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# Board Cover Memorandum

**To** Board of Education

**From** Gary Yee, Board Member

**Meeting Date** April 28, 2021

**Subject** Approval of Post-Committee Amendments to Local Business Policy 7115 - Capital Program/ Construction Related Local, Small Local and Small Local Resident Business Enterprise Program

**Action Requested** Approval by the Board of Education of Post-Committee Amendments to Local Business Policy - 7115 Capital Program/ Construction Related Local, Small Local and Small Local Resident Business Enterprise Program.

**Background** The Local Business Policy 7115 names the City of Oakland as the singular agency to certify local businesses. The 2018-2019 Alameda County Grand Jury Report – The Oakland Unified School District’s Broken Administrative Culture – Millions Wasted Every Year referenced the District’s Local Business Policy in Finding 19-10 and Recommendation 19-11. The impetus for the amendments were the Grand Jury Report.

On April 2, 2021, Facilities Committee approved the Amendment to BP 7115 dated March 26, 2021. Amendments that increase access and equity by local businesses have been targeted. This Amendment names five additional local business certifications to be incorporated BP 7115:

- Port of Oakland
- Alameda County Transportation Commission
- Alameda County Department of General Services
- US Department of Transportation
- California Public Utilities Commission

**Discussion** This Post-Committee Amendment (“Subsequent Amendment”) incorporates all the amendments contained in the Amendment that went to Facilities Committee on April 2, 2021 and adds the following:

- Five additional local business certifications to BP 7115 will be for a term of three years.
- After the three-year time period, District staff and consultants will conduct an analysis to assess the benefits of expanding the certification pool and bring forward any feedback or identify any impacts.

- The District will increase outreach efforts and provide technical assistance and support services to Small Local Business Enterprises and Small Local Residents Business Enterprises doing or seeking to do business with OUSD.
- During the three-year timeframe, staff and consultants will provide periodic reports to the Facilities Committee detailing outreach efforts, training, and number of Local Business Enterprises, Small Local Business Enterprises, Small Local Resident Business Enterprises that have been awarded contracts with the District.

**Fiscal Impact**

There is no direct fiscal impact from the Amendment or Subsequent Amendment. The larger pool of qualified local businesses may improve procurement in the Capital Program.

**Attachment(s)**

- Memo dated April 21, 2021 detailing Subsequent Amendments
- Redline of BP 7115 with Subsequent Amendments
- Clean copy of BP 7115

April 21, 2021

TO: Tadashi Nakadegawa, Acting Deputy Chief of Facilities Planning & Management  
Kenya Chatman, Acting Director of Facilities  
Oakland Unified School District

FROM: Dr. Gary Yee, Board Member

RE: Subsequent Amendment to Proposed Amendment to the OUSD Local Business Enterprise Policy

Board Member, Dr. Gary Yee proposes the following subsequent amendments to the Proposed Recommendations to the OUSD Local Business Enterprise Policy, dated March 26, 2021, that were presented to and passed by the Facilities Committee on April 2, 2021.

Whereas the District seeks to increase the number of Oakland based firms that are eligible to bid on OUSD projects and be recognized as Local Business Enterprises, Small Local Business Enterprises, and Small Local Resident Business Enterprises;

Whereas the OUSD Local Business Enterprise Policy is more aggressive than most other local agencies as our utilization is a requirement not an aspirational goal;

Whereas this subsequent amendment attempts to address criticisms raised in the 2018-2019 Alameda County Grand Jury Report – The Oakland Unified School District’s Broken Administrative Culture – Millions Wasted Every Year. Specifically, Finding 19-10 and Recommendation 19-11 stimulated review of the Local Business Utilization Policy and an examination of the pool of local contractors who can fulfill large school construction projects and the nexus between the LBU and increased project costs; and

Whereas as community members have expressed concern that increasing the pool will negatively impact some small local business that have worked on OUSD projects.

We offer the following subsequent amendments to the recommendations:

- The District accept Oakland based businesses certified with Alameda County, Alameda County Transportation Commission, California Public Utilities Commission, Port of Oakland, US Department of Transportation-Caltrans as eligible to participate in the OUSD LBE program for a three-year time frame. At the end of this timeframe, District staff and consultants conduct an analysis to assess the benefits of expanding the certification pool and bring forward any feedback or impacts.
- The District increase outreach efforts and provide technical assistance and support services to Small Local Business Enterprises and Small Local Residents Business Enterprises doing or seeking to do business with OUSD.

- During the three-year timeframe, staff and consultants provide periodic reports to the Facilities Committee detailing outreach efforts, training, and number of Local Business Enterprises, Small Local Business Enterprises, Small Local Resident Business Enterprises that have been awarded contracts with the District.



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Shanthi Gonzales, President, Board of Education



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Kyla Johnson-Trammell, Secretart, Board of Education

# 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 \$45,000<sup>1</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 \$84,100<sup>2</sup>. 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.

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<sup>1</sup>The District uses the alternative bidding procedures of the California Uniform Public Construction Cost Accounting Act., Pub. Contract Code, § 22000, et seq., the “CUPCAA”.

<sup>2</sup> 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, [Workplace & Employment Standards Department Office of Contract Compliance & Employment Services](#), which maintains a list of certified for profit and not-for profit businesses and organizations and which will be the District's primary certifying agency. The City of Oakland 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 the City of Oakland (SLRBE). For a period of three years, Local Business and Small Local Business certifications may also be accepted from the Port of Oakland, Alameda County Transportation Commission, Alameda County Department of General Services, US Department of Transportation California Unified Certification Program, and the California Public Utilities Commission. The District will follow the City of Oakland Small Business size standards in recognizing Small Local and Small Local Resident Businesses. Staff and consultants provide periodic reports to the Facilities Committee, during the three-year period, detailing: (1) outreach efforts; (2) training; and (3) the number of Local Business Enterprises, Small Local Business Enterprises, and Small Local Resident Business Enterprises that have been awarded contracts with the District. During the three-year period, the District shall increase outreach efforts and provide technical assistance and support services to Small Local Business Enterprises and Small Local Residents Business Enterprises doing or seeking to do business with OUSD. At the end of the

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three-year period, District staff and consultants will conduct an analysis to assess the benefits of expanding the certification pool and bring forward any feedback or impacts.

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

4/28/21

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