

DURHAM



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CITY OF MEDICINE

CITY OF DURHAM | NORTH CAROLINA

**Date:** May 19, 2015

**To:** Thomas J. Bonfield, City Manager  
**Through:** Wanda Page, Deputy City Manager  
**From:** Deborah Giles, EO/EA Director  
**Subject:** Addressing Minority/Women Business Availability and Underutilization

### **Executive Summary**

Griffin & Strong, PC (GSPC), the Disparity Study consultants, has recommended that the City institute aspirational goals for minority and female prime and subcontractors in the areas of statistically significant underutilization. They indicated that goals should be set at just below the availability figures they provided in all procurement categories. To determine the availability of minority and women firms, GSPC included firms that had at least registered to do business with a governmental entity. In this case, only firms on lists provided by the City, County or State of North Carolina was included. The inclusion of the State of North Carolina's Historically Underutilized Businesses (HUB) database as part of the determination of availability of minority and women businesses and the City's resulting underutilization of minority and women businesses is significant. The City of Durham does not currently accept the use of HUB firms to meet its participation goals under its current Equal Business Opportunity Program (EBOP). The City of Durham's current determination of availability is based solely on the number of firms it certifies in accordance with the Equal Business Opportunity Ordinance. The City's database of firms is the "universe" from which goals are set.

Should the City choose to discontinue its separate certification of firms and utilize the HUB database as a means of enhancing availability and potentially increasing utilization of MWBE firms, it would constitute a significant departure from the current means of promoting equal business opportunities for small disadvantaged business. There are four areas that are integral to the City's current program that need consideration: there will be a broader definition of minority firms as socially disadvantaged, there will be no business size standard, greater potential for use of women firms that are not bona fide as there will be no requirement that the minority/women business owner hold the license that may be required for their scope of work and there will be no process for protest of certification/decertification. The input and guidance of

the City Council is being sought prior to engaging in the detailed research and recommendations that may lead to substantial ordinance/program changes.

**Recommendation**

Department of Equal Opportunity/Equity Assurance recommends that the City Council

1. Receive a presentation on addressing the Disparity Study’s recommendations regarding availability and utilization of minority and women firms, and
2. Provide input and guidance to the administration on implementing changes to the Equal Business Opportunity Program.

**Background**

The City Council approved entering into the Disparity Study agreement on March 18, 2013 and Griffin & Strong, PC of Atlanta, Georgia was selected to conduct the study. GSPC completed their findings in December, 2014 and an administrative briefing of the findings was held on January 26, 2015. A presentation and a detailed report was made to the City Council on March 5, 2015 summarizing the outcome of the analysis and recommendations that may make the City’s programmatic efforts to remediate existing disparities more robust.

Following the presentation, the report was referred to the administration to conduct a thorough review of the Disparity Study analysis and each recommendation and develop an implementation strategy. The administration has begun its work by establishing a Disparity Study Review Team Committee consisting of the City Manager, two Deputy City Managers, the EOE Director, a Senior City Attorney, the General Services Assistant Director and a Management Analyst. As the Committee began its work, it was noted that the Disparity Study contained fifteen recommendations specific to the city. The first two recommendations relate to availability and utilization of minorities and women.

**Issues and Analysis**

GSPC provided availability data on all procurement categories. By way of example, the area of construction was reviewed and the availability of firms provided by GSPC was compared to that of the City of Durham.

Race/Ethnicity	GSPC #	Durham #
BLACK AMERICAN	134	81
ASIAN AMERICAN	12	4
HISPA NIC AMERICAN	39	15
AMERICAN INDIAN	6	5
WHITE FEMALE	127	40
TOTAL MWBE	318	145

The availability of minority and women firms provided by GSPC in construction is a little more than twice that of the number of firms in the City of Durham’s database. In order to increase the availability of firms to bid City opportunities and potentially enhance utilization, it would be appropriate to allow the use of the HUB database in meeting City of Durham participation

goals. To date, the HUB database contains 3,363 firms compared to the 282 firms in the City of Durham’s database across all procurement categories.

It would also seem reasonable to utilize the HUB database because of a change in state law in July of 2009. The law required that only minority and women firms certified through the HUB Office be listed in the database to be counted by local and state entities for HUB participation and the reporting purposes. At that time, the City of Durham received an exception because the HUB certification process had no size standards while the City’s Equal Business Opportunity Program (EBOP) focuses on small firms. The exception permitted the City to continue its certification process provided that the minority or woman firm was certified by the HUB Office first. If the City were to elect to use the HUB database of certified firms, it would no longer do small, disadvantaged business certifications and the certification component of the ordinance would be one area to require change. The HUB certification eligibility criteria are broader than that of the City of Durham. The chart below offers a snapshot of the two programs:

### HUB and City of Durham Eligibility Criteria

HUB Certification Eligibility	City of Durham SDBE Eligibility
At least 51% owned, controlled and managed, by one or more citizens or lawful permanent residents of the United States who are members of one or more of the following groups:	At least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more socially and economically disadvantaged individuals. Must be a citizen (or lawfully admitted permanent resident) of the United States who is either:
(1) Black	Black/African-American, which includes persons having origins in any of the black racial groups of Africa.
(2) Hispanic	Female
3) Asian American	Any individual found by the city on a case-by-case basis to have been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group, without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control.
(4) American Indian	Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more socially and economically disadvantaged individuals.
(5) Female	Which is a small business enterprise.
(6) Disabled	If any law requires the owners to have a

	particular license or other credential to operate, own and/or control a certain type of business, then the SED owners must possess the required license or credential. . If the law does not so require, that the owners lack such license or credential is a factor in determining whether the SED owners actually control the firm.
(7) Disadvantaged	The certification status of all SDBEs shall be reviewed biannually.
Certification is valid for four years, provided that the business continues to meet the eligibility requirements.	A firm that has been denied certification or recertification or been decertified may protest the denial or decertification

There are four items to consider should the City choose to discontinue its certification and utilize the HUB certification process:

1. There will be a broader definition of minority firms as socially disadvantaged. The City's current ordinance highlights Blacks and women as socially disadvantaged, while other groups must be found on a case-by-case basis to have been subjected to ethnic prejudice. Other ethnic minorities may be used to meet participation goals if a Black or woman firm cannot be found to meet the identified need. GSPC noted that "it is not coincidental that the two groups which are the focus of the City's MWBE program are over-utilized as subcontractors in certain areas. This speaks to the effectiveness of the City's current program in these areas". GSPC also indicated that the City needs to do greater outreach to Hispanics, Asians and American Indians. Use of the HUB database will increase availability of other ethnic minorities and potentially enhance utilization of other ethnic minorities and women due to its larger numbers. The increase in the number of other ethnic minorities in the HUB database and the recommendation to increase outreach to them, may decrease the utilization of Black owned firms.
2. There will be no business size standards. The City's current ordinance focuses on small businesses. This means that firms must meet the size standards set by the U.S. Small Business Administration for their work category in order to be certified by the City of Durham. This limits the number of firms certified and affords greater opportunities to small firms that meet the certification criteria. HUB certification has no size eligibility standards. Small firms that are currently benefiting from City opportunities will have to compete with larger firms in the HUB database; which may result in receiving fewer opportunities.
3. There will be no requirement that the minority/women business owner hold the license that may be required for their scope of work nor scrutiny as to control of the company if they do not possess the license. GSPC noted in its anecdotal findings that there are a substantial number of female owned firms that are in fact not controlled by females, but have been certified as female owned firms in order to participate in remedial programs, therefore taking valuable contracts meant for bona fide MWBEs. Due to the City's requirement that the SDBE own the license for their business, we have had fewer problems with certification of bona fide firms. The City requires women owned firms to be licensed to operate businesses like HVAC, plumbing, electrical and general

contracting. The minority/women owner does not have to be the license holder for HUB certification.

4. There will be no process for protest of certification/decertification. The HUB certification does not outline an appeals process when a firm is denied certification or is decertified. Under the City's ordinance, a firm that has been denied certification or recertification or been decertified may protest the denial or decertification.

There is clearly value in utilizing the HUB database to increase the number of firms available for use in meeting participation goals, thereby increasing the dollars spent with minority/women firms. But the use of HUB firms will be a significant shift in the City's program direction which centers on the certification of small businesses. The City must determine if there is a benefit for greater MWBE availability and utilization of MWBE firms through the use of the HUB certification process and database.

### **Alternatives**

The City may choose to continue to certify small businesses through its current process, continue current efforts and explore other best practices to enhance availability and utilization of minority and women firms.

### **Financial Impact**

There is no financial impact at this time.

### **SDBE**

Because this is a presentation, it was not reviewed by the Department of Equal Opportunity/Equity Assistance for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting.