



126-0212024-002

Agenda Item **No. 5(f)**
Meeting of January 7, 2025

INFORMATIONAL MEMORANDUM

TO: Commission on Community Investment and Infrastructure

FROM: Thor Kaslofsky, Executive Director

SUBJECT: Update on the San Francisco Unified School District's Mission Bay School Project's Small Business Contracting: Good Faith Efforts Analysis

On October 1, 2024, the Commission approved a motion requesting that the Office of Community Investment and Infrastructure ("OCII") look into the San Francisco Unified School District's ("SFUSD") compliance with OCII's Small Business Enterprise ("SBE") Policy for the procurement of contracts to construct the school play yard ("School Yard") at the Mission Bay school project ("Project"). The motion stated that OCII should take every measurable action to ensure full compliance with OCII's SBE policies. This memorandum describes OCII's review of SFUSD's compliance with good faith efforts required under the SBE Policy.

The Project includes the construction of both a school building and the School Yard on Mission Bay South Block 14 (the "School Site"), which is land originally donated by FOCIL-MB, LLC (). OCII's role is limited to funding the School Yard under applicable standards. The Project is also funded from school bond proceeds approved locally under Proposition A (Nov. 2016) and is subject to design-build standards under the California Education Code. Cal. Educ. Code § 17250.10 et seq.

BACKGROUND

Under the Mission Bay South Owner Participation Agreement (Nov. 16, 1998) (the "OPA") and the Joint Community Facilities Agreement with SFUSD (March 28, 2000), OCII has the obligation to pay for the School Yard construction costs, but has no obligation to pay for the school building. Payment for the School Yard improvements is to be made from tax increment revenues or Community Facilities District No. 6 funds consistent with the process required for other infrastructure improvements constructed by FOCIL-MB as master developer of the Mission Bay South Project Area.

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In 2021, SFUSD acquired the School Site from the Regents of the University of California (“UCSF”), the interim owner of the School Site pending SFUSD’s decision to accept the School Site. In April 2019, SFUSD contacted OCII regarding financing the School Yard with OCII funds along with the transfer of the parcel from UCSF to SFUSD.

In February 2021, OCII staff reported to the Commission on some of the contracting policies that would apply to the Project. In particular, the Commission memorandum stated that the Project would be subject to “SFUSD’s Prop A Project Labor Agreement with the Building Trades Council” (“PLA”) and require certain minimum local hiring goals. The memorandum also specifically noted that, “as required by the PLA, SFUSD is creating a registry of contractors, subcontractors, suppliers and other construction-related services for bidding and subcontracting based on its work on relevant projects.” Commission Memorandum Re: Workshop for the San Francisco Unified School District’s Mission Bay School Design at page 6 (Feb. 16, 2021).

In August 2021, SFUSD and OCII began conversations on adherence to OCII’s SBE Policy. These conversations continued periodically through June 2022, when SFUSD entered into a Design-Build Contract with McCarthy Building Companies, Inc. (“McCarthy”), as general contractor for the construction of the Mission Bay School, including the School Yard.

From June through August of 2022, following the execution of the Design-Build Contract, both SFUSD and McCarthy requested information from OCII regarding the OCII’s SBE Policy of good faith effort requirements.

SFUSD made several key decisions, early in the process of contract formation with FOCIL-MB and OCII consent, that impacted the contracting approach and SBE participation.

- One prime contract governs the overall construction of the School Site improvements, including both the school building and the School Yard;
- SFUSD relies on state statutory authorization for a design-build contract to construct the School Site and thus the prime contract and subcontracts were subject to the state standards for design-build, including awarding contracts on the basis of best value¹;
- SFUSD—not FOCIL-MB or its contractors-- entered directly into the contract to construct the School Yard.

¹ “‘Best value’ means a value determined by the evaluation of objective criteria that may include, but are not limited to, price, features, functions, life-cycle costs, experience, and past performance. ¶A best value determination may involve the selection of the lowest cost proposal meeting the interests of the school district and the objectives of the project, selection of the best proposal for a stipulated sum establishes by the procuring school district, or a tradeoff between price and other factors.” Cal. Educ. Code § 17250.15 (a) (1) & (2).

The use of one design-build contract for the Project, as authorized under the California Education Code, facilitated technical coordination and integration of various subcomponents of the construction, which OCII acknowledged and accepted.² However, the use of a design-build contract had significant implications for OCII policies encouraging breaking up contract scopes. As described below, the SBE Policy seeks to maximize SBE participation by dividing of contract work only “where appropriate.” SBE Policy, Section IV.G. 1.

The California Education Code requirements for design build projects may also limit OCII practices under the SBE Policy, which encourage prime contractors to consider SBE proposals even if they exceed the lowest bid so long as they “are reasonable and do not exceed competitive levels.” SBE Policy, Section IV. B. The California Education Code, however, requires contracts to be awarded “on a best value basis or to the lowest responsible bidder.” Cal. Education Code § 17250.35. The final SFUSD design build contract incorporated the “best value basis” for the selection of subcontractors. Moreover, SFUSD implemented the best value standard by establishing a “stipulated sum” to cover the total compensation for the design and construction of all components of the Project. Under the final Design Build contract, the Project costs could not exceed the stipulated sum of \$95,391,176.

On March 21, 2023, the OCII Commission passed Resolution No.06-2023 urging SFUSD to adopt a program, similar to the Small Business Enterprise Policy of OCII, to provide preferences for local disadvantaged businesses in the awarding of contracts with the SFUSD.” In noting SFUSD’s commitment to meet OCII’s SBE Program for the School Yard contracts, the Commission memorandum also described the applicability of SFUSD’s Project Labor Agreement with the Building Trades Council to the Project. The PLA does specifies a 10% overall WBE participation goal, and 35% MBE participation goal, and a 35% LBE participation goal and, has minimum local hiring goals in various trades for construction workforce hours (25%) and for apprentice workforce hours (50%), and requires a registry of contractors and subcontractors for relevant construction work. Commission Memorandum, Re: Urging the SFUSD to adopt a program, similar to the OCII SBE Policy (March 21, 2023).

In March of 2024, SFUSD and FOCIL-MB, entered into a Reimbursement Agreement, which provided that the “Scope of Work and construction of the School Play Yard are subject to . . . OCII’s Small Business Enterprise Policy (the ‘SBE Policy’) to which the District has agreed that all of its contractors, subcontractors and any entity which performs the Work shall comply.” Reimbursement Agreement, Section 1 at 5. In another section of the Reimbursement Agreement, SFUSD agreed that it “shall comply with OCII’s SBE Policy, as applicable.” Section 8.2 at 6. By the time the Reimbursement Agreement was presented to the Commission, SFUSD had already entered into the Design-Build contract.

Analysis

The following analysis measures McCarthy’s Good Faith Efforts in the procurement of School Yard related scopes of work. The School Yard was mostly procured through bid packages (“Bid Package”)

² See Commission Memorandum Re: Workshop for an Update on the San Francisco Unified School District’s Mission Bay School Project at page 5 (Sep. 20, 2022) (“SFUSD has requested, and FOCIL-MB has agreed, with OCII’s consent, that the School Yard Improvements shall be completed under the same construction contract as the overall School Project in order to better coordinate construction of the two elements.”)

that contained various scopes of work. School Yard Bid Package 2, was advertised in October 2022, and Bid Package 4, was advertised in March 2023. Notably, OCII Contract Compliance staff was not made of aware of these Bid Packages until April of 2024 after substantial buyout of these scopes, and therefore was not directly engaged in the procurement of School Yard related contracts. Therefore, this analysis relies entirely on documentation provided by SFUSD and McCarthy which was provided to OCII after substantial buyout. Relevant documentation includes the bid tabulations, advertisements, and outreach materials furnished by McCarthy.

Good Faith Efforts

OCII's SBE Policy establishes a contracting goal for SBE participation at fifty percent of all contracts awarded for a project. Compliance with the goal, however, is measured by the contractor's good faith efforts, which are defined in the SBE Policy and described below. "The ability of the Agency or Agency-Assisted Contractor to meet this goal will depend, in part, on 1) the availability of qualified SBEs capable of providing the goods or services required by the contract; and 2) the availability of SBEs who provide price quotes that are reasonable and do not exceed competitive levels beyond amounts that can be attributed to the increased costs faced by small local businesses." SBE Policy, Section IV. B at 5. These goals "are targets [that] the Agency or Agency-Assisted Contractor will make a good faith effort." SBE Policy, Section IV.G. at 6. In the context of subcontracting, the SBE Policy reiterates that "this goal may vary depending on the extent of subcontracting opportunities presented by the contract and the availability of SBE subcontractors capable of providing goods or services required by the contract." SBE Policy, Section V. A. at 8. Among the SBEs that are eligible for consideration, the SBE Policy provides "First Consideration" in the following order: Project Area SBEs, other San Francisco-based SBE, and all other SBEs.

The School Yard's budget is approximately \$11 million of the approximate \$95 million budget for the entire Mission Bay School Project, which also includes scopes of work for a school building. Pursuant to the Reimbursement Agreement, OCII's SBE Policy only applies to the School Yard. Compliance with the 50% SBE participation goal is measured in part by adherence to good faith efforts.

Analysis of McCarthy's Good Faith Efforts

Based on the information provided, McCarthy followed a procurement strategy that adopted contracting goals set forth in SFUSD's PLA, while also utilizing methods that were partially consistent with the SBE Good Faith Efforts. This resulted in a process that met some of the SBE Good Faith Effort elements, but that was deficient in others as articulated below. The following analysis describes the nine good faith elements defined in the SBE Policy at Section IV.G. and reviewed by OCII staff to determine whether the facts support a finding of good faith.

1. **Contract Size:** Where appropriate, the Agency or Agency-Assisted Contractor will divide the work in order to encourage maximum SBE participation or, alternatively, SBEs will be encouraged to joint venture. Each responsible staff person, developer or prime contractor/consultant shall identify specific items of each contract that may be performed by subcontractors and, if necessary, provide a list of prospective SBEs for the bidder(s). SBE Policy, Section IV.G.1.

Under the Design Build contract, McCarthy did not unbundle the School Yard work from the remainder of the School Project, which was not subject to the SBE Policy. For example, the scope of work for site concrete for both the school building and the School Yard were packaged as a single scope. Additionally prospective bidders did not receive information about OCII's Joint Venture program, which may represent further missed opportunities for dividing work scopes.

By not breaking apart the School Yard from the school building and by not further unbundling work scopes, McCarthy did not have the opportunity to potentially increase SBE participation by creating opportunities consistent with the capacity of small firms including potential Joint Venture opportunities on large scopes such as Site Concrete and Landscaping.

Notwithstanding the foregoing, some scopes of work which span the entire School Site like site remediation, soil surcharging, and other sitework construction may not have been technically practical or appropriate to divide up.

McCarthy made some efforts to identify scopes of work that were appropriate in size for SBEs including Wick Drains; Ground Improvements; Earthwork and Asphalt Paving; Fencing & Gates; Site Concrete; Playground Equipment and Athletic Recreational Surfacing; and Landscaping, Irrigation and Site Furnishings, and invited SBE firms to submit bids for these scopes. However, SBE's were not selected for this work due to McCarthy selecting the lowest responsive bid.

2. **Advertise:** For contracts procured using the Competitive Sealed Bids Public Contract Code Procedure or the RFP/RFQ Procedure, unless there are special circumstances, the Agency or Agency- Assisted Contractor will advertise for 30 days prior to the opening of bids or proposals in media focused on small businesses including the Bid and Contract Opportunities website through the City's Purchasing Department and the Procurement Opportunities section of local publications. SBE Policy, Section IV.G.2.

For Bid Packages 2 and 4, which included School Yard related scopes, McCarthy ran advertisements in local and regional publications from 14-26 days and allowed prequalified subs an additional 14-21 days to submit bids. OCII's position is that McCarthy's advertisement efforts while not identical to program requirements, were sufficient to meet the intent of the Good Faith Effort requirement pertaining to advertising, based on the advertising time frame and methods of publication.

3. **Prepare a List of SBEs:** Each responsible staff person, developer or prime contractor/consultant shall request the Contract Compliance Office to assemble a list of all known SBEs in the pertinent field(s)... SBE Policy, Section IV.G.3.

Regarding the preparation of SBE Lists, in practice, OCII Contract Compliance staff advises partners to generate SBE outreach through the City and County of San Francisco's Contract Monitoring Division ("CMD") online LBE directory. Because OCII staff was not engaged during the procurement of relevant scopes, McCarthy did not coordinate with OCII Contract Compliance staff on guidance in generating an outreach list.

McCarthy stated that they reached out to 188 SBEs including Project Area firms for Bid Packages 1 and 3 (Note Bid Package 3, was bundled with Bid Package 4, which included School Yard related scopes). McCarthy's outreach to 188 SBE firms, in combination with other SBE outreach efforts was sufficient to meet the intent of the Good Faith Effort requirements pertaining to SBE List Preparation.

4. **Public Solicitation:** The Agency or Agency-Assisted Contractor will mail Requests for Qualifications (RFQs) or Requests for Proposals (RFPs) to SBEs. It will follow up initial solicitations of interest by contacting SBEs to determine with certainty whether they are interested in performing specific items in a project. The Agency will also make contacts with SBE contractor associations or development centers, or any agencies that disseminate bid and contract information and provide technical assistance to SBEs. SBE Policy, Section IV.G.4.

For Bid Packages 2-4, McCarthy solicited prequalification from SBEs and invited prequalified firms to bid. McCarthy further advertised opportunities at various SBE outreach and trade association events. OCII's position is that McCarthy's efforts were sufficient to meet Good Faith Effort requirements pertaining to Public Solicitation.

5. **Convene Pre-bid or Pre-solicitation Meetings:** On consulting contracts that are \$5,000 or more and construction contracts estimated to cost \$5,000 or more, procured using the Competitive Sealed Bids Public Contract Code Procedure or the RFP/RFQ Procedure, the Agency or Agency-Assisted Contractor will send written invitations to potential SBE candidates to attend pre-bid or pre-solicitation meetings for the purpose of answering questions about the process and the specifications and requirements. Representatives of the Contract Compliance Office will also participate. SBE Policy, Section IV.G.5.

McCarthy outreached to SBEs and conducted pre-proposal meetings on the following dates: (This occurred prior to the signing of the Reimbursement Agreement)

- Bid Package 2: October 20, 2022 (School Yard related scopes include: Wick Drains and Ground Improvements)
- Bid Package 3: June 12, 2023.
- Bid Package 4: August 31, 2023. (School Yard related scopes include: Fencing and Gates; Site Concrete; Pavement Markings; Playground Equipment and Athletic Recreational Resurfacing; Landscape Irrigation and Site Furnishings; Site Utilities)

McCarthy also provided PowerPoint Presentations from each pre-bid meeting that detailed Project specifications and requirements. McCarthy also provided a sign in sheet from the pre-bid meeting demonstrating that a number of SBEs were in attendance.

Notably, the contracting goals included in the pre-bid presentation materials were consistent with SFUSD's PLA. Meanwhile, the SBE Policy, including the 50% SBE Contracting Goal was not included. McCarthy's failure to mention OCII's policies indicates that they may have followed SFUSD's PLA rather than OCII's SBE Policy. Meanwhile,

OCII was not made aware of, nor invited to participate in, pre-bid meetings, as provided under the SBE Policy.

OCII's position is that McCarthy met Good Faith Efforts as they relate to conducting a pre-bid meeting and publicizing Project specifications. Meanwhile, McCarthy's failure to include OCII Staff in pre-bid meetings, and failure to include OCII's SBE Policy in Project requirements suggest deficiencies with compliance in the other aspects of this Good Faith Effort requirement.

6. **Outreach and Other Assistance:** The Agency or Agency-Assisted Contractor will a) provide SBEs with plans, specifications and requirements for all or part of the project; b) make contacts with SBE contractor associations or development centers, or any agencies that disseminate bid and contract information and provide technical assistance to SBEs; and c) follow up initial solicitations of interest by contacting SBE firms to determine with certainty whether they are interested in performing specific items in a project. SBE Policy, Section IV.G.6.

McCarthy states that they provided interested SBEs access to bid documents; technical assistance; and connected SBEs with larger contractors to explore teaming/ subcontracting opportunities for School Yard scope.

McCarthy also employed a two-part solicitation process whereby they: (1) Invited prequalification from SBE subs for specific scopes and (2) Invited prequalified SBE contractors to bid.

McCarthy did not indicate that they outreached to SBE contractor associations or other local groups to disseminate information regarding contracting opportunities.

OCII's position is that McCarthy's efforts were sufficient to meet the intent of Good Faith Effort requirements pertaining to Outreach and Other Assistance.

7. **Insurance and Bonding:** Where lines of credit, insurance and bonding are potential problems for small businesses, the Agency or Agency-Assisted contractor should contact staff to explain the Agency's insurance and bonding requirements, answer questions about them, and be prepared to suggest avenues of assistance. SBE Policy, Section IV.G.7.

McCarthy states that they provided instructions and one-on-one assistance to contractors regarding prequalification requirements including information about their CDI program enrollment process and benefits. McCarthy also referred contractors to Merriwether & Williams, to receive assistance with bonding and insurance (based on Merriweather's contract with the City and County of San Francisco for Small Business Services).

OCII's position is that McCarthy's efforts were sufficient to meet the intent of Good Faith Effort requirements pertaining to Insurance and Bonding.

8. **Focused Meetings:** The Agency or Agency-Assisted contractor shall participate in meetings convened by staff for SBEs focusing on opportunities for particular industries, e.g., a joint meeting of housing sponsors and small architectural firms based in a Project Area. SBE Policy, Section IV.G.8.

OCII did not convene these meetings, and factor 8 was not considered in this Good Faith Analysis.

9. **Monitoring:** The Agency or Agency-Assisted Contractor will keep track of the date that each response, proposal or bid was received from SBEs, including the amount bid by and the amount to be paid (if different) to the non-SBE contractor that was selected. If the responsible staff person or bidder/proposer asserts that there were reasons other than the respective amounts bid for not awarding the contract to or selecting an SBE, he or she must be prepared to provide valid reasons(s) for any rejections. SBE Policy, Section IV.G.9.

In October 2024, SFUSD and McCarthy provided OCII with bid tabs for Bid Package 4. The bid tabs indicate and SFUSD and McCarthy confirmed that contracts were awarded on a “best value” basis, which SFUSD has clarified as the lowest responsive bid, without consideration for a firm’s SBE status in relation to meeting SBE contracting goals. In practice, the monitoring requirement includes reporting to OCII Staff in real time. Because SFUSD/McCarthy provided OCII with bid tabs after selections were made, OCII staff did not have the ability to assess compliance nor make recommendations on best practices to increase SBE contracting outcomes.

First Consideration

In addition to the Good Faith Effort requirements, OCII’s SBE Policy states that first consideration for contracting opportunities among eligible SBEs will be given by the Agency or Agency-Assisted Contractor in awarding contracts in the following order:

1) Project Area SBEs, 2) San Francisco based SBEs (outside an Agency Project or Survey Area), and 3) All other SBEs.”

The Policy further states, *“non-San Francisco-based SBEs should be used to satisfy participation goals only if Project Area SBEs or San Francisco-based SBEs are not available, qualified, or if their bids or fees are **significantly higher** than those of non-San Francisco-based SBEs.”*

In practice, OCII implements first consideration by allowing a slight escalation in costs for the utilization of SBE firms to increase opportunities for small and local businesses. While the SBE policy does not specify an amount in terms of what if any escalation of costs is reasonable, in practice OCII recommends the utilization of SBEs (with first consideration to Project Area and San Francisco based SBEs) whose bids are slightly higher than non-SBE firms where the absorption of such costs would not pose a significant or detrimental impact on a project’s budget.

Outcomes

McCarthy and SFUSD did not meet the target goal for 50% SBE participation. At the time of reporting McCarthy's efforts resulted in SBE participation of just under 6% percent on the School Yard scope.

Notwithstanding contracting outcomes, compliance with the SBE Policy is based on their good faith efforts as articulated in OCII's SBE Policy. OCII's review indicates that: (1) McCarthy satisfied six elements of the good faith effort standards; (2) element no. 1 (contract size) was not feasible once OCII and FOCIL-MB consented to the Project's use of a single design-build contract; (3) OCII did not consider element no. 8 (focused meetings) as part of its analysis; and (4) element no. 9 (monitoring), which would have involved a contemporaneous review of subcontractor's bid prices and other selection criteria, was preempted by McCarthy's application of the "best value" standard under the design-build requirements of state law.

Notably, McCarthy and SFUSD did not break out the School Yard from the school building the opportunity to meet the overall 50% SBE goal was likely diminished because of the economy of scale created by selecting larger contractors to perform various scopes of work.

The Design Build form of construction contract is a permitted SFUSD form of contract. SFUSD has asserted that its Design Build contract with McCarthy, required contracts be awarded on a best value basis and limited SFUSD's visibility into subcontracting activities. SFUSD presents this as a mitigating factor in the School Yard's low SBE outcomes as state law emphasizes low bid as a factor of best value. OCII also acknowledges that SFUSD requested, and FOCIL-MB agreed to, (with OCII's consent), the use of a single Design Build contract for the entire Project. As previously, stated, the outcome of McCarthy's efforts resulted in SBE participation of just under 6% percent on the School Yard scope at the time of reporting.

Based on these outcomes, FOCIL-MB and OCII have advised SFUSD and McCarthy to explore all available options to increase SBE participation on the School Yard scope. At the time of this memorandum, negotiations and efforts to improve contracting outcomes are ongoing, including efforts by McCarthy to identify where additional SBE contracting opportunities may exist.

(Originated by George Bridges, Contract Compliance Supervisor and Maria Pecot, Senior Contract Compliance Specialist)

DocuSigned by:

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Thor Kaslofsky
Executive Director

Attachment A: OCII Small Business Enterprise Policy



OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE

SMALL BUSINESS ENTERPRISE POLICY

Adopted:	November 16, 2004
Amended and Restated:	July 21, 2009
Second Amendment:	July 7, 2015
Third Amendment:	March 15, 2022

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I. INTRODUCTION

The Agency is acutely aware of the many challenges that small businesses face when contracting with public entities. The mission of the Agency includes economic development in Project Areas and accordingly this Small Business Enterprise Policy ("**SBE Policy**") is to establish a set of Small Business Enterprise participation goals and good faith efforts designed to ensure that monies are spent in a manner which provides SBEs with an opportunity to compete for and participate in Office of Community Investment and Infrastructure ("**OCII**" or "**Agency**") assisted projects. A genuine effort will be made to give First Consideration to Project Area SBEs and San Francisco- based SBEs before looking outside of San Francisco.

II. APPLICATION

This SBE Policy applies to all Contractors and their subcontractors seeking work on Agency-Assisted Projects on or after November 17, 2004 and any Amendment to a Pre-existing Contract as that term is defined in Article III - Definitions.

All Agency-Assisted Contracts, including contracts with both for profit and non-profit developers, shall contain a requirement that the developer and its general contractor and all subcontractors (regardless of tier) comply with this SBE Policy.

III. DEFINITIONS

"**Small Business Enterprise (SBE)**" means an economically disadvantaged business that is certified by another public entity (either municipal, State, or federal agency) that considers the certification criteria stipulated in this Policy. In general, such criteria shall include a determination by the public entity as to whether an economically disadvantaged business is an independent and continuing business for profit; performs a commercially useful function; is owned and controlled by persons residing in the United States or its territories; and has average gross annual receipts in at least the three years (and no more than five years, if practiced by the public entity) immediately preceding its application for certification as a SBE that do not exceed the following limits:

Industry	OCII SBE Size Standard
Construction Contractors	\$24,000,000
Specialty Construction Contractors	\$14,000,000
Suppliers (goods/materials/ equipment and general services)	\$12,000,000
Professional Services	\$5,000,000
Trucking	\$5,000,000

In addition, an economically disadvantaged business shall meet the other certification criteria described in Exhibit I in order to be considered an SBE by the Agency.

In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm's most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120s for Corporations) to calculate the firm's average annual gross receipts. In addition, the calculation of a firm's size shall include the receipts of all affiliates.

Once a business reaches the average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible SBE and it will not be counted towards meeting SBE contracting requirements (or goals).

"Affiliates" means an affiliation with another business concern based on the power to control, whether exercised or not. Such factors as common ownership, common management and identity of interest (often found in members of the same family), among others, are indicators of affiliation. Power to control exists when a party or parties have 50 percent or more ownership. It may also exist with considerably less than 50 percent ownership by contractual arrangement or when one or more parties own a large share compared to other parties. Affiliated business concerns need not be in the same line of business.

"Agency-Assisted Contract" means Development and Disposition Agreements, Land Disposition Agreements, Leases, Loan and Grant Agreements, and other similar contracts and agreements that the Agency executes with for-profit or non-profit entities.

"Agency Contract" means personal services contracts, purchase requisitions, and other similar contracts and operations agreements that the Agency executes with for-profit or non-profit entities.

"Amendment to a Pre-existing Contract" means a material change to the terms of any contract, the term of which has not expired on or before the date that this Small Business Enterprise Policy ("SBE Policy") takes effect, but shall not include amendments to decrease the scope of work or decrease the amount to be paid under a contract.

"Annual Receipts" means "total income" (or in the case of a sole proprietorship, "gross income") plus "cost of goods sold" as these terms are defined and reported on Internal Revenue Service tax return forms. The term does not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts. Typically, annual receipts are averaged over a concern's latest three (3) completed fiscal years to determine its average annual receipts.

However, to the extent a public entity considers a five-year average in its certification program, OCII will accept the five-year average provided the remaining certification criteria of the public entity is consistent with OCII's criteria stipulated in this Policy. If a concern has not been in business for three (3) years, the average weekly revenue for the number of weeks the concern has been in business is multiplied by 52 to determine its average annual receipts.

"Association" (as the term is used in the SBE Program) means an agreement between two parties established for the purpose of completing a specific task or project. The associate agreement shall provide the SBE associate a significant project management role and the SBE associate shall be recognized in marketing and collateral material. The Association shall be distinguished from traditional subcontracting arrangements via a written Association agreement that defines the management of the agreement, technical and managerial responsibilities of the parties, and defined scopes and percentages of work to be performed by each party with its own resources and labor force. Unlike the more formal Joint Venture, an Association does not require formation of a new business enterprise between the parties. The Associate agreement shall contain, at a minimum, provisions required by Section IV.E below and be subject to OCII approval.

"Commercially Useful Function" means that the business is directly responsible for providing the materials, equipment, supplies or services in the City and County of San Francisco ("City") as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are required and sought by the Agency.

"Joint Venture" (as the term is used in the SBE Program) means an entity established between two parties for the purposes of completing a venture or project. The Joint Venture agreement typically creates a separate business entity and requires acquisition of additional insurance for the newly created joint business entity. The Joint Venture agreement shall contain, at a minimum, provisions required by OCII, as Section IV.E below and be subject to OCII approval.

"Office" or **"Offices"** means a fixed and established place(s) where work is performed 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 as an "office" under this SBE Policy. Work space provided in exchange for services (in lieu of monetary rent) does not constitute an "office." The office is not required to be the headquarters for the business but it must be capable of providing all the services to operate the business for which SBE certification is sought. An arrangement for the right to use office space on an "as needed" basis where there is no office exclusively reserved for the business does not qualify as an office. The prospective SBE must submit a rental agreement for the office space, rent receipt or cancelled checks for rent payments. If the office space is owned by the prospective

SBE, the business must submit property tax or a deed documenting ownership of the office.

“Person” means one or more individuals, partnerships, associations, organizations, corporations, and cooperatives.

“Project Area Small Business Enterprise” means a business that meets the above-definition of Small Business Enterprise and that: (a) has fixed offices located within the geographical boundaries of a Redevelopment Project or Survey Area where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a Project Area or Survey Area business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in a Project Area or Survey Area for at least six months preceding its application for certification as a SBE; and (e) has a Project Area or Survey Area office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers of residential addresses alone shall not suffice to establish a firms’ location in a Project Area or Survey Area.

“Project Area” means an area of San Francisco that meets the requirements under Community Redevelopment Law, Health and Safety Code Section 33320.1. These areas currently include the Bayview Industrial Triangle, Bayview Hunters Point (Area B), Hunters Point Shipyard, Mission Bay (North), Mission Bay (South), Rincon Point/South Beach, South of Market, and Transbay.

“San Francisco-based Small Business Enterprise” means a business that meets the above-definition of Small Business Enterprise and that: (a) has fixed offices located within the geographical boundaries of the City; (b) is listed in the Permits and License Tax Paid File with a San Francisco business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in the City for at least six months preceding its application for certification as a SBE; and (e) has a San Francisco office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers or residential addresses alone shall not suffice to establish a firm's status as local.

“Specialty Construction Contractor” means a contractor licensed by the Contractors State License Board under the “C” classification license pursuant to California Business and Professions Code Section 7058.

“Survey Area” means an area of San Francisco that meets the requirements of the Community Redevelopment Law, Health and Safety Code Section 33310. These areas currently include Bayview Hunters Point Redevelopment Survey Area C.

IV. SMALL BUSINESS ENTERPRISES CONTRACTING GOAL

- A. In order to meet the mission of the Agency and promote economic development in Project Areas, the Agency intends to establish targets for SBE participation in Agency and Agency-Assisted Contracts. It also intends to provide Project Area Small Businesses with First Consideration to contracting opportunities with the Agency or through the prime contractors for Agency-Assisted Contracts.
- B. The Agency's overall SBE participation goals (for prime contracts) shall be set at 50%. This means that the Agency or Agency-Assisted Contractor shall use its best efforts to award at least 50% of all Agency-Assisted Contracts covered by this policy to SBEs. The ability of the Agency or Agency-Assisted Contractor to meet this goal will depend, in part, on 1) the availability of qualified SBEs capable of providing the goods or services required by the contract; and 2) the availability of SBEs who provide price quotes that are reasonable and do not exceed competitive levels beyond amounts that can be attributed to the increased costs faced by small local businesses. Accordingly, the Agency may, at its discretion, change the participation goals, on a contract-by-contract basis, in its own contracts or in Agency-Assisted Contracts.
- C. **Agency SBE Prime Contract Participation Goals are:**
- | | |
|-----------------------|-----|
| CONSTRUCTION | 50% |
| PROFESSIONAL SERVICES | 50% |
| SUPPLIERS | 50% |
- D. **First Consideration:** will be given by the Agency or Agency-Assisted Contractor in awarding contracts in the following order: 1) Project Area SBEs, 2) San Francisco-based SBEs (outside an Agency Project or Survey Area), and 3) All other SBEs. Non San Francisco-based SBEs should be used to satisfy participation goals only if Project Area SBEs or San Francisco-based SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non San Francisco-based SBEs.
- E. **Associations and Joint Ventures (JV):** OCII will recognize JVs and Associations between non-SBE firms and SBE firms where the SBE partner performs at least 35% of the work defined in the JV or Association agreement, and receives at least 35% (or a proportionate share, whichever is higher) of the dollars to be earned by the JV or Association. Under this arrangement, OCII will deem the JV or Association to be an SBE for the purposes of meeting the SBE goal. Due to the technical nature of the disciplines and the various standards of each industry, OCII will not require a standardized agreement. However, each JV and Association agreement must be in writing and contain, at a minimum, the following terms:
- Define the management of the agreement between the parties;
 - Define the technical and managerial responsibilities of each party;

- Define the scope of work to be performed by each party, and where possible identify the percentage and break-down of scope of work for each party;
- Identify any additional subcontractors or consultants that will perform the work under the agreement;
- Define the schedule, duration, and deliverable of the agreement;
- Detail the fee schedule, fee breakdown, or division of compensation;
- Specify insurance requirements and/or if each party shall maintain its own insurance;
- Specify how additional work or changes in scope shall be negotiated or determined and which party shall be responsible for notifying OCII of the changes;
- Specify how claims and disputes will be resolved.

A copy of the JV or Association agreement must be provided to OCII for approval in order for the JV or Association to be recognized.

F. **Certification**: Only firms certified as SBEs will be counted toward meeting the participation goals described above. The SBE firm must be certified by OCII or another governmental entity pursuant to the SBE Certification Criteria set forth in Exhibit I.

G. **Good Faith Efforts - Agency**: The goals established in Article IV.C above of this SBE Policy are targets the Agency or Agency-Assisted Contractor will make a good faith effort to achieve for prime contracts. Accordingly, good faith efforts must be taken to assure that these firms are utilized when possible as sources of supplies, equipment, construction, and services. Good faith efforts shall include the following:

1. **Contract Size**. Where appropriate, the Agency or Agency-Assisted Contractor will divide the work in order to encourage maximum SBE participation or, alternatively, SBEs will be encouraged to joint venture. Each responsible staff person, developer or prime contractor/consultant shall identify specific items of each contract that may be performed by subcontractors and, if necessary, provide a list of prospective SBEs for the bidder(s).
2. **Advertise**. For contracts procured using the Competitive Sealed Bids-Public Contract Code Procedure or the RFP/RFQ Procedure, unless there are special circumstances, the Agency or Agency-Assisted Contractor will advertise for 30 days prior to the opening of bids or proposals in media focused on small businesses including the Bid and Contract Opportunities website through the City's Purchasing Department and the Procurement Opportunities section of local publications.
3. **Prepare List of SBEs**. Each responsible staff person, developer or prime contractor/consultant shall request the Contract Compliance Office to assemble a list of all known SBEs in the pertinent field(s). This list will be

made available to the public upon request. Compliance Staff will consult with other redevelopment agencies and government agencies to identify small businesses, particularly those in Project and Survey Areas, that have expertise in areas used by the Agency; the Contract Compliance Office will continue its present practice of regularly updating a variety of lists.

4. Public Solicitation. The Agency or Agency-Assisted Contractor will mail Requests for Qualifications (RFQs) or Requests for Proposals (RFPs) to SBEs. It will follow up initial solicitations of interest by contacting SBEs to determine with certainty whether they are interested in performing specific items in a project. The Agency will also make contacts with SBE contractor associations or development centers, or any agencies that disseminate bid and contract information and provide technical assistance to SBEs.
5. Convene Pre-Bid or Pre-Solicitation Meetings. On consulting contracts that are \$5,000 or more and construction contracts estimated to cost \$5,000 or more, procured using the Competitive Sealed Bids or Public Contract Code Procedure or the RFP/RFQ Procedure, the Agency or Agency-Assisted Contractor will send written invitations to potential SBE candidates to attend pre-bid or pre-solicitation meetings for the purpose of answering questions about the process and the specifications and requirements. Representatives of the Contract Compliance Office will also participate.
6. Outreach and Other Assistance. The Agency or Agency-Assisted Contractor will a) provide SBEs with plans, specifications and requirements for all or part of the project; b) make contacts with SBE contractor associations or development centers, or any agencies that disseminate bid and contract information and provide technical assistance to SBEs; and c) follow up initial solicitations of interest by contacting SBE firms to determine with certainty whether they are interested in performing specific items in a project.
7. Insurance and Bonding. Where lines of credit, insurance and bonding are potential problems for small businesses, the Agency or Agency-Assisted contractor should contact staff to explain the Agency's insurance and bonding requirements, answer questions about them, and be prepared to suggest avenues of assistance.
8. Focused Meetings. The Agency or Agency-Assisted contractor shall participate in meetings convened by staff for SBEs focusing on opportunities for particular industries, e.g., a joint meeting of housing sponsors and small architectural firms based in a Project Area.
9. Monitoring. The Agency or Agency-Assisted Contractor will keep track of the date that each response, proposal or bid was received from SBEs, including the amount bid by and the amount to be paid (if different) to

the non-SBE contractor that was selected. If the responsible staff person or bidder/proposer asserts that there were reasons other than the respective amounts bid for not awarding the contract to or selecting an SBE, he or she must be prepared to provide valid reasons(s) for any rejections.

V. SUBCONTRACTING - BY PRIME CONTRACTORS

- A. **Subcontracting Goal** The Agency intends to establish a subcontracting participation goal for SBEs at 50%, but recognizes that this goal may vary depending on the extent of subcontracting opportunities presented by the contract and the availability of SBE subcontractors capable of providing goods or services required by the contract. Accordingly, the Agency, at its discretion, may change the participation goals on a contract-by-contract basis.
- B. **First Consideration** will be given in the following order: 1) Project Area SBEs, 2) San Francisco-based SBEs (outside an Agency Project or Survey Area), and 3) All other SBEs.
- C. **Good Faith Efforts - Subcontracting**. The Agency will continue its efforts to maximize the involvement of SBE subcontractors by having each responsible staff person:
 - 1. Request the Contract Compliance Office to assemble for the prime, a list of all known SBEs, particularly those in Project or Survey Areas, in the pertinent field(s). This list will be made available to the public upon request.
 - 2. Identify specific items of each contract that may be performed by subcontractors and, if necessary, provide a list of prospective SBEs for the bidder(s).
 - 3. Send notices to appropriate organizations of the opportunities of SBEs to obtain subcontracts with the Agency.
 - 4. Advise SBEs of its insurance requirements and offer SBEs advice on meeting the requirements.
- D. **Contract Provision Requiring Good Faith Efforts**. Agency staff shall include in prime contracts provisions that require prospective contractors that will be utilizing subcontractors to make the following good faith efforts to subcontract to SBEs:
 - 1. Consult with the Agency and other agencies, including government agencies to identify small businesses that have expertise in areas needed by the Agency.

2. Document efforts undertaken to encourage subbidder(s) to obtain SBE participation at a lower tier including identifying specific items of the contract that may be performed by SBE subcontractors and prospective SBEs to perform such items.
 3. Make contacts with SBEs, associations or development centers, or any agencies, which disseminate bid and contract information to SBEs. Follow up initial solicitations of interest by contacting small business enterprises to determine with certainty whether they are interested in performing specific items in a project. This provision includes making direct written solicitation with a complete scope of work to all Agency certified SBEs that provide any subcontract portion of the proposed work.
 4. Keep track of the date that each response, proposal or bid was received from SBEs, including the amount bid by and the amount to be paid (if different) to the non-SBE contractor that was selected. If the bidder/proposer asserts that there were reasons other than the respective amounts bid for not awarding the contract to or selecting an SBE, he or she must be prepared to provide valid reasons(s) for any rejections.
 5. Assist SBEs relative to obtaining and explaining plans, specifications and contract requirements.
 6. Assist SBEs with respect to bonding, lines of credit, etc.
 7. Extend negotiation efforts to SBEs or be prepared to explain the reasons for not negotiating with SBEs.
 8. Prepare a report which shows for each private project and each public project (without an SBE Program) undertaken by the consultant in the preceding 12 months, the total dollar amount of the contract and the percentage of the contract dollars that were awarded to SBEs.
 9. Document any other efforts undertaken to encourage participation by SBE.
- E. **Technical Assistance.** As appropriate, Agency staff shall suggest various sources of assistance to SBEs such as U.S. Small Business Administration ("**SBA**"), U.S. Minority Business Development Agency, San Francisco Renaissance, SCORE (Service Corps of Retired Executives), Urban Solutions, as well as other local community based economic development organizations.
- F. **Aid to Unsuccessful Bidders.** As an aid to unsuccessful bidders the Agency will make available upon reasonable request the following information within a reasonable time (usually within 30 days) after the selection of a contractor/consultant:

For construction contractors:

1. A summary of unit prices taken from the bid documents.
2. A list of subcontractors, nature of work, and bid dollar amount from the bid documents.

For professional consultants:

1. All submissions received in response to RFQs or RFPs and, upon request, an explanation of the Agency's insurance and bonding requirements, and brochures that describe any bonding program in effect.

VI. CONSTRUCTION CONTRACTORS

- A. Construction contracts and subcontracts awarded for \$5,000 or more shall contain a provision that requires contractors and subcontractors to comply with the Agency's Construction Work Force, Prevailing Wage Provision/Labor Standards, and Small Business Enterprise Program.

- B. **Compliance with Prompt Payment Statute:**

1. Construction contracts and subcontracts awarded for \$5,000 or more shall contain the following provision:
 - i) "Amounts for work performed by a subcontractor shall be paid within seven (7) days of receipt of funds by the contractor, in accordance with California Business and Professions Code Section 7108.5 et seq. Failure to include this provision in a subcontractor or failure to comply with this provision shall constitute an event of default which would permit the Agency to exercise any and all remedies available to it under contract, at law or in equity."
2. In addition to and not in contradiction to the Prompt Payment Statute (California Business and Professions Code Section 7108.5 et seq.), if a dispute arises which would allow a Contractor to withhold payment to a subcontractor due to a dispute, the Contractor shall only withhold that amount which directly relates to the dispute and shall promptly pay the remaining undisputed amount, if any.

VII. SUBMISSION OF ELECTRONIC CERTIFIED PAYROLLS

- A. For any contract which requires the submission of certified payroll reports, each Contractor (which herein includes subcontractors regardless of tier) shall comply with the Agency's Construction Work Force and Prevailing Wage Provision/Labor Standards reporting requirements. Contractors are advised that the Agency will not be liable for interest, charges or costs arising out of or relating to any delay in making progress payments due to Contractor's failure to make a timely and accurate submittal of weekly certified payrolls.

- B. In addition to the above, Contractor shall comply with the requirements of California Labor Code Section 1776, or as amended from time to time, regarding the keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its Subcontractors of all tiers.
- C. The Contractor shall make the payroll records available to for inspection at all reasonable hours at the job site office of Contractor.
- D. Contractor is solely responsible for compliance with Labor Code Section 1776 or this SBE Policy. The Agency shall not be liable for Contractor's failure to make timely or accurate submittals of certified payrolls.

VIII. AUTHORIZATION

- A. When staff seeks contract authorization staff shall document and report to the Executive Director and/or the Commission:
 - 1. Whether the Contract Compliance Office provided a list of potential SBEs to be invited for the scope of work being considered.
 - 2. Where appropriate, how the potential work was divided into small contracts to ensure that the scope of work was not too large for an SBE to bid or submit a proposal or how potential SBEs were encouraged to joint venture.
 - 3. That specific items of the contract that may be performed by SBE subcontractors were identified and prospective SBEs were identified for the bidder(s).
 - 4. On consulting service contracts that are \$5,000 or more and construction contracts estimated to cost \$5,000 or more, that prospective SBEs were invited to a pre-bid and/or pre-solicitation meeting for the purpose of answering questions about the process, the bonding and insurance requirements, the specifications and other requirements.
 - 5. All outreach efforts including advertisements or notifications to trade associations or other groups that were made as part of attempts to reach potential SBE candidates.

IX. APPEALS

Any bidder or proposer wishing to appeal a staff recommendation for awarding a contract will be notified of the proposed action and will have an opportunity to be heard by the full Commission when the item comes up on the Agenda.

X. WAIVER

Any of the SBE requirements may be waived if the Agency determines that a specific requirement is not relevant to the particular situation at issue, that SBEs were not available, or that SBEs were charging an unreasonable price. All waivers involving Agency contracts shall be reported to the Commission.

XI. SEVERABILITY

The provisions of this SBE Policy are declared to be separate and severable. The invalidity or unenforceability of one or more provisions of this SBE Policy shall in no way affect the validity of the remainder.

EXHIBIT I

SBE CERTIFICATION CRITERIA

- A. The Agency will consider the certifications or denials of the Contract Monitoring Division (CMD) of the City and County of San Francisco and will accept those certifications or denials from CMD and other governmental entities that are consistent with the standards of the Agency.
- B. The Agency shall make efforts to enter into reciprocal agreements with other agencies that have similar certification standards and policies.
- C. In order to be certified as an SBE the business must meet all of the requirements contained in the SBE Policy, as applicable, and in this SBE Certification Criteria.
- D. In order for a joint venture or association to be recognized as an SBE, the joint venture or association must be organized pursuant to the Agency's SBE Policy and be approved by the Agency.
- E. The Agency will not recognize a subcontractor as an SBE if it sub-contracts more than 50 percent of its subcontract amount to non-SBEs.
- F. A contractor may substitute the amount of a purchase order to a SBE supplier for up to 15 percent of the SBE subcontractor goals. In order to be recognized, a supplier must perform a commercially useful function in the supply process. However, if the supplier is acting as a mere conduit such as a manufacturer's representative or broker then only the amount of the commission or three percent (3%), whichever is greater, will be credited towards meeting the SBE goals. If none of the work is to be subcontracted, SBE suppliers may be utilized without limitation.
- G. If a firm contends that it is an SBE, the Agency may request the owner to submit to the Agency an Application for Certification (Small Business Enterprise Affidavit) under penalty of perjury that swearing to the truth and accuracy of all statements made and material submitted to the Agency, including additional information. If certified by the HRC, a copy of a current HRC certification shall be submitted.
- H. An eligible SBE shall be an independent business. In determining whether a business is independent, the Agency shall examine the adequacy of the business's resources for the scope of work under a proposed contract, its financial independence, the extent of its equipment leasing, and its relationships with non-SBEs. Relationships with non-SBE firms will be scrutinized as to whether the SBE firm:
 - 1. Is known in the industry or trade to be operated by a non-SBE;
 - 2. Is operated in tandem with a non-SBE;

3. Has multiple licenses, some of which are affiliated with non-SBEs;
 4. Itself owns the equipment or trucks that are to be used on the job;
 5. Is listed in the telephone book, preferably in the Yellow Pages under the class for which it is seeking Agency recognition;
 6. Subcontracts back to, leases from, or is back-contracted or joint venturer(s) in an amount unrelated to shared risks and profits. Back contracting includes any agreement or other arrangement between a prime contractor and its subcontractor where the prime contractor performs or secures the performance of the subcontract in such a fashion and/or under such terms and conditions that the prime contractor enjoys the financial benefit of the subcontract. Said agreement or other arrangement includes, but is not limited to, situations where either a contractor or subcontractor agrees that any term, condition or obligation imposed upon the subcontractor by the subcontract shall be performed by or be the responsibility of the prime contractor.
 7. Maintains a permanent office separate from that of its sources of vehicles, subcontractors, the general contractor or from any joint venturer(s); and
 8. In the case of a supplier, carries the material being supplied as a regular part of its inventory.
- I. A SBE firm shall not have any formal or informal restrictions which limit the customary discretion of the owner. The owner should have the authority to perform all of the below functions:
1. Manage either the marketing or production aspects of the business;
 2. Be authorized to sign on all bank accounts, to draw against letters of credit, and to secure surety bonds and insurance; and
 3. Control the profit sharing, pensions or stock option plans.
- J. In order to be considered a Project Area SBE, the business must meet the definition of Project Area Small Business Enterprise in Article III, Definitions.
- K. In order to be considered a San Francisco-based SBE, the business must meet the definition of San Francisco-based SBE in Article III, Definitions.
- L. License Qualification Essential: If state or local law requires a person to have a particular license or other credential in order to own and/or control a certain type of firm, then the person(s) who owns and controls an SBE applicant firm of that type must possess the required license or credential. An owner of an SBE applicant firm who is employed by a non-SBE in a similar line of business of the

applicant firm and who is used to qualify a professional business as an SBE does not meet the Agency's SBE requirements of having management and control of the business. Likewise, an owner of an SBE applicant firm who is employed by a non-SBE construction firm and who is used to qualify a construction business as an SBE cannot meet the Agency's SBE requirements of having management and control of the business. An owner who is certified by the Agency for one profession, e.g., electrical engineering, cannot attribute that certification to another profession, e.g., mechanical engineering, unless he or she is registered for more than one professional license. By extension a certified SBE plumbing business must also be certified to perform electrical work to be an eligible SBE electrical contractor. For businesses that do not require a license, the managing owner must have training, education and work experience in that type of business.

- M. A business requesting to be acknowledged as an SBE shall supply the Agency with all such additional information as the Agency may deem relevant in order to make a determination of such status. If such information is not supplied within 45 days of it being requested, the Agency may consider the Application for certification withdrawn.
- N. A change in ownership of a firm will be carefully scrutinized. The following factors shall be considered:
 - 1. The reason of the timing of the change in ownership of the business relative to the time that bids are opened or proposals are considered;
 - 2. Whether the interest of a non-disadvantaged firm conflicts with the ownership and control requirements of this SBE Policy.
 - 3. Whether an employee-owner who had previous or continuing employee-employer relationship between or among present owners has management responsibilities and capabilities.
- O. Grandfather clause: Firms that were certified as Disadvantaged Minority-owned Business Enterprises (MBE) and Woman-owned Business Enterprises (WBE) in 2004 were automatically deemed certified as SBEs on the effective date of this policy so long as they continue to meet the economic and other standards for SBEs described in this SBE Policy.
- P. In its sole and absolute discretion, the Agency, in interpreting the provisions of this SBE Policy, may rely on the provisions, rules, standards, and other guidance under the Local Business Enterprise Program of the City and County of San Francisco, S.F. Administrative Code Chapter 14B, to the extent that those provisions, rules, standards, and guidance are consistent with this SBE Policy.
- Q. The SBE Agreement executed by the developer and/or contractor is the implementation document for the SBE Policy.