Headline: THROUGH THE CRACKS

SubHead: Agencies fail to give applications the scrutiny they need, resulting in certification of companies that shouldn't be in the programs.

Byline: By Jeffrey Meitrodt and Mark Schleifstein
Staff writers

Date: Tuesday, March 27, 2001

Text: For the past five years, E.C. Durr Heavy Equipment Inc. has been the biggest success story of the disadvantaged business program at the Orleans Levee Board.

In reports to the U.S. Department of Transportation, which oversees the program, the Levee Board has taken credit for awarding $7.2 million in construction work to E.C. Durr.

That's almost half the work that the agency has funneled to disadvantaged businesses since 1994. In fact, without the woman-owned company's participation, the Levee Board wouldn't have come close to meeting its annual goal of awarding at least 16 percent of its work to disadvantaged firms.

There's just one problem: E.C. Durr and its majority owner, Donna Stumpf, never should have been in the program, agency officials now acknowledge.

"No, absolutely not. She's not disadvantaged," said Nina Hebert-Marchand, who runs the Levee Board's disadvantage business enterprise program.

Durr is hardly the only company that slipped through the cracks. In its analysis of seven local agencies' programs aimed at helping disadvantaged business enterprises, or DBEs, The Times-Picayune found dozens of companies that were approved for participation despite evidence indicating that their owners didn't meet the rules.

Eleven of those companies are owned by millionaires. Others should have been disqualified because their revenues are too high. And, officials at local agencies with DBE programs said, some are operating as front companies, where women or minorities claim to be the owners of companies that are, in fact, controlled by nondisadvantaged individuals.

Some of those companies, such as Durr, were denied certification by at least one agency and later approved by other agencies where the standards, or the amount of scrutiny, were significantly lower.

The result: Since 1989, at least $105 million in work was awarded to 48 firms that weren't eligible to participate in the programs or wouldn't qualify for similar programs run by the U.S. Small Business Administration. That's a third of the $314 million that flowed through these programs in the past 12 years.

That infuriates many disadvantaged business owners who have received little or no help from the programs. In interviews with more than 100 DBE owners, the most common lament was that too many of the wrong businesses are being helped while the truly underprivileged are being left out in the cold.

"When there is big money on the table, it never gets to where it is supposed to go," said Lyle Barrois, whose security company was certified by six local agencies and received no work through the programs. "The big contractors eat it all up. . . . We are fighting over crumbs."

Allen Marcelin, whose construction company has received about $200,000 through the programs, is equally discouraged. "These programs weren't set up to help one black man become a millionaire," said Marcelin, an African-American. "The same people reap the benefits over and over again, and it is not extended to the community at large; it is the privileged few."

'Misused'

Officials at local agencies with DBE programs have long acknowledged that the programs are ripe for misuse.

In a 1989 audit of the Sewerage & Water Board of New Orleans, an outside accounting firm found that the agency's program had been "misused" by people "who are clearly not socially and economically disadvantaged."

In 1994, former Louisiana Supreme Court Chief Justice Revius Ortique Jr., while running his first meeting as chairman of the New Orleans Aviation Board, said he was concerned about some of the companies in the airport's program.

"We know that sometimes DBEs are not really DBEs," Ortique said. "There have been some company reorganizations where the husband who was the president of the corporation has now put his wife or his sister in as president. . . . We are not so naive as to believe that all has been pure."

Of the seven local agencies whose programs were analyzed by The Times-Picayune, the Aviation Board has rejected the most applicants. In the past five years, the agency has denied certification to 59 companies, or 8 percent of the more than 700 companies that have sought DBE status, records show. The water board denied 36 companies, or 9 percent of 411 applications, while the city denied 21, or 9 percent of 242 applications. The other four agencies -- the Housing Authority of New Orleans, the Levee Board, the Orleans Parish School Board and the Regional Transit Authority -- accepted all comers.

By comparison, the U.S. Small Business Administration, which typically reviews more than 1,000 applications per year for its disadvantaged business program, has an average rejection rate of about 30 percent, records show.

Local officials said they are doing the best they can with limited resources.

"It's a challenge to implement the programs effectively," Mayor Marc Morial said. "What city functions do we have adequate resources for Our police department is the only area where we don't need additional resources."

The big question

Still, administrators usually don't have to do much digging to find out whether a firm really is disadvantaged. Besides filling out an application, which can run up to 32 pages at some agencies, candidates must submit a thick bundle of records when they seek disadvantaged status. Some agencies ask for everything from federal tax returns and personal financial statements to signed copies of leases, stock transfer ledgers and minutes from corporate shareholder meetings.

Administrators are expected to plow through that information and answer two basic questions. First, is the company really owned and controlled by the applicant If so, is that applicant socially and economically disadvantaged

At four of the seven local agencies with DBE programs, minority- and woman-owned companies are considered "presumptively disadvantaged," which means they automatically are certified unless someone files a written complaint about the applicant or the certifying agency finds evidence that the company or its owners don't qualify.

The level of scrutiny differs at each agency. Some keep their applications simple, requiring applicants to provide nothing more than basic business information, such as annual revenue and owners' names.

Other agencies hand out long and detailed questionnaires. For instance, at three local agencies, applicants are asked probing questions about their childhood: Did they grow up in a public housing development Were they raised by a single parent Did their family receive welfare benefits Applicants also are asked about discrimination they may have experienced in and outside the workplace. They're asked whether they've been denied access to schools or social clubs, jobs or promotions. And they're asked to explain how their disadvantage has affected business.

Regardless of how much detail the agencies require, administrators are supposed to conduct site visits to verify the information.

Easy ticket

A review of hundreds of files, however, shows there are few wrong answers on these applications.

For example, of the 24 companies that filled out detailed questionnaires for the city before it revised its application in 1995, 13 business owners claimed absolutely no social, employment, developmental, business or economic disadvantages -- and all were certified as disadvantaged. At the School Board, six owners claimed no social or economic disadvantages. They also were certified.

Officials at the Housing Authority of New Orleans went so far as to say that the answers really don't matter, as long as the company is minority- or woman-owned and nobody files a written protest about the company's certification. No one has challenged a HANO applicant in more than seven years, and records show that the agency has certified at least 22 companies that should have been disqualified.

"Someone has to assert that they are not disadvantaged. Then we would review the individual," said HANO procurement director Mary Alexander, who helps oversee the program. "But until someone asserts otherwise, they are assumed to be disadvantaged by their ethnic background or gender."

One of the most flagrant examples of a company that survived the screening process is H.J. Russell & Co., an Atlanta construction company that helped build Atlanta's Hartsfield International Airport, as well as the 1996 Olympic Stadium, the Georgia Dome and the Fulton County Jail.

With 1999 revenue of $191 million, the company is as big as Boh Bros. Construction Co., the largest construction company in New Orleans. H.J. Russell also is one of the 10 largest black-owned businesses in the country. Its controlling owner, Herman Russell, is personally worth at least $25 million, according to published reports.

Though the company is much too large to qualify for local DBE programs, it was granted disadvantaged status by HANO and the Levee Board.

In the end, neither agency awarded the firm any work, but Russell serves as an example of how easy it is to become certified. Altogether, of the $40 million in business credited to minority-owned firms by HANO in the past five years, at least 31 percent of the work went to companies that did not qualify for the agency's DBE program.

Asking the experts

Administrators at local agencies said they approved companies that claimed no disadvantages because the applications are not scored, meaning there is no specific threshold for proving discrimination. None of the seven local agencies scores DBE applications.

"We felt that it was necessary to look at more of what people were writing down rather than give a score," said School Board administrator James Lloyd, who stopped grading applications several years ago.

Considering the complexities of defining disadvantage, two local agencies joined forces in 1997 and hired a panel of experts: five university professors with degrees in either sociology or economics who earn between $75 and $200 an hour to help determine who's disadvantaged.

The panel usually meets once a month, and members said they spend as little as five minutes discussing a company before voting on whether it should be certified as a disadvantaged business. The panel certifies firms for the water board and the portion of the airport's program that does not include federal funding or oversight.

"There is a certain amount of subjectivity to it," said panelist Ronald Schroeder, an economics professor at Loyola University. "It is not a mathematical equation. . . . Each business is looked at and examined on its own merits. We don't have any automatic cutoff for size or anything like that."

That has produced some puzzling rulings. In 1997, for instance, the panel rejected C&S Consultants owner Eugene Colbert Jr. because his "household income is too high." Colbert's income level wasn't disclosed, but he previously earned as much as $169,488 per year as the majority owner of the engineering firm, records show. By contrast, the panel approved Citywide Testing & Inspections last year, even though its majority owner, Roy A. Glapion, reported household income of $602,581 in 1999 and $333,028 in 1998 on his applications.

Glapion said his company doesn't need the programs to survive, but he also said it's unfair to penalize him just because he's making a good living.

"The program is set up to help you become successful," said Glapion, the son of late City Councilman Roy Glapion. "How do you define success It depends on who you talk to. This is America. You should be able to do what you want, as long as it is legal and (you are) willing to sacrifice like I have."

Panel discussion

Panel members said there is no hard limit on how much someone can make and still be considered disadvantaged.

"If someone has a household income of $100,000, we would certainly give that more scrutiny than if someone has a household income of $25,000," Schroeder said. "But it is not a fixed number."

Likewise, the panel has no limits on the personal net worth of an applicant -- the measure of a person's assets minus their liabilities -- which helps explain why it has approved several millionaires for the programs. In addition, panelists said they do not enforce agency rules that require them to deny certification to companies with revenue above levels established by the U.S. Small Business Administration. Those limits range from $500,000 to $25 million.

Panelist Jose Bautista, an economics professor at Xavier University, said officials at the airport and the water board "implied" that the panel did not have to strictly enforce the revenue limitations. Other panelists said they're not sure how many firms they have approved that topped the limits, but they said it wasn't many. Revenue data on most companies approved by the panel was unavailable.

"The panel was told to use our expertise in determining economic or social disadvantage," Bautista said. "So we use our expertise."

Gerard Victor, an attorney for the water board, said the agency did not give the panel instructions on how to interpret the regulations or how to use the size limitations.

"We never gave the panel marching orders," Victor said. "The panel members were treated with a great deal of respect, and they understand that they are the decision-makers."

Panelists said that the system is not perfect and that there have been strong disputes over certain decisions. "What we struggle with is what to do in situations where the company is perhaps grossing very little money but the owner is doing relatively well," said Carl Wiltz, a sociology professor at Dillard University. "Do you throw the baby out with the bath water, so to speak It is a struggle with us."

Morial said he doesn't quarrel with the panel's work. "They have the educational background necessary to form an expert opinion," he said. "Bureaucrats and city employees don't."

Salary caps

The panel's approach is similar to the city's, where there also are no limits on household income, net worth or annual revenue. Such flexibility is rare. DBE experts, including consultants who have studied the issue for the city, say the vast majority of programs in the United States aimed at minority- and woman-owned businesses put restrictions on the personal or corporate finances of an applicant.

The most common approach is to limit certification to companies that meet the revenue limits set by the Small Business Administration. All but one of the local agencies with DBE programs have adopted those caps, but they haven't always been enforced. While 12 companies have been rejected because their revenues were too high, records show, dozens of firms that exceeded the SBA's limits were approved.

One of those companies is Carlo Ditta Inc., one of the largest suppliers of ready-mix concrete in Louisiana. In the past decade, the company has been certified as disadvantaged by five local agencies -- even though its revenues have exceeded SBA guidelines since at least 1987. The company also is one of the biggest recipients of money from local DBE programs, collecting almost $9.6 million as a subcontractor on various local projects.

Carlo Ditta officials said the company's finances shouldn't matter, because the firm is owned primarily by a woman, Felicia Ditta. "We never said we were underprivileged," said vice president and part owner J. Carlo Ditta, a white man who was interviewed before he died last fall.

Local agencies have been equally forgiving where personal finances are concerned. None has a limit on an applicant's household income, and until recently just one put a ceiling on an applicant's net worth.

For its popular 8(a) program, the Small Business Administration disqualifies applicants whose net worth exceeds $250,000 and ejects participants from the program if their net worth subsequently tops $750,000. That doesn't include an applicant's equity in their home or business. The housing authority is the only local agency to adopt that limit, but it has never been enforced, HANO officials acknowledged. Three other agencies -- the Aviation Board, the Levee Board and the RTA -- added a $750,000 limit in 1999.

Concessions excepted

The lack of tough financial limits has allowed some very wealthy people to participate. One of them is Dale Mason Cochran, an African-American who grew up in New Orleans and is the wife of celebrity lawyer Johnnie Cochran, whose famous clients have included O.J. Simpson and rapper Sean "Puffy" Combs.

Last year, when Johnnie Cochran was shopping for a personal jet, his finances were the subject of a feature story in The New York Times. Cochran, who typically earns at least $1 million per year, told The Times he was worth $5 million. That included homes in Los Angeles, a condominium in Manhattan and two apartment buildings in West Hollywood -- but not the value of Cochran's law firm. With a rapidly growing seven-figure income, Cochran's net worth was expected to reach $25 million to $50 million within five years, his accountant reported.

But Johnnie Cochran's wealth has not hampered his wife's ability to participate in the airport's disadvantaged business program. In 1996, when her company -- Concourse Concessions-N.O. Inc. -- was approved for the airport's program, the Aviation Board had no net-worth limits. The company subsequently landed a big piece of a 10-year contract to lease space at the airport for news and gift stores. The deal occurred when concessions giant W.H. Smith of Atlanta formed a joint venture with Concourse Concessions to meet the airport's DBE goal on the contract. So far, records show, the contract has steered more than $4 million in revenue to Concourse Concessions.

Since then, the airport imposed its $750,000 net-worth limit at the direction of the U.S. Department of Transportation, but Dale Cochran still qualifies because that limit does not apply to DBEs involved in the concessions business. Transportation officials have recommended a $2 million net-worth cap for concessionaires, but that proposal has yet to be implemented.

Dale Cochran declined to comment.

Interestingly, Cochran's joint venture is the only business ever to be sanctioned by the airport for failing to meet a goal for DBE participation. In 1999, the airport notified Cochran that her joint venture with W.H. Smith owed $196,319 for failing to purchase 35 percent of its goods and services from other DBEs, as the venture's contract required.

"Your failure to meet your goal of 35 percent in the procurement area presents serious problems, which must be remedied," DBE liaison officer Calhoun Moultrie Jr. said in his letter to Cochran.

Despite several requests, Cochran's joint venture with W.H. Smith has yet to pay the fine, airport officials said recently.

'The biggest farce'

Another millionaire who continues to benefit from local DBE programs is Nolan Marshall, who remains certified by several local agencies even though he is worth at least $1.8 million. While he defends his place in the programs, Marshall is surprisingly critical of the certification process. His pet peeve: the proliferation of woman-owned businesses that should not be certified.

"They should be tougher on getting rid of sham and woman-owned businesses," Marshall said. "That's the biggest farce of the whole thing. . . . They're taking money that should go to the other companies."

Often, woman-owned businesses are controlled by nondisadvantaged men, usually the husbands of the female applicants, Marshall said.

In fact, that has been a leading reason given for rejecting companies, records show. At the airport, at least two dozen companies were denied certification because administrators determined that the female applicants didn't actually own or control the businesses.

A masonry company was rejected when the airport determined that the person who ran the company was the applicant's husband, who had 28 years of experience as a bricklayer. Several other firms were denied certification when the airport discovered that the applicants' husbands financed the ventures.

E.C. Durr Heavy Equipment Inc. was rejected March 10, 1995, when majority owner Donna Durr Stumpf received a four-page letter outlining the many reasons why her firm failed to qualify for the airport's DBE program.

Like many other woman-owned businesses, E.C. Durr's stock ownership was split on a 51-49 basis between Stumpf and her husband, Stephen Stumpf, who are both white. After paying a visit to the company, airport DBE officer Moultrie concluded that Donna Stumpf had little to do with the business and lacked the experience to run the construction company.

The airport zeroed in on her compensation: While Mrs. Stumpf brought home $12,000 per year as the firm's secretary and treasurer, her husband was making as much as $292,000 as chairman and chief executive officer. Also, Moultrie noted, Donna Stumpf was out of the office most of the time, signed few checks, did no estimating and has no training in the construction business. He even questioned the size of her office, which was much smaller -- and less comfortably appointed -- than those of her husband and the company president.

Donna Stumpf declined a request for an interview, but her husband said the company did nothing wrong in trying to get help as a disadvantaged business. E.C. Durr was successful in getting certified by the RTA and Levee Board.

"Our applications and qualifications as a woman-owned business were always truthful and appropriate and were accepted as such by the agencies," he said. "We did not use our status as a woman-owned business extensively, but did obtain several contracts."

At the Levee Board, Hebert-Marchand regrets that she never talked to her counterpart at the airport about E.C. Durr. "I think if we had the rapport then that we have now, maybe companies like E.C. Durr wouldn't have been certified," she said.

'Going after survival'

As Stephen Stumpf tells it, his wife grew up in the construction business. Her father, Edward C. Durr Sr., started the company in the mid-1950s to capitalize on growth in Jefferson Parish. It had a specific niche: filling residential lots with earth to keep them above water.

"I'd say Mr. Durr filled 75 percent of the house lots in Jefferson Parish," Stephen Stumpf said.

Originally, Donna Stumpf had no interest in the bulldozer business. In the late 1960s, she won several beauty contests, including Miss Jefferson Parish and New Orleans Dairy Princess. At the time, she told reporters, she planned on a career in "fashion merchandising." She and Stephen were married in 1972 and moved to Nashville, Tenn., where Stephen Stumpf was general manager of a national sprinkler company.

Several years later, Donna's father called to see whether they would be interested in buying him out. Stumpf said the call came as a surprise to his wife.

"She assumed her brother would get first crack at the business, but her brother didn't want any part of it," Stumpf said. "I think she was as surprised as I was. At that time, we didn't think we'd ever come back to New Orleans."

Originally, Stumpf said, his wife owned 50 percent of the business, while he owned 40 percent and his father-in-law retained 10 percent. Shortly before Durr died in 1991, he sold his remaining stock, making sure his daughter retained a controlling interest in the firm. Stumpf said the division of stock had nothing to do with DBE certification. "I wish I was that smart," he said.

In the early years, Stumpf said, his wife was "very active" in the business, running the office and handling paperwork. Later, as the business grew, she reduced her involvement and the company hired a construction veteran named Freddy Yoder to work as president.

"We've grown to the point where we've got professional management in place," Stumpf said. "She and I are the visionaries of the business, but Freddy runs the day-to-day operations."

It's hard to see why the company needed help. By 1993, when E.C. Durr was seeking disadvantaged status from the Levee Board, its annual sales had climbed to $6 million, a big jump from 1976, when it took in about $400,000, Stumpf said. By 1997, revenue for the company, which now specializes in heavy construction, was up to $9.7 million.

Moreover, the company has successfully competed against the giants of the local construction business on public and private projects, winning millions of dollars in work without public assistance.

But Stumpf said he had no idea E.C. Durr would be so successful as the 1990s began. At the time, work had largely dried up in the private sector, and public-sector work was increasingly being set aside for minority- and woman-owned businesses. Stumpf said he and his wife decided to jump on the bandwagon.

"We were going after survival," he said. "We were trying to capture the markets we were so accustomed to capturing."

In the end, however, Durr didn't need the programs. The Levee Board took credit in its annual DBE reports for giving the company more than $7 million in work, making it look as if the agency was doing a good job meeting its DBE goals.

But for Durr, just $1.4 million came through the DBE program, records show. The company received the rest by offering the lowest price on publicly bidded work.

"Looking back, we would have survived without it," said Stumpf, whose company dropped out of the DBE program a year ago. "It made up a very small portion of our volume."

======================================

DECIDING WHO'S DISADVANTAGED

Two local agencies, the Sewerage & Water Board and the Aviation Board, pay a panel of five university professors from $75 to $200 an hour to help determine if applicants are socially and economically disadvantaged.

Income limits

* With no caps on an applicant's household income or personal net worth, some panelists say they are free to broadly interpret agency guidelines on who is "economically disadvantaged." In fact, two millionaires and other company owners making as much as $500,000 per year have been approved.

Revenue limits

* The panelists say they are not enforcing limits on company revenue for either agency because officials didn't give them those instructions. They said they're not sure how many companies they've approved that were over the revenue limits. Water Board attorney Gerard Victor said the board is leaving it up to the panel to decide how to determine if an applicant is disadvantaged.

Social disadvantage

* Panelists review applicants' answers to a series of questions about their backgrounds. But those answers are not graded or scored, and there are no "wrong" answers that would automatically disqualify an applicant. Some applicants were certified even though they claimed no social disadvantages.

OTHER PANELISTS INCLUDE:

* James E. Blackwell, University of Massachusetts professor emeritus of sociology, who now lives in New Orleans

* Beverly S. Favre', Southern University of New Orleans professor of sociology

*Carl Wiltz, professor of Sociology at Dillard University

==

. . . .

Jeffrey Meitrodt can be reached at jmeitrodt@timespicayune.com or (504) 826-3497.

Mark Schleifstein can be reached at mschleifstein@timespicayune.com or (504) 826-3327.

Caption: E.C. Durr CEO Stephen Stumpf and his wife took over the construction company from Mrs. Stumpf's father, who died in 1991. Although the company has been accepted by some agencies as a woman-owned business, at least one agency has disputed the company's claims that Donna Stumpf controls the company. [COLOR]

A driver for Durr Heavy Equipment finished loading his truck with debris, above, from the St. Thomas housing complex in the Lower Garden District, while a track shovel, below, demolishes buildings in the housing project. Although Durr was granted disadvantaged status by the LeveeBoard, it hasn't eally needed the program, company officials said. Instead, it has won millions of dollars in work by underbidding some of the biggest general contractors in New Orleans. One recent victory was a $3.5 million contract from the Housing Authority of New Orleans to demolish St. Thomas. [COLOR]

RONALD SCHROEDER: 'Each business is looked at and examined on its own merits.' Loyola University economics professor

JOSE BAUTISTA: 'The panel was told to use our expertise in determining economic or social disadvantage. So we use our expertise.' Xavier University economics professor.

STAFF PHOTOS BY TED JACKSON

Words: 4413

Section: NATIONAL

Page: 04