



CITY OF DURHAM

Department of General Services
City of Durham
101 City Hall Plaza
Durham, NC 27701

Request for Proposals

Date of Issue: November 20, 2009

Due Date: December 21, 2009 at 2:00PM

RFP for Utility Audit Services

The Department of General Services is requesting proposals for Utility Audit Services from qualified candidate to perform utility audit services for the City of Durham. Candidates are to provide the City of Durham with consulting services designed to obtain rebates and reductions in the areas of Utilities and Telephone expenses.

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General Services	<i>Project Manager Department</i>
919.560.4197 Ext. 21240	<i>Project Manager Telephone Number</i>
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Section One

Introduction and Instructions

1.01 Return Mailing Address, Contact Person, Telephone & Fax Numbers, Deadline for Receipt of Proposals

Candidates must submit one (1) original and four (4) copies of their proposal, in writing, to the Department of General Services in a sealed envelope. The proposal must be addressed as set out below.

**City of Durham
General Services Department
Attention: Dean Pricer
Project Name: Utility Audit Services
101 City Hall Plaza
DURHAM, NC, 27701**

**Delivery Address if submitting in person:
2011 Fay Street
Durham, NC 27704**

Proposals must be received no later than 2:00 p.m., on December 21, 2009. Fax, electronic and/or oral proposals are not acceptable.

1.02 Definitions In This RFP

Unless the context indicates otherwise – (a) The expressions “RFP,” “this RFP,” and “the RFP” refer to this document as it may be amended or updated. (b) “City” and “city” mean the City of Durham. (c) The “proposal” is the response of a person, firm, or corporation proposing to provide the services sought by this RFP. (d) The word “Candidate” or “candidate” is the person, firm, or corporation that submits a proposal or that is considering submitting a proposal. (e) The word “Contractor” or “contractor” is the person, firm, or corporation with which the City enters into a contract to provide the services sought by this RFP. That is, “contractor” generally refers to a successful candidate that has obtained a fully executed contract with the City, while “candidate” is generally reserved to the stage before a contract has been signed.

1.03 BACKGROUND, DESCRIPTION OF PROJECT AND NATURE OF RFP

(a) **Project Background:** The City of Durham owns, leases and operates facilities and properties throughout the City and County of Durham. The City's billings for utility services for its multiple facilities is one of the largest parts of its annual operating expenses. The City receives billings monthly from commercial utility providers. The City is seeking proposals for the purpose of performing utility services audits of the City's electric service, provided by Duke Energy, its natural gas service provided, by PSNC Energy and telephone service provided by Verizon and AT&T. The candidates are required to review past utility bills and provide audit services for purposes of identifying any billing errors, overcharges or other billing discrepancies entitling the City to refund of payment or credit. The City seeks proposals from candidates who are well qualified and capable of providing utility audits.

(b) **Scope of Work:**

The candidate is required to review and evaluate all utility providers whom the City pays or paid for services in the following list of categories: electricity, natural gas and telephone services. The candidate is required to review and evaluate every rate for every item billed to determine if the City is billed in accordance with tariff regulations for the current and previous three (3) years from the execution date of the Utility Auditing Service Contract for errors and overcharges for gas and electric and two (2) years for telephone service. The candidate will coordinate with each utility company and come to agreement for proprietary audit methods, if monthly and/or quarterly services are being overcharged, and if inefficient services or tariff violations currently exist, or if violations existed on previous billings, or other errors resulting in overcharges exist. The candidate will negotiate with the utility provider to have any detected and confirmed overcharges removed in the form of refunds and/or credits to the City. The City reserves the right to add additional categories of billing for review and evaluation by the candidate under the same terms and conditions as the original contract. The candidate will:

1. Provide consulting services designed to obtain rebates and reductions for electricity, natural gas and telephone expenses.
2. Provide the City with an analysis of their methods of purchasing utilities and telephone services and advise on any cost saving actions that may implemented or any overcharges that may have been paid by the City.
3. Provide in writing a summary of all available cost saving actions.
4. Obtain billing invoices using the City of Durham's Internet portal to calculate all savings amounts.

When an error has occurred on City's invoices, the candidate will endeavor to collect on behalf of the City, the amount of such overcharge. Conversely, the candidate will receive no compensation where there is no refund or credit, or there is no reduction in the City's monthly and/or quarterly utility charges.

(c) **Deliverables:**

At a minimum the following deliverables must be provided to the City:

1. Submit to the City at no later than the end of the contracted period, a report indicating, by utility service provider, the period of utility bills that have been reviewed and evaluated, the amount of refund or credit due to the City, correspondence from said utility provider agreeing to the actual amount of refund due to the City, and the method to be used to refund the moneys owed the City, (e.g.; refund check or account adjustment credit).
2. Provide a report with an explanation of areas of cost savings which will include a description of all billing over charges and under charges and

savings recommendations. Report to be based on sound best practice recommendations and other audit accounting recommendations arising out audit information.

3. Include any innovation/creative service or approach ideas that may reduce the City's overall costs, (e.g.; explore achieving a lower tariff by aggregating the entire City's electrical load).

1.04 RFP Evaluation and Schedule

The contract term and work schedule indicated herein represent the City's best estimate of the schedule that will be followed. If a component of this schedule, such as the opening date, is delayed, the rest of the schedule will be shifted by the same number of days. The contract will be for a period not to exceed one year and may be subject to amendment upon acceptable completion of audit services described in this RFP.

The approximate RFP Schedule is as follows:

- (a) Issue RFP: November 20, 2009
- (b) Last date for receipt of proposals: December 21, 2009
- (c) Proposal Evaluation Committee to complete its evaluation by: December 31, 2009
- (d) City Council approves budget amendment: January 19, 2010
- (e) City Manager to sign the contract: January 26, 2010
- (f) City Manager and successful candidate sign contract: TBD
- (g) Contract end date: 1 year from starting date of contract.

1.05 Compensation:

Contractor will be paid a contractual percentage share of all verified actual dollars saved by rebates/refunds or rate schedule over-charges which are proven by each utility company, Duke Energy, PSNC Energy, Verizon or AT&T. Payment will be made by the City within thirty days of approval of Account Adjustment Invoice (approval of adjustment, or actual refund or credit from the utility company) submitted by the utility provider. The City will owe the contractor nothing unless and until a refund or credit is received by the City from a utility provider.

1.06 Required Review

Candidates should carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and objectionable material must be made in writing and received by the Project Manager at least ten (10) days before the proposal opening. This will allow issuance of any necessary amendments, if deemed appropriate. It will also help prevent the opening of a defective solicitation and exposure of candidate's proposal upon which award could not be made. Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Project Manager, in writing, at least ten (10) days before the time set for opening.

1.07 Questions Received before Opening of Proposals

All questions must be in writing and directed to the issuing office, addressed to the Project Manager, Dean Pricer. The interested party must confirm telephone conversations in writing.

Two types of questions generally arise. One may be answered by directing the questioner to a specific section of the RFP. These questions may be answered over the telephone. Other questions may be more complex and may require a written amendment to the RFP. The Project Manager will make that decision.

1.08 Addendums to RFP

If an addendum to this RFP is issued it will be provided to all candidates who received an electronic copy or were mailed a copy of the RFP and will be posted to the City's website.

1.09 Right of Rejection / Discretion of the City

- (a) The City of Durham reserves the right to reject any or all proposals.
- (b) NOTWITHSTANDING anything to the contrary in this document or in any addendums to this document, unless the provision refers specifically to this provision, the City reserves the right (i) to negotiate changes of any nature with any firm proposing to do the work with respect to any term, condition, or provision in this document and /or in any proposals, whether or not something is stated to be mandatory and whether or not it is said that a proposal will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for the work with one or more firms that do not submit proposals. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City in its discretion. This subparagraph (b) applies to the entire RFP, including the SDBE portion.
- (c) **Discretion of the City.**
 - 1. The City of Durham reserves the right to reject any or all proposals.
 - 2. NOTWITHSTANDING anything to the contrary in this document or in any addendums to this document, unless the contrary provision refers specifically to this provision, the City reserves the right (i) to negotiate changes of any nature with any candidate with respect to any term, condition, or provision in this document and/or in any proposals, whether or not something is stated to be mandatory and whether or not it is said that a proposal will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for some or all of the work with one or more persons, firms, or corporations that do not submit proposals. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City in its discretion. This subparagraph B applies to the entire RFP, including the SDBE portions.
 - 3. Where the City asks or tells candidates to do stated things, such as that a proposal should follow a stated format or that the candidate should do stated things in seeking the contract, the City may reject a proposal because it does not comply with those requests, so the candidate is adding to its risk of rejection by non-

compliance. Still, the City may, in its discretion, waive non-compliance. This subsection (C) does not limit subsections (A) and (B).
(d). Of course, once a contract is signed, the parties to the contract may enforce the contract according to its terms.

1.10 City Not Responsible for Preparation Costs:

The City of Durham will not pay any cost associated with preparation, submittal, presentation, or other costs associated with the proposal.

1.11 Disclosure of Proposal Contents

All proposals and other material submitted become the property of the City of Durham. All proposal information, including detailed price and cost information, will be held in confidence during the evaluation process and before the time a Notice of Intent to Award is issued. Thereafter, proposals will become public information.

1.12 Trade Secrets and Confidentiality

As a general rule, all submissions to the City are available to any member of the public. However, if materials qualify as provided in this section, the City will take reasonable steps to keep Trade Secrets confidential.

(a) Designation of Confidential Records. The terms "Trade Secrets" and "record" are defined in (a)(1) (Definitions). To the extent that the candidate wishes to maintain the confidentiality of Trade Secrets contained in materials provided to the City that will or may become a record, the candidate shall prominently designate the material as "Trade Secrets" at the time of its initial disclosure to the City. The candidate shall not designate any material provided to the City as Trade Secrets unless the candidate has a reasonable and good-faith belief that the material contains a Trade Secret. When requested by the City, the candidate shall promptly disclose to the City the candidate's reasoning for designating material as Trade Secrets. In providing materials to the City, the candidate shall make reasonable efforts to separate those designated as Trade Secrets from those not so designated, both to facilitate the City's use of records and to minimize the opportunity for accidental disclosure. For instance, if only a sentence or paragraph on a page is a Trade Secret, the page must be marked clearly to communicate that distinction. To avoid mistake or confusion, it is generally best to have only Trade Secret information on a page and nothing else on that page.

To the extent authorized by applicable state and federal law, the City shall maintain the confidentiality of records designated "Trade Secrets" in accordance with this section. Whenever the candidate ceases to have a good-faith belief that a particular record contains a Trade Secret, it shall promptly notify the City.

(1) Definitions.

“Trade secret” means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

- a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.

“Record” means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, received by the City of Durham in connection with the candidate’s proposal.

(b) Request by Public for Access to Record. When any person requests the City to provide access to a record designated as Trade Secrets in accordance with subsection (a), the City may

- (1) decline the request for access,
- (2) notify the candidate of the request and that the City intends to provide the person access to the record because applicable law requires that the access be granted, or
- (3) notify the candidate of the request and that the City intends to decline the request.

Before declining the request, the City may require the candidate to give further assurances so that the City can be certain that the candidate will comply with subsection (c) (Defense of City).

(c) Defense of City. If the City declines the request for access to a record designated as Trade Secrets in accordance with subsection (a), the candidate shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of the City’s non-disclosure of the records. In providing that defense, the candidate shall at its sole expense defend Indemnitees with legal counsel. The legal counsel shall be limited to attorneys reasonably acceptable to the City Attorney.

Definitions. As used in this subsection (c), “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, fines, penalties, settlements, expenses, attorneys’ fees, and interest. Indemnitees” means the City, and officers, officials, independent contractors, agents, and employees, of the City.

“Indemnitees” does not include the candidate. The City may require the candidate to provide proof of the candidate’s ability to pay the amounts that may reasonably be expected to become monetary obligations of the candidate pursuant to this section. If the candidate fails to provide that proof in a timely manner, the City shall not be required to keep confidential the records whose non-disclosure gives rise to the potential monetary obligation. Nothing in this agreement shall require the City to require any natural person to be imprisoned or placed in substantial risk of imprisonment, being found by a court to be in

contempt, or being in violation of a court order as a result of alleged nondisclosure of records or for alleged noncompliance with a court order respecting disclosure of records. This subsection (c) is separate from and is to be construed separately from any other indemnification and warranty provisions in the contract between the City and the candidate.

1.13 Subcontractors

Subcontractors may be used to perform work under this contract. If an candidate intends to use subcontractors, the candidate must identify in their proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

If a proposal with subcontractors is selected, the candidate must provide the following information concerning each prospective subcontractor within five working days from the date of the City's request:

- [a] complete name of the subcontractor,
- [b] complete address of the subcontractor,
- [c] type of work the subcontractor will be performing,
- [d] percentage of work the subcontractor will be providing,
- [e] evidence, as set out in the relevant section of this RFP, that the subcontractor holds a valid City of Durham business license,
- [f] a written Statement, signed by each proposed subcontractor, that clearly verifies that the subcontractor is committed to render the services required by the contract.

An candidate's failure to provide this information within the time set may cause the City to consider their proposal non-responsive and reject the proposal.

The substitution of one subcontractor for another may be made only at the discretion of the project manager and with prior written approval from the project manager.

1.14 Equal Business Opportunity Program

It is the policy of the City to provide equal opportunities for City contracting for small firms owned by socially and economically disadvantaged persons doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct present effects of past discrimination and to resolve complaints of discrimination. This policy applies to all professional services categories.

While there are no SDBE participation goals for this project, in accordance with the Ordinance, all candidates are required to provide information requested in the “SDBE Professional Services Forms” package, which has been included with this Request for Proposals in Attachment B. Proposals that do not contain the appropriate, completed “Professional Services Forms” will be deemed non-responsive and ineligible for consideration. The “Declaration of Performance,” “Participation Documentation,” Managerial Profile,” “Equal Opportunity Statement” and the “Employee Breakdown” documents are required of all candidates. In lieu of “Employee Breakdown,” contractors may submit a copy of the current EEO-1 form (corporate basis). Other forms in the package should be used as needed.

The Department of Equal Opportunity/Equity Assurance is responsible for the Equal Business Opportunity Program. All questions about “SDBE Professional Services Forms” should be referred to Deborah Giles or other department staff at (919) 560-4180.

SECTION TWO

STANDARD PROPOSAL INFORMATION

2.01 Amendments to Proposals

Amendments to or withdrawals of proposals will only be allowed if acceptable requests are received before the deadline set for receipt of proposals. No amendments or withdrawals will be accepted after the deadline.

2.02 Evaluation of Proposals

The City will use an evaluation committee to evaluate all proposals. The evaluation will be based solely on the evaluation factors set out in section seven of this RFP.

SECTION THREE

STANDARD CONTRACT INFORMATION

3.01 Contract Type

The City anticipates that the conclusion of the RFP process will be a contract between the City and the successful candidate under which the successful candidate will provide the services generally described in this RFP. It is the City’s intention to use the contract that is attached as Attachment A, modified and filled in to reflect the RFP and the proposal. If a candidate objects to any of the contract, it should state the objections in its proposal.

3.02 Contract Approval

This RFP does not, by itself, obligate the City. The City's obligation will commence when the City Manager approves the contract. Upon written notice to the contractor, the City may set a different starting date for the contract. The City will not be responsible for any work done by the contractor, even work done in good faith, if it occurs before the contract start date set by the City.

3.03 Proposal as a Part of the Contract

Part or all of this RFP and the successful proposal may be incorporated into the contract.

3.04 Additional Terms and Conditions

The City reserves the right to add terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

3.05 INSURANCE REQUIREMENTS:

Contractor shall maintain insurance not less than the following:

Commercial General Liability, covering

- premises/operations
- products/completed operations; this coverage shall be maintained for 6 years following the date of acceptance of the completed building by the City
- broad form property damage
- explosion, collapse, and underground hazards if the hazards exist in the performance of this contract
- contractual liability
- independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement); additional insured coverage shall be primary and non-contributing
- combined single limit not less than \$1,000,000 per occurrence;

Errors & Omissions Liability, covering:

- negligent acts / omissions of Contractor with regard to performance of services under this contract;
- self-insured retentions/deductibles in excess of \$25,000 must be approved by the City Finance Director
- coverage may be provided either by specific policy or as part of the Commercial General Liability Policy
- combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year; if coverage is only available on claims made basis,

then additional coverage requirements may apply, subject to review of City Finance Director

Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners, partners, and officers
- employers' liability, with a limit of not less than \$1,000,000.

Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina
- companies with Best rating of A-VIII or better.

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:
City of Durham, North Carolina
attention: Finance Director
101 City Hall Plaza
Durham, NC 27701
- both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

3.06 Bid Deposit - Performance Bond - Surety Deposit

Bid Bond

A Bid Deposit will not be required.

Performance Bond

A Performance Bond will not be required.

Surety Deposit

A Surety Deposit will not be required.

3.07 Contract Payment

Contractor will be paid a contractual percentage share of all verified actual dollars saved by rebates/refunds or rate schedule over-charges which are proven by each utility company, Duke Energy, PSNC Energy, Verizon or AT&T. Payment will be made by the City within thirty days of approval of Account Adjustment invoice (approval of adjustment , or actual refund or credit from the utility company) submitted by the utility provider. The City will owe the contractor nothing unless and until a refund or credit is received by the City from a utility provider.

3.08 Contract Changes - Unanticipated Amendments

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the Project Manager will provide the contractor a written description of the additional work and request the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of such amendments.

The contractor will not commence additional work until the Project Manager has secured any required City approvals necessary for the amendment and issued a written contract amendment.

3.9 Non-Discrimination Clause

The City of Durham opposes discrimination on the basis of race and sex and urges all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under city contracts.

3.10 EEO Provisions

During the performance of this Contract the Contractor agrees as follows:

- a. The Contractor shall not discriminate against any employee or applicant or employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these provisions.
- b. The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
- c. The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding.
- d. In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts.
- e. Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

SECTION FOUR

PROPOSAL FORMAT AND CONTENT

4.01 Proposal Format and Content

The City discourages overly lengthy and costly proposals, however, in order for the City to evaluate proposals fairly and completely, candidates should follow the format set out herein and provide all of the information requested. Proposals should adequately describe the candidate's capabilities to satisfy the requirements of this RFP. The RFP should include sections, clearly labeled and numbered.

4.02 Contact information

Proposals must **include the complete name and address of the candidate and the contact information** (name, mailing address, email address, fax number and telephone number) of the person the City should contact regarding the proposal.

4.03 Legal Status of Candidate and Signers:

State the full, exact name of the candidate. **State whether the candidate is an individual, corporation, limited partnership, general partnership, limited liability company, professional corporation, professional association**, etc. If it is anything other than an individual or general partnership, specify the State under which the entity is organized. If the State under which the entity is organized is not North Carolina, specify whether the candidate has received a certificate of authority from the N. C. Secretary of State to transact business in North Carolina. State whether the entity is in existence at the time the proposal is submitted or whether the candidate intends to officially form the entity. State the names of the individuals who will sign the contract with the City and what their titles are.

4.04 Understanding of the Project

Candidates must provide a **comprehensive narrative Statement** that illustrates their understanding of the requirements of the project and the project schedule.

4.05 Methodology Used for the Project

Candidates must provide a comprehensive narrative Statement that **indicates the methodology they intend to employ and illustrates how their methodology will serve to accomplish the work and meet the City's project schedule.**

4.06 Management Plan for the Project

Candidates must **provide a comprehensive narrative statement that indicates the management plan they intend to follow and illustrates how their plan will serve to accomplish the work** and meet the City's project schedule.

4.07 Experience, Qualifications and License

It is expected that the candidate that will be awarded the contract will have experience of **at least five year in providing utility audit service to governmental or municipal agencies or equivalent.**

Candidates must provide an **organizational chart specific to the personnel assigned to accomplish the work** called for in this RFP, illustrate the lines of authority, designate the individual responsible and accountable for the completion of each component and deliverable of the RFP.

Provide a **narrative description of the organization** of the project team.

Provide a personnel roster that identifies each person who will actually work on the contract and provide the following information about each person listed:

- [a] title,
- [b] resume,
- [c] other qualifications
- [d] location(s) where work will be performed, and

Provide reference names and phone numbers for similar projects your firm has completed.

4.08 Percentage of Actual Dollar Savings (cost proposal)

Candidates must provide a percentage share of all verified actual dollars saved by rebates/refunds or rate schedule over-charges which are proven by each utility company they will charge on the savings found.

4.09 Vendor Tax ID

A valid Federal Tax ID must be submitted to the issuing office with the proposal or within five days of the City's request.

4.10 SDBE Participation

Complete the SDBE forms as specified in the SDBE portions of this RFP (8.01 Attachment B – SDBE Forms), and follow the instructions as to what to submit in the proposal.

4.11 Assumptions regarding City of Durham Actions and Participation

If your proposal assumes that the City will take certain actions or provide certain facilities, or do anything else, you should state these assumptions explicitly. If you are simply relying on the RFP's statements of what the City will do and provide, there is no need to restate that.

4.12 Conflict of Interest

If the candidate has any grounds to believe there could be a conflict of interest, such as that a City employee who is involved in awarding the contract has a connection with the candidate, please explain.

4.13 Non-Collusion

This RFP constitutes an invitation to bid or propose. Include and sign the following with your response:

The City of Durham prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.

I, _____ affirm that I have not engaged in collusion with any City employee(s), other person, corporations or firms relating to this bid, proposals or quotations. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

Signature: _____

SECTION FIVE EVALUATION CRITERIA AND SELECTION

**THE TOTAL NUMBER OF POINTS USED
TO SCORE THIS RFP IS 100**

5.01 Understanding of the Project— 10%

Proposals will be evaluated against the questions set out below.

- [a] How well has the candidate demonstrated a thorough understanding of the purpose and scope of the project?

- [b] How well has the candidate identified pertinent issues and potential problems related to the project?
- [c] How well has the candidate demonstrated that it understands the deliverables the City expects it to provide?
- [d] How well has the candidate demonstrated that it understands the City's time schedule and can meet it?
- [e] Adherence to the City's M/WBE program.

5.02 Methodology Used for the Project—10%

Proposals will be evaluated against the questions set out below.

- [a] How well does the methodology depict a logical approach to fulfilling the requirements of the RFP?
- [b] How well does the methodology match and contribute to achieving the objectives set out in the RFP?
- [c] How well does the methodology interface with the time schedule in the RFP?

5.03 Experience and Qualifications—40%

Proposals will be evaluated against the questions set out below.

- [a] Do the individuals assigned to the project have experience on similar projects?
- [b] Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the project requires?
- [c] How extensive is the applicable education and experience of the personnel designated to work on the project.
- [d] How knowledgeable are the candidate's personnel of the local area and how many individuals have worked in the area previously?

Questions regarding the firm:

- [e] How well has the firm demonstrated experience in completing similar projects on time?
- [f] How successful is the general history of the firm regarding timely and successful completion of projects?
- [g] Has the firm provided letters of reference from previous clients?

5.04 Contract Cost (Percentage Share on Savings)—40%

SECTION SIX SUBMISSION OF THE PROPOSAL

6.01 Cover Letter with Proposal

Cover letter. The proposal should contain a cover letter, signed by a principal with the candidate. The cover letter should contain the following statement:

The undersigned, whose title and position with the candidate are stated next to or beneath his or her signature, has the authority to submit this proposal (including this cover letter) on behalf of the name of candidate in response to the Request for Proposals for *Utility Audit Services* dated (*month,date*), ____,2009.

Unless otherwise clearly stated in this response to the RFP, our proposal accepts the terms and conditions stated in the RFP, including the services to be performed and the provisions of the contract to be signed.

The cover letter should contain one of the following two paragraphs A or B. If (i) the cover letter does not contain either of the following two paragraphs, or (ii) the cover letter contains the first of those paragraphs (paragraph A) but fails to comply with the instructions in the section of the RFP titled “Trade Secrets and Confidentiality,” the City may treat everything it receives from the candidate as NOT Trade Secret or confidential, and the City may disclose to the public everything it receives from the candidate.

A. With respect to all Trade Secrets that the candidate may submit to the City in connection with this proposal or the contract, if the contract is awarded to the candidate, the candidate shall comply with the section of the RFP titled “Trade Secrets and Confidentiality,” including all of its subsections, including the subsection titled “Defense of City.” The candidate acknowledges that the City will rely on the preceding sentence.

-or-

B. The candidate is not submitting any Trade Secrets to the City in connection with this proposal or the contract; if the contract is awarded to the candidate, the candidate will not submit any Trade Secrets to the City in connection with this proposal or the contract. The candidate acknowledges that the City will rely on the preceding sentence.

Addendums. The cover letter should list the last addendum that the City issues for this RFP, with a statement such as, *The undersigned candidate has read all the addendums issued by the City for this RFP, through and including Addendum No. ____.* In that blank the candidate should list the number of the last addendum.

6.02 How to Submit a Proposal

Candidates should submit their proposals in a sealed envelope. The envelope should be addressed for delivery to the Project Manager at the address shown in the "Project Manager and Contact with City" section at the beginning of this RFP.

Write the following prominently on the outside of the envelope: "**Proposal for Utility Audit Services**".

Proposals are to be received no later than 2:00PM, *December 21, 2009*. Proposals should not be made by email or fax.

Format. Submit (1) Original and (4) copies first explaining the candidates' statements for understanding the Project, next the candidates' methodology used for the project, followed by the candidate's experience and qualifications, and last the proposed contract shared percentage of savings for the candidate and the City.

Candidate to Bear Risk and Expense. No candidate will have any claims or rights against the City arising out of the participation by a candidate in the proposal process. No candidate will have any claims or rights against the City for the City's failure to award a contract to it or for awarding a contract to another person, firm, or corporation, regardless of whether the other person, firm, or corporation participated in the RFP process or submitted or did not submit a proposal that complied with the RFP.

Privilege License. The City's practice is that if a City privilege license is required to perform the work under the contract, the candidate needs to obtain the license before the City will sign the contract. For information on this license, telephone (919) 560-4700 or see http://www.durhamnc.gov/departments/finance/business_license.cfm.

Notice Under the Americans with Disabilities Act (ADA). The City of Durham will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Anyone who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in the City program, service, or activity, should contact Ms. Stacey Poston, ADA Coordinator, voice 919-560-4197, fax 560-4196, TTY 919-560-1200, or Stacey.Poston@durhamnc.gov, as soon as possible but no later than 48 hours before the scheduled event.

ATTACHMENTS

- A: Standard Form of Contract
B: SDBE Forms

7.01 Attachment A - Standard Form of Contract

CONTRACT FOR *[descriptive title]*

This contract is made and entered into as of the ____ day of _____, 20____, by the City of Durham (“City”) and *[name of firm]* (“Contractor”), *[Indicate type of entity, for instance: a corporation organized and existing under the laws of [name of State]; a limited liability company organized and existing under the laws of [name of State]; a professional corporation organized and existing under the laws of [name of State]; a professional association organized and existing under the laws of [name of State]; a limited partnership organized under the laws of [name of State]; a sole proprietorship; or a general partnership].*

Sec. 1. Background and Purpose. *[Several sentences are usually plenty.]*

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor’s. The Contractor shall *[state the services to be provided and the schedule for those services.].* In this contract, “Work” means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor’s duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 4. Contractor’s Billings to City. Compensation. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. *[City staff - Add any special requirements or detail needed in the invoices.]* Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall pay the Contractor for the Work as follows: *[Describe the timing of payments, how amounts are calculated, etc. List the kinds of expenses, if any, that the City will reimburse.].* The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 5. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled “Prompt Payment to Subcontractors,” he or she will be referred to as the “Project Manager”) determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

- (i) the amount of interest due to the Subcontractor under subsection (a), and/or
- (ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled “Prompt Payment to Subcontractors”) shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage consistent with same terms as those between the Contractor and the City.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the

Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 6. Insurance. [*Consult Risk Management.*]

Sec. 7. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in section ____ [*City staff – That blank will usually be Section 2 but it depends on where you insert the schedule of the Contractor’s performance*] above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City’s rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 8. Attachments. The following attachments are made a part of this contract:

Attachment A [*Insert title of attachment*] containing [*insert number*] page(s).

Attachment B [*Insert title of attachment*] containing [*insert number*] page(s).

In case of conflict between an attachment and the text of this contract excluding the attachment, the text of this contract shall control.

Sec. 9. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

[*Insert name and department*]

City of Durham

101 City Hall Plaza

Durham, NC 27701

The fax number is (919)____.

To the Contractor:

[*Insert name and address*]

The fax number is _____.

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 10. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection “a,” the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections “a” above and “c” below -- “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys’ fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). “Indemnitees” means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor’s Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection “a” above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 11. Miscellaneous

(a) Choice of Law and Forum. This contract shall be deemed made in Durham County, North Carolina.

This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunity Program), as amended from time to time. The failure of the Contractor to comply with that chapter shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of Article III of Chapter 18, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Contractor. Section 18-59(f) of Article III of Chapter 18 provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(k) Principles of Interpretation and Definitions. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation.

(2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

(l) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

Sec. 12. Termination for Convenience ("TFC"). (a) *Procedure.* Without limiting any party's right to terminate for breach, the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor a one hundred dollar TFC fee and pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

City's finance officer

Date

[Note to City staff – Where there are italics or blanks in this contract, you must put something. The preaudit section can be omitted when it is clear that the contract does not require the City to pay money to the Contractor. If in doubt, include the preaudit section. The EEO Provisions are included above, so they don't need to be attached separately. Place a header or footer on each page (if you like, you may skip page 1) to the following effect:
[Insert the name of the contract] between the City of Durham and [name of Contractor], page [insert page number]

When you insert the signature and notarization sections, insert the Contractor's name in both of those sections.]

8.01 Attachment B - SDBE Forms

CITY OF DURHAM SMALL DISADVANTAGED BUSINESS ENTERPRISE PROFESSIONAL SERVICES FORM



Equal Opportunity/ Equity Assurance Department

Mailing Address:

101 City Hall Plaza
Durham, North Carolina 27701

Street Address:

302 East Pettigrew Street, C-180
Durham, North Carolina 27701

Phone: (919) 560-4180

Facsimile: (919) 560-4513

CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM

Policy Statement

It is the policy of the City to provide equal opportunities for City contracting to small firms owned by socially and economically disadvantaged persons doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct the present effects of past discrimination and to resolve complaints of discrimination.

Goals

To increase the dollar value of all City contracts for goods and services awarded to small disadvantaged business enterprises, it is a desire of the City that the contractor will voluntarily undertake efforts to increase the participation of socially and economically disadvantaged individuals at higher skill and responsibility levels within non-minority firms engaged in contracting and subcontracting with the City.

The Equal Opportunity/Equity Assurance Director shall establish project specific goals for each project or contract based upon the availability of small disadvantaged business enterprises (SDBE's) within the defined scope of work, delineated into percentages of the total value of the work.

Equal Business Opportunity Ordinance SDBE Participation Documentation

If applicable information is not submitted with your proposal, your proposal will be deemed non-responsive.

Declaration of Performance must be completed and submitted with your proposal.

SDBE Participation Documentation must be used to document participation of Small Disadvantaged Business Enterprise (SDBE) on Professional Services projects. All SDBEs must be certified by the City of Durham's Equal Opportunity/Equity Assurance Department prior to submission date. If a business listed has not been certified, the amount of participation will be reduced from the total utilization.

Managerial Profile must be used to list the managerial persons in your workforce who will be participating in this project.

Equal Employment Opportunity Statement for your company must be completed and submitted with your proposal.

Employee Breakdown must be completed and submitted for the location providing the service/commodity. If the parent company will be involved in providing the service/commodity on the City contract, a consolidated employment breakdown must be submitted.

Letter of Intent to Perform as a Sub-consultant/Subcontractor must be completed for SDBEs proposed to perform on a contract. This form must be submitted with the proposal.

Post Proposal Submission SDBE Deviation

Post proposal submission SDBE deviation participation documentation must be used to report and deviation from SDBE participation either prior to or subsequent to startup of the project. The Equal Opportunity/Equity Assurance Department must be notified if the proposed sub-consultant/subcontractor is unable to perform and for what reasons. Substitutions of sub-consultants/subcontractor, both prior to and after awarding of a contract, are subject to City approval.

SDBE Goals Not Met/Documentation of Good Faith Efforts

It is the responsibility of consultants/contractors to make good faith efforts. Good Faith Efforts means the sum total of efforts by a particular business to provide equitable participation of socially and economically disadvantaged employees and sub-consultants/subcontractors.

Whenever contract alternatives, amendments or extra work orders are made individually or in the aggregate, which increase the total value of the original contract, the consultant must make a good faith effort to increase SDBE participation such that the amounts subcontracted are consistent with the established goals.

SELECTION OF CONSULTANTS/CONTRACTORS FOR ARCHITECTURAL/ENGINEERING AND OTHER PROFESSIONAL SERVICES

Goal

The purpose is to provide Small Disadvantaged Businesses equal opportunities for participation on City of Durham contracts.

Definition of the Scope of the Selection Policy

The Equal Opportunity/Equity Assurance Director shall establish SDBE participation goals for each contract to be awarded by the City. Project specific goals for each project or contract will be based upon the availability of small disadvantaged business enterprises (SDBE's) within the defined scope of work, delineated into percentages of the total value of the work.

Small Disadvantaged Business Proposal Requirements

The prime consultant/contractor shall submit a proposal in accordance with the City of Durham's Request for Proposal. In addition, the prime consultant/contractor must submit all required Professional Services SDBE Forms.

Selection Committee for Professional Services

A selection committee shall be established to be composed of the following: City Manager or a designated representative of this office; Director of Finance or a designated representative of this office; department head responsible for the project; City Engineer if engineering services are involved; the Equal Opportunity/Equity Assurance Director and Purchasing Manager. Other representatives shall be called upon as needed based on their areas of expertise.

The committee shall screen the proposals based on the following criteria:

1. Firms; interest in the project;
2. Current work in progress by firm;
3. Past experience with similar projects;
4. General proposal for carrying out the required work;
5. Designation of key personnel who will handle the project, with resume for each;
6. Proposed associate consultants/contractors, SDBE subconsultants;
7. Indication of capability for handling project;
8. Familiarity with the project;
9. Fees that have been charged for recent comparable projects;
10. References;
11. SDBE Participation; and
12. Documentation of Good Faith efforts.

After ranking the firms presenting proposals based on the above criteria, interviews will be conducted by the selection committee with the top ranked firms (3-5). The contracting department will make the final recommendation, prepare contracts for review by the City Attorney, and prepare the recommendation for the City Council including the following:

1. Description and scope of the project;
2. Recommended firm;
3. Contract cost;
4. Time limits;
5. Basis for selection;
6. Source for funding;
7. Equal Business Opportunity Ordinance compliance; and
8. Recommendation that the contract be approved by the City Council.

Contract Award

A provision must be written in each contract with an architect or engineer requiring them to work with Equal Opportunity/Equity Assurance Department in creating and identifying separate work.

Project Evaluation

An evaluation shall be made of each contract after its completion to be used in consideration of future professional services contracts. The evaluation shall cover appropriate items from the check list for ranking applicants. A copy of the evaluation shall be given to the consultant, and any comment he/she cares to make shall be included in the files.

DECLARATION OF PERFORMANCE BY CONSULTANT/CONTRACTOR

Briefly address each of the following items:

1. A brief synopsis of the company and the products/services it provides:

2. Describe the normal procedure used on a bid of this type, giving the flow of purchase from the company to the ultimate purchaser:

3. List anyone outside of your company with whom you will contract on this bid:

The undersigned consultant/contractor certifies that: (check appropriate box)

- a) _____ It is the normal business practice of the consultant/contractor to perform all elements of the contract with its own workforce without the use of subcontractors/vendors; and
- b) _____ That the above documentation demonstrates this *firm's* capabilities to perform all elements of the contract with its own work force or without the use of subcontractors/vendors.
- c) _____ The vendor/contractor will use a subconsultant(s) in the fulfillment of this scope of work.

Date

Authorized Signature

**PARTICIPATION DOCUMENTATION
(TO BE COMPLETED BY PRIME CONSULTANT/CONTRACTOR ONLY)**

Names of all firms (including prime and sub consultants/ Sub contractors)	Location	SDBE Firm Yes/No	Nature of Participation	% of Project Work

TOTAL _____

Name - Authorized Officer of Prime Consultant/Contractor Firm (Print/Type)

Signature - Authorized Officer of Prime Consultant/Contractor Firm

Date

MANAGERIAL PROFILE

Name of Firm: _____

Contact Person: _____

Title: _____

Address: _____

Telephone No.: _____

Date: _____

List the managerial persons in your work force who will be participating in this project, including name, position, and whether the individuals are minority or woman within the definition* of the City of Durham's Equal Business Opportunity Ordinance.

Managerial Employees

NAME	POSITION	SOCIALLY/ECONOMICALLY DISADVANTAGED* (YES/NO)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

* M-Minority(African American), W-Woman, Other-H-Hispanic, AI-American Indian, AS-Asian American, Handicapped

EQUAL OPPORTUNITY STATEMENT

(You may submit your organization's EEO policy in lieu of this sheet)

EMPLOYEE BREAKDOWN

Part A – Employee Statistics for the Primary Location

MALES

FEMALES

Employment Category	Total Employees	Total Males	Total Females	White	Black	Hispanic	Asian or Alaskan Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manger													
Professional													
Labor													
Clerical													
Totals													

Part B – Employee Statistics for the Consolidated Company *(See instructions for this form on whether this part is required.)*

MALES

FEMALES

Employment Category	Total Employees	Total Males	Total Females	White	Black	Hispanic	Asian or Alaskan Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manger													
Professional													
Labor													
Clerical													
Totals													

EEO-1 Report may be submitted in lieu of this form

Letter of Intent to Perform as a Sub-Consultant

The undersigned intends to perform work in connection with the above project as a SDBE:

Minority (African American) ☐ Woman ☐ Hispanic ☐
American Indian ☐ Asian American ☐ Handicapped ☐

The SDBE status of the undersigned is certified by the City of Durham as identified by the attached copy of certification or the attached SDBE Contractor Identification List supplied by the EO/EA Department.

The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed):

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<u>ITEMS</u>	<u>PROJECTED COMMENCEMENT DATE</u>	<u>PROJECTED COMPLETION DATE</u>

The undersigned will subcontract _____% of the dollar value of this contract to a SDBE subconsultant/subcontractor and/or non-SDBE subconsultant/subcontractor.

The undersigned will enter into a formal agreement in the amount of \$_____ for the above work with you, conditioned upon your execution of a contract with the City of Durham.

Name _____ Title _____

Company _____ Telephone _____

Address _____

Signature _____

REQUEST TO CHANGE SDBE PARTICIPATION

Project: _____

Name of bidder or consultant: _____

Name and title of representative bidder or consultant: _____

Address (including zip code): _____

Telephone number: _____ Fax number: _____

Email address: _____

Total amount of original contract, before any change orders or amendments: _____

Total amount of the contract, including all approved change orders and amendments to date, but not counting the changes proposed in this form: _____

Dollar amount of changes proposed in this form: _____

The proposed change (*check one*) ☐ **increases** ☐ **decreases** the dollar amount of the bidder's/consultant's contract with the City.

Does the proposed change decrease the SDBE participation? (*check one*) ☐ **yes**

☐ **no**

If the answer is **yes**, complete the following:

BOX A. For the subcontract proposed to be changed (increased, reduced, or eliminated):

Name of subconsultant: _____

Goods and services to be provided before this proposed change: _____

Is it proposed to eliminate this subcontract? ☐ yes ☐ no

If the subcontract is to be increased or reduced, describe the nature of the change (*such as adding \$5,000 in environmental work and deleting \$7,000 in architectural*):

Dollar amount of this subcontract before this proposed change: _____

Dollar amount of this subcontract after this proposed change: _____

This subconsultant is (*check one*):

☐ 1. City-certified Black-owned SDBE

☐ 2. City-certified Women-owned SDBE

3. City-certified SDBE that is neither Black-owned nor women owned, but to be credited as

3(a) ☐ Black-owned SDBE

3(b) ☐ Women-owned SDBE

☐ 4. not a City-certified SDBE

BOX B. Proposed subcontracts other than the subcontract described in Box A above

Name of subcontractor for the new work: _____

Goods and services to be provided by this proposed subcontract: _____

Dollar amount proposed of this proposed subcontract: _____

This subcontractor is (*check one*):

- ☐ 1. City-certified Black-owned SDBE
- ☐ 2. City-certified women-owned SDBE
- 3. City-certified SDBE that is neither Black-owned nor women owned, but to be credited as

3(a) ☐ Black-owned SDBE

3(b) ☐ Women-owned SDBE

☐ 4. not a City-certified SDBE

Add additional sheets as necessary.

SDBE GOALS NOT HAVING BEEN MET. The following information must be presented by the consultant concerning good faith efforts taken.

It is the responsibility of consultants to make good faith efforts. Any act or omission by the City shall not relieve them of this responsibility. For future efforts, it shall be comprised of such efforts which are proposed to allow equitable participation of socially and economically disadvantaged employees and sub-consultants/subcontractors. The City Manager shall apply the following criteria, with due consideration of the quality, quantity, intensity and timeliness of efforts of consultants/contractors, in determining good faith efforts to engage SDBEs along with other criteria that the City Manager deems proper:

Name of Bidder: _____

*If you find it helpful, feel free to attach pages to explain your answers. **How many pages is your firm attaching to this questionnaire?** _____ (Don't count the 2 pages of this questionnaire.)*

If a yes or no answer is not appropriate, please explain the facts. All of the answers to these questions relate only to the time before your firm submitted its bid or proposal to the City. In other words, actions that your firm took after it submitted the bid or proposal to the City cannot be mentioned or used in any answers.

1. SOLICITING SDBEs.

(a) Did your firm solicit, through all reasonable and available means, the interest of all SDBEs certified (that is, in the City's database) in the scopes of work of the contract? ☐ **yes** ☐ **no**

(b) In such soliciting, did your firm advertise? ☐ **yes** ☐ **no** Are you attaching copies to this questionnaire, indicating the dates and names of newspaper or other publication for each ad if that information is not already on the ads? ☐ **yes** ☐ **no**

(c) In such soliciting, did your firm send written (including electronic) notices or letters? Are you attaching one or more sample notices or letters? ☐ **yes** ☐ **no**

(d) Did your firm attend the pre-bid conference? ☐ **yes** ☐ **no**

(e) Did your firm provide interested SDBEs with timely, adequate information about the plans, specifications, and requirements of the contract? ☐ **yes** ☐ **no**

(f) Did your firm follow up with SDBEs that showed interest? ☐ **yes** ☐ **no**

(g) With reference to the SDBEs that your firm notified of the type of work to be subcontracted -- Did your firm tell them:

(i) the specific work your firm was considering for subcontracting? ☐ **yes**
☐ **no**

(ii) that their interest in the contract is being solicited? ☐ **yes** ☐ **no**

(iii) how to obtain and inspect the applicable plans and specifications and descriptions of items to be purchased? ☐ **yes** ☐ **no**

2. BREAKING DOWN THE WORK.

(a) Did your firm select portions of the work to be performed by SDBEs in order to increase the likelihood that the goals would be reached? ☐ **yes** ☐ **no**

(b) If **yes**, please describe the portions selected. **ANSWER:**

3. NEGOTIATION. In your answers to 3, you may omit information regarding SDBEs for which you are providing Form E-105.

(a) What are the names, addresses, and telephone numbers of SDBEs that you contacted? **ANSWER:**

(b) Describe the information that you provided to the SDBEs regarding the plans and specifications for the work selected for potential subcontracting. **ANSWER:**

(c) Why could your firm not reach agreements with the SDBEs that your firm made contact with? Be specific. **ANSWER:**

4. ASSISTANCE TO SDBEs ON BONDING, CREDIT, AND INSURANCE.

(a) Did your firm or the City require any subcontractors to have bonds, lines of credit, or insurance?

☐ **yes** ☐ **no** (Note: In most projects, the City has no such requirement for subcontractors.)

(b) If the answer to (a) is **yes**, did your firm make efforts to assist SDBEs to obtain bonds, lines of credit, or insurance? ☐ **yes** ☐ **no** If **yes**, describe your firm's efforts. **ANSWER:**

(c) Did your firm provide alternatives to bonding or insurance for potential subcontractors? ☐ **yes** ☐ **no** If **yes**, describe. **ANSWER:**

5. GOODS AND SERVICES. What efforts did your firm make to help interested SDBEs to obtain goods or services relevant to the proposed subcontracting work? **ANSWER:**

6. USING OTHER SERVICES.

(a) Did your firm use the services of the City to help solicit SDBEs for the work? ☐ **yes** ☐ **no** Please explain. **ANSWER:**

(b) Did your firm use the services of available minority/women community organizations, minority and women contractors' groups, government-sponsored minority/women business assistance agencies, and other appropriate organizations to help solicit SDBEs for the work? ☐ **yes** ☐ **no** Please explain. **ANSWER:**