



The Columbia City Council met in Executive Session and conducted a Work Session on Tuesday, February 4, 2014 at City Hall, 1737 Main Street, Columbia, South Carolina. The Honorable Mayor Stephen K. Benjamin called the meeting to order at 12:22 p.m. and the following members of Council were present: The Honorable Sam Davis, The Honorable Tameika Isaac Devine, The Honorable Leona K. Plough and The Honorable Moe Baddourah. The Honorable Brian Dequincey Newman and The Honorable Cameron A. Runyan arrived at 12:30 p.m. Also present were Ms. Teresa Wilson, City Manager and Ms. Erika D. Moore, City Clerk.

EXECUTIVE SESSION

Councilor Plough asked staff to clarify why some of the items have to be taken up in Executive Session. She asked that to the extent possible any or all discussions on Bull Street and any of the other items be done in public. She said even for contractual matters, the law doesn't require us to go into Executive Session.

Mr. Kenneth E. Gaines, Esq., City Attorney reviewed the items to be discussed in Executive Session.

Mayor Benjamin asked that they go into Executive Session; determine what can be discussed publicly; and then do so after the Executive Session.

Ms. Teresa Wilson, City Manager noted that the Bull Street Development and the Multi-use facility will also be discussed during the evening meeting; staff will be doing a separate presentation.

Upon a motion made by Mr. Davis and seconded by Ms. Devine, Council voted unanimously to enter into Executive Session at 12:27 p.m. for the discussion of **Items 1** through **3** as outlined.

1. Discussion of negotiations incident to proposed contractual arrangements – *This item was discussed in Executive Session. No action was taken.*
 2. Discussion of negotiations incident to the proposed purchase of property – *This item was discussed in Executive Session. No action was taken.*
 3. Receipt of legal advice which relates to matters covered by attorney-client privilege – *This item was discussed in Executive Session. No action was taken.*
- **Council adjourned the Executive Session discussion and convened the Work Session at 3:55 p.m.**

FINANCIAL REPORT – *The presentation of this report was deferred.*

CITY COUNCIL DISCUSSION / ACTION

4. Disparity Study Recommendations: [Modifications to the Mentor Protégé Program Guidelines](#) – Ms. Tina Herbert, Executive Director of the Office of Business Opportunities and Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division – [Click here to view the presentation](#)

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities introduced the mentors and protégés that currently participate in the Mentor Protégé Program and the Minority Business Advisory Council. She said these individuals also had input on the guidelines being presented today. She explained that the Mentor Protégé Program resulted from the Disparity Study that said there was an underutilization of women and minority businesses in city contracts. She said there are several city programs that are designed to help with small, minority and women-owned businesses that are here locally. She noted that these programs are administered out of the Department of Utilities and Engineering Compliance Division.

Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division presented the three programs that were established by City Council in support of local small, minority and women owned businesses: Subcontracting Outreach Program (SOP), Mentor-Protégé Program (MPP); and the Local Business Enterprise Policy Program (LBE). He explained that the Subcontractor Outreach Program was designed in 2006 for larger capital improvement projects in which the prime contractors are required to give at least 20% of the cost of the project to subcontractors and in doing so they would participate with the disadvantaged business enterprises, disabled veteran business enterprises and other business enterprises in the city. He explained that the Mentor Protégé Program was developed in 2008 to incorporate minority, women and small businesses to increase their capacity in the area of water and sewer projects. He said we have less than 200 certified local businesses and the Local Business Enterprise Program was developed in 2010 to give a certified local business a 5% advantage over companies outside of the certified area.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said one of the ultimate objectives of the MPP was to develop our minority and women owned firms so that they are capable of participating independently in the industry. She outlined the goals of the program. She clarified that the Mentor Protégé Program is administered by the Utilities and Engineering Department, not the Office of Business Opportunities

Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division explained that the administration of the MPP is in participation with the Office of Business Opportunities. He further explained that the Director of the Utilities and Engineering Department and the City Engineer are responsible for designating projects as Mentor Protégé Program projects and only the approved MPP teams can compete for those projects. He noted that construction projects are awarded to the lowest bidder and professional services are awarded through a Request for Qualifications.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities noted that even if a firm is in the MPP, it is not guaranteed an award.

Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division stated that for each project, the MPP team is required to present an implementation plan that outlines what the mentor is going to provide to the protégé and what is being provided by the protégé.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities clarified that the Office of Business Opportunities' role is to recruit mentors and protégés as needed; coordinate opportunities to pair mentors and protégés; research viable bonding and financing programs; analyze data; verify Minority Business Enterprise (MBE) and Disadvantaged Business Enterprise (DBE) certifications; and offer training and educational courses. She reported that the program was more successful in 2013 with \$17,561,647 being awarded through the MPP. She noted that \$2,046,211 was awarded to protégés; \$519,000 to women owned firms; 4% to minorities; and 4% to African-Americans.

Councilor Devine noted that the amount awarded to protégés in 2013 is the lowest.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities explained that they met with the Minority Business Advisory Council to develop the following goals: 40% of Capital Improvement Plan projects are to be designated for the Mentor Protégé Program and work towards designating 30% of project costs to protégés.

Councilor Newman asked what the goal was in 2013. He asked what actual percentage of CIP projects was awarded through the MPP.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities further recommended that the protégés receive a minimum of 20% of the total project costs.

Ms. Teresa Wilson, City Manager asked staff to define the situations in which it would not be feasible for a protégé to receive a minimum of 20% of total projects.

Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division said there may be a limited role in the project for a protégé.

Mayor Benjamin said it needs to be the burden of the mentor to show feasibility or non-feasibility.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities noted that the mentor has to explain why they haven't met the 20%.

Councilor Plough said as an example, there is a professional services contract on the evening meeting agenda with 12% protégé participation.

Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division said they will all fit the criteria unless there is a reason why it shouldn't.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said the Department of Utilities and Engineering will know on the front end whether or not it is feasible.

Ms. Teresa Wilson, City Manager asked staff to better define the requirement for the traditional mentor protégé projects rather than it being too arbitrary.

Councilor Plough asked that it be documented when the item comes forward for approval.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said that protégé led projects are geared towards professional services where the engineers or architects acting as the protégé can take on at least 51% of the work and manage the project with the assistance of the mentor.

Councilor Davis asked if that will be limited to architects and engineers.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said it can be done in construction, but it's easier to do with professional services.

Councilor Davis said part of the strategy was to also look at breaking contracts down to increase the ability of the protégés to demonstrate their capacity. He said we should consider that also.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said they did that because there were a lot of situations where some protégés may get as little as 3% of the contract or as much as 90% and we wanted it to be more consistent. She said protégé only projects will allow the protégés to compete among themselves for a project, but they must have a mentor to help them with the project. She noted that the Director of Utilities and Engineering will also identify which areas the projects fall within.

Ms. Teresa Wilson, City Manager asked if the three (3) structures will follow any revisions in the guidelines. She asked if there is a definition for a protégé.

Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division said under the new guidelines any current protégé that has a team would be able to bid on a protégé only project.

Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division said there was a recommendation in the original disparity study for the city to start working towards Bid Online. He said the first construction project was successfully bid through Bid Online last week. He outlined the new protégé requirements to include having an established office for a minimum of one (1) year in the Columbia-Newberry CSA, which is consistent with the LBE Program policy. He reported that construction companies must obtain a water plant and/or water line certification if necessary, within one (1) year.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities recalled that Council wanted to see how many firms would be impacted by reducing the size of the CSA. She said the firms will be grandfathered in for two years.

Councilor Davis said that was done in case we couldn't find a qualified firm. He said keeping those firms for another two years may limit local firms from having a shot. He said he would rather see more effort to build capacity locally than to go out of the area.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said it was done, because we have firms that have done good work in our city and we've put a lot of work into some of those firms. She said some of these same firms could also be a subcontractor.

Mayor Benjamin said he is fine with the grandfather provision.

Councilor Plough asked if the established location means a primary office with employees.

Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division said the idea is that they would have an office of authorization, but it doesn't have to be the primary office.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities explained that they are considering allowing joint ventures to serve as a mentor, which is modeled after the SBA standards.

Councilor Plough asked how that is structured; when is it a joint venture; who's singing on the line; can you be part of a joint venture and then bid individually as a protégé; or can you be a protégé as part of a team and part of the joint venture.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities explained that there is no limit to the number of joint ventures you can be a part of, but they would have to meet the mentor requirements; you won't have anyone bidding as a protégé who is also in a joint venture, because they would need the experience and funding requirements. She said they would have to meet the same bonding requirements of a single mentor.

Councilor Plough asked about the advantage of offering this.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said Atlanta has a joint venture structure as part of their race conscience program and they are doing very well. She said there aren't any minority mentors and this program may help with increasing those numbers.

Councilor Davis asked why we don't have any minority mentors.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said the firms either don't have the skills or capacity to serve as mentors.

Councilor Plough asked if projects will be set aside for joint ventures.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said no; they would bid like a mentor protégé team.

Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division said they will require each party in a joint venture to apply as a mentor first.

Councilor Plough said we don't have any minority mentors nor successful women owned mentors.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities presented the new team requirements that will limit the agreement between one protégé and one mentor to four (4) years; the initial protégé can continue to serve as a subcontractor with the mentor; and staff will track the funds paid to both.

Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division added that there will be a one (1) team limit and the teams will be required to submit quarterly and annual reports to include a new business plan and financial statements compiled from an external CPA for each firm.

Councilor Devine said she received comments about the expense associated with that requirement. She asked if they considered using an accountant, a tax preparer that may not be a CPA or using financials submitted with business license applications.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said this is the lowest level for an external review. She noted that the due date is April 15th, but extensions can be granted.

Councilor Plough asked who is responsible for giving the reports.

Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division said it is a team report, but they can require the mentor to provide it.

Mayor Benjamin said the mentor would have more internal capacity to do it, but we want to know that the protégé had a chance to review it for accuracy.

Ms. Teresa Wilson, City Manager said there needs to be some indication that they mutually worked together on the report.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said it would be good to have the protégés contribute to the reports so that the mentor isn't getting the administrative burden. She explained that under the gross receipts requirements, protégés can have a maximum of \$3.5 million for professional services and \$5 million for construction over three consecutive years in the area they are building capacity in.

Councilor Plough asked how staff will know.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said they have to sign an affidavit. She acknowledged that they need to put the proper procedures in place in order to implement the requirement. She reviewed the requirements for a business plan and implementation plan. She said a protégé will automatically graduate if the annual gross receipts exceed \$3.5 million in professional services and \$5 million for construction over three years or after completing eight (8) years in the program.

Ms. Teresa Wilson, City Manager asked if we can have a protégé who exceeds the gross receipts requirements in one area become a protégé in another area.

Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division said yes, in one of those five (5) areas.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said that a protégé has to meet the criteria to become a mentor and a protégé can graduate and still be a subcontractor for mentors.

Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division said up until now the language in the program only provided for termination of the MPP Agreement and there were times when termination would have been too harsh. He reviewed the conditions under which the Director of Utilities and Engineering can terminate a firm.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities described how the program will be evaluated.

Councilor Baddourah asked why the Office of Business Opportunities isn't monitoring the process and the composition of the MPP Advisory Committee.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said OBO is not a part of the administration of the program.

Ms. Teresa Wilson, City Manager said that it is an administrative function.

Mayor Benjamin asked if we need a new disparity study.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said if City Council wants to move towards a program to get better results they will need to look at a race and gender conscience program and they would need a new disparity study.

Mayor Benjamin asked that staff do some due diligence to see what that might cost. He said the numbers leave a great deal to be desired. He said we talked about the accountability of the mentors and the protégés and the reality is that as it relates to our own house, there is no accountability. He said he's not sure if compliance belongs in Utilities and Engineering, but the ultimate responsibility and accountability rests with this Council. He insisted that these numbers are unacceptable; we have to do better; we must figure out a way to get much better results in a narrow period of time with some degree of accountability from our staff along the way. He said that the people with compliance responsibility for this should not be the same organization charged with administering the contracts. He's not sure if the fox should be guarding the hen house and if the fox wants to guard the henhouse then at the very least, the measures of accountability need to be drafted into those employees' annual review. He said if we can't meet those targets, then someone has to be held accountable. He requested quarterly reports that show these numbers dramatically improving in a very short period of time; an estimate for an updated disparity study; and he asked the City Manager to determine whether or not compliance will stay in the Utilities and Engineering Department or goes to the Office of Business Opportunities.

Councilor Plough said the problem is with Council. She said Tina presented goals, but there is no quantifiable increase. She said we need succinct and quantifiable goals and the reports. She urged the City Manager to bring back performance based goals.

Mayor Benjamin said as many measurements as we can put into play to measure our progress along the way is very good, but that starts at the gateway and if the gateway is determined by the Director of Utilities and Engineering and we're missing the target then every inch downstream just isn't going to happen. He said very clear goals need to be laid out and we need to make sure we are doing that and measuring our progress along the way. He said that has to be a priority; it has to be reported to this Council regularly; and we have to start making progress; this is not acceptable.

Councilor Newman agreed with Ms. Plaugh's statement regarding the goals. He said figuring out what percentages of the CIP projects were worked on in the past are important for us. He agreed that the numbers are terrible for 2013. He agreed that they did not need to micromanage the City Manager, but they do need to set the policy. He said Council needs to change it from a goal to an actual requirement. He said they also need to determine if 40% is a realistic requirement. He said we are controlling the funds and making these decisions. He said in our role as policy makers there shouldn't be a problem requiring that a specific amount of money goes to our protégés. He said we need to explore if there are legal issues with that. He asked the City Manager to tell City Council what a realistic requirement would be.

Ms. Teresa Wilson, City Manager said we have a real opportunity even with the Clean Water 2020 Program and the amount of money we are about to spend over the next several years. She said there is a whole field of people here in Columbia who has the capacity to be mentors but aren't in the program. She said we have to push ourselves to work with other people. She said the EPA requirements aren't to be taken lightly, but there are opportunities there and I want to look at it more broadly and bring back more specific guidelines.

Councilor Newman encouraged staff to make sure this happens quickly. He said he would hate for the Bull Street infrastructure to happen without this being in place.

Councilor Davis agreed with Mr. Newman. He said he was frustrated by the amount of time we've spent on this final product and at the same time we have been approving contracts. He said some of this money has gone down the highway and there are businesses that need to be intensively recruited and given an opportunity to get involved. He believes these businesses have talent and can do some of this work. He agreed that capacity is sometimes incremental, but if you get people involved based on their talents and what they can contribute, everybody wins; we build the capacity; we have more local businesses helping us build and maintain this city; and the dollar turns over more in this community.

Mayor Benjamin asked how Atlanta has done things and been successful.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said Atlanta has a race conscience program. She said that Franklin Lee, Esq. provided a memo in support of considering a race conscience program, but the problem is trying to start it eight (8) years after the disparity study was done.

Mayor Benjamin asked if they can move forward with approving the presentation and the recommendations on contracts that are being processed now.

Councilor Devine asked that the Utilities and Engineering Department consider designating projects to the Mentor Protégé Program structure in consultation with the Office of Business Opportunities. She always hears concerns about our emergency contracts and we need criteria in place to ensure that everybody is getting an opportunity to bid on those emergency contracts.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities said if a mentor bids on an emergency project, they don't have to use the protégé. She said it might be a timing issue.

Mr. Joey Jaco, Director of Utilities and Engineering said for emergency projects, they invite who they feel can handle the job.

Ms. Missy Gentry, P.E., Assistant City Manager said they are making a more conscience effort to be inclusive. She said anybody that is on a team should be included.

Councilor Devine said people are tired of hearing us say that we are trying; we have to say we're doing it; and address whatever policies or recommendations that are needed to do that.

Ms. Diane Sumpter, Chief Executive Officer of DESA, Inc. said she has been working on this for years and yes, the city needs a new disparity study. She said in order for us to move to a race neutral program, we have to study it again; the data is almost ten (10) years old. She said if we did a study today, it would show that we've accomplished very little, but it would also show that we are on the road to doing something now. She said the study was designed to build capacity in five (5) areas, but we didn't look at it that way. She said they used the firms in the same capacity, all the time. She implored the Council to move, because we have been in the same place for two (2) years.

Mr. Ronald Taylor of Taylor Brothers Construction Company, Inc. said we have an instrument we can use, but he is concerned with the city staffing someone to monitor the program. He said it's not good to have a great program and not see results. He suggested that they look at each project individually and ensure that the criteria of the program are met at the end of each project before the retainage is given.

Mr. Charles Deep, PE, LEED AP BD+C / President of 4D Engineering said as a new protégé having the one mentor team would be hugely detrimental for protégés like him, when they can do any number of things with any number of firms. He said one firm wants to do water and sewer project with them. He said some of these firms have been around for 90-years and the 5-year recession we've had prior to 2013, it's hard for the small companies to compete with the huge companies. He said the \$3.5 million cap is high when it's all in one area. He asked the Council to consider these matters.

Mayor Benjamin asked if \$3.5 million is a lot, if that's all they do.

Mr. Charles Deep, P.E., LEED AP BD+C / President of 4D Engineering said if that's all they do, then it's not a lot; it's a fair amount.

Mayor Benjamin asked if there is a limitation on gross revenues.

Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division said the gross is \$5 million in construction.

Mr. Nate Spells of Construction Dynamics, Inc. asked the Utilities and Engineering Department to look at alternate delivery systems for projects. He said most projects are done by design build. He said the South Carolina procurement code allows for design build and construction management at-risk. He said these systems are more inclusive than low bid scenarios.

Ms. Dana Higgins, City Engineer of the Department of Utilities and Engineering said design build was added last year.

Ms. Teresa Wilson, City Manager outlined the following items for feedback from staff in addition to approving the guidelines: look at cost estimates for an updated disparity study; continue to compare the Atlanta program as a model for a race conscience program; City Management to look at the administrative and compliance functions and how that should be handled going forward; quarterly reports on our progress to Council to include quantifiable goals that we will set; looking at how we procure emergency projects; and looking at the Construction Manager At-Risk model for procurement, moving forward immediately.

Mr. Eric Cassell, Compliance Administrator for the Department of Utilities and Engineering Compliance Division said they set implementation for July 1, 2014.

Councilor Davis recommended that we dissect the recommendations to see what can be put forward given the number of contracts that will be bid on and approved between now and then.

Ms. Missy Gentry, P.E., Assistant City Manager said you have to give the mentors and protégés time to develop new teams. She doesn't know how we will stop bidding work right now; that will delay work for months. She said we can certainly start implementation. She requested a list of all projects that are in progress.

Ms. Dana Higgins, City Engineer of the Department of Utilities and Engineering said we can start implementing this on everything going forward.

Mr. Joey Jaco, Director of the Utilities and Engineering Department agreed to provide a list of those projects.

Ms. Tina Herbert, Executive Director of the Office of Business Opportunities agreed to provide a matrix.

Councilor Plough asked staff to come back with how they can expedite the full implementation.

Upon a motion made by Mayor Benjamin and seconded by Ms. Plough, Council voted unanimously to approve the guidelines that were presented and to direct City Management to look at cost estimates for an updated disparity study; continue to compare the Atlanta program as a model for a race conscience program; look at the administrative and compliance functions and how that should be handled going forward; provide

quarterly reports on progress to include quantifiable goals; look at how we procure emergency projects; look at the Construction Manager At-Risk model for procurement; bring back an implementation plan; and move forward immediately.

5. One Columbia – The Honorable Leona K. Plough

Mayor Benjamin said the work that One Columbia has done in the last several years is incredible. He wants to see One Columbia continue to grow its brand well beyond the time and tenure that we are here. He offered to step aside and get a new slogan for Benjamin. He said there is legitimate concern and people need to start seeing the division between what has become a very mature and incredibly consequential organization in this community.

Upon a motion made by Ms. Plough and seconded by Mr. Runyan, Council voted unanimously to adjourn the Work Session at 5:39 p.m.

Respectfully submitted by:

Erika D. Moore
City Clerk