



Date: February 16, 2016
To: Thomas J. Bonfield, City Manager
Through: Wanda S. Page, Deputy City Manager
From: Deborah Giles, Director, Department of Equal Opportunity/Equity Assurance
Subject: Revised Ordinance to Promote Equal Business Opportunities in City Contracting

Executive Summary

Griffin & Strong, PC (GSPC) of Atlanta, Georgia completed a Disparity Study for The City of Durham and Durham County in December of 2014. The administration was charged with conducting a thorough review of the Disparity Study analysis and each recommendation and developing an implementation strategy. The administration began its work by establishing a Disparity Study Review Team Committee. As the Committee began its work, it was noted that the Disparity Study contained fifteen recommendations specific to the City. 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. A report was submitted to City Council in September of 2015 outlining a recommended implementation strategy.

The first step in implementation of the recommendations necessitated revisions to the current Ordinance to Promote Equal Business Opportunities in City Contracting which underpins the Equal Business Opportunity Program operated by the City. An ordinance revision was drafted by the City Attorney's office. The draft and the proposed minority and women business participation goals were shared with internal and external stakeholders for input. Information gleaned from these sessions was incorporated into the ordinance. The final ordinance and the proposed minority and women business participation goals are being presented for City Council approval.

Recommendation

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

1. Adopt an ordinance to revise the Equal Business Opportunity Program, and
2. Approve the minority and women business participation goals found in attachment 1.

Background

The City of Durham conducted a Disparity Study in 2000 to determine the continuation 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.

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 by establishing a Disparity Study Review Team Committee consisting of the City Manager, two Deputy City Managers, the EOEA Director, a Senior Assistant City Attorney, the General Services Assistant Director and a Management Analyst. 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. A report was presented to City Council on September 21, 2015 outlining the recommended implementation strategy.

The first step in Implementation of the recommendations is the revision of the Ordinance to Promote Equal Business Opportunities in City Contracting. A draft revision of the ordinance was prepared by the City Attorney's office. Input on the draft and the proposed minority/women business participation goals was sought from all staff engaged in contracting activity on January 20, 2016; from minority/women businesses, supplier diversity managers, bidders/ estimators, the general public and the Diversity Study Review Committee on January 28, 2016 and the Durham General Contractors Association on February 2, 2016. Minimal input was received. Specific comments from these sessions were incorporated in the ordinance as appropriate. The final ordinance is being presented for approval by the City Council. Additionally, the proposed minority and women business participation goals are also being presented for approval in an attachment. This is being done to avoid having to revise the ordinance should modification of the goals be indicated in the future.

Issues and Analysis

The findings of the Disparity study pointed 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 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 demonstrates 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 seemed 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.

The report was referred to the administration to conduct a thorough review of the Disparity Study analysis and each of the fifteen recommendations specific to enhancing the City's current program and develop an implementation strategy.

The Disparity Study Review Committee engaged in a detailed review of each of the Disparity Study recommendations which was also presented to the City Council inclusive of whether each recommendation should be implemented. Approval of the revised Ordinance to Promote Equal Business Opportunities in City Contracting is an essential response to the study recommendations. The current ordinance will sunset on March 31, 2016.

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. The proposed goals appear in the attachment. 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.

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 of the nature of this request, 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.

Attachments

Ordinance to revise the equal business opportunity program
Attachment 1 – initial minority and women business participation goals



Date: February 16, 2016
To: Thomas J. Bonfield, City Manager
Through: Wanda S. Page, Deputy City Manager
From: Deborah Giles, Director, Department of Equal Opportunity/Equity Assurance
Subject: Minority and Women Underutilized Business Participation Goals

In keeping with the recommendation of the Durham City-County Disparity Study, the City of Durham has established minority and women business enterprise (MWBE) participation goals at 50% of the percentages of availability reported in the Disparity Study for each contracting category. The goals are as follows and will become effective **April 1, 2016**:

CONTRACTING CATEGORY	MINORITY GOAL	WOMEN GOAL
CONSTRUCTION	11%	7%
PROFESSIONAL SERVICES	8%	6%
SERVICES	7%	5%
GOODS	2%	4%