INFORMATIONAL MEMORANDUM

TO: Agency Commissioners
FROM: Tiffany Bohee, Executive Director
SUBJECT: Overview of OCII Small Business Enterprise (SBE) and Workforce Programs: status report on SBE and local hiring goals and comparison with City and County of San Francisco programs

EXECUTIVE SUMMARY

The Office of Community Investment and Infrastructure ("OCII"), as successor agency to the Redevelopment Agency of the City and County of San Francisco, has a long history of promoting equal opportunity in contracting and workforce employment among contractors performing work on Agency-assisted contracts. OCII adopted and continues to actively implement the Equal Opportunity Programs ("EOP") of the prior Redevelopment Agency. These EOP programs are comprehensive and include,

- Small Business Enterprise Policy
- Nondiscrimination in Contracts and Equal Benefits Policy
- Minimum Compensation Policy
- Health Care Accountability Policy
- Prevailing Wage Provisions (Labor Standards)
- Construction Workforce Policy

The subject of this report will focus on OCII’s Small Business Enterprise ("SBE") and Construction Workforce programs, and its performance on projects active as of January 1, 2013. Specifically, the period for this report is January 1, 2013 through May 31, 2014, and includes all projects that either (1) were active and closed during the reporting period, or (2) remain active. During the period, OCII oversaw 40 projects which range from private market rate to OCII affordable housing, private commercial developments, and public infrastructure projects valued at over $1.23 billion dollars.

Under its SBE and Construction Workforce policies, OCII establishes an overall 50 percent goal for SBE participation and local workforce hiring in contracts that it oversees. Contractors are required to perform extensive good faith efforts in an attempt to meet the goals and OCII staff work closely with each contractor to ensure compliance. On a performance basis, some projects performed better than others, with some meeting or exceeding the 50 percent goal while others falling short. Overall, OCII contractors performed on average a 32 percent SBE utilization rate on contracts completed in 2013, and a 35 percent SBE utilization rate on on-going contracts. Similarly, the overall local workforce hiring rate is approximately 33.5 percent, as a percentage
of total work hours. Although these percentages fall short of the agency’s overall goals, which were purposely set at a high threshold, the absolute dollar value and number of work hours should not be discounted. OCII projects, for example, have had a direct economic benefit to the local economy, contributing $427 million of economic activity to small businesses, with approximately half of that ($192 million) directly in San Francisco. In addition, OCII projects logged 1.07 million work hours among San Francisco residents, the equivalent of 515 full-time workers.

**BACKGROUND**

The Redevelopment Agency of the City and County of San Francisco (“Agency”) was a public entity separate and distinct from the City and County of San Francisco (“City”). After dissolution, the Office of Community Investment and Infrastructure (as the successor agency to the Redevelopment Agency) retained this independent organizational structure. This context is important because many of the ordinances enacted by the City did not apply to OCII, but these ordinances were important. For example, Administrative Code Chapter 14B: Local Business Enterprise and Non-discrimination in Contracting Ordinance applies to contracts that are “paid out of monies deposited in the City Treasury or out of trust monies under the control of or collected by the City.” However, the vast majority of OCII’s activities (such as development and disposition agreements, and owner participation agreements with developers) do not involve City funds and, accordingly, Chapter 14B does not apply to OCII contracts. To address the importance of City ordinances, the Agency enacted major policies (which apply to OCII) to mirror the intent of City ordinances. These ordinances and OCII’s respective policies are summarized below.

<table>
<thead>
<tr>
<th>OCII</th>
<th>SF City &amp; County</th>
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<tbody>
<tr>
<td>Small Business Enterprise (SBE) Policy</td>
<td>Chapter 14B Ordinance: Local Business Enterprise and Non-discrimination in Contracting Ordinance</td>
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<tr>
<td>Nondiscrimination in Contracts and Equal Benefits Policy</td>
<td>Chapter 12B/12C Ordinances: Nondiscrimination in Contracts</td>
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<tr>
<td>Health Care Accountability Policy</td>
<td>Health Care Accountability Ordinance (HCAO)</td>
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<td>Minimum Compensation Policy</td>
<td>Minimum Compensation Ordinance</td>
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<tr>
<td>Workforce Requirements (overall 50% with First Consideration for Project Area residents, applicable to Agency-assisted private projects)</td>
<td>Mandatory Local Hiring Ordinance (scale from 20% to 50% over 7 years on publicly funded contracts)¹</td>
</tr>
<tr>
<td>Prevailing Wage Policy (Labor Standards) (required on Agency-assisted private projects)</td>
<td>Prevailing Wage (required of public works contracts, i.e., construction-related work financed with public assistance)²</td>
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</table>

¹ On June 10, 2014, the Board of Supervisors adopted an expansion of the Mandatory Local Hiring Ordinance to require local hiring provisions on private projects on public land and the payment of prevailing wages on these private projects. This proposed legislation is pending enactment by the Mayor.

² Ibid.
Although OCII has adopted policies to effectuate certain City ordinances, it is important to note that OCII’s policies on small business, prevailing wage, and workforce requirements do not mirror City ordinances in exact terms. The reason for this is that certain aspects of a City ordinance may not be applicable to OCII and modifications were made at the policy level to best meet the objectives of OCII, conforming to City ordinances while addressing the overall objective of redevelopment. As previously mentioned, for example, the City’s Chapter 14B ordinance pertains to City funded contracts and addresses San Francisco businesses in particular. OCII went a step further and adopted policies on small business and workforce engagement with First Consideration for businesses and residents impacted by an OCII project. This is in keeping with the fundamental purpose of redevelopment as outlined by the State Legislature, not only to expand the supply of low- and moderate-income housing, but also “to expand employment opportunities for jobless, underemployed, and low-income persons, and to provide an environment for the social, economic, and psychological growth and well-being of all citizens.” (Health and Safety Code 33071.)

Furthermore, only recently did the City consider adopting provisions to require contractors to hire locally and pay prevailing wages on private projects on public land. For many years, OCII has adopted a prevailing wage policy and labor standard that calls for private developers and contractors to adhere to State prevailing wages on contracts that are normally exempt from State requirements. Specifically, State prevailing wage laws apply to "public works" contracts applicable to construction, alteration, demolition, installation, or repair work paid for in whole or in part out of public funds. The bulk of OCII’s oversight of construction activities, on the other hand, does not involve public funds or assistance. Much of these activities are performed on private land or land sold to a developer at fair market value, which do not meet the definition of public works. Nevertheless, the Agency had the foresight to adopt a prevailing wage policy as a condition on a redevelopment project, requiring developers and contractors to adhere to State prevailing wages on effectively a private project.

COMPARISON OF EQUAL OPPORTUNITY PROGRAMS IN CONTRACTS

Office of Community Investment and Infrastructure
Small Business Enterprise (SBE) Program

On November 16, 2004, the Agency adopted a Small Business Enterprise (SBE) Policy to provide certain preferences to small businesses competing for and participating on redevelopment projects. The SBE Policy replaced the Agency’s Minority and Women Business Enterprise (W/MBE) Policy, which was not limited to San Francisco-based businesses. In keeping with the overall objective of redevelopment, however, OCII adopted the principle of First Consideration for residents and businesses impacted by a redevelopment project area in contracting and employment opportunities. The OCII SBE Policy calls for an overall SBE participation goal of 50 percent on Agency-assisted contracts, which, unlike the City’s LBE program, applies to private developments and projects located in redevelopment areas. Agency-assisted contracts are defined as follows:

- Development and Disposition Agreements (DDAs)
- Land Disposition Agreements (LDAs)
• Leases, Loan and Grant Agreements
• Owner Participation Agreements (OPAs)
• Contracts and Operations Agreements that the Agency executes with for-profit or non-profit entities

The SBE program is designed to encourage SBE participation by requiring developers and contractors to perform extensive good faith efforts to include SBEs in the performance of any Agency-assisted contracts or agreements, and any subsequent agreements between the developer and its contractors or consultants. If SBE participation goals are not met, compelling good faith efforts must be documented and provided to OCII. In accordance with the SBE Policy, the developer or contractor shall give priority in awarding any Agency-assisted contracts in the following order: (1) Project and Survey Area SBEs, (2) Local SBEs (outside an OCII Project or Survey Area, but within San Francisco), and (3) all other SBEs (outside of San Francisco). Non-local SBEs are allowed to satisfy participation goals only if Project and Survey Area SBEs or Local SBEs are neither available nor qualified, or if their bids or fees are significantly higher than those of non-local SBEs. OCII staff works closely with developers and contractors to ensure good faith efforts are diligently performed.

For reporting purposes, OCII looked at recent projects that have been completed along with projects that are continuing to assess its performance on a past and present basis. Specifically, OCII staff looked at all projects that were active as of January 1, 2013, and reviewed SBE participation figures for projects that either (1) were active and closed after January 1, 2013, or (2) remain active as of this report. OCII staff utilized contract award information gathered from developers, contractors, and information from OCII’s web-based reporting tool, Elation Systems. Information was confirmed with the developers and contractors, and updated when applicable.

During this reporting period, OCII oversaw 40 projects which consist of over 60 contracts ranging from market rate, inclusionary, and stand-alone affordable housing to private commercial developments and public infrastructure projects valued at over $1.23 billion. Eight projects were completed on or after January 31, 2013, totaling $296 million dollars, of which $94.5 million went to SBEs. This translates to a participation rate of 32 percent. For projects currently in construction, more than $907 million is being monitored with a current SBE participation rate of 35 percent (or approximately $314 million), which is modestly higher than completed projects but short of the agency’s overall goal. To address the shortfall, OCII staff will closely monitor these projects to improve SBE participation rates. Fortunately, in the area of current design and predevelopment efforts (which total approximately $28 million dollars) the SBE participation rate is averaging 64 percent and equates to about $18 million to SBEs. OCII staff will continue to monitor these projects as they enter into the construction phase. Please refer to Attachment A for individual project details.

Although the agency has an overall SBE participation goal of 50 percent, it is important to note that the overall goal may be adjusted either upward or downward on a contract-by-contract basis depending on the availability of SBEs to perform the requested work. These adjustments may be necessary to account for a specific circumstance (such as the lack of available SBE firms to perform, say, pile driving) and follow, to a large degree, the City’s concept of establishing
contract-specific participation goals, which are based on firm availability. It should be noted that during this reporting period no adjustments were made on any Agency-assisted contracts.

Furthermore, OCII staff attempted to discern the specific ethnic make-up of SBE firms that are identified as minority-owned or MBE on Attachment A, but with limited success. Currently, the MBE and WBE designations were polled from the City’s LBE database, which identifies whether an LBE firm is minority or women-owned. Specific ethnic data, however, is not provided. In addition, OCII’s current SBE Policy does not require contractors to gather and report on ethnic and/or gender information. In an attempt to determine whether ethnic data could be reliably gathered, OCII staff combed through several publicly available databases, which included the California Unified Certification Program database of DBEs (disadvantaged business enterprises), the California Public Utilities Commission Supplier Clearinghouse of W/MBEs (women and minority owned firms), and the U.S. Small Business Administration (SBA) Dynamic Small Business Search database (http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm). Unfortunately, the available information is incomplete and may be partially unreliable because some ethnic and gender information is self-reported (such as data from SBA). In addition, the process of identifying reliable ethnic data required extensive staff time, more than was available prior to this report to accurately reflect the specific group membership of MBE firms.

San Francisco Local Business Enterprise (LBE) Program

Pursuant to Chapter 14B of the Administrative Code, the City enacted a Local Business Enterprise (LBE) program to assist San Francisco-based small and micro businesses to increase their ability to compete effectively for the award of City contracts. The City recognized that San Francisco small businesses experience higher costs than large businesses or businesses located outside the City, resulting in a competitive disadvantage. In addition, the City recognized the lingering effects of past discrimination in public contracting and effected small business size standards in its LBE program, acknowledging that many economically and socially disadvantaged firms are small. The primary benefits of the City’s LBE program are to offer contracting opportunities at varying levels:

- On a prime contracting level, the LBE program provides LBE bid discounts and micro-business set-asides
- On subcontracting, the LBE program establishes contract-specific LBE subcontracting goals and requires contractors to exercise “Good Faith Outreach”

The Contract Monitoring Division (CMD) of the City’s General Services Agency administers the LBE program, which implements different procurement mechanisms based on the dollar value of contracts. The City distinguishes between “Formal”, “Informal”, and “Set-aside” contracts:

- Formal contracts are those that exceed $400,000 in construction or $100,000 in goods and professional and other services, and are competitively awarded on a formal basis, i.e., public advertisement and notice. LBE subcontracting goals are established on Formal contracts.
• Informal contacts are those that exceed $10,000 in value but less than the thresholds of a Formal contact referenced above. Informal contracts are competitively awarded but do not require formal public notice or advertisement. Three bids from LBE firms are sufficient for an awarding agency to make its procurement decision. LBE subcontracting goals are established for Informal contracts.

• Set-asides are established to encourage Micro-LBE prime contracting. Contracts are set aside on the basis that not less than a certain percentage of City contracts are set aside solely for Micro-LBE competition. Not less than 50 percent of public works contracts estimated to be equal to or less than $400,000, or not less than 25 percent of contracts other than public works contracts estimated to be equal to or less than $100,000 are set aside for Micro-LBEs. Set-aside contracts are awarded if at least 2 Micro-LBEs submit bids/proposals and if the award is determined to be at fair market price. There are no subcontracting goals on set-aside contracts.

City agencies seeking to procure goods or services are required to work with CMD to determine appropriate LBE contracting mechanisms, notably the establishment of contract-specific LBE subcontracting goals. Bidders and proposers are required to submit good faith efforts documentation unless their bid or proposal exceeds the LBE contract goal by at least 35 percent.

The City’s LBE program is comprehensive and well-conceived, addressing the full spectrum of contracts awarded by City agencies. For Fiscal Year (“FY”) 2012/2013, the City reported a total of $413.5 million in contracts awarded and approximately $243.2 million (or about 59 percent) going to LBE firms. For the first six months of FY2013/2014, the City reported a total of $224.1 million in contracts awarded with $115.7 million (or 52 percent) going to LBE firms. (See Attachment C for reports published by the City on its LBE program.)

While there is a natural inclination to compare the City’s LBE program with OCII’s SBE program, it is important to note that variances in these programs make a direct comparison difficult. These variances include differing definitions of what constitutes a “small” or “local” business.

**OCII’s SBE Size Limits:**

• Construction – $14,000,000
• Professional or personal services – $2,000,000
• Suppliers – $7,000,000
City’s LBE Size Limits:

<table>
<thead>
<tr>
<th></th>
<th>&quot;Micro&quot; Bid Discount: 10%</th>
<th>&quot;Small&quot; Bid Discount: 10%</th>
<th>&quot;SBA&quot; Bid Discount: 2%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class A and Class B General Contractors</td>
<td>$7,000,000</td>
<td>$14,000,000</td>
<td>$33,500,000</td>
</tr>
<tr>
<td>Specialty Construction Contractors</td>
<td>$3,500,000</td>
<td>$7,000,000</td>
<td>$17,000,000</td>
</tr>
<tr>
<td>Trucking and Hauling</td>
<td>$1,750,000</td>
<td>$3,500,000</td>
<td>$8,500,000</td>
</tr>
<tr>
<td>Goods Materials and Equipment Suppliers</td>
<td>$3,500,000</td>
<td>$7,000,000</td>
<td>$17,000,000</td>
</tr>
<tr>
<td>General Service Providers</td>
<td>$3,500,000</td>
<td>$7,000,000</td>
<td>$17,000,000</td>
</tr>
<tr>
<td>Architect/Engineering</td>
<td>$1,250,000</td>
<td>$2,500,000</td>
<td>$7,000,000</td>
</tr>
<tr>
<td>Professional Services</td>
<td>$1,250,000</td>
<td>$2,500,000</td>
<td>$7,000,000</td>
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</tbody>
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Notably, the size standards for the City’s LBE program are divided into three levels: Micro, Small, and SBA (which represents the U.S. Small Business Administration’s size standards ranging from $7 million to $33.5 million). OCII’s size standards, on the other hand, are more simply defined, essentially following the City’s “Small” category for construction and suppliers, but differ from the City’s limit for professional services ($2.5 million for the City as opposed to $2 million for OCII). In addition, the City’s application of bid discounts (which allows a City agency to adjust a small business bid by lowering it from 2 to 10 percent for bid evaluation purposes) provides a competitive advantage to small businesses that differs from OCII’s SBE Policy, which makes no provision for such adjustment. These differences should be noted for program comparison purposes.

COMPARISON OF WORKFORCE PROGRAMS

Well before the City’s adoption of its local hiring policy for construction, OCII has implemented a construction workforce requirement on Agency-assisted projects, applied on a contract-by-contract basis. The workforce requirement is aggressive and unique in that it establishes a local hiring goal of 50 percent, with First Consideration for Project Area residents and requires contractors to adhere to State prevailing wages. OCII monitors workforce compliance through a web-based monitoring and reporting system, Elation Systems. Contractors and subcontractors are required to submit certified payroll reports through this system, which tracks, by project and trade, each hour worked by a contractor’s or subcontractor’s employees. The system also tracks employee information such as residence and, in most cases, ethnic and gender data, which is optional. OCII staff monitors payroll submissions for deficiency and gathers missing payroll reports when delinquent. For this report, OCII staff extracted data from Elation Systems and

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3 Given the Agency’s historic practice of using comparable small business criteria, OCII may want to consider an amendment to its policy to raise the threshold for professional/personal services from $2 million to $2.5 million to conform to the City’s program.

4 The LBE bid discount is used for bid evaluation purposes only. For example, if the bid discount renders a bid from a small business lowest, the small business is awarded the contract but at its original bid price.
separately identified and reported those work hours performed by San Francisco residents, and those performed by individuals residing in the ZIP codes: 94107, 94124, and 94134 ("BVHP" area). In addition, minority and women data is provided for informational purposes.

For projects completed during this reporting period, OCII contractors logged 1.57 million worker hours, of which 635,346 hours (or 37.3 percent of the total) were performed by San Francisco residents. For projects currently in construction, OCII contractors are hiring local residents at an average rate of 29 percent. Although this percentage may appear low, there are several projects in the early phase of its construction that will yield higher percentages and OCII staff (along with staff from the Office of Economic and Workforce Development ("OEWD")) will monitor these projects closely. Please refer to Attachment B for individual project details.

Effective March 4, 2014, OCII entered into an agreement with OEWD to provide day-to-day construction workforce compliance services. Under this agreement, staff meets bi-weekly with OEWD to discuss and assess progress. Staff will monitor and work closely with OEWD to ensure OCII contractors are making extensive good faith efforts to meet the 50 percent local hiring goal.

**City Local Hiring Policy for Construction**

In December 2010, the San Francisco Board of Supervisors approved amendments to Chapter 6.22(g) of the San Francisco Administrative Code and adopted the San Francisco Local Hiring Policy for Construction. This Policy sets the local hiring goal at 20 percent in the first year of implementation (March 2011) and increments the goal annually by 5 percent until it reaches 50 percent by year 7 (2017). In its current, fourth year of implementation, the City’s local hiring goal remains at 30 percent (Year 3 level). At the recommendation of the Mayor's Construction Workforce Advisory Committee this percentage was left at 30 percent for Year 4 pending further review of performance data.

**City Local Hiring Goals Over 7 Years**

<table>
<thead>
<tr>
<th>Year</th>
<th>Local Hiring %</th>
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<tbody>
<tr>
<td>1</td>
<td>20%</td>
</tr>
<tr>
<td>2</td>
<td>25%</td>
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<tr>
<td>3</td>
<td>30%</td>
</tr>
<tr>
<td>4</td>
<td>35%</td>
</tr>
<tr>
<td>5</td>
<td>40%</td>
</tr>
<tr>
<td>6</td>
<td>45%</td>
</tr>
<tr>
<td>7</td>
<td>50%</td>
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Overall, for the first three years of implementation the City logged 2.55 million worker hours, of which 929,088 hours were performed by San Francisco residents. This equates to approximately 36.4 percent local hiring, which exceeds the third year hiring goal of 30 percent. It is important to note that the Policy, as currently enacted\(^5\), only applies to public infrastructure and building

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\(^5\) On June 10, 2014, the Board of Supervisors adopted an ordinance expanding the City's Mandatory Local Hiring Ordinance to apply to private projects on public land. This ordinance is pending approval by the Mayor.
construction projects funded with City funds and do not include projects that are privately funded or funded in part or in whole by the Federal government. Accordingly, the City’s report only includes those contracts funded through the City for the following departments: Department of Public Works, Port of San Francisco, Public Utilities Commission, Recreation and Parks Department, and San Francisco International Airport (non-federalized contracts only). Notably, the City’s local hiring statistics do not include any City-sponsored affordable housing projects through the Mayor’s Office of Housing and Community Development (MOHCD), which renders a direct comparison of local hiring performance difficult between OCII and the City. In addition, the Board of Supervisors just recently, on June 10, 2014, approved an expansion of the City’s Local Hiring Policy to include local hiring requirements on private projects on public land. These forthcoming projects are directly comparable to OCII’s activities and future reports that include these projects would be more meaningful on a comparative basis.

Finally, because OCII only recently entered into an agreement with OEWD to provide workforce compliance services, a more extensive report on workforce hiring will be presented at a later date with OEWD.

(Originated by George Bridges, Sr. Contract Compliance Specialist, and Raymond Lee, Contract Compliance Supervisor)

Tiffany Bohee
Executive Director

Attachment A: SBE Dollars by Project Summary Report
Attachment B: Work Force Summary Report
Attachment C: LBE Participation Reports

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6 Federal provisions prohibit geographical preferences, such as a local hiring requirement, on Federally-assisted contracts.