CHARLOTTE℠

April 22, 2010

Mr. Darryl Kellough
Southside Constructors, Inc.
2033 Cross Beam Drive
Post Office Box 19010
Charlotte, NC 28219

Re: Fire Station 42 Bid

Dear Mr. Kellough:

Thank you for coming in to meet with me on April 21 regarding Southside Constructor's appeal of the City staff recommendation to reject Southside's bid on Fire Station 42. We understand the significance of this project to Southside, and we appreciate your passion and conviction in explaining Southside's efforts to comply with the Small Business Opportunity ("SBO") Program.

I have reviewed the documentation relating to Southside's SBO compliance effort. I have also given careful thought to the points raised by Southside and by staff. Based on that, I have decided to uphold staff's recommendation that City Council reject Southside's bid for failure to comply with the SBO Program.

As we discussed, the City's SBO Program requires that a bidder either: (a) meet the SBE Goal; or (b) obtain the minimum Good Faith Efforts (GFE) points. Unlike some programs that apply more subjective measures of good faith efforts, the City's SBO Program includes a very specific menu of steps that bidders may receive points for.

Based on our meeting, it appears that Southside only earned 135 of the required 170 GFE points. I concur with staff's conclusion that Southside did not comply with the strict letter of the SBO Program with respect to: (a) GFE 5.3.4 (Breaking Down Work) and (b) GFE 5.3.18 (Additional SBE Outreach). While the SBO Program Manager has the authority to issue a waiver in some instances, I do not believe a waiver would be appropriate in this situation because:

- Southside proposed zero SBE utilization, whereas the second low bidder and six other bidders proposed to meet or exceed the SBE Goal;
- Southside was short by 35 points out of 170 (and 170 was the bare minimum number of points that could have been achieved).

I understand that Southside made a strong effort to comply with the SBO Program in this instance. Neither I nor City staff doubts the ability of the company, the integrity of the company nor the fact that Southside legitimately tried to meet the GFE requirements. Unfortunately, however, a strong effort to comply with a defined good faith efforts policy is not the standard. In the interest of applying the program fairly and consistently to all bidders I am not willing to recommend a waiver under these circumstances.

As a result of this decision, my recommendation to reject Southside's bid due to non-compliance with the SBO Program and to award the Fire Station 42 contract to the second low bidder will be presented to City Council at the April 26, 2010 Council Business Meeting. We thank you for consenting to have the review conducted by me in order to allow the contract award decision to proceed as scheduled.

We truly do appreciate the importance of this decision to Southside. While I regret that the news is not what you were hoping for this time around, we all recognize your vigilance and resourcefulness, and we hope to see you successfully bid on City projects in the future.

Sincerely,

Ron Kimble
Deputy City Manager

cc: Curt Walton, City Manager
Pat Mumford, Neighborhood and Business Services Director
Tom Flynn, Economic Development Director
Cindy White, Senior Assistant City Attorney
Natasha Warren, Engineering and Property Management
Bren Yett, Engineering and Property Management