



March 4, 2014

MEMORANDUM

To: Thomas J. Bonfield, City Manager
From: Wanda S. Page, Deputy City Manager
Deborah Giles, EO/EA Department Director
Subject: SDBE Participation for FY 2012-13

EXECUTIVE SUMMARY

Each year a final report is prepared that summarizes SDBE participation in city contracting for the fiscal year. As a result of interim discussions during FY2013, direction was provided to expand the report and present a more detailed analysis of results and recommendations responsive to these results, with the overall goal of increasing participation by SDBE firms.

In response to these discussions, this memo includes a more detailed analysis of data and recommendations along with attachments detailing construction and professional services contracting activity of the City of Durham for the fiscal year ended June 30, 2013. A draft report was presented December 13, 2013. Input from the Executive Team and current status of recommendations has been incorporated in this final report.

BACKGROUND

North Carolina General Statutes (NCGS) 143.28 and 143.64 govern the City's process for selection of contractors and professional services providers for construction and repair services. The City has also adopted local ordinances and administrative policies that complement these statutes including the Ordinance to Promote Equal Business Opportunities in City Contracting (Code of Ordinances, Section 18). The City must utilize a formal bidding process as described by the statute for all construction and repair projects estimated to be \$500,000 or greater. This requirement generally requires an advertisement for the project to the general public. The City has more flexibility in its selection of construction and repair contractors when the project is estimated to be between \$30,000 and \$500,000. This more flexible informal bidding process is also found in North Carolina General Statutes. Advertising is not required but a notice of bid is recommended. State Statute does not require bidding for construction and repair services estimated below \$30,000, but if circumstances permit, multiple price quotes should be obtained. Additionally, the City's Code of Ordinances (Section 18-56) requires the City Manager to

establish project specific participation goals for Small Disadvantaged Business Enterprises (SDBEs) owned by blacks and SDBEs owned by women, based on normal industry practice, the availability of at least two SDBEs to perform the scopes of work of the project, and the City's utilization of SDBEs to date.

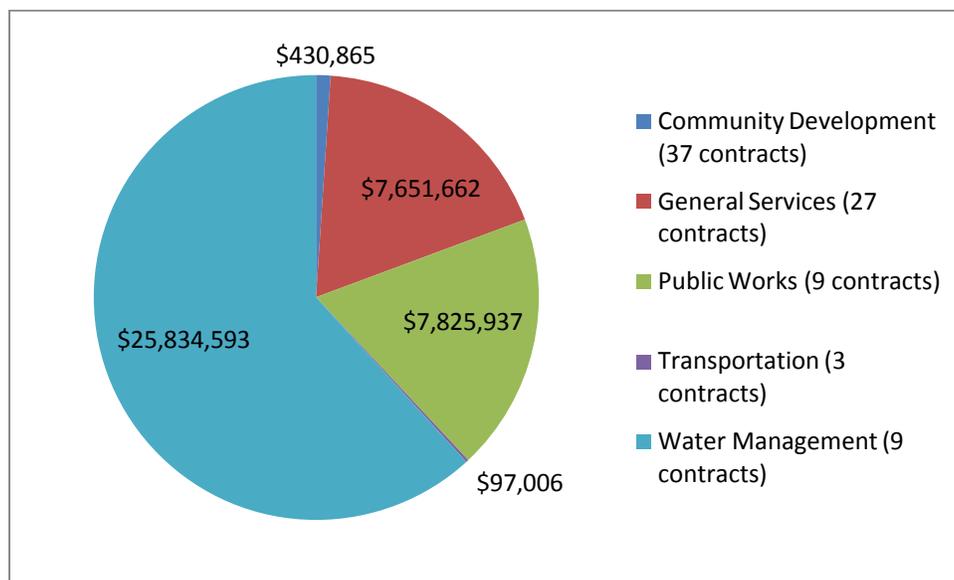
The City Manager has delegated the administration of this ordinance to the Department of Equal Opportunity and Equity Assurance (EOEA). Based on current operating procedures, participation by certified SDBE firms serving as prime contractors and sub-contractors on all construction and repair contracts for all amounts is included in participation totals. However, SDBE participation goals are not set for contracts estimated to be below \$100,000.

Operationally, the EOEA Department along with the department that is implementing the project collaboratively set the project specific goals based on scope of work in projects and available SDBE contractors to perform the scope of work. Statutes, ordinances, policies, and operating procedures described in this background section inform the historical results reported, analysis provided, and recommendations contained in this report.

CONSTRUCTION

The City of Durham entered into 85 separate construction contracts ranging from \$1,100 to \$5,699,987 during fiscal year 2013. The Community Development, General Services, Public Works, Transportation, and Water Management Departments were the implementing departments for these contracts.

Construction Contracting Activity for FY2013 by Department



The contracts for the period totaled \$41,840,062; 59 were for contracts of \$100,000 or less totaling \$1,507,831 and no participation goals were set. Of the contracts \$100,000 or less, SDBEs were the prime contractor on three (3) of the contracts for a total of \$60,850. All three (3) of these firms were Minority-Owned Small Disadvantaged Business Enterprise (MSDBE)

firms, and none were Woman-Owned Small Disadvantaged Business Enterprise (WSDBE) firms.

Of the 85 construction contracts, 26 exceeded \$100,000 totaling \$40,332,231. Scopes of work identified in seven (7) of these projects did not match specialty areas identified in the SDBE database of certified firm profiles and therefore no goals were established; 19 projects had goals established, with 12 meeting or exceeding the goals. The seven (7) remaining projects had good faith effort reviews, five (5) were deemed to have made a good faith effort under the provisions of the City's Ordinance and two (2) were awarded in the best interest of the City. Of the contracts greater than \$100,000, SDBES were the prime contractor on five (5) contracts (MSDBE Prime - 2 contracts and WSDBE Prime - 3 contracts) for a total of \$2,712,977 (MSDBE Prime - \$935,437 and WSDBE Prime - \$1,777,540).

Table 1 below presents FY2012 for comparative purposes and summarizes the total and percentage of contracting dollars awarded to SDBE firms performing as either prime or sub-contractors during the period. (See *Attachment 1-Construction Contracting Activity July 1, 2012 to June 30, 2013*)

Table 1

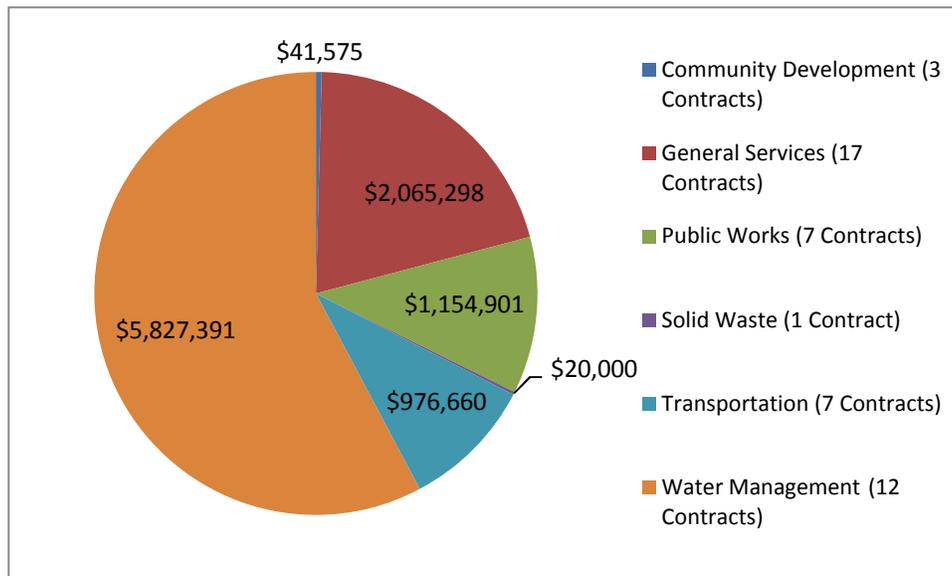
Construction	FY 2011-12	FY 2012-13
Total Dollars	\$28,748,147	\$41,840,062
MSDBE \$/%	\$ 1,113,036 (4%)	\$ 2,803,742 (7%)
WSDBE \$/%	\$ 303,305 (1%)	\$ 2,115,570 (5%)

For the analysis period, The EOE Department used the benchmarks of 15% minority and 5% women participation goals in construction. The City did not meet the minority benchmark, but showed improvement from the last fiscal year and met the women participation benchmark for the FY 2013.

PROFESSIONAL SERVICES

The City of Durham entered into 47 separate construction-related professional services contracts ranging from \$3,500 to \$2,065,000 during fiscal year 2013. The Community Development, General Services, Public Works, Solid Waste, Transportation, and Water Management Departments were the implementing departments for these contracts.

Professional Services Contracting Activity for FY2013 by Department



The contracts for the period totaled \$10,085,825; 34 were for contracts of \$100,000 or less totaling \$1,366,189 and no participation goals were set. Of the contracts \$100,000 or less, SDBEs were the prime contractor on six (6) of the contracts (MSDBE Prime - 5 and WSDBE Prime- 1) for a total of \$ 201,575 (MSDBE Prime - \$175,860 and WSDBE Prime - \$25,715).

Of these 47 professional services contracts, 13 exceeded \$100,000 totaling \$8,719,636. Scopes of work identified in five (5) of these projects did not match specialty areas identified in the SDBE database of certified firm profiles and therefore no goals were established. Five (5) projects had goals established, with all five (5) meeting or exceeding the goals. Of the three (3) remaining projects, two (2) were selected from established on call lists and one (1) project was considered exempt. Of the contracts greater than \$100,000, one (1) MSDBE certified firm was the prime contractor for a total contract amount of \$408,200.

Table 2 on page five (5) presents FY2012 for comparative purposes and summarizes the total and percentage of contracting dollars awarded to SDBE firms performing as either prime or sub-contractors during the period. (See Attachment 2 –Professional Services Contracting Activity July 1, 2012 to June 30, 2013)

Table 2

Professional Services	FY 2011-12	FY 2012-13
Total Dollars	\$14,587,184	\$10,085,825
MSDBE \$/%	\$ 876,959 (6%)	\$ 839,412 (8%)
WSDBE \$/%	\$ 1,101,255 (8%)	\$ 316,145 (3%)

In the area of professional services, the adopted benchmarks for this period were 10% for minority participation and 5% for women participation. While there is variance between years up and down, the City did not reach the benchmark in fiscal year 2013 for either category in 2013.

ANALYSIS

Construction Contracting Activity

As reported in the construction section, the majority (69%) of the construction contracts executed were under \$100,000. These contracts totaled \$1,507,831. Except for the three (3) contracts noted totaling \$60,850, SDBEs were either unavailable or not selected to perform these contracts as prime contractors and no goals were set for participation due to the dollar threshold of the individual contracts.

Also, except for the five (5) construction contracts totaling \$2,712,977, SDBEs did not bid or were not selected in the formal or informal bidding process in the remaining \$37,619,254 of contracts above \$100,000 as the prime contractor. **Table 1** on page three (3) reflects the total dollars and percentages awarded to SDBEs in construction contracts.

12 of 19 projects (63%) achieved goals when participation goals were set. When the good faith effort achievement was included, the rate increased to 17 of 19 projects in compliance (89%). If actual goals had been achieved on the seven (7) projects totaling \$7,795,062 that did not meet goals, but met good faith effort or were awarded in the best interest of the City, additional participation amounts totaling \$614,487 (MSDBE) and \$408,932 (WSDBE) would have resulted in 8% and 6% participation rates for FY2013, still lower than the minority benchmark of 15% but higher than the women’s benchmark of 5%.

The data also shows the impact on outcomes when an SDBE firm is the prime contractor. \$2,773,827 or 56% of total participation reported of \$4,919,312 was achieved due to eight (8) contracts being executed by SDBE prime contractors. *(Disaggregated MSDBE and WSDBE results shown in Table 3 below)*

Table 3

Construction	FY 2012-13
MSDBE Participation	\$2,803,742
MSDBE Prime Contractor Participation (5 contracts)	\$996,287
% of MSDBE participation by MSDBE Primes	39%
WSDBE Participation	\$2,115,570
WSDBE Prime Contractor Participation (3 contracts)	\$1,777,540
% of WSDBE participation by WSDBE Primes	84%

Additionally, when the City executes unique projects such as the water meter replacement project that totaled \$5,699,987, the single largest contract of the year, and there were no goals set due to the scope of work and eligible SDBEs to perform, participation outcomes are impacted. Absent the winning bids of the five (5) contracts in the category of \$100,000 or more, overall participation would have been significantly lower, 4% for MSDBE firms and 1% for WSDBE firms similar to results reported in the previous fiscal year.

The Community Development Department executed 37 contracts totaling \$430,865 with eight (8) firms. All firms are currently not certified SDBEs in the City's program. It is believed that the majority of these firms would qualify as SDBEs if the firms applied to the program, and based on the size of the contracts, the firms would likely perform as prime contractors. However, because these contracts are small dollar contracts, overall participation percentages are likely to be only slightly increased. This year's performance would have only increased by 1% if all firms providing service to Community Development had been SDBE firms.

Professional Services Contracting Activity

As reported in the professional services section, the majority (72%) of the contracts executed were under \$100,000. These contracts totaled \$1,366,189. Except for the six (6) contracts noted on page 4 above totaling \$201,575, SDBEs were either unavailable or not selected to perform these contracts as prime contractors and no goals were set for participation due to the dollar threshold of the individual contracts.

Also, except for the one (1) professional services contract totaling \$408,200, SDBEs were not selected to perform services in the \$8,719,636 of contracts above \$100,000 as the prime

contractor. **Table 2** on page 5 shows the total dollars and percentages awarded to SDBEs in professional services contracts.

This analysis also shows the impact on outcomes when an SDBE firm is the prime contractor. \$609,775 or 53% of total participation reported of \$1,155,557 was achieved due to seven (7) contracts being executed by SDBE prime contractors. *(Disaggregated MSDBE and WSDBE results shown in Table 4 below)*

Table 4

Professional Services	FY 2012-13
MSDBE Participation	\$839,412
MSDBE Prime Contractor Participation (6 contracts)	\$584,060
% of MSDBE participation by MSDBE Primes	70%
WSDBE Participation	\$316,145
WSDBE Prime Contractor Participation (1 contract)	\$25,715
% of WSDBE participation by WSDBE Primes	8%

Five (5) of Five (5) projects (100%) achieved goals when participation goals were set. However, absent the execution of the contract with the one (1) MSDBE firm as a prime for a contract over \$100,000, the annual participation would have been 4% instead of the 8% achieved. **(Table 2 p.5)** Setting goals on only 38% of eligible projects also impacted overall participation results. The specialized scope of the remaining projects over \$100,000 contributed to fewer eligible projects having goals set and fewer SDBE firms selected as prime contractors on these projects.

Unique to the professional services contracting process, firms selected to perform these services can be selected from a pre-qualified list established as an on-call list of firms in advance of available projects, rather than by a project by project request for qualifications. The General Services, Transportation, and Water Management Departments solicit for professional services utilizing on-call lists to award individual professional services contracts. Each department has a department-specific process for assigning firms to perform contracts with varying impacts on SDBE participation. The General Services Department established its on-call list in 2003. There are 44 different consultants; eight (8) of the firms (18% of total) are SDBEs. These firms are authorized for use to execute professional services contracts less than \$100,000 on a rotating basis by category. The EOEA Department maintains the list of firms and

provides General Services the next available consultant by category from the approved list to perform a contract. The original term of service has expired but is still being used as a method of assigning contracts in compliance with the informal selection process for professional services authorized by state statute. The Transportation Department has selected 12 different firms for their on-call list. There is one (1) SDBE firm (8% of total) included on the list. The list is also available for use by the Public Works Department. This on-call list of firms is authorized for use to perform professional services at all dollar values. The Transportation Department manages the process and notifies all firms on the list when services are needed. The Department establishes an internal review panel to select the contractor. Contracts greater than \$100,000 are presented to the City Council for approval after a selection is made from the list. The current list of firms expires in March of 2016. The Water Management Department has an established on call list with 18 firms. None of the firms are SDBE firms. The Department manages the selection of firms from the list to perform contracts through the use of an internal selection team made up of Department Management. The current list of firms expires in March of 2014

During the review period, of the 47 professional services contracts executed, 13 contracts were awarded from the on-call list for a total of \$1,240,155; 12% of the dollar value of all contracts executed. 11 contracts totaling \$613,094 were for contracts less than \$100,000 and two (2) contracts totaling \$627,061 were for contracts exceeding \$100,000. One (1) SDBE was awarded a contract during the review period. The dollar value of the contract was \$99,785.

The General Services Department had the highest percentage of MSDBE firms on the list, but did not execute any contracts within the review period with an MSDBE firm using the “rotating basis” of selection. Also, the General Services Department awarded only 4 contracts to on-call firms totaling \$86,183. The \$86,183 represented 21% (\$86,183 of \$404,050) of contracts under \$100,000 and 4% of total contracts awarded.

The Transportation Department using the “internal review panel” method awarded one contract to a MSDBE firm totaling \$99,785. This contract was 43% (\$99,785 of \$230,410) of contracts below \$100,000 and 12% of total contracting dollars for the period. As planned by the Transportation Department, it utilized the on-call list to assign most of its contracts. 98% of contracts under \$100,000 were awarded to the on-call firms and 84% of contracts above \$100,000 were awarded to on-call firms.

The Water Management Department had no SDBE firms on its on-call list. Therefore no SDBE firms were awarded using the “internal review panel” method. 66% (\$300,000 of \$456,700) of Water Management contracts below \$100,000 were awarded to firms on the on call list. This \$300,000 represented 5% of total contracts awarded.

The results imply the General Services Department did not rely on the on-call services list for the majority of its contracts under \$100,000. The Transportation Department used the on-call services list for the majority of its contracts across all dollar values, and the Water Management Department relied on its on-call list for a significant number of contracts under \$100,000 as planned, but the amount was a small percentage of total contracting activity.

The dollar value of contracts executed with on-call non-SDBE firms was \$1,140,370. The aggregate participation rate for minority and women owned SDBEs in professional services was 11%. As a point of reference, if on-call lists would have resulted in contract awards to SDBE firms at a rate of 20% (\$248,031) instead of the 12% (\$99,785) achieved, based on actual performance, the aggregate participation would have been slightly higher at 13%. While we do not currently aggregate participation in the presentation of SDBE results, this benchmark is provided as a reference to assist in goal setting in the establishment of future on-call lists.

Conclusion:

Project Goals Sub-Contracting

Projects estimated to cost \$100,000 or more are eligible to have SDBE participation goals set. When goals are set on projects, the goals are met at a relatively high rate. Specifically, in the area of construction contracting, goals were met 63% of the time and when good faith effort is achieved per the City's ordinance, the compliance rate increases to 89%. In the area of professional services, goals were met 100% of the time. However, only 38% of eligible professional services projects had goals set. This outcome appears to be due in part to the absence of SDBEs to perform the scope of work; 38% of the contracts fit this category. 15% of the contracts were awarded from the on call list of firms and 8% of the contracts were considered exempt. In the area of construction contracting 73% of projects had goals set. This outcome suggests the City's database of firms was sufficient with appropriate specialty areas to compete for sub-contracting opportunities made available on a majority of the City's construction contracts. There is no indication based on results that dollar thresh-holds for subcontracting opportunities should be changed.

Prime Contracting

SDBE firms were selected as the prime contractor on three (3) construction contracts less than \$100,000 for a total of \$60,850. For construction contracts greater than \$100,000, SDBE firms were selected as prime contractor for five (5) for a total of \$2,712,977. In the area of professional services, SDBE firms were selected as prime provider on six (6) contracts less than \$100,000 for a total of \$201,575. For professional services contracts greater than \$100,000, SDBE firms were selected as prime for one (1) contract for a total of \$408,200. The outcomes suggest there is capacity to increase the number and value of contracts awarded to SDBE firms as prime contractors.

Firm Selection

Currently, various selection processes are used to select firms to perform services in compliance with authorized informal selection methods. This report provides some insight on the impact of firm qualification, selection methods, and City and Departmental business practices on the results of SDBE participation in City contracting. While SDBE firms were awarded only one (1) contract from the on-call selection method during the analysis period, the

FY2013 results do not specifically reveal potential for large increases in SDBE participation based on current City contracting activity utilizing this method. The outcomes suggest there is capacity to increase the number and percentages of eligible SDBE firms in all pre-qualified selection pools and routine informal requests for qualifications and quotations used by implementing departments.

Reporting

This detailed analysis shows the effect of a single contract award or a few individual contract awards, particularly in the awarding of prime contracts with SDBE firms on reported results as well as significant variances between reporting periods when sub-contracting and prime contracting participation are tracked and reported in aggregate. The outcomes suggest expanded reporting will better inform targeted recruitment efforts.

Performance Benchmarks

The benchmarks set for SDBE participation have been established and approved as targets annually, but have not been the result of a detailed analysis of previous results or a current disparity study. The City is currently involved in a disparity study that will provide much needed data relevant to the establishment of benchmarks for the Equal Business Opportunity Program.

Recommendations:

While historical results presented here cannot be relied upon to represent future results, the analysis revealed areas of focus for targeted recommendations below that may improve participation results in both numbers of SDBE firms participating and larger total dollars of contracting activity with SDBE firms over time. Actual results will continue to be influenced by the economy, the types of funded projects in the review period, the availability of subcontracting opportunities on projects, and the ability of SDBES to be successful in being the selected prime contractors on construction and professional services contracts.

1. Target efforts to engage SDBE firms in professional services for both planned City projects and City normal lines of business operations to reduce the outcome of no SDBE to perform the scope in subcontracting opportunities. (In Process)
2. Conduct an annual seminar with bidders and their estimators to explain SDBE requirements and expectations to assist in advancing the percentage of contracts with goals achieved from the current level of 63% closer to 100% in the area of construction. (In Process)
3. Develop a reference guide for City project managers to assist them in reinforcing SDBE requirements with prospective bidders. (Complete)

4. Conduct bi-annual training of new project managers on EBOP requirements. (In Process)
5. Engage the minority and women owned vendors servicing contracts to the Community Development department and increase the number of certified firms in the department's informal selection process. This successful engagement could have an immediate impact on the selection of SDBE firms for prime contracting opportunities under \$100,000 as these are firms already known to the City and providing some services to the City as non-certified firms. Services offered to SDBE firms including networking, professional mentorship, and specific notice of opportunities in the informal quote process would become available to these firms. (In Process)
6. Engage City departments in targeting and recruiting known minority and women owned firms in under-represented specialty areas to introduce additional certified firms in the data base with a focus on firms with capacity to perform as prime providers particularly in the professional services area. (In Process)
7. Continue to offer technical assistance to build capacity of SDBEs to bid available projects through direct service and referral to appropriate business development providers and monitor results. (In Process)
8. Develop annual targets and measures for both prime and sub-contracting opportunities for SDBEs based on planned City projects, certified firms available, other historical and trend data, and Disparity Study results. Expand reporting and track and report progress in alignment with these targets and program guidelines. (Partially Complete – see page 12 and 13 for expanded reporting tables)
9. Review and update administrative purchasing and contracting policies regarding the inclusion of SDBES when seeking quotes for City contracts and projects, including the development of a collection and reporting protocol to track compliance. (Planning)
10. Develop an administrative procedure designed to increase the inclusion of qualified SDBE firms in the establishment of City multi-year on-call or pre-qualified lists of firms. (Planning)

SDBE Participation on Projects with Goals

Construction	FY 2012-13
Total Number of Contracts with Goals	19
Total Dollar Value of Contracts with Goals	\$30,943,323
MSDBE Participation on Contracts with Goals	\$2,742,892 (9%)
WSDBE Participation on Contracts with Goals	\$2,115,570 (7%)

Professional Services	FY 2012-13
Total Number of Contracts with Goals	5
Total Dollar Value of Contracts with Goals	\$4,419,283
MSDBE Participation on Contracts with Goals	\$663,552 (15%)
WSDBE Participation on Contracts with Goals	\$239,077 (5%)

Aggregate Participation

Total Contracting Activity	FY 2012-13
Total Dollar Value of All Contracting	\$51,925,887
Total Dollar Value of SDBE Participation on All Contracting	\$6,074,869
% SDBE Participation of All Contracting	12%

Aggregate Participation on Projects with Goals

Total Contracting Activity on Projects with Goals	FY 2012-13
Total Dollar Value of All Contracts with Goals	\$35,362,606
Total Dollar Value of SDBE Participation on Contracts with Goals	\$5,761,091
% SDBE Participation on All Contracts with Goals	16%