



Date: February 18, 2013
To: Thomas J. Bonfield, City Manager
Through: Wanda S. Page, Deputy City Manager
From: Deborah Giles, Director, Department of Equal Opportunity/Equity Assurance
Subject: Interlocal Agreement between the City of Durham and Durham County to Conduct a Joint Disparity Study

Executive Summary

The City of Durham conducted a Disparity Study of its MWBE Program in 2000. The MWBE Program was subjected to an external review again in 2003. Following the review, the City adopted the Equal Business Opportunity Program and has since re-authorized and operated this program without further study. The purpose of this agreement is to engage a consultant to provide the City and County with current legal guidance not only relative to new legislation, policies and procedures to meet any constitutional mandates, but also the programmatic needs of the constituencies of the City and County.

During the FY2012-13 budget process, the City and County governments discussed the prospects of doing a joint Disparity Study as a way for both entities to update their programs, provide a strong legal basis for providing contracting opportunities to small disadvantaged business enterprises in the event of a legal challenge and share in the costs associated with doing a new study. The City budgeted \$100,000 for the study in its FY12-13 budget. Both entities are now prepared to proceed upon approval of the Interlocal Agreement.

Recommendation

The Administration recommends that the City Council authorize the City Manager to execute an Interlocal Agreement with Durham County for a joint Disparity Study.

Background

The City of Durham conducted a Disparity Study in 2000 to determine the constitutionality of its race and gender based MWBE program. In 2002, the City contracted with a firm to evaluate that study and make recommendations that would meet any applicable constitutional mandates appropriate to the City of Durham. The City adopted a race and gender neutral "Equal Business Opportunity Program" in 2003. This program has been reauthorized every two years since initial implementation without further study and will now sunset in March of 2014. As a best practice, it is recommended that programs that seek to remedy discrimination in contracting activity be studied every three to five years.

During the FY2012-13 budget process, the City and County governments discussed the prospects of doing a joint Disparity Study as a way for both entities to update their programs, provide a strong legal basis for providing contracting opportunities to small disadvantaged business enterprises, and share in the costs associated with doing a new study. The City budgeted \$100,000 for the study in its FY12-13 budget.

Since the second quarter of FY12-13, the City and County have been in ongoing discussions about the content of the Disparity Study Request for Proposals and the Interlocal Agreement. Both entities agree with the content of the RFP and Interlocal Agreement.

Issues and Analysis

The City of Durham has had no formal study of the Equal Business Opportunity Program since its inception in 2003. While it is a best practice for a program study to be performed every three to five years, the City's program was last studied ten years ago and is due to be studied. Funding has been a challenge to conducting a study in the past. This arrangement for a joint Disparity Study by both the City and County offers a cost-effective means to evaluate the programs of both entities.

Alternatives

The City may choose not to enter into this agreement. The current Equal Business Opportunity Program will continue to operate with vulnerability should it be challenged in the courts. The City may choose to fund a separate study from the County.

Financial Impact

There is no new fiscal impact at this time. The City budgeted \$100,000 in FY12-13 to fund its portion of a joint Disparity Study.

SDBE SUMMARY

Because this is an agreement, it was not reviewed by the Department of Equal Opportunity Equity Assurance for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting.