



**Date:** August 18, 2015  
**To:** Thomas J. Bonfield, City Manager  
**Through:** Wanda S. Page, Deputy City Manager  
**From:** Deborah Giles, Director, Department of Equal Opportunity/Equity Assurance  
**Subject:** Durham City-County Disparity Study Follow-up

### **Executive Summary**

The City Council approved entering into the Disparity Study agreement on March 18, 2013 and Griffin & Strong, PC (“GSPC”) 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 began its work by establishing a Disparity Study Review Team Committee consisting of the City Manager, two Deputy City Managers, the EOE Director, a Senior Assistant 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 related to availability and utilization of minorities and women. On June 4, 2015, a presentation was made to the City Council for input regarding potential issues in addressing availability and utilization of minorities and women based on the study data and recommendations. Upon receiving the City Council’s input, the Disparity Study Review Committee continued its research, review and analysis. This report is to present its recommended implementation strategy.

### **Recommendation**

1. The Department of Equal Opportunity/Equity Assurance recommends that the City Council receive a follow-up report of the Disparity Study, and
2. Refer the item to the administration for implementation of study recommendations.

### **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 (EBOP)” in 2003. This program has been reauthorized every two years since initial implementation without further study and will now sunset in March of 2016. 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 in the event of a legal challenge and share in the costs associated with doing a new study.

The City Council approved entering into the Disparity Study agreement on March 18, 2013 and the Durham City and County Managers signed the agreement. Based on the selection process by City and County staff, Griffin & Strong, PC of Atlanta, Georgia was selected to conduct the study. The goal of the study was to determine whether there exists a statistically significant disparity between the number of available MWBEs in the Durham marketplace and the number of these firms that have been awarded contracts from the City, the County or their prime contractors. The study also sought to determine if there was a legal predicate to maintain or create any remedial programs to address any disparity that might exist based on analysis of City and County contracting activity for a five-year period from FY2007-12.

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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 began by establishing a Disparity Study Review Team Committee consisting of the City Manager, two Deputy City Managers, the EOE Director, a Senior Assistant City Attorney, the General Services Assistant Director and a Management Analyst. As the Committee began its analysis, 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. On June 4, 2015, a presentation was made to the City Council for input regarding potential issues in addressing availability and utilization of minorities and women based on the study data and recommendations. Upon receiving the City Council's input, the Disparity Study Review Committee continued its research, review and analysis of the GSPC recommendations. This report is to present the recommended implementation strategy.

### **Issues and Analysis**

There were eleven specific findings in the Disparity Study. Overall, the study points to a statistically significant underutilization of all minorities and women as prime and subcontractors in all procurement categories, inclusive of construction, architecture/engineering, services and goods. The findings mirror some concerns expressed by the administration and City Council based on the Equal Opportunity Equity Assurance Department's ongoing monitoring and reporting of construction and architecture/engineering contracting activity. The majority of City certified minority and women owned businesses are certified in construction and architecture/engineering.

It is noted that in the study of prime contracting, there was a focus on contracts greater than \$30,000. Therefore, contracting with minority/women primes under the \$30,000 threshold is not reflected in the study. Additionally, contracting with minority/women firms whose businesses were located outside of the relevant market identified in the study was not included.

It was noted that African Americans and women, which are the focus of the City's Equal Business Opportunity Program, are over-utilized as subcontractors in certain areas. This speaks to the effectiveness of the City's current program in these areas. However, these same two groups are substantially underutilized as primes. The study further reported almost no utilization of other minority groups either as primes or subcontractors. The study demonstrates that without the establishment of remedial programs at the City, there would be little utilization of minority and women owned businesses in City of Durham contracting.

In general, there seems to be a good understanding of the practices and procedures currently in place with the City. The purchasing practices and policies regarding minorities and women for the City are assisting in contracting with some Black American and White Female owned businesses but are not robust enough to close the disparity gap for any minority/women group.

GSPC presented its report that included fifteen recommendations specific to enhancing the City's current program. 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 began its work by establishing a Disparity Study Review Team Committee consisting of the City Manager, two Deputy City Managers, the EOE Director, a Senior Assistant 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. On June 4, 2015, a presentation was made to the City Council for input regarding potential issues in addressing availability and utilization of minorities and women based on the study data and recommendations. The issues expressed by the City Council and the Disparity Study Review Committee's discussion of the issues are as follows:

1. Is there a way to give extra points for Durham firms that bid on City of Durham projects? In consultation with the City Attorney's Office, it was noted State bidding laws governing competitive contracting would preclude providing additional points for Durham firms in the contracting process. Assigning points to Durham firms in service contracting may be permissible, but would be subject to Constitutional restrictions on local preferences in public contracting.
2. Is there a way to have a program that incorporates the HUB database but maintain some elements of the City's current program? Maintaining elements of the current program would continue the current certification process and result in limitations of the number of minority/women firms who would be eligible to participate in contracting activities to meet participation goals. In reviewing the HUB database for firms known to have been denied certification by the City of Durham based on current program requirements, there was approximately 100 (3%) of the total current HUB database (3,363) involved. There are likely other firms that would not have met the City's criteria had they sought Durham certification. However, after considerable review and discussion, expanding availability seems paramount in improving minority and women business utilization based on the findings of the Disparity Study.
3. Is there a way to expand the local criteria to include other ethnicities?

The current local program could be expanded to be more inclusive of other ethnicities, but doing so would likely have minimal impact. The City of Durham currently certifies other ethnicities in its program, though the program's primary focus is on black and

women owned firms. Additionally, this modification to the current program would continue the criteria that limit availability.

4. Is there a way to expand the City of Durham's reporting to capture all minority/ women business dollars spent (ie. CMAR participation)?

Process refinements will be made to better capture the total minority/women business participation. The Administration believes this data capturing and reporting enhancement is significant since the City has historically observed high levels of minority and women owned firm participation on CMAR and other projects. This data was unavailable in the City's MUNIS system during the study period.

5. Is there research that demonstrates that minority businesses are more likely to employ other minorities?

The studies reviewed show that minority-owned firms are more likely to employ minorities. An article from the Institute for Research on Poverty summarizes many of the studies related to this issue: <http://www.irp.wisc.edu/publications/dps/pdfs/dp123601.pdf> The overwhelming conclusion is that black-owned businesses are more likely to hire black employees.

Dr. Thomas "Danny" Boston, a professor at the Georgia Institute of Technology, found that two out of three employees of black-owned small businesses were black. Dr. Boston summarizes his conclusions in this blog article: <http://www.blackeconomicdevelopment.com/black-business-hiring-can-reduce-black-unemployment/>.

Similar findings are summarized in *Economic Development in American Cities: The Pursuit of an Equity Agenda* (<https://books.google.com/books?id=5tbMML54bdEC&pg=PA29&dq=minority+firms+hire+minorities&hl=en&sa=X&ei=U-p2VcejHszsAWC1YOIAQ&ved=0CDAQ6AEwAA#v=onepage&q=minority%20firms%20hire%20minorities&f=false>).

6. The culture of the overall organization must be addressed so that EOEA is not held solely responsible for participation results. This issue should be part of performance reviews.

This observation was reflected in recommendation six of the Disparity Study which states City and County employees and user departments should be evaluated regularly based on the quality, transparency, and effectiveness of their attempts to reach procurement goals and achieve the overall goals of the MWBE programs in place. This recommendation is addressed in conjunction with the overall responses to the study recommendations.

A detailed review of each of the Disparity Study recommendations is attached inclusive of whether the recommendation should be implemented.

Based on consideration of the minority and women availability data in the study, a review of the City's past performance and the GSPC recommendation that aspirational goals be set below the

availability reported; City of Durham aspirational goals are proposed to be set at 50% of the of the percentages of availability reported in the Disparity Study for each contracting category. Goals were set on construction and professional services contracts in the past, but not services and goods. This will be the first time that the City will set goals on all contracting categories. These goals are to be evaluated annually and the levels adjusted as appropriate using the availability data from the study following review and analysis of goal attainment. A new Disparity Study should be considered in three to five years for a more comprehensive evaluation of the Equal Business Opportunity Program’s performance and the effectiveness of the programmatic enhancements implemented. The proposed goals are expressed in whole numbers below:

Contract Category	Current Goal	GSPC Availability %		Proposed Goal	
		M	W	M	W
Construction	Project Specific	21%	14%	11%	7%
Architecture/Engineering	Project Specific	15%	11%	8%	6%
Services	No Goals	14%	10%	7%	5%
Goods	No Goals	4%	7%	2%	4%

The Ordinance to Promote Equal Business Opportunities in City Contracting will be revised following approval of the recommended strategy for implementation. The revised Ordinance will be brought forward for City Council approval following stakeholder review and input. The new Ordinance is to be approved for implementation by March 31, 2016.

**Alternatives**

The City may choose to continue current Equal Business Opportunity Program without change.

**Financial Impact**

There is no financial impact at this time.

**SDBE**

Because this is a report, 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.