CHARLOTTE

City Council
Follow-Up Report

May 13, 2011

April 11 – City Council Dinner Briefing

SBO Good Faith Efforts
Staff Resource: Nancy Rosado, N&BS, 704-336-2116, nrosado@charlottenc.gov

During the dinner briefing, Council member Carter asked whether the Small Business Office is collecting information on good faith efforts of the City's larger businesses and if there were a requirement in the City's policy about the offering being timely.

In 2002 the North Carolina General Assembly ratified a bill to the Charlotte City Charter that authorized the City to establish a Small Business Opportunity (SBO) Program. The bill allowed the City to establish bid and proposal specifications that include goals and good faith effort requirements to enhance participation by small businesses in City contracts.

Good Faith Efforts (GFEs) are a legally required component of most goal-based contracting programs. Depending where the funding for a project comes from, a project may be governed either by the City's SBO Program, or by a state or federal agency program, each of which have differing versions of GFE requirements.

On a City-funded contract in which an SBE goal is established, a bidder must either meet (or exceed) the SBE goal, or earn the required number of GFE points. In order to be deemed SBO compliant, the bidder must demonstrate that they negotiated in good faith with City certified Small Business Enterprises (SBEs). For example, if the SBE goal on a project is established at 10%, and the low bidder submits 3% SBE commitments at the time of bid, in order to be deemed responsive in their bid, the low bidder would be required to submit GFE documentation.

For City of Charlotte contracts, there are a standard 350 available GFE points and the minimum points required to be earned to be deemed SBO compliant is set at 165. There are 20 separate GFE categories that bidders can choose to perform, with points ranging from 10 to 25 points per GFE. To receive credit for each GFE performed bidders must provide documentation that the GFE action was performed within the timeframe stipulated in the SBO policy. Examples of GFE categories include:

- Sending subcontracting opportunity solicitations to SBEs
- Making project plans available to SBEs
- Conducting a pre-bid for SBEs
- Providing financial, insurance, or bonding assistance to SBEs
- Providing training or mentoring assistance to SBEs
- Utilizing SBEs on non-City projects

Please see attached SBO FORM 5 for complete list of all GFE categories.

When a bidder does not meet the SBE goal established on a project they are required to submit sufficient documentation to prove the GFE points they have claimed. The timeframe to submit this information is typically three days after requested by the City. If the documentation demonstrates the bidder achieved at least the minimum number of required GFE points, then the bidder is deemed SBO compliant and is recommended for award of the contract. If the documentation is deemed insufficient, the recommendation is to reject the bid due to SBO non-compliance.

April 25 – City Council Business Meeting

Assessment of Mobile Food Vendors
Staff Resource: Walter Abernethy, N&BS, 704-336-4213, wabernethy@charlottenc.gov
At the April 25 meeting, the City Council asked for an assessment and update on the mobile food vendor ordinance.

In November 2008, City Council approved Zoning text amendment #2008-079 which modified regulations for mobile food vendors. The new regulations, approved in 2008, were prompted by complaints from community groups expressing concerns about noise, littering, trash, illegal parking and loitering that they indicated was a result of mobile food vendor operations in their neighborhoods. Before recommending any changes to the Zoning Ordinance, a stakeholders group was formed in August 2007 to discuss the mobile food vendor issues. The main provisions of the regulations are:

- a 9:00 p.m. curfew;
- a 400 foot separation requirement from other food vendors and from residential land use;
- a 90-day permitting limit for one location.

In the last six months there have been two mobile food vendors cited for violations of the ordinance. Code Enforcement staff report generally that mobile food vendor operations have dropped significantly since the implementation of the new regulations in 2008. Permitting staff indicate that they are approving approximately two to three permits per month. The reduction in mobile food vendor operations is likely a result of poor economic conditions, as well as adherence to the new Zoning regulations governing these types of operations.

May 9 – City Council Business Meeting

SBO Goals on Work Order Based Contracts

Staff Resources: Jeb Blackwell, E&PM, 704-336-3603, jblackwell@charlottenc.gov
Nancy Rosado, N&BS, 704-336-2116, nrosado@charlottenc.gov

During the May 9 Council meeting, Council member Mitchell asked what the City negotiated as the final goal on the SBO and what percentage of the Traffic Calming Engineering Services contract would be the City's SBO goal. The City Council requested a report as it relates to the SBO opportunity for the contract and similar contracts.

For professional services contracts, the Small Business Opportunity (SBO) Policy allows the City to either establish an up-front Small Business Enterprise (SBE) goal or negotiate SBE participation after the proposal selection process.

Over the past several years, for professional services contracts involving "unspecified" work, many Key Business Units have often chosen to negotiate SBE commitments after proposal selection.

The Traffic Calming Engineering Services contract awarded at the May 9 Council Meeting provides for future unspecified consulting services that are work order assignments which are difficult cases for establishing accurate up-front SBE goals. At the time of the RFP release the specific scopes of work and subcontracting opportunities are unknown. In this instance, while staff knows of some locations to study, others will be determined from citizen requests, and measures will vary based on location.

Currently, when a SBE goal remains undefined for a work order based contract, once the specific scopes are determined, the prime contractor signs a letter of intent with each SBE on its project team to be utilized as required by the work orders assigned.

In response to the City Council's questions, the SBO Office will convene a meeting with citywide contracting personnel to review the current practice and SBO Policy regarding "unspecified" professional service contracts and report back to Council in late June.

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Small Business Opportunity Program

Good Faith Efforts (GFE) and Statement of GFE Compliance

SBOP Form 5

Bidder Name:		**Bid Date:**	
Project Name:			
Project Number:			

§Per Part B, Section 5 of the SBO Policy(v.2009)[1], if a Bidder has not fully met the SBE Goal, then it must document it has met the GFE requirements by completing this Form. The Bidder must submit **Form 5** within three (**3) Business Days** after the City requests it, unless specified otherwise in the City Solicitation Documents. Below is a list of Good Faith Efforts as defined in Part B: Section 5.3. To the left of each item is the number of points assigned to that item for this project. **Please place an "X" in the first column for each item you are claiming credit.**

Failure to submit **Form 5** in the time specified or failure to achieve the minimum number of Good Faith Efforts points stated in the blank below constitutes grounds for rejection of your bid.

Minimum Number of GFE Points Required: 165

☐	**10**	**Section 5.3.1: Notification of Subcontracting Opportunities.** To receive credit for this GFE, a Bidder must provide to the City no later than **14 Days** before Bid Opening a list of the areas in which the Bidder intends to seek subcontractors and suppliers. The Bidder may report this information on **Form 1** or on another document providing the same information as **Form 1**.
☐	**10**	**Section 5.3.2: SBE Contacts:** A Bidder must make the required contacts not less than **7 Days** before Bid Opening to receive credit. Refer to Part B, Section 5.3.2 of the SBO Policy for requirements of the Solicitation Method, Solicitation Content, and Solicitation Documentation. To receive credit for this GFE, a Bidder must submit an SBE Solicitation Form ("**Form 2**") within the time specified in the City Solicitation Documents. If no time period is specified in the City Solicitation Documents, a Bidder must submit **Form 2** within **3 Business Days** after the City requests it.
☐	**10**	**Section 5.3.3: Making Plans Available. *(see note)** To receive credit for this GFE, the Bidder must: (a) make "Project Documents" (as defined below) available to Interested SBEs no less than **7 Days** before Bid Opening in one of the 3 ways described below; and (b) notify all SBEs contacted under GFE 5.3.2 of the way in which Project Documents will be made available. As used herein, Project Documents means any project descriptions, construction plans, specifications or requirements that are necessary for SBEs to bid on the project. The 3 ways a Bidder may make Project Documents available to SBEs are: a) provide Interested SBEs with a hard copy of the Project Documents via email, fax, regular mail or other means of document transfer; b) provide necessary physical access and adequate time for SBEs to fully review the Project Documents at the Bidder's place of business within the Charlotte Regional Area, or, if the Bidder has no place of business within the Charlotte Regional Area, at an alternate location within the Charlotte Regional Area where the information can be reviewed at no cost to the SBEs; or c) post the Project Documents on a website that SBEs can access at no cost. To receive credit for this GFE, the Bidder's notice to SBEs must identify: (a) a telephone number or email address for requesting copies of the Project Documents or, (b) the locations (including the address) where Project Documents can be reviewed or, (c) the website link on which they are posted.
☐	**15**	**Section 5.3.4: Breaking Down Work. *(see note)** To receive credit for this GFE, the Bidder must: (a) notify SBEs as part of a Bidder's SBE contacts under Section 5.3.2 that the Bidder is willing to divide or combine elements of work into economically feasible units on a case-by-case basis to facilitate SBE participation and (b) negotiate in good faith with any SBEs that request such divisions or combinations
☐	**10**	**Section 5.3.5: Attendance at Pre-Bid.** To receive credit for this GFE, the Bidder must attend any pre-bid meetings scheduled by the City for the Contract in question.
☐	**15**	**Section 5.3.6: Conducting a Pre-Bid for SBEs. *(see note)** To receive credit for this GFE, the Bidder must conduct a pre-bid meeting for SBEs no less than **3 Business Days** before Bid Opening. The pre-bid meeting must take place within Mecklenburg County, or, if the Proposer has no place of business within Mecklenburg County, at an alternate location within the Charlotte Regional Area. No less than 48 hours before the pre-bid meeting, the Bidder must communicate the time and location of the meeting to the SBEs that the Bidder is required to contact to earn GFE points under Section 5.3.2
☐	**15**	**Section 5.3.7: Training.** To obtain credit for this GFE, the Bidder must provide training or mentoring to at least 2 SBEs within **12 months** before Bid Opening, and the Bidder must have the training or mentoring certified by the Program Manager. The Program Manager shall have the discretion to deny credit for training or mentoring that in the Program Manager's sole discretion is not significant or not reasonably likely to assist the SBE in developing its capabilities.

[1] SBO Policy v.2009 amended August 2009

☐	**25**	**Section 5.3.8: SBOP Mentor-Protégé Program.** The Bidder may receive credit for this GFE if the Bidder demonstrates that it is participating in the City's SBO Mentor-Protégé program, and that it is a mentor in good standing. The Program Manager shall have the discretion to deny credit for this GFE if the mentor is not in good standing.
☐	**20**	**Section 5.3.9: Working with SBE Assistance Organizations.** To receive credit for this GFE, the Bidder must document that it has performed one of the following within the **12 month** period before Bid Opening for an SBE Assistance Organization (as defined below): (a) **Provide location for SBE Assistance Organization Event:** Providing a meeting location for the SBE Assistance Organization to host a regular meeting or special event at no cost or at a reduced rate. (b) **Provide training for SBE Assistance Organization members:** Providing training or facilitating workshops aimed at increasing the capacity or skill level or the SBE Assistance Organization members, or participating in training or a workshop sponsored by the SBE Assistance Organization. (c) **Contracting with new SBE:** Documenting that the SBE Assistance Organization helped to identify an SBE with whom the Bidder subsequently subcontracted work (whether on a City Construction Contract or other contract). The KBU will not give the Bidder credit for this GFE if the Bidder contracts with an SBE that the Bidder has used on previous projects.
☐	**20**	**Section 5.3.10: Bonding or Insurance Assistance on Construction Contract.** To receive credit for this GFE, the Bidder must assist an SBE in obtaining its own bond or insurance coverage for a City contract or another contract by (a) providing direct assistance within the **6 months** preceding the Bid Opening, and (b) showing that the SBE did not have access to the bond or insurance coverage before the Bidder's assistance. To document satisfaction of this GFE, the Bidder must submit: (a) the name of the SBE; (b) a description of the assistance the Bidder provided; (c) the date the Bidder provided the assistance; (d) the name of a contact person with the SBE who can verify that the Bidder provided the assistance; and (e) any additional information requested by the City.
☐	**20**	**Section 5.3.11: Entering Into Joint Venture with SBEs**. To receive credit for this GFE, the Bidder must document the existence of a Joint Venture agreement between the Bidder and an SBE that increases opportunities for SBE business participation, whether on City Contracts or other contracts. To document satisfaction of this GFE, Bidders must document that they have entered into such an agreement within the **12 months** before the Bid Opening, and such documentation must include; (a) the name of the SBE; (b) a description of the Joint Venture; (c) evidence of the date the Bidder and the SBE entered into the agreement; and (d) the name of a contact person with the SBE who can verify the terms of the agreement. If requested by the City, the Bidder must also provide a copy of the Joint Venture agreement.
☐	**20**	**Section 5.3.12: Financial Assistance.** To receive credit for this GFE, the Bidder must provide one of the following types of assistance to an SBE during the **12 months** before Bid Opening: (a) assistance in obtaining equipment, a loan, capital, lines of credit, (b) joint pay agreements or guaranties to secure loans, the purchase of supplies, or letters of credit, including waiving credit that is ordinarily required; or (c) assistance in obtaining the same unit pricing with the Bidder's suppliers as the Bidder. Such assistance may be in connection with a City Construction Contract or any other contract, but must have a value in excess of $2,000. To receive credit for this GFE, Bidders must document: (a) the name of the SBE; (b) the description of the assistance the Bidder provided; (c) the date the Bidder provided the assistance; (d) the name of a contact person with the SBE who can verify that the Bidder provided the assistance was provided; and (e) that the assistance provided had a value in excess of $2,000. The Bidder shall provide any other documentation of proof, as requested by the City.
☐	**25**	**Section 5.3.13: Quick Pay Agreements On The Construction Contract Up For Award. *(see note)** For purposes of this Section, the term "Quick Pay Commitment" means a commitment to pay all SBEs participating in the Construction Contract within 20 Days after the Contractor confirms that the SBE has properly performed and the SBE's work has been properly completed. To receive credit for this GFE, Bidders must: (a) provide the City with a copy of a policy containing the above-referenced Quick Pay Commitment that the Bidder has adopted for the project and document that the Bidder informed each SBE about the Quick Pay Commitment as part of the Bidder's SBE contacts under Section 5.3.2; or (b) document that prior to Bid Opening the Bidder made a written Quick Pay Commitment to each SBE that will participate in the Construction Contract up for award. Including a statement in a Bid solicitation letter indicating that the Bidder *will consider* entering into quick pay agreements will not suffice.

☐	**20**	**Section 5.3.14: Attendance at City Workshops or Networking Sessions.** To receive credit for this GFE, the Bidder must document that within **12 months prior to Bid Opening** the Bidder attended a workshop, seminar or networking session held by the City to (a) educate contractors or SBEs about the requirements of the SBO Program and how Bidders can comply with the Program; or (b) increase the capacity or skill level of SBEs; or (c) provide networking opportunities for SBEs.
☐	**20**	**Section 5.3.15: Follow-up Contacts. *(see note)** To receive credit for this GFE, the Bidder must follow-up with each SBE that the Bidder contacted under Section 5.3.2 that did not reply that it was unwilling to participate in the Construction Contract. Additionally, the Bidder must: (a) make each follow-up contact subsequent to the initial contact and at least **48 hours** before Bid Opening; (b) make each follow-up contact by telephone or in person, and (c) document the contact with affidavit stating the name of the SBE representative with whom the Bidder spoke and certifying that the contact met the content requirement of Section 5.3.2.2.
☐	**15**	**Section 5.3.16: Achieving 50% of SBE Participation Goal.** To receive credit for this GFE, the Bidder's Committed SBE Goal must be at least 50% of the SBE Goal established by the City for the Contract.
☐	**15**	**Section 5.3.17: Additional SBE Outreach. *(see note)** To receive credit for this GFE, a Bidder must do the following no less than 7 Days before the Bid Opening: (a) contact the minimum number of "additional outreach" SBEs specified in the City Solicitation Documents (which number will be higher than the minimum contacts required to satisfy GFE 5.3.2); and (b) document compliance with the solicitation requirements outlined in Section 5.3.2.1, Section 5.3.2.2 and Section 5.3.2.3, and (c) supply such additional documentation as the City may require.
☐	**20**	**Section 5.3.18: SBE Participation On Non-City Contracts.** To receive credit for this GFE, the Bidder must document that during the **24 month** period before Bid Opening, the Bidder paid SBEs on non-City contracts more than the Bidder would have to pay SBEs to meet the SBE Goal for the Construction Contract at issue. To receive credit for this item, Bidders must document for each non-City SBE subcontract: (a) the name of the project and the parties to the contract; (b) the name of the SBEs the Bidder paid on the project; (c) the amount the Bidder paid to each SBE during such 24 month period; and (d) any additional documentation requested by the Program Manager for verification purposes. To count a payment to an SBE under this GFE, the SBE must have been certified by the City at the time the payment was made.
☐	**25**	**Section 5.3.19: Working With a New SBE**. To receive credit for this GFE, the Bidder must: (a) commit to hire a "New SBE" (as defined below) to provide goods or services totaling at least $10,000 on the Contract at issue, and (b) calculate and document the New SBE commitment in the manner set forth in Sections 3.2 through 3.7 of the SBO Policy **Part D**. As used herein, "New SBE" means an SBE that was certified as an SBE for the first time during the year prior to Bid Opening.
☐	**20**	**Section 5.3.20: Exceeded SBE Goal by More Than 50% on Past Project.** To receive credit for this GFE, the Bidder must document that during the 2 years prior to Bid Opening the Bidder exceeded the SBE Goal on a City Contract of equal or greater value by more than 50%. This GFE is measured by actual payments to SBEs as opposed to commitments. A Bidder "exceeds the SBE Goal" for purposes of this GFE when its total payments to SBEs on the Contract exceed the SBE Goal by more than 50% of the SBE Goal (the "50% Payment Threshold"). A Bidder may receive credit for this GFE during the time period that begins when the 50% Payment Threshold is first reached and extends for 2 years after completion of the applicable project.

350 **Total Available GFE Points**

_____ **Total GFE Points Attained (to be completed by City)**

<u>NOTE</u>: In order to earn GFE points for GFEs 5.3.3; 5.3.4; 5.3.6; 5.3.13(a); 5.3.15; or 5.3.17, you must also have earned the GFE points for 5.3.2.