



Update on the San Francisco Unified School District's Mission Bay School Project's Small Business Contracting: Good Faith Efforts Analysis

Presentation Overview

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- OCII Commission
 - January 7, 2025

Good Faith Efforts Overview SBE Policy

SBE Program Objectives and Benefits:

- OCII's SBE Policy establishes a Good Faith Effort for 50% SBE Contracting Goal, with **first consideration** to Project Area SBE's, followed by San Francisco based SBE's, followed by all other SBEs
- Compliance with the SBE Policy is measured by a contractors Good Faith Efforts, as defined within the SBE Policy.

Good Faith Effort: Contract Size

Where appropriate, the Agency or Agency-Assisted Contractor will divide the work in order to encourage maximum SBE participation or, alternatively, SBEs will be encouraged to joint venture.

- Under the Design Build Model, McCarthy did not unbundle the School Yard work from the remainder of the School Project, which was not subject to the SBE Policy.
- McCarthy identified scopes of work that were appropriate in size for SBEs. However, SBE's were not selected for this work due to McCarthy selecting the lowest responsive bid, consistent with the Design Build model.
- Based on the above OCII staff determined McCarthy was deficient in this Good Faith Effort requirement.

Good Faith Effort: Advertise

The general contractor shall advertise for 30 days prior to the opening of bids or proposals in media focused on small businesses including the Bid and Contract Opportunities website through the City's Purchasing Department and the Procurement Opportunities section of local publications.

- McCarthy ran advertisements in local and regional publications from 14-26 days and allowed prequalified subs an additional 14-21 days to submit bids.
- McCarthy's advertisement efforts, while not identical to program requirements, were sufficient to meet the intent of the Good Faith Effort requirement pertaining to advertising, based on the advertising time frame and methods of publication.

Good Faith Effort: Prepare a List of SBEs

Each responsible staff person, developer or prime contractor/consultant shall request the Contract Compliance Office to assemble a list of all known SBEs in the pertinent field(s)...

- McCarthy reached out to 188 SBEs including Project Area firms for bid packages that included School Yard Related Scopes
- McCarthy's outreach efforts were sufficient to meet the intent of the Good Faith Effort requirements pertaining to SBE List Preparation.

Good Faith Effort: Public Solicitation

The Agency or Agency-Assisted Contractor will mail Requests for Qualifications (RFQs) or Requests for Proposals (RFPs) to SBEs. It will follow up initial solicitations of interest by contacting SBEs to determine with certainty whether they are interested in performing specific items in a project. The Agency will also make contacts with SBE contractor associations or development centers, or any agencies that disseminate bid and contract information and provide technical assistance to SBEs.

- For School Yard related Bid Packages, McCarthy solicited prequalification from SBEs and invited prequalified firms to bid. McCarthy further advertised opportunities at various SBE outreach and trade association events.
- McCarthy's efforts were sufficient to meet Good Faith Effort requirements pertaining to Public Solicitation.

Good Faith Effort: Convene Prebid or Pre-solicitation Meetings

The Agency or Agency-Assisted Contractor will send written invitations to potential SBE candidates to attend pre-bid or pre-solicitation meetings for the purpose of answering questions about the process and the specifications and requirements. Representatives of the Contract Compliance Office will also participate.

- McCarthy outreached to SBEs and conducted pre-proposal meetings for School Yard related bid packages.
- Project specifications and requirements were included in presentation materials and sign in sheets demonstrate that a number of SBEs were in attendance.
- OCII's SBE policy and program goals were not included in SBE materials, though McCarthy did include contracting goals consistent with their PLA.
- OCII Staff was not invited to participate pursuant to the policy.
- McCarthy was partially compliant in meeting the intent of Good Faith Effort requirements pertaining to Pre-solicitation meetings

Good Faith Effort: Outreach and Other Assistance

The Agency or Agency-Assisted Contractor will a) provide SBEs with plans, specifications and requirements for all or part of the project; b) make contacts with SBE contractor associations or development centers, or any agencies that disseminate bid and contract information and provide technical assistance to SBEs; and c) follow up initial solicitations of interest by contacting SBE firms to determine with certainty whether they are interested in performing specific items in a project.

- McCarthy provided interested SBEs access to bid documents; technical assistance; and connected SBEs with larger contractors to explore teaming/subcontracting opportunities for School Yard scope.
- McCarthy also employed a two-part solicitation process whereby they: (1) Invited prequalification from SBE subs for specific scopes and (2) Invited prequalified SBE contractors to bid.
- McCarthy's efforts were sufficient to meet the intent of Good Faith Effort requirements pertaining to Outreach and Other Assistance

Good Faith Effort: Insurance and Bonding

Where lines of credit, insurance and bonding are potential problems for small businesses, the Agency or Agency-Assisted contractor should contact staff to explain the Agency's insurance and bonding requirements, answer questions about them, and be prepared to suggest avenues of assistance.

- McCarthy provided instructions and one-on-one assistance to contractors regarding prequalification requirements including information about their California Department of Insurance (CDI) program enrollment process and benefits.
- McCarthy referred contractors to Merriwether & Williams, to receive assistance with bonding and insurance (based on Merriweather's contract with the City and County of San Francisco for Small Business Services).
- McCarthy's efforts were sufficient to meet the intent of Good Faith Effort requirements pertaining to Insurance and Bonding.

Good Faith Effort: Monitoring

The Contractor will keep track of the date that each response, proposal or bid was received from SBEs, including the amount bid by and the amount to be paid (if different) to the non-SBE contractor that was selected. If the responsible staff person or bidder/proposer asserts that there were reasons other than the respective amounts bid for not awarding the contract to or selecting an SBE, he or she must be prepared to provide valid reasons(s) for any rejections.

- McCarthy awarded contracts on a “best value” basis (lowest responsive bid).
- In practice OCII monitors contract selection in real time in order to make recommendations.
- Because SFUSD/McCarthy provided OCII with bid tabs after selections were made, OCII staff did not have the ability to assess compliance nor make recommendations on best practices to increase SBE contracting outcomes.

Outcomes

- At the time of reporting McCarthy's efforts resulted in SBE participation of just under 6% percent on the School Yard scope.
- OCII's review indicate that McCarthy satisfied five elements of the good faith effort standards; partially compliant in 1 element (Prebid/Presolicitation Meetings); and deficient in terms of Contract Size (due to infeasibility) and Monitoring
- OCII acknowledges that:
 - Element no. 1 (contract size) was not feasible once OCII and FOCIL-MB consented to the Project's use of a single design-build contract;
 - Element no. 9 (monitoring) which would have involved a contemporaneous review of subcontractor's bid prices and other selection criteria, was also preempted by McCarthy's application of the "best value" standard under the design-build requirements of state law.

Note OCII did not consider Element Number 8 (focused meetings as part of the analysis.

Next Steps

- FOCIL-MB and OCII have advised SFUSD and McCarthy to explore all available options to increase SBE participation on the School Yard scope.
- At the time of this memorandum, efforts to improve contracting outcomes are ongoing, including efforts by McCarthy to identify where additional SBE contracting opportunities may exist.