



126-0032023-002

Agenda Item **No. 5(g)**
Meeting of March 21, 2023

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Thor Kaslofsky, Executive Director

SUBJECT: Urging the San Francisco Unified School District to adopt a program, similar to the Small Business Enterprise Policy of the Office of Community Investment and Infrastructure, to provide contracting goals for small businesses in the awarding of contracts; Mission Bay South Redevelopment Project Area

EXECUTIVE SUMMARY

On September 20, 2022, San Francisco Unified School District ("SFUSD") and Office of Community Investment and Infrastructure ("OCII") staff presented an update on the Mission Bay elementary school project ("Mission Bay School"), to be built on Mission Bay South Block 14. Part of that update included a summary of SFUSD's small business contracting and workforce hiring program for the Mission Bay School. Following the presentation, Commissioners requested more detail about SFUSD's small business contracting goals.

Attachment 1 to this memorandum, the SFUSD Hiring Fact Sheet, provides additional detail on the contracting and hiring policies for the Mission Bay School building. As was presented at the September 20, 2022 Commission meeting, SFUSD will comply with OCII's Small Business Enterprise Policy ("SBE") and workforce hiring goals for the construction of the exterior Mission Bay School play yard project ("School Yard") because OCII funds will be used for the construction of the exterior play yard. However, for the construction of the Mission Bay School and non-play yard exterior space ("School Project"), SFUSD will be following its own contracting and hiring policies which do not include the same requirements in OCII's SBE Policy.

London N. Breed
MAYOR

Thor Kaslofsky
EXECUTIVE DIRECTOR

Miguel Bustos
CHAIR

Bivett Brackett
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Dr. Carolyn Ransom-Scott
COMMISSIONERS

One S. Van Ness Ave.
5th Floor
San Francisco, CA
94103

415 749 2400

www.sfocii.org

BACKGROUND

OCII SBE Contracting

In November 2004, the Redevelopment Agency adopted an SBE Policy and replaced the Former Agency's Minority and Women Business Enterprise ("W/MBE") Policy. The objective of the SBE Policy is to level the playing field for small businesses, particularly San Francisco-based small businesses, so that they may compete favorably on OCII-assisted projects. In keeping with the overall objective of redevelopment, OCII continued the principle of "First Consideration" by offering priority to local businesses for contracting opportunities. Specifically, a developer or contractor shall give first consideration in the award of any OCII-assisted contracts in the following order: (1) Project Area SBEs, (2) Local SBEs (outside an OCII Project 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 Area SBEs and Local SBEs are unavailable or unqualified, or if their bids or fees are significantly higher than those of non-local SBEs.

OCII's SBE Policy establishes an ambitiously high SBE utilization goal of 50% to encourage aggressive and proactive measures to engage SBEs. These measures include incentives for engaging SBEs in construction joint ventures and professional services associations (such as associate architects) to foster capacity building among SBEs. OCII's SBE Policy applies to all OCII-assisted contracts, including Development and Disposition Agreements (DDAs), ground leases, and loan agreements, as others.

As part of the SBE Policy, OCII adopted the practice of averaging a firm's gross receipts over its immediate prior five years to determine business size for purposes of qualifying as a small business. In an effort to mitigate marketplace confusion and improve program administration, OCII adopted size standards in July 2015 and amended the size standards in March 2022 to conform to the City and County of San Francisco's Local Business Enterprise ("LBE") Program with respect to their Micro and Small LBEs¹. To qualify as a small business, a firm's gross receipts (averaged over five years) must not exceed the following thresholds for the respective classifications:

¹The City certifies Local Business Enterprises in three categories (ranked by smallest to largest gross receipts): (1) Micro-LBE, (2) Small-LBE, and (3) SBA-LBE. In March 2022, the OCII amended the SBE Policy to harmonize the size thresholds of the City's Small-LBE.

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

From July 1, 2021 through June 30, 2022, seven projects under OCII's jurisdiction were awarded contracts at a value of over \$136 million. On an aggregate basis, there are 44 projects totaling \$1.1 billion that are being monitored by OCII as of June 30, 2022, and these projects are at various stages of design and construction. These projects include private market rate housing, stand-alone and inclusionary affordable housing, private commercial developments, and public infrastructure improvements.

Overall, projects initiated during this reporting period yielded very good SBE participation percentages for both professional services and construction contracts. For professional service contracts, SBE participation reached over 83.5% of total awards, exceeding the 50% goal and is within a percentage point of the prior year. For construction contracts, SBE participation was at a favorable level, reaching over 55.5%, exceeding the 50% goal.

Location

Block 14 is approximately 2.2 acres bounded by Owens Street to the west, Nelson Rising Lane to the south, 6th Street to the east and Mission Bay Boulevard and the Mission Bay traffic circle to the north.

Transfer Process

The Mission Bay Plan Documents (“Plan Documents”) contemplated the transfer of Block 14 by the Regents of the University of California (“UCSF”) as part of its overall campus but reserved it as a School Site through the November 16, 1998, Agreement for Donation of Real Property (“Donation Agreement”) between UCSF and the Project Area’s successor owner FOCIL. The Donation Agreement described the use of the School Site “as a public elementary, middle or secondary school building and yard by the [SFUSD]”.

In accordance with the Plan Documents, UCSF would be the interim School Site owner until such time that the SFUSD made a formal request that it was moving forward with the School Project. In 2017 SFUSD formally endorsed moving forward with the School Project. UCSF has transferred the School site to SFUSD, and construction began in November 2022.

Cooperative Approach

The OPA’s Acquisition Agreement and the Project Area’s Financing Plan, establishes the process by which the costs associated with all of FOCIL’s Infrastructure obligation are reimbursed through OCII with the Public Improvement Community Facility District #6 funds (“CFD #6”). The Joint Community Facilities Agreement authorizes the use of CFD #6 funds for the School Yard Improvements. Under CFD #6, OCII is authorized to provide funding for the School Yard Improvements, but not the building.

The OPA states that FOCIL will complete the School Yard Improvements as part of its overall Infrastructure obligation. However, SFUSD has requested, and FOCIL 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. As a result, SFUSD and FOCIL will enter into a Reimbursement Agreement to fund the design and construction of the School Yard Improvements. The Reimbursement Agreement will also establish the process by which FOCIL will manage SFUSD’s reimbursement requests for the costs associated with the School Yard Improvements. FOCIL will be reimbursed by OCII in accordance with the existing infrastructure reimbursement process, and then once reimbursed, FOCIL will then reimburse the SFUSD for its already incurred costs.

Contracting to Date

In 2021, SFUSD issued a Request for Proposals (“RFP”) to select a Design Build Entity (“DBE”) to complete the Mission Bay School. On June 15, 2022 the SFUSD Board selected McCarthy and DLR Architects (“DLR”) as the DBE for the Mission Bay School project.

DISCUSSION

Contract Compliance

School Yard

Since the School Yard Improvements will be reimbursed using OCII's CFD #6 funds, the work will be required to comply with the terms of the Acquisition Agreement and OCII's SBE requirements. The Reimbursement Agreement will state these requirements.

SFUSD has committed to a good faith effort to meet OCII's SBE Program and to coordinate with OCII's Contract Compliance team when they bid the School Play Yard Improvements in the fall of 2023. SFUSD and OCII staff has met with McCarthy and DLR to discuss OCII's SBE program, and the team has communicated it is ready and able to comply with OCII's SBE goals for the School Yard. DLR and SFUSD have already selected an SBE Landscape architect, Miller Company, who will work on the refinement of the School Yard Improvements as well as the rest of the School Project's exterior landscaping. In addition, McCarthy has stated that its School Project team will include its Director of Equity and Inclusion, who will assist in identifying minority-owned businesses who may be interested in portions of the School Yard Improvement scope of work.

School Project

The School Project will be subject to SFUSD's Prop A Project Labor Agreement with the Building Trades Council ("PLA"). While the PLA does not specify SBE goal percentages, it encourages the participation of small businesses in District projects and requires minimum local hiring goals as laid out below:

- 25% Local hiring participation of total construction workforce hours
- 50% Local hiring participation of apprentice construction workforce hours

These goals apply to the following trades:

- Carpenters
- Electricians
- Ironworkers
- Laborers
- Painters
- Plumbers
- Carpet and Soft Floor Layers

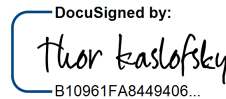
As part of the PLA, SFUSD's contractors and subcontractors are encouraged to source apprentices through San Francisco's CityBuild Academy, pre-apprenticeship program for the construction field and a partnership with the San Francisco Office of Economic and Workforce Development, City College of San Francisco, community non-profit organizations, labor unions, and industry employers. Additionally, SFUSD contractors and subcontractors are encouraged to hire a high school aged summer intern through SFUSD's Career Technical Education ("CTE") Summer Internship Program, a job readiness program, for every \$2.5 million in an awarded contract.

Finally, 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. The PLA also provides for no strikes or lockouts.

The School Project will also be subject to a 3% Disabled Veteran Business Enterprise ("DVBE") participation goal.

In addition to these policies and with SFUSD's support, McCarthy has also assigned Michelle Nolen, Community Outreach and Supplier Diversity Director, to the project. She will conduct outreach to SBE contractors in the Mission Bay priority target zip codes of 94124, 94134, and 94107 for both the School Building and the School Yard projects. In addition to contracting, Ms. Nolen will also focus on sourcing SBE suppliers.

(Originated by Gretchen Heckman, Development Specialist)

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Thor Kaslofsky
Executive Director

Attachment 1: SFUSD Hiring Fact Sheet

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LOCAL HIRE POLICY

Members of the San Francisco Unified School District (SFUSD) Board of Education passed a local hiring policy to increase employment opportunities for San Francisco residents. As stated in Articles III and XI of the SFUSD Prop A Project Labor Agreement (PLA), all covered projects are required to fulfill minimum Local Hiring Requirements and help fund SFUSD's Career Technical Education (CTE) Summer Internship Program.

Minimum Local Hiring Percentages apply to the following trades:

- Carpenter and Related Trades
- Carpet, Linoleum, and Soft Tile Layers
- Electricians
- Iron Workers
- Laborer and Related Classifications
- Painters
- Plumbers

Local Hiring Requirements:

- Each Contractor shall employ residents of the District for at least twenty-five percent (25%) of Project Work hours by trade for each trade listed above.
- Each Contractor shall employ apprentices who are residents of the District for fifty percent (50%) of Project Work hours by trade for each trade

All contractors and subcontractors subject to the SFUSD Prop A PLA are encouraged to hire or sponsor apprentices from City Build Academy's registry of local workers.

CTE Summer Internship Program:

The CTE Summer Internship Program works with High School students on job readiness and exposure to a wide range of vocations including construction. All PLA Projects are encouraged to sponsor summer interns for every \$2.5 million in construction contracts.

Local Hire Registry:

The San Francisco Unified School District is creating an ongoing, continuous registry of contractors, subcontractors, suppliers and other construction-related services for bidding and subcontracting current projects under its Proposition A Bond Program. This registry is part of



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the District's Local Hire Policy, implemented through its Project Labor Agreement with the Building Trades Council with the aim of fulfilling Articles III and XI of the PLA.

Both local (San Francisco-based) and non-local contractors, subcontractors and suppliers are eligible and encouraged to apply for inclusion in the District's Local Hire

Registry. Contractors and subcontractors meeting the goals of the District's Local Hire Policy are also eligible to apply for non-PLA and other projects under the District.

DVBE POLICY

The District has a Disabled Veteran Business Enterprise ("DVBE") Participation Goal Program ("the DVBE Program") which establishes a three percent (3%) Participation Goal for DVBEs. All Bidders are required by the District, pursuant to the DVBE Program, to submit DVBE Worksheets that confirm two (2) advertisements were published at least 14 days prior to bid opening.

SBE

While there is no specific percentage goal for SBEs, the PLA encourages the participation of small businesses.

PREVAILING WAGE RATES & OTHER LABOR CODE REQUIREMENTS

All contractors are required to:

- Pay the Prevailing Wage (see Wage Rates at www.dir.ca.gov/DLSR/PWD)
- Submit Certified Payroll Records (see Public Works Payroll Reporting Form at www.dir.ca.gov/dlse/)
- Keep documentation of fringe benefit payments
- Maintain a daily sign in sheet with the names and trades of employees
- Post the Prevailing Wage Rates at the job site
- Employ registered apprentices