

ADMINISTRATIVE PROCEDURE 6356
SMALL LOCAL BUSINESS ENTERPRISE PROGRAM

The Chancellor directs and authorizes District staff and the construction management team to refine and implement the District's Small Local Business Enterprise Program (SLBE Program) as set forth in Board Policy 6355. Implementation shall occur in conjunction with legal review, with ongoing consultation with SLBE stakeholders, and in accordance with the standards set forth below. The Chancellor also directs District staff and the construction management team to integrate these program components into the District's construction management and procurement systems, including by updating the District's standard contract terms to reflect the requirements herein.

I. Definitions.

- A. *Commercially Useful Function:*** A function for which a business is made directly responsible by the contract solicitation for providing the specified materials, equipment, supplies or services to the District. The function must constitute work that is normal for the business' services; and must be carried out by the business actually performing, managing, or supervising the work involved. The business is not providing a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SLBE participation.
- B. *Covered Contract:*** Any bond-funded construction contract with an award amount of at least \$1 million; and any bond-funded personal and professional services, goods, maintenance, repairs, and operations contract with an award amount of at least \$1 million.
- C. *Market Area:*** Alameda County and West Contra Costa County.

II. SLBE Requirements

- A. *Small Local Business Enterprise (SLBE) Definition:*** A Small Local Business Enterprise is a business that satisfies all three of the following criteria:

 - 1. the business is an independently owned and operated business that is not dominant in its field of operation, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of fifteen million dollars (\$15,000,000) or less over the previous three years;¹

¹ See Public Contract Code § 2002(b)(2) and Government Code § 14835.

2. the business meets the location requirements set forth below in paragraph II.B; and
3. the business meets the active certification requirement set forth below in paragraph II.C.

B. Business Location Requirements. To qualify as an SLBE as described herein, the business in question must meet the following standards.

1. The business must be located at a fixed, established commercial address located in the District's Market Area (as defined).
2. Business location may not be based on a short-term or movable office, a post office box, or a telephone answering service.
3. If the business has an office outside of the District's Market Area as well as an office within the Market Area, the office within the District's Market Area must be staffed on a full-time permanent basis with someone employed by the business.
4. If requested by the District, a business that has an office outside of the District's Market Area must provide proof that one or more past contracts cite the business address (such as contracts to perform work, to rent space or equipment, or for other business services) within the District's Market Area at least one year prior to the date of contract award.

C. Active Certification Requirement. To qualify as an SLBE as described herein, the business must have current certification as a small or local business entity, disadvantaged business entity, or other category of business entity, provided by another public entity, including, but not limited to: the City of Oakland, Alameda County, the Port of Oakland, the California General Services Administration, or the U.S. Small Business Administration.

D. District Verification Process. District staff shall develop a verification process, including self-certification, subject to documentation requirements and investigation procedures in appropriate cases. The District's bid system and/or enterprise resource system shall include indications as to whether a business is an SLBE for purposes of the District's SLBE Program.

III. SLBE Utilization Provisions and Incentives.

- A. Percentage Utilization Provision.** For each Covered Contract, the District has established an SLBE percentage utilization provision of at least 25 percent of the contract's dollar value.
- B. Availability Analysis.** Prior to the issuance of a formal invitation for bid or other contract solicitation for a Covered Contract, the District may evaluate the availability of SLBEs to participate in the proposed contract, and adjust the percentage provision if appropriate.

C. Bid Preferences for Enhanced SLBE Utilization.

1. The District shall apply a bidding preference to bids for prime contracts that contain commitments to exceed the established SLBE percentage provision, as described below. Bid preferences are used only for computation purposes to determine the lowest bidder; after selection, contracts are entered into using the actual bid amount (rather than the value discounted for selection purposes).
2. Bid preferences for enhanced SLBE commitments are as follows:

Total SLBE Participation	Bid Preference
25 percent of bid value	none
above 35 percent of bid value	3 percent
above 45 percent of bid value	4 percent
above 55 percent of bid value	5 percent

3. Prime contractors who are SLBEs will receive the maximum five percent bid preference, so long as their non-SLBE listed subcontractors are performing less than 45 percent of the dollar value of work under the contract.
4. For each contract solicitation, District shall establish a reasonable maximum dollar value application of the bid preference.
5. For any contracts awarded on a best value basis (rather than lowest responsible bidder), District staff shall establish an approach to application of the bid preference within the best value scoring system.

D. Compliance Determinations.

1. **Responsive Bidder Determination.** The District's Purchasing Department is responsible for determinations of compliance with this program during contract award process. In order for a bid for a Covered Contract to be deemed responsive, the bidder must either (i) list subcontractors and scopes of work that satisfy the specified SLBE percentage provision for the contract; or (ii) demonstrate that they made

good faith efforts to satisfy the percentage provision.² Bids that satisfy neither standard shall be deemed nonresponsive.³ Staff shall release guidance regarding good faith efforts determinations, which shall be based on specific, objective criteria to be provided to bidders. Responsiveness determinations shall be made promptly after receipt of bids. Findings of non-responsiveness based on failure to satisfy percentage provision or demonstrate good faith efforts shall be provided in writing to bidders.

2. Utilization. In utilizing subcontractors on Covered Contracts, each prime contractor shall take the following steps. (SLBEs bidding as prime contractors are exempt from these procedures unless they are claiming SLBE credit for subcontractors.)

- a. List each proposed subcontractor in its bid, clearly identifying the SLBE status and the dollar amount of work each subcontractor will perform.
- b. Ensure that each SLBE subcontractor provides a Commercially Useful Function.
- c. Throughout performance of the contract, maintain or exceed the SLBE subcontractor percentages (based on the quoted dollar amounts) indicated in the bid submission.
- d. Promptly provide to the District any records requested by the District to verify compliance with SLBE Program requirements and related contract terms.
- e. Make no substitutions to the SLBE subcontractors listed in the bid submission without the prior written approval of the District. The District may approve a substitution if any of the following conditions occur:
 - i. the subcontractor signs a written statement agreeing to the substitution;
 - ii. the subcontractor has been given a reasonable opportunity to execute the subcontract, yet fails to, or refuses to execute the subcontract, or refuses to satisfy contractual obligations;
 - iii. the subcontractor becomes insolvent; or

² See Public Contract Code § 2002(a);2002(c)(5).

³ See Public Contract Code § 2002(a);2002(c)(5).

- iv. the District determines the work performed by the subcontractor is not in accordance with the contract agreement, or the subcontractor is substantially and unduly delaying or disrupting the progress of work.

E. Remedies. Remedies for violation of the SLBE Program and related contract terms, for fraudulent behavior in SLBE Program certification, compliance, or contract implementation, or for violation of other District requirements, may include all remedies set forth in prime contracts and applicable policies. If the prime contractor fails to maintain the percentages specified in bid submission, the District may assess liquidated damages in an amount equal to the amount that should have been awarded to the listed SLBE, and/or may take any other remedial actions specified in the prime contract or applicable law. District staff shall establish review procedures regarding liquidated damages assessments. In certain situations involving serious and repeated noncompliance, the District may debar a contractor from participation on District projects.

IV. Small Business Advisory Council. By Summer 2026, District management shall establish a Small Business Advisory Council consisting of representatives of local organizations that advocate for small local businesses. The District authorizes staff to identify an initial group of six prospective members, as well as a District Liaison, to serve on this Advisory Council. To be eligible for participation, and organization must show that it has been in existence for at least a year, and that it has at least 15 members. Representatives shall be subject area experts. The Advisory Council shall also have one District Liaison who is a District staff person tasked with implementation of the SLBE Program.

This Advisory Council will help the administration thoroughly and proactively develop critical solutions to the District's procurement concerns regarding SLBEs, disseminate information regarding specific projects and programs, provide a forum for interactive discussions with interested parties, and provide regular feedback, recommendations, and monitoring regarding the administration's implementation of the SLBE Program.

V. SLBE Outreach. The District shall implement robust outreach efforts to inform SLBEs of contracting opportunities with the District.

VI. SLBE Education and Technical Assistance. The District shall provide education and technical assistance programs for SLBEs, and for Peralta students, to prepare for work on bond program projects. Since many public entities in the Bay Area are leaders in business inclusion efforts, District staff may consider collaboration with other agencies and districts, in order to build on best practices, and to efficiently provide a strong suite of technical assistance resources to the local SLBE community.

- VII. Local Hiring Policy and Labor Compliance.** The District may establish a local hiring policy that sets requirements for contractors to identify and provide employment and training opportunities to local residents and Peralta students and graduates, in work on District construction projects. Staff shall develop program details, define the employment and training opportunities that contractors should make available to local residents and Peralta students and graduates, and ensure integration with District project labor agreement requirements where applicable.
- VIII. Annual Reports.** The District shall prepare an annual report regarding program implementation, for transmission to the Small Business Advisory Council and the Board of Trustees.

References:

California Government Code § 14835
California Public Contract Code § 2000 *et seq.*
California General Services Administration Small Business Certification
California Government Code sec. 14835
City of Oakland Small & Local Business Certification
County of Alameda Small, Local and Emerging Business Program Certification
Port of Oakland Local, Small, & Diverse Business Certification
U.S. Small Business Administration Certification

Approved by the Chancellor: December 19, 2025