

CITY OF OAKLAND

AGENDA REPORT

OFFICE OF THE CITY CLERK
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TO: Office of the City Administrator
ATTN: Deborah A. Edgerly
FROM: Contract Compliance & Employment Services Division, Office of the City Administrator
DATE: September 12, 2006

RE: **A Report and Recommendations From the City Administrator's Contract Compliance and Employment Services Division Regarding the Status of Local Hiring and Local Contracting on the Forest City "Uptown" Project Including the Market Rate and Mixed-Use Projects, With Remediation Recommendations for Any Local Hiring and Contracting Goals Not Being Met**

SUMMARY

This report responds to Council's request for information on the current level of local Oakland business participation and local Oakland resident participation on the Forest City "Uptown Project". This report reflects a snapshot in time revealing the current participation levels for Oakland businesses and residents.

Policies against which these levels are measured and reported are as follows: (1) 20% Local and Small Local Business Enterprise Program (L/SLBE) Program wherein certified small local firms must participate at a rate of at least 10% of the total project and local certified firms must participate at a rate of at least 10% of the total project or small local firms may satisfy the total 20% minimum; (2) Local Employment Program (LEP) wherein 50% of the workforce hours must be worked by Oakland residents on a craft by craft basis and (3) the 15% Apprenticeship Program wherein 15% of the total hours worked must be worked by Oakland apprentices.

Given the above description, data reflects the following:

1. The project is meeting local employment goals for both the Local Employment Program (LEP) and the 15% Apprenticeship Program;
2. LFR exceeded the minimum 20% Local/Small Local Business Enterprise (L/SLBE) requirement. The portion of work under LFR is nearing completion;
3. It is too soon to determine the level of compliance under Roberts Obayashi (RO). This portion of work is just beginning. The contractor expects to meet or slightly exceed the minimum 20% L/SLBE requirement once pending contracts have been awarded.

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FISCAL IMPACT

Relative to compliance policies, the Uptown Project offers great potential for an outstanding economic impact for Oakland residents and businesses and thus the local economy.

Relative to employment, the combined certified payrolls of LFR and RO show that Oakland workers have received approximately \$ 344,019 in wages and fringe benefits to date. A total of 7,489 hours were worked on the Uptown job site and, as the Local Employment policy allows, 1,908 hours were worked on non-city funded jobs.

The local employment and apprentice hours will grow significantly as the project progresses. Please see a detailed breakout of hours worked to date on page 6, Table 2, of this report.

Relative to the L/SLBE Program requirements, the economic impact for local businesses shows approximately \$9,159,882 awarded to local Oakland businesses. Of that total, \$6,776,458 were awarded to Local Business Enterprises (LBEs) and \$2,383,424 were awarded to Small Local Businesses Enterprises (SLBE).

Local business participation, as expressed in the combined total dollars awarded by both LFR and RO to date, while low in terms of the overall project percentage, has a significant fiscal impact on the local economy. Other fiscal impacts were outlined by the Community Economic Development staff in previous reports to the Council.

BACKGROUND

In June of 2004, pursuant to Resolution No. 2004-0038 C.M.S., the Agency authorized the Agency Administrator to enter into a Lease Disposition and Development Agreement (LDDA) and two ground leases with Uptown Housing Partners, LLC (an affiliate of Forest City) for the development of 700 units of rental housing, including 25 percent affordable units ("Uptown Project") in the Uptown Project Area.

Initially, Forest City planned to develop the Uptown Project in two phases, with 590 units and a new public park in the first phase, and 110 units in the second phase. Phase 2 of the Uptown Project was going to be built on a block bounded by William Street in the north, Telegraph Avenue in the east, 19th Street in the south and a new public park in the west ("Parcel 4"). Each development phase was going to be governed by a separate ground lease.

In October of 2005, the Agency and Uptown Housing Partners executed the ground lease for the first phase of the Project, covering development of Parcel 1, 2, 3 and the public park

parcel. The LDDA requires that Forest City comply with all of the City and Agency local contracting and resident hiring requirements and goals.

During the design of the project, Forest City's architects were able to place 665 units into the area comprising Parcels 1, 2 and 3, rather than the original 590 units contemplated when the LDDA was authorized in 2004. As a result, only 35 units would have had to be built on Parcel 4 to satisfy the 700-unit minimum requirement approved by the Council for the entire project. Rather than construct 35 residential rental units on Parcel 4, Forest City proposed to acquire the property at its fair market value and agreed to develop at least 120 units of market rate housing (the "Market Value Project"). Forest City is not seeking any financial assistance from the City or Agency for the development of the Market Value Project. Thus, this development is no longer considered Phase 2 of the Uptown Project; the Market Value Project is a stand-alone fair market value development in the Uptown Activity Area of the Central District Redevelopment Project Area.

On May 16, 2006, the Agency, pursuant to Agency Resolution No. 2006-0041 C.M.S., and the City, pursuant to Oakland City Council Resolution No. 79910 C.M.S., authorized the Agency Administrator to enter into a Disposition and Development Agreement (DDA) with Forest City for the development of Parcel 4. Because this portion is a market rate agreement and Forest City will pay the fair market value for the Agency-owned property and not receive any other public assistance, Forest City is not required to comply with the City's or Agency's local employment and business participation requirements and goals. However, according to a Forest City spokesperson, the following comment was put forward as it relates to local business and resident participation on the market rate agreement: "While Forest City is under no obligation because this is a fair market transaction, as a national developer, Forest City will make every commercially reasonable effort to hire local firms when possible."

Hazardous materials remediation and demolition on Parcels 1, 2, 3, 4 and the park commenced in November of 2005. Forest City has completed the remediation on Parcels 1, 2 and 3 and has begun construction of the foundation and garage components of the Uptown Project. Forest City will not complete environmental remediation of Parcel 4 and the park until Parcel 4 becomes available in June of 2007. Construction of the market-rate project on Parcel 4 will not commence until the fall of 2007.

KEY ISSUES AND IMPACTS

Table I below reflects the total participation levels to date by LFR and Roberts Obayashi. As demonstrated, LFR exceeded the minimum local business participation requirement with 29.75% LBE and 20.45% SLBE. Under a 20% minimum L/SLBE participation requirement, the total percentage for LFR alone is an outstanding 50.2 % and 30.2% over the minimum.

Table 1

		Total Contract Amount	LBE Dollars	LBE %	SLBE Dollars	SLBE %
1	LFR	\$ 6,100,978	\$ 1,814,928	29.75%	\$ 1,247,682	20.45%
2	RO	\$135,669,000	\$ 4,961,530	3.66%	\$ 1,135,742	0.84%
	Total	\$141,769,978	\$ 6,776,458	4.78%	\$ 2,383,424	2%
total L/SLBE to date					\$9,159,882	6%

It is too soon to determine compliance under Roberts Obayashi because there are several pending contract awards in the amount of approximately \$25,442,345. While the contracts have not been executed, the apparent low bidders have been identified. As a result of the pending status, these dollars were not counted in this status report. It is important to note that once the pending contracts are awarded, Roberts Obayashi anticipates meeting or slightly exceeding the minimum 20% L/SLBE participation requirement. Compliance analysis spread sheets are found in Attachment A, pages 1, 2, & 3.

Project Labor Agreement

There is concern that the Uptown Project's Project Labor Agreement (PLA) may be a disincentive to small local non-union businesses. Briefly, there are two (2) types of PLAs, both of which are being utilized within Alameda County. Both PLAs require contractors to operate as union contractors while performing work specific to the project covered by the respective PLA. Both cover working conditions, wages, address trust fund contributions by the contractors and subcontractors associated with the specific project to appropriate union trust funds, establish expedited and truncated grievance procedures, and no labor related work stoppages.

Both PLAs deliver the same benefits with respect to workforce, work product, and project stability. The PLAs differ in whether non-union contractors or subcontractors are required to change the status of their companies to that of signatories with the union(s).

The PLA implemented for the Upton Project requires contractors to become signatory with the respective union(s). Of most concern is that the contractor is obligated beyond the scope of work and duration of the Uptown Project to operate as a union contractor, and to conduct concurrent and future work as union contractors.

Many of Oakland's small local construction companies are not willing to extend the wage and work assignment requirements to all of the work they perform in exchange for the opportunity to secure and perform work on projects covered by PLAs with straight Schedule A requirements.

The other type of PLA, as implemented by the Port of Oakland, is known as the Maritime and Aviation Project Labor Agreement (MAPLA). The MAPLA does not require contractors who are awarded work to change the status of their company. Instead, they are required to sign an agreement that is limited to work they will perform on Port MAPLA related projects and does not extend to other projects the contractor is or will be working on; and the agreement has a fixed duration tied to the completion of their work covered by the Port's MAPLA.

PLAs can be efficient and effective tools to better insure that contracted work on large construction projects is performed within designated time frames and at specified costs. Clearly, the type of Project Labor Agreements adopted for area projects affect the degree to which the majority of Oakland based Small Local and Local Business Enterprises will be both willing and able to compete for construction work. PLAs that allow the greatest potential for participation by Oakland based companies would be one that is similar to the Port of Oakland's Maritime and Aviation Project Labor Agreement (MAPLA).

Local Employment Program (LEP)

The Local Employment Program (LEP) sets a goal of 50% of the total project hours to be worked by Oakland residents. At this point in time, the Uptown Project is in compliance with the 50% resident employment goal.

As of August 19, 2006 the Uptown Project has generated 18,737.99 total project hours, with 7,430.09 hours (39.65%) performed by Oakland residents. Certified payroll data substantiates employment of Oakland residents on non-City projects. That work equals to 1,908.16 work hours to date. These figures are expected to increase as the project progresses.

15% Apprenticeship Program

As of August 19, 2006 the Uptown Project has generated 13,050.76 project hours eligible for application of the 15% Apprenticeship Program, with 1,474.00 or 11.29% hours worked by Oakland apprentices. Certified payrolls have been submitted to substantiate the provision of employment of Oakland apprentices on non-City projects. The current level equals 483.14 hours or fifteen percent (15%) hours. The Uptown Project is in compliance with the 15% Apprenticeship Program.

It is important to note that total project hours for the 15% Apprenticeship Program differ from the total project hours used to establish local hire goals for the Local Employment Program (LEP) because there are craft categories where there are no Oakland apprentice employment options, e.g., Asbestos Removal Worker-Laborers, Teamsters, etc.. In addition, overtime hours are exempt when establishing apprentice utilization requirements. The exemption of overtime hours is consistent with California Labor Codes when determining required apprentice utilization.

Table 2 below details hours worked, by contractor, on the Uptown Project site and non-city funded projects (off site).

Table 2

	Uptown Project	Total hours worked	Oakland residents	Oakland Apprentices	Non-City funded hours	Wages and Fringe to Oakland Residents
1	LFR	12,849.49	6,015.09	1,049.00	409.66	\$ 232,273.00
2	RO	6,123.00	1,474.00	425.00	1,498.50	\$ 111,746.00
	TOTALS	18,972.49	7,489.09	1,474.00	1,908.16	\$ 344,019.00

CONCLUSIONS

- The most accurate reflection of participation at this time is that of LFR. LFR, responsible for the site work, has exceeded the 20% minimum L/SLBE participation requirement.
- Once pending contracts have been awarded and work is in full swing, Roberts Obayashi's part of the project has the potential to meet the minimum 20% local business participation requirement.
- The Forest City PLA brought comments of concern from businesses that were not able or ready to join a union in order to work on the project. Forest City expressed concern for meeting the conditions of both the PLA and local business participation and resident hiring policies.
- Contractors operating under the City of Oakland's local preferences are placed in a difficult position when they must satisfy competing requirements that are binding beyond the duration of the project.

SUSTAINABLE OPPORTUNITIES

Economic: Substantial impact on the economic stability of local firms and Oakland residents.

Environmental: Significant hazardous abatement occurred at this project site.

Social Equity: Meeting the City's local business and resident participation goals, the payment of prevailing wages, utilization of Oakland apprentices, and employment of skilled and unskilled workers.

DISABILITY AND SENIOR CITIZEN ACCESS

This project is in compliance with the American with Disabilities requirements.

RECOMMENDATION(S) AND RATIONALE

Staff recommends returning to Council in six months with a more accurate level of L/SLBE participation; particularly in regard to the level of participation for work performed by Roberts Obayashi, which is expected to increase upon award of several pending contracts that total approximately \$25,442,354.00.

Staff recommends that in the future, when the City negotiates with developers and/or contractors who opt to operate under a PLA, the resulting agreements should reflect the Port of Oakland's MAPLA model and the City should insert language that will balance non-city polices, such as Project Labor Agreements, with City of Oakland local business and resident preference policies, such as the L/SLBE, Local Employment and 15% Apprenticeship Programs.

A more flexible PLA will be less of a disincentive for local non-union businesses to bid on projects with PLAs and will allow greater opportunities for local resident hiring. For example, the City of Oakland's 50% Local Employment and 15% Apprenticeship Programs could be written in as part of PLA language.

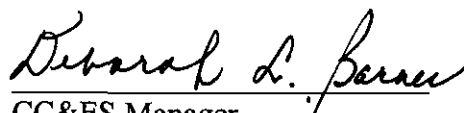
An additional benefit of flexible Project Labor Agreements such as MAPLA is the ability to establish very specific resident hiring objectives for the governed project. Specifically, hiring goals can be incorporated in the PLA language that focus on, for example, residents from specific Oakland neighborhoods or communities within Oakland, graduates from pre-apprenticeship training programs, and individuals enrolled in ex-offender programs could be prioritized within the hiring goals.

ACTION REQUESTED OF THE CITY COUNCIL

Accept the compliance status of the Uptown Project and approve staff's request to return to the Committee in six months with an overall update, with specific data regarding participation levels by Roberts Obayashi.

Direct staff to craft language that sets forth guidelines for PLAs similar to the MPLA and that include special local hire considerations.

Respectfully submitted,


CC&ES Manager
Office of the City Administrator

Prepared by:

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Local Employment Supervisor
and
Dasco Munoz
Contract Compliance Officer

APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:


Office of the City Administrator

LBE/SLBE Participation

Project Name: **Uptown Project**

Project No.: CEDA001						For Tracking Only				
Discipline	Prime & Subs	Location	Cert. Status	LBE	SLBE	Total	TOTAL	Ethn.	MBE	WBE
						LBE/SLBE	Dollars			
Prime	LFR	Oakland	CB	1,814,928.00		1,814,928.00	1,814,928.00	C		
Driller	Chow Engineering	Walnut Creek	UB				19,000.00	NL		
Lab	Entech Analytical	Santa Clara	UB				74,050.00	NL		
Signage	Merrill Signs	Oakland	CB		500.00	500.00	500.00	C		
Demo/Salvage	The Reuse People	Alameda	UB				11,500.00	NL		
Excavation- Demo	Pacific States	Dublin	UB				1,954,968.00	C		
Asbestos Abatement	Complete Decon	Benecia	UB				193,425.00	C		
Demolition	Inner City Demolition	Oakland	CB		285,000.00	285,000.00	285,000.00	C		
Concrete Recycle	Specialty Crushing	Oakland	CB		20,250.00	20,250.00	20,250.00	C		
Trucking- Clean Soil	Williams Trucking	Oakland	CB		493,020.00	493,020.00	493,020.00	AA	\$493,020.00	
Trucking - Demo	Williams Trucking	Oakland	CB		74,930.00	74,930.00	74,930.00	AA	\$74,930.00	
Shoring	Malcom Drilling	Hayward	UB				413,000.00	NL		
Trucking - Class 1	Double D	San Jose	UB				369,525.00	NL		
Trucking - Class 2	Williams Trucking	Oakland	CB		373,982.00	373,982.00	373,982.00	AA	\$373,982.00	
AC	AC Curb, Inc.	Elk Grove	UB				2,900.00	NL		
Project Totals										
				1,814,928.00 29.75%	1,247,682.00 20.45%	3,062,610.00 50.20%	6,100,978.00		\$941,932.00	
Requirements: The 20% requirements is a combination of 10% LBE and 10% SLBE participation. An SLBE firm can be counted 100% towards achieving 20% requirements.				LBE 10%	SLBE 10%	LBE/SLBE 20%		Ethnicity AA = African American AI = Asian Indian AP = Asian Pacific C = Caucasian H = Hispanic NA = Native American O = Other NL = Not Listed		
Legend	LBE = Local Business Enterprise SLBE = Small Local Business Enterprise Total LBE/SLBE = All Certified Local and Small Local Businesses NPLBE = NonProfit Local Business Enterprise NPSLBE = NonProfit Small Local Business Enterprise		UB = Uncertified Business CB = Certified Business MBE = Minority Business Enterprise WBE = Women Business Enterprise							

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LBE/SLBE Participation..... Uptown Project

Project No.: CEDA001						For Tracking Only				
Discipline	Prime & Subs	Location	Cert. Status	LBE	SLBE	Total LBE/SLBE	TOTAL Dollars	Ethn.	MBE	WBE
PRIME	Roberts Obayashi	Danville	UB				68,505,025			
Automatic Fire Sprinkler System	Allied Fire Protection	Oakland	CB	2,244,530		2,244,530	2,244,530	C		
Concrete Reinforcement & Post	Bay Area Reinforcing	Fairfield	UB				2,309,890			
Construction Cleaning	C&C Maintenance Services	Oakland	UB				158,000	AA	\$158,000	?
Concrete Shotcrete	Dees-Hennessey, Inc.	San Carlos	UB				602,700			
Concrete	Cemex	Oakland	UB	275,000		275,000		C		?
Debris Box	Premier Recycling	San Jose	UB							
Electrical & Low Voltage	Design Electric	Pleasanton	UB				12,232,345			
Fire Caulking	Focon, Inc.	Oakland	CB		66,500	66,500		AA	\$0	
Concrete Block	Dixon's Masonry/Spencer	Oakland	CB		842,726	842,726	842,726	AA	\$842,726	
Supplier	Central Concrete	San Jose	UB							
Supplier	Close Material	Hayward	UB							
Supplier	Baselite	Dixon	UB							
Supplier	Coliseum Steel	Oakland	CB	20,000		20,000		C		
Concrete & Architectural Cast	Galletti and Sons, Inc.	Martinez	UB				4,623,909			
Concrete	Cemex	Oakland	UB	1,362,000		1,362,000				?
Material Supplier	Level Construction II	Oakland	CB		3,500	3,500		C		
Liquid Boot	JSS Construction Inc.	Garden Grove	UB				573,700			
Field Engineering	Luk & Associates	Hercules	UB				12,000			
HVAC	Monster Mechanical	Santa Clara	UB				1,697,719			
Hydraulic Elevators	National Elevators Co., Inc.	Pleasanton	UB				1,088,000			
Chain Link Fence	North American Fence	Oakland	UB		40,016	40,016	40,016	C		?
Fluid Applied Waterproofing	North Bay Waterproofing	Novato	UB				949,176			
Concrete Forms	Peck & Hiller Company	Hayward	UB				2,212,400			
Formwork Materials	Level Construction II	Oakland	CB		75,000	75,000		C		
Plywood & Lumber	Sierra Point Lumber	Brisbane	UB							
Forklift Rental	Coast Crane	San Leandro	UB							
Structural Steel Driven Piles	Substructure Support, Inc.	Oakland	CB				1,077,939			
Plumbing	W.L. Hickey Sons, Inc.	Sunnyvale	UB				11,056,580			
Wholesale Plumbing Supply	Meyer Supply	Oakland	CB	1,060,000		1,060,000		C		
Firestopping	Focus Construction dba Focon,	Oakland	CB		108,000	108,000		AA	\$0	
Trenching	T.A. Smith Excavation	San Martin	UB							
Wholesale Plumbing Supply	Cal-Steam	San Leandro	UB							
	To date	Awarded Dollars		6,776,458.00	2,383,424.00	9,159,882.00	110,226,655.00			
	To date	Awarded Percent		5.83%	2.05%	7.87%				

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