



Charlotte Business INClusion Policy Revision

Charlotte Business INClusion Advisory
Committee (CBIAC) Recommendations
based on 2017 Disparity Study

City Council Strategy Session
June 1, 2020

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OBJECTIVES

- PRESENT AMENDMENTS TO THE CBI POLICY REFLECTING THE DISPARITY STUDY
 - Recommendations made by the Charlotte Business INClusion Advisory Committee (CBIAC) and the Workforce and Business Development Committee
- ADDRESS THE QUESTION: WHAT IS A DISPARITY STUDY?
- REVIEW OF THE 2017 DISPARITY STUDY CONSIDERATIONS
- PRESENT RECOMMENDATIONS AND POLICY AMENDMENTS

CHARLOTTE BUSINESS INCLUSION ADVISORY COMMITTEE (CBIAC)

Stephane Berwald, Chairwoman	Metrolina Minority Contractors Association (MMCA)
Edison Cassels, Vice Chairman	At-Large
James Clayton	At-Large Prime Construction Company
Michelle Keaton Barrow	Charlotte Black Chamber of Commerce (CMBCC)
Vinroy Reid	At-Large Prime Construction Company
Christopher Socha	At-Large Prime Construction Company
William Stricker	Carolina Association of General Contractors (CAGC)
Vilma Betancourt	National Association of Women Business Owners (NAWBO)
Milgritos Aguilar	Hispanic Contractors Association (HCAC)
Shobha Rajpal	Carolinas Asian-American Chamber of Commerce
Steven Bimbo	At-Large
Gregory Williams	At-Large Professional Services Company
Walter Baucom III	Metrolina Native American Association
Noah Cartage	At-Large

ANSWER THE QUESTION OF WHAT IS A DISPARITY STUDY

- What is a disparity study?
 - A determination of whether disparity exists between the number of minority-owned business enterprises (MBEs) and/or women-owned business enterprises (WBEs) available to perform on city contracts and the city's utilization of these firms. (Availability/Utilization)
 - A determination of the extent to which any disparity is attributable to discrimination.
- Why should the City conduct a disparity study?
 - Offers an objective analysis of contracting practices over a five year period.
 - Ensures a thorough approach to understanding and addressing disparities that exist.
 - Provides a legal justification for race-conscious and gender-conscious goal setting if disparity is shown in specific areas of contracting.

REVIEW OF THE 2017 DISPARITY STUDY CONSIDERATIONS

Key CBI Policy Provisions	2017 Disparity Study Policy Considerations
Annual Citywide Aspirational MWSBE Prime Goals	<ul style="list-style-type: none"> • Consider 20.9% as basis for annual aspirational MWBE goal • Continue efforts to unbundle contracts
MWSBE Subcontracting Goals	<ul style="list-style-type: none"> • Expand use of subcontracting goals to address identified disparities • Consider separating the use of SBE and MWBE subcontracting goals • Continue counting MWSBE participation towards subcontracting goals
SBE Designated Contracts	<ul style="list-style-type: none"> • Expand SBE Designated Contracts Strategy

REVIEW OF THE 2017 DISPARITY STUDY CONSIDERATIONS

Key CBI Policy Provisions	2017 Disparity Study Policy Considerations
SBE and MWBE Certification & Eligibility	<ul style="list-style-type: none"> • Consider establishing business size thresholds for MWBEs • Consider personal net worth thresholds for MWBEs
Mandatory Subcontracting Requirements	<ul style="list-style-type: none"> • Consider implementing mandatory subcontracting requirements
Data Tracking and Reporting	<ul style="list-style-type: none"> • Implement centralized diversity management software

POLICY AMENDMENTS

CBI Policy Revisions	Recommended by CBIAC & ED Committee	CBI Policy Revision Cross Reference
1. Provide history of and legal justification for adoption of 2017 Disparity Study.	Yes	<i>Part A, Section 1.1</i>
2. Give bidders twenty-four hours to finalize CBI Form 3.	Yes	<i>Part B, Section 3.1</i> <i>Part C, Section 3.1</i>
3. Change “ Breaking Down Work ” Good Faith Effort* from fifteen points to ten points.	Yes	<i>Part B, Section 5.3.3</i>
4. Change “ Negotiating in Good Faith with MWSBEs ” Good Faith Effort* from fifteen points to ten points.	Yes	<i>Part B, Section 5.3.7</i>

*State law requires a bidder to achieve 50 points to satisfy good faith efforts.

POLICY AMENDMENTS

CBI Policy Revisions	Recommended by CBIAC & ED Committee	CBI Policy Revision Cross Reference
5. Increase the duration of SBE certification from three years to four years	Yes	<i>Part E, Section 2.17</i>
6. Eliminate the ability to count a single MWSBE towards a MWBE Goal and SBE Goal on a single contract. Firm would count towards either the MWBE Goal or SBE Goal	Yes	<i>Part A, Section 2.1</i> <i>Part A, Section 3.1</i> <i>Part B, Section 2.5</i> <i>Part D, Section 1.1</i>
7. Lower construction subcontracting threshold from \$300,000 to \$200,000 which benefits certified MWSBEs through: <ul style="list-style-type: none"> adequate bonding at \$200k rather than \$300K which many certified firms cannot meet creating “right size” opportunities for smaller firms to grow into larger jobs, while gaining experience and increasing capacity Increasing the pool of available opportunities to set goals and improve participation on contracts at lower levels 	Yes	<i>Part B, Section 3.1</i> <i>Part C, Section 3.1</i>

*Note: Revisions include other non-substantive administrative changes.

NEXT STEPS

Request For Council Action

June 8th – Workforce and Business Development Committee Vote

June 8th – Amendments on agenda for adoption

July 1st – Revisions become effective

DISCUSSION



EXHIBIT A - CBI Form 3



Page 1 of 2

CBI FORM 3: Subcontractor / Supplier Utilization Commitment

This form **MUST** be submitted at the time of Bid Opening. *Copy this CBI Form 3 as needed.*
 Failure to properly complete and submit Form 3 with the Bid constitutes grounds for rejection of the Bid.

Per Part B, Section 3.4 of the CBI Policy, the Subcontractor/Supplier Utilization Commitment (CBI Form 3) captures information regarding the SBEs, MBEs, and other subcontractors and suppliers that the Bidder intends to use on the Contract **FOR ALL ITEMS**.

For Construction Contracts under \$100,000, SBEs/MBEs must satisfy the requirements of Part B, Section 3 of the CBI Policy in order to count the work they intend to perform on the contract with its own current workforce towards the established Subcontracting Goal, and must list themselves below along with their projected utilization amount.

Bidder Name:			
Project Name:			
Project Number:	Established SBE Goal:		
	Established MBE Goal:		

List below all SBEs and MBEs (Non-Hauling Services) that you intend to use on this Contract. **NOTE:** You will only receive credit for SBEs that are currently verified with the City as of the Bid Opening Date. Furthermore, you will only receive credit for MBEs that are registered with the City as of Bid Opening Date and who have an ethnic designation of African American, Hispanic, or Native American.

SBE/MBE Vendor Name (Non-Hauling Services)	Description of work / materials	NAEP Code	Vendor #	Total Projected Utilization (%)

For all hauling services on this Contract, list below all SBEs and MBEs that you intend to provide such work and the Total Projected Utilization (%).

SBE/MBE Vendor Name (Hauling Services)	Description of work / materials	NAEP Code	Vendor #	Total Projected Utilization (%)

Total Subcontractor / Supplier Utilization (including SBEs, MBEs and Non-MBEs/SBEs)	\$
Total SBE Utilization	\$
Total MBE Utilization	\$
Total Bid Amount (including Contingency)	\$
Percent SBE Utilization* (Total SBE Utilization divided by Total Bid Amount)	%
Percent MBE Utilization* (Total MBE Utilization divided by Total Bid Amount)	%

* The SBE and MBE Utilization percentages **MUST** be rounded to (2) decimal places.

Version 11-2016

11

EXHIBIT A – Form 3



Page 2 of 2

CBI FORM 3: Subcontractor / Supplier Utilization Commitment

List below all **non-MBEs/SBEs (subcontractors and suppliers)** that you intend to use on this Contract.

Vendor Name	Description of work / materials	NAEP Commodity Code	Vendor #	Projected Utilization (if known) (%)

Letters of Intent submitted upon notice from the City

Per Part D, Section 3.6 of the CBI Policy, within three (3) Business Days after receiving a request from the City (or within such longer time as may be communicated by the City in writing), Bidders must submit a separate Letter of Intent (CBI Form 4) for each SBE and MBE listed on CBI Form 3. Each Letter of Intent must be executed by both the SBE and/or MBE and the Bidder. The City shall not count proposed SBE and/or MBE utilization for which it has not received a Letter of Intent by this deadline. Per Part B, Section 3.3, a Regular Dealer as defined in the CBI Policy shall only count 60% of all expenditures towards the established Subcontracting Goal(s). In addition, a Hauler, Broker, or Packager shall only count fees or commissions charged for providing a Commercially Useful Function by the SBE and/or MBE towards the established Subcontracting Goal(s). The Bidder is still obligated to pay the SBE and/or MBE the full amount listed on the Contract with the SBE and/or MBE regardless of what percentage is actually counted towards the SBE and/or MBE Goal.

Adding subcontractors or suppliers after submitting this form

Nothing in this certification shall be deemed to preclude you from entering into subcontracting arrangements after submission of this form. However, per Part D of the CBI Policy, you must comply with the following:

- You must maintain the level of SBE and/or MBE participation proposed on this CBI Form 3 (and CBI Form 3A, if applicable) throughout the duration of the Contract, except as specifically allowed in Part D.
- If you need to terminate or replace a SBE and/or MBE, you must comply with Part D, Section 5.
- If the scope of work on the Contract increases, or if you elect to subcontract any portion of work not identified on this form as being subcontracted, then you must comply with Part D, Section 6.
- A Letter of Intent (CBI Form 4) must also be submitted for each SBE and/or MBE you add subsequent to contract award.

All Subcontractors and Suppliers must be registered with the City of Charlotte.

Pursuant to the City's Vendor Registration Policy, each subcontractor or supplier (non-MBE/SBE, SBEs and MBEs) that you use on this contract must be registered in the City's vendor database. You will need to provide the vendor number for each subcontractor or supplier used on this contract as a condition for receiving payment on this Contract.

Signature

Your signature below indicates that the undersigned firm certifies and agrees that:


- It has complied with all provisions of the CBI Policy; and,
- Failure to properly document such compliance in the manner and within the time periods established by the CBI Policy shall constitute grounds for rejection of your bid.

Signature of Authorized Official	Printed Name	Title	Submission Date
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Version 11-2016

12

EXHIBIT B – Form 5


Page 1 of 2

CBI FORM 5: Good Faith Effort (GFE) and Statement of GFE Compliance

Bidder Name: _____
Project Name: _____
Project Number: _____

Per Part 8, Section 5 of the CBI Policy, if a Bidder has not fully met the **established Subcontracting Goal(s)** for this project, then the Bidder must document it has met the GFE requirements by completing this Form. GFE Points will be calculated, independently, for each Subcontracting Goal that is not met. For instance, if the Bidder fails to meet both the SBE Goal and the MBE Goal that was set with respect to African American, Native American, and Hispanic firms, the Bidder will have to earn the minimum GFE points for SBEs and also the minimum GFE Points for MBEs.

Detailed information of the City's GFE requirements can be found in the CBI Policy, Part 8, Section 5. The Bidder must submit CBI Form 5 within three (3) Business Days after the City requests it, unless specified otherwise in the City Solicitation Documents. Failure to do so constitutes grounds for rejection of the bid. Below is a list of Good Faith Efforts as defined in Part 8, Section 5.3. To the left of each item is the number of points assigned to that item. Please place an "X" in the first column for each item you are claiming credit. Failure to achieve the minimum number of Good Faith Efforts points stated in the box below constitutes grounds for rejection of your bid.


NOTE: All actions necessary to earn GFE Points must be undertaken prior to Bid Opening.

Total Available GFE Points is: 155		Minimum Number of GFE Points Required for this Project is: 50
Points	Good Faith Effort (GFE)	
<input type="checkbox"/>	10	Section 5.3.1: Contacts. The Bidder must contact SBEs and MBEs in a manner reasonably calculated to meet the established Subcontracting Goal(s) for the Contract. Factors considered may include but are not limited to: (a) The number of available SBEs and MBEs contacted; (b) Whether the Bidder directed its contacts to SBEs and MBEs listed as performing scopes of work sufficient to meet the SBE Goal and MBE Goal; (c) Whether the contacts were made at least 10 Days before Bid Opening; (d) How the contacts were made and whether they were documented in a verifiable way (and in compliance with any forms provided by the City); (e) Whether the substance of the Bidder's solicitation was reasonably sufficient to generate a response from SBEs and MBEs; (f) Whether the Bidder promptly and adequately responded to inquiries received from SBEs and MBEs; and (g) Whether the Bidder made follow up contacts to SBEs and MBEs that did not respond to the Bidder's initial contact.
<input type="checkbox"/>	10	Section 5.3.2: Making Plans Available. To receive credit for this GFE, the Bidder must: (i) make "Project Documents" (as defined below) available for inspection by SBEs and MBEs at least 10 Days before Bid Opening; and (ii) notify the SBEs and MBEs contacted under GFE 5.3.1 of the way in which Project Documents will be made available. A Bidder may receive credit for GFE 5.3.2 only if it receives credit for GFE 5.3.1 (Contacts), and only if it responds promptly to any requests made for access to the Project Documents.
<input type="checkbox"/>	15	Section 5.3.3: Breaking Down Work. The Bidder must demonstrate to the City's satisfaction that it broke down of combined elements of work into economically feasible units to facilitate SBE and MBE participation. In awarding points the City will consider the number and dollar value of the scopes of work the Bidder listed in the written invitation for SBE and MBE participation, whether those scopes would be sufficient to meet the established Subcontracting Goal and how the Bidder notified SBEs and MBEs of its willingness to break down the work into such units. Simply resuming the City's subcontracting scopes as listed in the City's Solicitation Documents will not earn this GFE. A Bidder may receive credit for this GFE only if it receives credit for GFE 5.3.1 (Contacts).

Version 11-2016

13

EXHIBIT B – Form 5


Page 2 of 2

<input type="checkbox"/>	10	Section 5.3.4: Working With MBE/SBE Assistance Organizations. The Bidder must document that it worked with an MBE/SBE Assistance Organization (as defined below), to provide assistance in recruiting MBEs/SBEs for the Contract for which Bids are sought. • A "MBE/SBE Assistance Organization" is an organization identified by the City of Charlotte and listed in the City Solicitation Documents as providing assistance in the recruitment of MBEs/SBEs.
<input type="checkbox"/>	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.
<input type="checkbox"/>	20	Section 5.3.6: Bonding or Insurance Assistance on Construction Contract. The Bidder must assist a SBE and/or MBE in getting required bonding or insurance coverage for the Contract at issue or provide alternatives to bonding or insurance for SBEs and/or MBEs. To document satisfaction of this GFE, the Bidder must submit: (a) the name of the SBE and/or MBE; (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 and/or MBE who can verify that the Bidder provided the assistance; and (e) any additional information requested by the City. No credit will be given for assistance provided to an Affiliate of the Bidder. In deciding whether to award points for this GFE, the City will consider how significant and meaningful the assistance was, how many SBEs and/or MBEs it was offered to, and what impact it likely had on the Bidder's efforts to recruit SBEs and/or MBEs for the project.
<input type="checkbox"/>	10	Section 5.3.7: Negotiating in Good Faith with MBE/SBEs. The Bidder must: (a) demonstrate that it negotiated in good faith with interested SBEs and/or MBEs (which means showing at least some back and forth negotiation between the Bidder and SBEs and/or MBEs); (b) demonstrate that it did not reject any SBEs and/or MBEs as "unqualified without sound reasons based on their capabilities"; (c) document in writing the reasons for rejecting any SBEs and/or MBEs for lack of qualification.
<input type="checkbox"/>	25	Section 5.3.8: Financial Assistance. The Bidder must provide one of the following types of assistance to an SBE and/or MBE in connection with the Contract: (a) assistance in obtaining equipment, a loan, capital, lines of credit, (b) joint pay agreements or guarantees 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. To receive credit for this GFE, Bidders must document: (a) the name of the SBE and/or MBE; (b) the description of the assistance the Bidder provided; (c) the date the Bidder provided the assistance; and (d) the name of a contact person with the SBE and/or MBE who can verify that the Bidder provided the assistance. No credit will be given for assistance provided to an Affiliate of the Bidder. In deciding whether to award points for this GFE, the City will consider how significant and meaningful the assistance was, how many SBEs and/or MBEs it was offered to, and what impact it likely had on the Bidder's efforts to recruit SBEs and/or MBEs for the project.
<input type="checkbox"/>	20	Section 5.3.9: Enlarging into Joint Venture. To receive credit for this GFE, the Bidder must demonstrate that it negotiated a Joint Venture or partnership arrangement with one or more SBEs and/or MBEs, as applicable, on the Contract. To receive credit for this GFE, Bidders must document: (a) the name of the SBE and/or MBE; (b) a description of the Joint Venture or partnership; (c) evidence of the date the SBE and/or MBE entered into the agreement; and (d) the name of a contact person with the SBE and/or MBE who can verify the terms of the agreement. No credit will be given for a joint venture with an Affiliate of the Bidder.
<input type="checkbox"/>	20	Section 5.3.10: Quick Pay Agreements on the Construction Contract Up For Award. For purposes of this Section, the term "Quick Pay Commitment" means an agreement or policy commitment to pay all SBEs and/or MBEs participating in the Contract within 20 Days after the Contractor confirms that the MBE/SBE has properly performed and the MBE/SBE's work has been properly completed. To receive credit for this GFE, Bidders must provide the City with a copy of the Quick Pay Commitment and documentation showing that the Bidder informed each SBE and/or MBE about the Quick Pay Commitment as part of the Bidder's SBEs and/or MBEs contacts under Section 5.3.1. No Bidder will receive credit for (i) any statement indicating that the Bidder will consider entering into a Quick Pay Commitment or (ii) any statement made verbally but not in written form to communicate the Quick Pay Commitment. A Bidder may receive credit for this GFE only if it receives credit for GFE 5.3.1 (Contacts).

Total GFE Points (Claimed by Bidder) _____ Total GFE Points Earned (Assessed by City) _____

Version 11-2016

14