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OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Antwan Wilson, Superintendent  
Jacqueline P. Minor, Co-General Counsel

**Board Meeting Date** March 9, 2016

**Subject** Amendments to Board Policy BP 3311

**Action Requested** **Approval by the Board of Education of modifications in Board Policy 3311**

## Background and Discussion

Consistent with California law, Board Policy BP 3311 is being modified to make it clear that most contracts should be competitively except as provided in the Board Policy. The revised Board Policy provides that effective July 1, 2016, except as expressly provided in this Board Policy or by statute, contracts for a "public project," as defined in California Public Contract Code section 22002, subdivision (c) involving an expenditure of \$15,000 or more shall be awarded to the lowest responsible bidder, and contracts for the lease or purchase of equipment, materials, supplies or services if they involve an expenditure of \$87,800 or more, as annually adjusted, shall be competitively bid.

The exceptions are listed in the Board Policy. The major exceptions include:

1. **CUPCCAA.** The District is a **CUPCCAA**<sup>1</sup> approved and certified school district. This means that construction contracts between \$45,000 and \$175,000 can be let using informal procedures.
2. **Professional Service Agreements** and contracts for materials, supplies, equipment and/or services costing less than the bid limit, which is \$87,800 (but increases a small amount on January 1 of each year), do not have to be formally bid. (Public Contract Code Section 20111(a)).
3. **Construction related Professional Services** such as Architects, Division of State Architects (DSA) Inspectors, Environmental Consultants and Construction Managers require a "fair, competitive selection process."
4. **Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources) are exempt from competitive bidding.
5. **Emergency** contracts do not need to be formally bid, but the Board must approve a resolution declaring the need for and Emergency Contract.

<sup>1</sup> The Uniform Public Construction Cost Accounting Act



6. **Technology** contracts:
  - a. for electronic data-processing systems and supporting software equipment and/or services (including copiers/printers) over the \$87,800 bid limit (which is subject to annual adjustment), must be competitively advertised, but any one of the three lowest responsible bidders may be selected – Public Contract Code 20118.1;
  - b. Contracts for Computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive bid process and the basis for award does not need to be the lowest price.
7. **Educational Materials** (books, textbooks, test materials, educational computer software) are exempt from competitive bid.
8. **Piggyback” Contracts**. Contracts issued by other governmental entities that authorize use of the same contract terms by other governments (this is called “piggyback” contracts).
9. **Western States Contracting Alliance Contracts (WSCA) and California Multiple Award Schedule Contracts (CMAS)**. Contracts that are approved for use by governmental entities by entities such as Western States Contracting Alliance Contracts (**WSCA**) and California Multiple Award Schedule (**CMAS**). WSCA and CMAS contracts are often used for the purchase of information technology and software.
10. **Perishable Food** contracts do not need to be competitively bid.
11. **Sole Source** contracts do not have to be competitively bid.
12. **Special Services** contracts for financial, economic, accounting, legal or administrative services; insurance services; waste management services do not have to be competitively bid.
13. **Change Order for Material and Supplies**. Public Contract Code authorizes the change or alteration of an existing contract without competitive bidding if the cost agreed upon in writing does not exceed ten percent of the original contract price.

The Policy also reaffirms the Board’s commitment to BP 7115 -- Capital Program/Construction Related Local, Small Local and Small Local Resident Business Enterprise Program

**Recommendation**

**Fiscal Impact**

**Attachments**

**Approval by the Board of Education of modifications in Board Policy 3311**

N/A

- Board Policy 3311

James Harris  
President, Board of Education

Antwan Wilson  
Secretary, Board of Education

# OAKLAND UNIFIED SCHOOL DISTRICT

## Board Policy

### Business and Noninstructional Operations

BP 3311

Bids

#### The Governing Board Requires Competitive Bidding For Most Public Contracts

Consistent with California law, the Governing Board requires competitive bidding for most public contracts. The purposes of competitive bidding are to secure economy in the construction of public works and the expenditures of public funds for materials and supplies, to protect the public from collusive contracts, to exclude favoritism and corruption, and to promote competition among bidders so as to ensure that all public contracts are secured at the lowest cost to District taxpayers.

Effective July 1, 2016, except as expressly provided in this Board Policy or by statute, contracts for a "public project,"<sup>1</sup> as defined in California Public Contract Code section 22002, subdivision (c) involving an expenditure of \$15,000 or more shall be awarded to the lowest responsible bidder, and contracts for the lease or purchase of equipment, materials, supplies or services if they involve an expenditure of \$87,800 or more, as annually adjusted, shall be competitively bid. All contracts submitted to the Board for approval shall include the Contract Justification Form that is attached hereto as Attachment A. Attachment A may be modified from time to time.

#### The Governing Board Reaffirms Its Commitment to Board Policy 7115 -- Capital Program / Construction Related Local, Small Local and Small Local Resident Business Enterprise Program

In approving BP 3311, the Governing Board also reaffirms its commitment to BP 7115 and requires compliance with BP 7115.

In December 2008, in order to provide economic opportunity for its residents and businesses and stimulate economic development, the District implemented 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 L/SL/SLRBE) proved 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

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<sup>1</sup> The term "public project" is defined in as any of the following:

- a) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility
- b) Painting or repainting of any publicly owned, leased, or operated facility

However, public project does not include janitorial or custodial services, or routine, recurring and usual work necessary to maintain public property, minor repainting, landscape maintenance, etc



and professional service agreements. The ensuing years 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. Effective February 1, 2014, the Board amended the Policy to require fifty percent (50%) mandatory local participation on all District capital program / construction related contracts and professional service agreements.

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There is a fifty (50) % minimum participation requirement for all formally bid public works construction contracts over \$45,000<sup>2</sup> and formally solicited construction related contracts professional services contracts, including, but not limited to, architects, construction managers, inspectors, testing labs and geotechnical engineers, over \$87,800<sup>3</sup>. All informal construction contracts below \$45,000 and all informal construction related professional services contracts below \$87,800.00 will include outreach to certified local firms such that a minimum of three local certified firms are included in the solicitation. In addition, 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.

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#### **The Uniform Public Construction Cost Accounting Act (the "CUPCCAA or the "Act")<sup>4</sup>**

On October 14, 2009, the Board of Education approved Resolution No. 0910-0090 adopting the Uniform Public Construction Cost Accounting Act and authorizing the District to use "Informal Bidding Procedures" to award contracts between \$45,000 and \$175,000. The Uniform Public Construction Cost Accounting Act (the "CUPCCAA") is an exception to the general rule that school districts must competitively bid most public contracts. Under CUPCCAA the formal bid thresholds for the District is \$175,000 (which amount may be adjusted from time to time). Therefore, the District may award public projects between \$45,000 and \$175,000 using "informal bidding procedures" as provided in the law.

#### **Governing Board May Request That A Contract Be Competitively Bid If The Board Determines That It Is In The Best Interest of The District To Do So**

In those circumstances where the law does not require competitive bidding, the Governing Board may request that a contract be competitively bid if the Board determines that it is in the best interest of the district to do so. If the Superintendent or designee determines that a Facilities or Buildings and Grounds contract involving an expenditure of more than the CUPCCAA bid threshold of \$175,000 (which amount may be adjusted from time to time) shall not be competitively bid, the Chief Operations Officer for the District shall provide the Board with a detailed rationale, including how the award without competitive bidding ensures that the District has secured the best terms at the best price.

#### **Significant Exceptions to The Competitive Bidding Requirement**

<sup>2</sup>The District uses the alternative bidding procedures of the California Uniform Public Construction Cost Accounting Act, Pub. Contract Code, § 22000, et seq., the "CUPCCAA".

<sup>3</sup>Subject to annual increases pursuant to Public Contract Code 20111(a).

<sup>4</sup>Public Contract Code section 22000 et seq

The following are several important statutory exceptions to the competitive bidding requirement. The following list is not intended to be exhaustive, and District Staff may recommend that the District procure services or goods not included on the list below that are exempt by other statutes from competitive bidding.

1. **CUPCCAA.** As noted above, the District is a **CUPCCAA**<sup>5</sup> approved and certified school district. This means that construction contracts between \$45,000 and \$175,000 can be let using informal procedures.
2. **Professional Service Agreements** and contracts for materials, supplies, equipment and/or services costing less than the bid limit, which is \$87,800 (but increases a small amount on January 1 of each year), do not have to be formally bid. (Public Contract Code Section 20111(a)).
3. **Construction related Professional Services** such as Architects, Division of State Architects (DSA) Inspectors, Environmental Consultants and Construction Managers require a “fair, competitive selection process.”
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  - b. Contracts for Computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive bid process and the basis for award does not need to be the lowest price.
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<sup>5</sup> The Uniform Public Construction Cost Accounting Act

8. **Piggyback” Contracts.** Contracts issued by other governmental entities that authorize use of the same contract terms by other governments (this is called “piggyback” contracts).
9. **Western States Contracting Alliance Contracts (WSCA) and California Multiple Award Schedule Contracts (CMAS).** Contracts that are approved for use by governmental entities by entities such as Western States Contracting Alliance Contracts (**WSCA**) and California Multiple Award Schedule (**CMAS**). WSCA and CMAS contracts are often used for the purchase of information technology and software.
10. **Perishable Food** contracts do not need to be competitively bid.
11. **Sole Source** contracts do not have to be competitively bid.
12. **Waste Management/ Recycling Services Contract.** Sections 40058 and 40059(a)(2) of the Public Resources Code provides that the District can contract with a “solid waste enterprise” for waste handling services and the District can determine. “[w]hether the services are to be provided by means of nonexclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding.”
13. **Special Services** contracts for financial, economic, accounting, legal or administrative services; insurance services; waste management services do not have to be competitively bid.
14. **Change Order for Material and Supplies** (Pub. Cont. Code §§ 20118.4/20659.) Public Contract Code authorizes the change or alteration of an existing contract without competitive bidding if the cost agreed upon in writing does not exceed ten percent of the original contract price.
15. **Completion of Construction Contracts Upon Default of Contractor.** Where the governing board of a school district has reserved the right to complete a construction contract and deduct the amount expended from the agreed price of the contract should the contractor fail to carry out the work, a statute requiring competitive bidding does not apply.

Legal Reference:

EDUCATION CODE

17595 Purchases through Department of General Services  
38083 Purchase of perishable foodstuffs and seasonable commodities  
38110 Purchase of supplies through county superintendent  
38111 Purchases by district governing board  
38112 Purchases of necessary supplies  
39802 Transportation bids and contracts for services

GOVERNMENT CODE

4330-4334 Preference of California-made materials  
6252 Definition of public record  
53060 Special services and advice  
54201-54205 Purchase of supplies and equipment by local agencies

PUBLIC CONTRACT CODE

2000-2001 Responsive bidders  
3400 Bids, specifications by brand or trade name not permitted  
3410 United States produce and processed foods  
6610 Bid visits  
12161 Definitions, recycled paper products  
12168 Preference for purchase of recycled paper products  
12169 Bidders to specify percentage of recycled paper product  
12200 Definitions, recycled goods, materials and supplies  
12210 Purchase of recycled products preferred  
12213 Specification by bidder of recycled content  
20103.8 Award of contracts  
20107 Bidder's security  
20111-20118.4 School districts  
20189 Bidder's security, earthquake relief  
22002 Definition of public project  
22030-22045 Alternative procedures for public projects (CUPCCAA)  
22050 Alternative emergency procedures

COURT DECISIONS

Konica Business Machines v. Regents of the University of California, (1988) 206 Cal.App.3d 449  
City of Inglewood-Los Angeles County Civic Center Authority v. Superior Court, (1972) 7 Cal.3d 861

Management Resources:

WEB SITES

CSBA: [www.csba.org](http://www.csba.org)  
California Association of School Business Officials: [www.casbo.org](http://www.casbo.org)

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