Approval of Board Policy and Implementing Regulations.

BACKGROUND:

In order to provide economic opportunity for Oakland residents and businesses and stimulate economic development, the Oakland Unified School District ("District") implemented in December of 2008 a program that has directly impacted how public funds are spent. The 2008 program, commonly referred to as the Local, Small Local and Small Local Resident Business Enterprise Program (2008 S/SL/SLRBE) has proven to be a great success, stimulating economic development through the support and empowerment of the local community, especially groups that have historically been disadvantaged. The District's primary goal under the 2008 L/SL/SLRBE was to partner with the local community and demonstrate its leadership by harnessing local resources so as to achieve maximum local benefits. Since 2009, as a direct result of this program, \$115 million has been spent with local Oakland businesses.

CURRENT CONSIDERATIONS:

The 2008 L/SL/SLRBE established a twenty percent (20%) mandatory local participation requirement on all District contracts and professional service agreements. Following implementation of the 2008 L/SL/SLRBE policy, the ensuing years have demonstrated that the Program was an overwhelming success, most particularly on District construction projects and construction related professional services agreement. There is now clear data demonstrating that there is more than

sufficient capacity among Oakland construction industry businesses to increase the mandatory participation thresholds for construction related solicitations. **The 2014 L/SL/SLRBE would establish a fifty percent (50%) mandatory local participation requirement on all District Capital Program construction contracts and construction related professional service agreements.**

FISCAL IMPACT:

There is a fiscal impact associated with the 2014 L/SL/SLRBE Program. Most of the direct costs are attributed to monitoring compliance, which is primarily handled by an outside consulting firm, 360 Total Concepts, with support from OUSD staff and the Capital Program's Construction Manager, Seville Group, Inc. Other fiscal impacts may include additional costs associated with doing business with firms located in Oakland. 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 the District, potentially offsetting any premiums imposed by implementation of the policy.

RECOMMENDATION:

That the Board of Education adopt and approve the Resolution Amending the 2008 Local, Small Local and Small Local Resident Business Enterprise Program and Increasing the Mandatory Local Participation Requirement From Twenty (20%) to FIFTY (50%) percent for all construction contracts over \$45,000 and all construction related professional services contracts over \$84,100. (Subject to annual increases pursuant to Public Contract Code section 20111(a).), and approve the Board Policy and implementing Administrative Regulations.

ATTACHMENTS:

- Resolution No. 1314-1022
- Board Policy 7115
- Administrative Regulation 7115

**RESOLUTION NO. 1314-1022 OF THE OAKLAND UNIFIED SCHOOL DISTRICT
AMENDING THE 2008 LOCAL, SMALL LOCAL AND SMALL LOCAL RESIDENT BUSINESS
ENTERPRISE PROGRAM AND INCREASING THE MANDATORY LOCAL PARTICIPATION
REQUIREMENT FROM TWENTY (20%) TO FIFTY (50%) FOR ALL CAPITAL PROGRAM
CONSTRUCTION CONTRACTS OVER \$45,000 AND ALL RELATED PROFESSIONAL SERVICES
CONTRACTS OVER \$84,100.¹**

WHEREAS, in December of 2008 the Board of Education determined that it was in the best interests of the District and the citizens of Oakland to implement a local business utilization policy, known as the Local, Small Local, Small Local Resident ("L/SL/SLRBE") to stimulate economic opportunity for local residents and small businesses, encourage local economic development and insure that competitive prices are paid for goods and services; and

WHEREAS, the L/SL/SLRBE has successfully stimulated economic development through the support and empowerment of the local and small business community, most particularly on District construction projects and construction related professional services agreement, demonstrating that there is more than sufficient capacity among Oakland construction industry businesses to increase the mandatory participation thresholds for construction related solicitations; and

WHEREAS, the District will continue to partner with the local community and demonstrate its leadership through its vigorous implementation of this progressive policy, and help the community harness local resident and small business resources to achieve maximum local and emerging business benefits; and

WHEREAS, in developing the 2014 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 District 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.

¹ (Subject To Annual Increases Pursuant To Public Contract Code Section 20111(A).).

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 construction contracts and construction related professional services agreements require the lowest responsive bidder to include, at a minimum, fifty percent (50%) local, small local and/ or resident small business owner involvement. In exchange for exceeding the 50% 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 50% small local business participation on construction related contracts 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 existing 2008 L/SL/SLRBE Program and the new 2014 L/SL/SLRBE Program through the continuation and/or imminent adoption of a variety of diverse programs and policies, including:

- Establishment of a strong Local Hiring Program;
- Renegotiation of the 2004 Project Labor Agreement to include greater opportunities for OUSD students in construction trade professions;
- Prevailing Wage Policy, as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771; and
- District Sponsored Apprenticeship Programs in partnership with local trade unions.

WHEREAS, the Board of Education is mindful that to remain effective, the 2014 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 an annual 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 amends the Local, Small Local and Small Local Resident Business Enterprise (L/SL/SLRBE) Program to increase the mandatory local participation from twenty percent (20%) to fifty percent (50%) on all Capital Program construction contracts and related professional services agreements.

Section 3. The Board of Education hereby directs District staff to meet with community stakeholders on an annual 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 his designee are 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 and the 2014 L/SL/SLRBE.

PASSED AND ADOPTED by the Board of Education of the Oakland Unified School District this 29th day of January, 2014; by the following vote, to wit:

AYES: Jody London, Jumoke Hinton Hodge, Anne Washington, Roseann Torres,
Vice President James Harris and President David Kakishiba

NOES: None

ABSTAINED: None

ABSENT: Christopher Dobbins

CERTIFICATION

I, Gary Yee, Secretary to 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 29th day of January, 2014 with a copy of such Resolution being on file in the Administrative Office of said district.



Gary Yee, Ed.D.,
Secretary, Board of Education

File ID Number: 13-2935
Introduction Date: 1-29-14
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By: _____

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

BP 7115

Capital Program / Construction Related Local, Small Local and Small Local Resident Business Enterprise Program (2014 L/SL/SLRBE)

Background

In order to provide economic opportunity for its residents and businesses and stimulate economic development, the Oakland Unified School District ("District") implemented in December of 2008 a program that has directly impacted how public funds are spent. The 2008 program, commonly referred to as the Local, Small Local and Small Local Resident Business Enterprise Program (2008 S/SL/SLRBE) has proven to be a great success, stimulating economic development through the support and empowerment of the local community, especially groups that have historically been placed at a disadvantage. The District's primary goal under the 2008 L/SL/SLRBE was to partner with the local community and demonstrate its leadership by harnessing local resources in order to achieve maximum local benefits.

The 2008 L/SL/SLRBE established a twenty percent (20%) mandatory local participation requirement on all District contracts and professional service agreements. The ensuing years have demonstrated that the Program was an overwhelming success, most particularly on District construction projects and construction related professional services agreement, demonstrating that there is more than sufficient capacity among Oakland construction industry businesses to increase the mandatory participation thresholds for construction related solicitations.

District Policy Effective February 1, 2014

Therefore, the District amends the 2008 L/SL/SLRBE (2014 L/SL/SLRBE) to require fifty percent (50%) mandatory local participation on all District capital program / construction related contracts and professional service agreements.

There is a fifty (50) % minimum participation requirement for all formally bid public works construction contracts over \$45,000¹ and formally solicited construction related contracts professional services contracts, including, but not limited to, architects, construction managers, inspectors, testing labs and geotechnical engineers, over \$84,100². All informal construction contracts below \$45,000 and all informal construction related professional services contracts below \$84,100.00 will include outreach to certified local firms such that a minimum of three local certified firms are included in the solicitation.

¹The District uses the alternative bidding procedures of the California Uniform Public Construction Cost Accounting Act., Pub. Contract Code, § 22000, et seq., the "CUPCCAA".

² Subject to annual increases pursuant to Public Contract Code 20111(a).

Emergency Contracts

L/SL/SLRBE businesses will be given first priority in the performance of emergency work as defined in Public Contract Code section(s) 22000-22045 which formulates and establishes procedures for bidding, contracting, and purchasing goods and services under the California Uniform Construction Cost Accounting Act.

Compliance Monitoring and Penalties

To ensure compliance with the program, the contractor or consultant shall provide records upon request 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.

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.

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.

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 Local 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 conducting a construction related solicitation is required to obtain responses from certified firms appropriate to the nature and scope of the particular solicitation. Upon request, mailing lists of certified firms.

See Administrative Regulation 7115

1/29/14

OAKLAND UNIFIED SCHOOL DISTRICT

Administrative Regulations

AR 7115

Capital Program / Construction Related Local, Small Local and Small Local Resident Business Enterprise Program (2014 L/SL/SLRBE)

Background

In order to provide economic opportunity for its residents and businesses and stimulate economic development, the Oakland Unified School District ("District") implemented in December of 2008 a program that has directly impacted how public funds are spent. The 2008 program, commonly referred to as the Local, Small Local and Small Local Resident Business Enterprise Program (2008 S/SL/SLRBE) has proven to be a great success, stimulating economic development through the support and empowerment of the local community, especially groups that have historically been placed at a disadvantage. The District's primary goal under the 2008 L/SL/SLRBE was to partner with the local community and demonstrate its leadership by harnessing local resources in order to achieve maximum local benefits.

The 2008 L/SL/SLRBE established a twenty percent (20%) mandatory local participation requirement on all District contracts and professional service agreements. However, following implementation of the 2008 L/SL/SLRBE, the ensuing years have demonstrated that the Program was an overwhelming success, most particularly on District construction projects and construction related professional services agreement, demonstrating that there is more than sufficient capacity among Oakland construction industry businesses to increase the mandatory participation thresholds for construction related solicitations.

District Policy Effective February 1, 2014

Therefore, the District has resolved to amend the 2008 L/SL/SLRBE (2014 L/SL/SLRBE) to require fifty percent (50%) mandatory local participation on all District capital program / construction related contracts and professional service agreements. The Amended 2014 L/SL/SLRBE program still provides for preference points on construction related professional services contracts and bid discounts on construction contracts, (up to 5 points or 5%) as the proposer's level of local, small local and small local resident business participation increases.

There is a fifty (50) % minimum participation requirement for all formally bid public works construction contracts over \$45,000¹ and formally solicited construction related contracts professional services contracts, including, but not limited to, architects, construction managers, inspectors, testing labs and geotechnical engineers, over \$84,100². All informal construction contracts below \$45,000 and all informal construction related professional services contracts below \$84,100.00 will include outreach to certified local firms such that a minimum of three local certified firms are included in the solicitation. Specifics of the new policy are detailed under the "Program Guidelines" section below.

¹ Please note: The District uses the alternative bidding procedures of the California Uniform Public Construction Cost Accounting Act., Pub. Contract Code, § 22000, et seq., the "CUPCCAA".

² Subject to annual increases pursuant to Public Contract Code 20111(a).

Verified Results of the 2008 L/SL/SLRBE Program

Since 2008, the quantifiable impacts of the Program include:

- Increases in the number of Oakland certified businesses participating in District construction contracting projects and construction related professional services agreements;
- Increases in the circulation of local dollars within the Oakland community and revitalization of Oakland's economic base through reinvestment of General Obligation bond dollars; and
- Increases in the development and capacity enhancement of Oakland certified businesses.

The Amended 2014 L/SL/SLRBE continues to provide economic opportunity to local residents and businesses by supporting local economic development while paying competitive prices for construction related goods and services.

Part 1.

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) **Commercially useful function** - The business is directly responsible for providing the materials, equipment, supplies or services to the District as required by the solicitation or request for quotes, bids or proposals.
- 3) **Contractor/Consultant/Vendor** - The individual, partnership, corporation, joint venture or other legal entity entering into a contractual agreement with the District.
- 4) **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.
- 5) **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.
- 6) **Emergency Work** - A public works contract awarded because of imminent danger (e.g. fires, floods, earthquakes) or immediate threat to the health, safety and welfare of Oakland residents and meeting the District's legal requirements for waiving normal bidding procedures.

- 7) **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.
- 8) **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(a). (For 2014 the threshold is \$84,100.00, subject to annual adjustments). For informal professional services contracts, 75% of the work shall be awarded to small local firms or small local resident firms.
- 9) **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.
- 10) **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.
- 11) **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.
- 12) **Public works contract** - Any construction, alteration, demolition, or repair work done under contract and paid for in whole or in part with public funds.
- 13) **Size Standard** - One factor used to determine a small business. The District follows the Size Standard utilized by the City of Oakland's certification process.
- 14) **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 \$45,000 and under. For informally bid small construction contracts, 75% of the work shall be awarded to small local or small local resident firms.
- 15) **Small Local Business Enterprise (SLBE)** – A business that (a) meets the Size Standard set by the City of Oakland 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.

- 16) **Small Local Resident Business Enterprise (SLRBE)** –A business that (a) meets the Size Standard set by the City of Oakland 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.
- 17) **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.
- 18) **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.
- 19) **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.
- 20) **Tier** - The level of the relationship between the prime contractor and subcontractors, or between subcontractors.
- 21) **Waiver** - An intentional action by the Board of Education, excusing a contractor or a department from adhering to and/or complying with a District policy.

Program Requirements

There is a 50% minimum participation requirement for all construction contracts over \$45,000 and all construction related professional services contracts over \$84,100. (Subject to annual increases pursuant to Public Contract Code section 20111(a).) All construction contracts below \$45,000 and all

professional services contracts below \$84,100.00 must include outreach to certified local firms such that the respondent can demonstrate that a **minimum of three local certified firms** were included in the solicitation.

The 50% local business participation requirement must be met with a **maximum** participation of 25% for Local Business Enterprises (LBE) and a **minimum** participation of 25% 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 50% requirement. In the case of construction projects where trucking is warranted, 50% 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 50% requirement may be re-set from 50 % all the way 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 50% 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 50% minimum participation requirement.

For purposes of determining that the 50% L/SL/SLRBE business participation minimum is met and is valid, the District is currently utilizing the certification process, as amended in 2012, 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 50% businesses participation requirement. Certification status is confirmed during the compliance evaluation process.

Bid discounts are awarded for every 10% of additional contract dollars attributable to certified firms over the 50% minimum threshold requirement for responsive bids. No more than five percent (5%) in additional bid discounts or three (3) additional preference points may be earned.

Tier 1: Mandatory

50% Mandatory Requirement can be met with: 25% (or less) Local Business participation and 25% (or more) Small Local or Small Local Resident Business participation.

Tier 2: Optional

Participation over and above the 50% 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 between SLBE's *and/or* SLRBE's or additional participation is achieved entirely with SLRBE's.

	<u>LBE Maximum Participation</u>	<u>SLBE Minimum Participation</u>
	25%	25%*
Total	0% to 25%	25% to 50%

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 or consultant 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. The 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

<u>LBE Maximum Participation</u>	<u>SLBE/SLRBE Minimum Participation</u>	<u>Total LBE/SL- SLRBE Participation</u>	<u>Bid Discount / Preference</u>
25%	35%	60%	3%
<u>LBE Maximum Participation</u>	<u>SLBE/SLRBE Minimum Participation</u>	<u>Total LBE/SL- SLRBE Participation</u>	<u>Bid Discount / Preference</u>
25%	45%	70%	4%

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 (Construction Contracts)

Unless otherwise specified in the contract documents, and in accord with California law, Prime contractors who have entered into a contract agreement with the District cannot substitute a listed subcontractor, including any listed L/SL/SLRBE used to meet participation requirements, without prior approval of the District.

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

1. A written statement from the listed sub contractor agreeing to the substitution,
2. When the listed sub contractor 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 contractor becomes insolvent,
4. When the listed sub contractor fails or refuses to satisfy contractual agreements,
5. When the listed sub contractor 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 contractor is substantially unsatisfactory, or not in accordance with the contract agreement or that the sub contractor is substantially delaying or disrupting the progress of the work.

Prior to the approval of the prime consultant request for substitution, the District shall give notice, in writing, to the listed sub contractor, of the Prime contractor's request for substitution and/or the reason for such request. The sub contractor 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 contractor's consent to the substitution.

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

Emergency Contracts

L/SL/SLRBE businesses will be given first priority in the performance of emergency work as defined in Public Contract Code section(s) 22000-22045 which formulates and establishes procedures for bidding, contracting, and purchasing goods and services under the California Uniform Construction Cost Accounting Act.

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 Prime contractor shall include in its contracts with its sub contractors, requirements that its sub 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 prevailing wage requirement will be monitored and enforced by the District in accordance with state law. 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.

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 Local 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 conducting a construction related solicitation is required to obtain responses from certified firms appropriate to the nature and scope of the particular solicitation. Upon request, mailing lists of certified firms.

Joint Venture Agreements

A business that is bidding or competing for District construction related contracts may associate with a certified Small Local or Small Local Resident business to compete for contracts as a joint venture, and thereby meet the mandatory participation requirements of the L/SL/SLRBE policy. (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 / SLBE/SLRBE joint venture association.) A joint venture should be between two entities with the same discipline or licensing 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.

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 SLBE/SLRBE that relies on the resources and personnel of a non-SLBE/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 SLBE/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 SLBE/SLRBE Joint Venture Partners:

1. **The SLBE/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 SLBE/SLRBE partner must perform work that is commensurate with its experience.

3. The SLBE/SLRBE partner must use its own employees and equipment to perform its portion of the project.

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.

Other Joint Venture Conditions

The District's Facilities Director or designee must first approve the SLBE/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 SLBE/SLRBE joint venture must provide upon request, cancelled checks and any other financial records to the District.

Additional 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

Part III

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 (minimum one (1) year lease required)***

END Part III