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## **EXECUTIVE SUMMARY**

### **CITY OF SAINT PAUL**

In November 2006, MGT of America, Inc. (MGT), was retained to conduct a Minority and Women Business Enterprise Disparity Study for the City of Saint Paul (City) and the Saint Paul Housing and Redevelopment Authority (HRA) to determine whether there was a compelling interest to justify a minority and woman-owned business enterprise (M/WBE) program for the City and HRA. The study consisted of fact-finding to determine whether existing City and HRA efforts had eliminated active and passive discrimination; to analyze City and HRA procurement trends and practices for the study period 2002 through 2006; and to evaluate various options for future program development. The following presents a summary of selected findings, recommendations, and commendations for the City of Saint Paul.

More detailed findings and recommendations, along with associated best practices are located in **Chapter 10.0** of this report.

#### **CITY FINDING E-1: City M/WBE Prime Utilization**

The dollar value of M/WBE prime utilization in the relevant market by the City is shown in **Exhibit CITY/E-1** below. Over the current study period (January 1, 2002 through December 31, 2006) in the relevant market the following took place:

- Forty-six M/WBEs won 260 prime construction contracts for \$50.58 million on City projects (14.06 percent of the total).
- Six M/WBEs won 19 prime architecture and engineering contracts for \$2.19 million on City projects (11.32 percent of the total).
- Fifteen M/WBEs won 30 prime professional services contracts for \$868,155 on City projects (5.1 percent of the total).
- Ten M/WBEs won 17 other services contracts for \$156,729 on City projects (1.77 percent of the total).
- Twenty-seven M/WBEs won 79 goods, equipment, and supplies contracts for \$1.23 million on City projects (1.74 percent of the total).

Disparity existed for all M/WBE groups in the Vendor Outreach Program (VOP), except for Asian American prime contractors in construction.

#### **CITY FINDING E-2: M/WBE Subcontractor Utilization, Availability, and Disparity on City Projects**

Over the current study period in the relevant market, 61 M/WBEs won 147 construction subcontracts on City projects for \$10.5 million (20.8 percent of the total). M/WBEs constituted 20.81 percent of City construction subcontractors. There was disparity for Hispanic American and Asian American subcontractors on City projects over the study period.

**EXHIBIT CITY/E-1  
M/WBE SUBCONTRACTOR UTILIZATION, AVAILABILITY  
AND DISPARITY ON CITY PROJECTS  
CITY OF SAINT PAUL  
JANUARY 1, 2002 THROUGH DECEMBER 31, 2006**

Business Category	African American	Hispanic American	Asian American	Native American	Nonminority Women	M/WBE Firms
Construction Subcontractors - Dollars	\$1,985,317	\$87,702	\$856,706	\$2,116,348	\$5,522,319	\$10,568,392
Construction Subcontractors - Percent	3.91%	0.17%	1.69%	4.17%	10.87%	20.81%
Construction Subcontractors - Availability	3.29%	1.68%	2.05%	1.17%	9.08%	17.27%
Disparity	No	Yes	Yes	No	No	

Source: Utilization, availability, and disparity findings are taken from the disparity exhibits previously shown in Chapters 4.0, 5.0, and 8.0.

**CITY FINDING E-3: M/WBE Utilization on Building Permits**

The utilization of M/WBEs firms on private sector commercial construction projects was significantly lower than M/WBE utilization on City and HRA projects, and generally below most measures of M/WBE availability in the marketplace. Over the study period, M/WBEs won less than 2 percent (1.9%) of private sector commercial construction subcontracts, as compared to more than 20 percent (20.8%) of City construction subcontracts (**Exhibit CITY/E-2**).

**EXHIBIT CITY/E-2  
COMPARISON FOR M/WBE CONSTRUCTION SUBCONTRACTOR UTILIZATION  
CITY OF SAINT PAUL AND PRIVATE SECTOR COMMERCIAL CONSTRUCTION  
JANUARY 1, 2002 THROUGH DECEMBER 31, 2006**

Subcontractors	African American	Hispanic American	Asian American	Native American	Nonminority Women	M/WBE Firms
City of Saint Paul Construction Subcontractors	3.91%	0.17%	1.69%	4.17%	10.87%	20.80%
HRA Construction Subcontractors	1.56%	0.44%	0.58%	0.43%	5.59%	8.60%
Private Construction Subcontractors (Building Permits) Excludes Not for Profits	0.02%	0.03%	0.22%	0.12%	1.68%	1.94%
Census Availability	1.26%	1.04%	0.65%	0.37%	7.65%	10.97%

Source: Utilization, availability, and disparity findings are taken from the disparity exhibits previously shown in Chapters 4.0, 5.0, and 8.0.

## **CITY FINDING E-4: Other Private Sector Evidence**

Statistical analysis of data in the 2003 National Survey of Small Business Finance (NSSBF), Survey of Business Owners (SBO), Public Use Micro Sample (PUMS), and local survey data also found substantial disparities by race and gender, many of which persisted after controlling for other factors besides race and gender (e.g., company capacity, ownership level of education and experience). These disparities were corroborated in part by anecdotal evidence from surveys and interviews with M/WBE vendors.

## **SELECTED RECOMMENDATIONS**

### **CITY RECOMMENDATION E-1: Construction**

#### **Best Value Construction**

Minnesota statutes now permit the award of construction contracts to either the lowest responsible bidder, or the vendor offering the “best value.”<sup>1</sup> A number of localities have put in specification requests for bidders to propose how they can best achieve agency goals for inclusion in procurement. Using an Request for Proposal (RFP) process can provide the flexibility for including M/WBE participation in prime contractor requirements and selection. The City should consider how best value procurement of construction can assist in S/M/WBE utilization in construction.

#### **Joint Ventures**

City should consider adopting a joint venture policy similar to the one implemented by the city of Atlanta. The city of Atlanta requires establishment of joint ventures on large projects of over \$10 million.<sup>2</sup> Primes are required to joint venture with a firm from a different ethnic/gender group in order to ensure prime contracting opportunities for all businesses. This rule applies to female and minority firms as well as non-minority firms. This rule has resulted in tens of millions of dollars in contract awards to female and minority firms.

### **CITY RECOMMENDATION E-2: Professional Services and Other Services**

#### **Bidder Rotation**

The percentage of M/WBE utilization in other services has declined since the early 1990s. Some political jurisdictions use bidder rotation schemes to limit habit purchases from majority firms and to ensure that M/WBEs have an opportunity to bid along with majority firms. The city of Atlanta and Miami-Dade County, Florida, have had particular success with rotating diverse teams of architectural and engineering (A&E) firms. The City should review procurement categories where bidder rotation may increase M/WBE prime utilization and does not conflict with state procurement statutes.

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<sup>1</sup> Minn Rev State § 16C.28, 02.

<sup>2</sup> City of Atlanta Ordinance Sec. 2-1450 and Sec. 2-1451.

### **CITY RECOMMENDATION E-3: Goods**

#### **State Contracts, Master Contracts and Cooperative Agreements**

The City should consider instituting a policy of encouraging purchasing staff to use S/M/WBEs that are on state contracts and identified as such when the City uses state term contracts in purchasing. The City should ask vendors on state contracts, master contracts and cooperative contracts to report their S/M/WBE utilization. For example, airport disadvantaged business enterprise (DBE) programs ask car rental companies to report their spending with DBE companies, rather than imposing direct subcontracting requirements on car rental contracts.<sup>3</sup>

### **CITY RECOMMENDATION E-4: SBE Program for Prime Contracts**

The City should be commended for its longstanding SBE program. A strong SBE program is central to maintaining a narrowly tailored program to promote M/WBE utilization. In particular, the City should focus on increasing M/WBE utilization through the SBE program.

### **CITY RECOMMENDATION E-5: M/WBE Subcontractor Project Goals and Good Faith Efforts**

The City should consider reviewing its good faith effort requirements in its contracts. The core theme should be that prime contractors should document their outreach efforts and the reasons why they may have rejected qualified M/WBEs who were the low-bidding subcontractors.

### **HRA AND CITY RECOMMENDATION E-6: Narrowly Tailored S/M/WBE Program for the City and HRA**

Recent developments in court cases involving federal DBE programs provide important insight into the design of local M/WBE programs. In January 1999, the United States Department of Transportation (USDOT) published its final DBE rule in Title 49, Code of Federal Regulations, Part 26 (49 CFR 26). In the latest round of the DBE litigation, the Courts found the new DBE regulations to be narrowly tailored.<sup>4</sup> The federal DBE program has the features in **Exhibit CITY/E-3** that contribute to this characterization as a narrowly tailored remedial procurement preference program. The City and the HRA should consider adopting these features in any new narrowly tailored M/WBE program. The City and HRA should also have a sunset date for the program

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<sup>3</sup> 49 CFR, Part 23.11.

<sup>4</sup> *Adarand v. Slater*, 228 F.3d 1147 (10<sup>th</sup> Cir. 2000), *Gross Seed. v. State of Nebraska*, 345 F.3d 968 (8<sup>th</sup> Cir. 2003); cert denied, 158 L.Ed. 2d 729 (2004), *Northern Contracting v. Illinois DOT*, 2005 U.S. Dist. LEXIS 19868 (ND IL 2005).

**EXHIBIT CITY/E-3  
NARROWLY TAILORED M/WBE PROGRAM FEATURES**

Narrowly Tailored Goal-Setting Features	DBE Regulations
The City should not use quotas.	49 CFR 26(43)(a)
The City should use race- or gender-conscious set-asides only in cases where other methods are inadequate to address the disparity.	49 CFR 26(43)(b)
The City should meet the maximum amount of its M/WBE goals through race-neutral means.	49 CFR 26(51)(a)
The City should use M/WBE contract goals only where race-neutral means are not sufficient.	49 CFR 26(51)(d)
The City should use M/WBE goals only where there are subcontracting possibilities.	49 CFR 26(51)(e)(1)
If the City estimates that it can meet the entire M/WBE goal with race-neutral means, then the City should not use contract goals.	49 CFR 26(51)(f)(1)
If it is determined that the City is exceeding its goal, then the City should reduce the use of M/WBE contract goals.	49 CFR 26(51)(f)(2)
If the City exceeds goals with race-neutral means for two years, then the City should not set contract goals the next year.	49 CFR 26(51)(f)(3)
If the City exceeds M/WBE goals with contract goals for two years, then the City should reduce use of contract goals the next year.	49 CFR 26(51)(f)(4)
If the City uses M/WBE goals, then The City should award only to firms that made good faith efforts.	49 CFR 26(53)(a)
The City should give bidders an opportunity to cure defects in good faith efforts.	49 CFR 26(53)(d)

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## EXECUTIVE SUMMARY

### CITY OF SAINT PAUL HOUSING AND REDEVELOPMENT AUTHORITY

In November 2006, MGT of America, Inc. (MGT), was retained to conduct a Minority and Women Business Enterprise Disparity Study for the City of Saint Paul (City) and the Saint Paul Housing and Redevelopment Authority (HRA) to determine whether there was a compelling interest to justify a minority and woman-owned business enterprise (M/WBE) program for the City and HRA. The study consisted of fact-finding to determine whether existing City and HRA efforts had eliminated active and passive discrimination; to analyze City and HRA procurement trends and practices for the study period 2002 through 2006; and to evaluate various options for future program development. The following presents a summary of selected findings, recommendations, and commendations for the City of Saint Paul's Housing and Redevelopment Authority.

More detailed findings and recommendations, along with associated best practices are located in **Chapter 10.0** of this report.

#### HRA FINDING E-1: HRA M/WBE Prime Utilization

Five M/WBEs won 6 prime construction contracts for \$19.9 million on Housing and Redevelopment Authority (HRA) projects (2.14 percent of the total) (**Exhibit HRA/E-1**).

#### EXHIBIT HRA/E-1 M/WBE PRIME CONSTRUCTION UTILIZATION ON HRA PROJECTS SAINT PAUL HOUSING AND REDEVELOPMENT AUTHORITY JANUARY 1, 2002 THROUGH DECEMBER 31, 2006

	African American	Hispanic American	Asian American	Native American	Nonminority Women	M/WBE Firms
Construction Prime - Dollars	\$3,367,240	\$0	\$16,310,145	\$0	\$307,450	\$19,984,835
Construction Prime - Percent	0.36%	0.00%	1.75%	0.00%	0.03%	2.14%
Construction Prime - Availability	4.92%	0.00%	1.64%	0.00%	1.64%	8.20%
Disparity	Yes	Yes	No	Yes	Yes	

Source: Utilization, findings are taken from the disparity exhibits previously shown in Chapter 6.0.

Disparity existed for all M/WBE groups on HRA prime construction projects, except for Asian American prime contractors in construction.

**HRA FINDING E-2: M/WBE Subcontractor Utilization and Disparity.**

Over the current study period in the relevant market 161 M/WBEs won 475 construction subcontracts on HRA projects for \$39.0 million (8.6 percent of the total) over the study period (**Exhibit HRA/E-2**). There was disparity for all M/WBE subcontractor groups on HRA projects over the study period.

**EXHIBIT HRA/E-2  
M/WBE SUBCONTRACTOR UTILIZATION, AVAILABILITY AND DISPARITY  
ON HRA PROJECTS  
SAINT PAUL HOUSING AND REDEVELOPMENT AUTHORITY  
JANUARY 1, 2002 THROUGH DECEMBER 31, 2006**

<b>Business Category</b>	<b>African American</b>	<b>Hispanic American</b>	<b>Asian American</b>	<b>Native American</b>	<b>Nonminority Women</b>	<b>M/WBE Firms</b>
Construction Subcontractors Dollars	\$7,095,444	\$2,008,045	\$2,615,857	\$1,947,707	\$25,372,115	\$39,039,168.00
Construction Subcontractors Percent	1.56%	0.44%	0.58%	0.43%	5.59%	8.60%
Construction Subcontractors Availability	3.29%	1.68%	2.05%	1.17%	9.08%	17.27%
Disparity	Yes	Yes	Yes	Yes	Yes	

Source: Utilization, availability, and disparity findings are taken from the disparity exhibits previously shown in Chapter 6.0.

**HRA FINDING E-3: M/WBE Utilization on Building Permits**

The utilization of M/WBEs firms on private sector commercial construction projects was significantly lower than M/WBE utilization on City and HRA projects, and generally below most measures of M/WBE availability in the marketplace. Over the study period M/WBEs won less than 2 percent of private sector commercial construction subcontracts, as compared to almost 8.6 percent of HRA construction subcontracts (**Exhibit HRA/E-3**).

**EXHIBIT HRA/E-3  
COMPARISON FOR M/WBE CONSTRUCTION SUBCONTRACTOR UTILIZATION  
CITY OF SAINT PAUL, HRA AND PRIVATE SECTOR COMMERCIAL CONSTRUCTION  
JANUARY 1, 2002 THROUGH DECEMBER 31, 2006**

<b>Subcontractors</b>	<b>African American</b>	<b>Hispanic American</b>	<b>Asian American</b>	<b>Native American</b>	<b>Nonminority Women</b>	<b>M/WBE Firms</b>
HRA Construction Subcontractors	1.56%	0.44%	0.58%	0.43%	5.59%	8.60%
Private Construction Subcontractors (Building Permits) Excludes Not for Profits	0.02%	0.03%	0.22%	0.12%	1.68%	1.94%
Census Availability	1.26	1.04	0.65	0.37	7.65	10.97%

Source: Utilization, availability, and disparity findings are taken from the disparity exhibits previously shown in Chapters 6.0 and 8.0.

#### **HRA FINDING E-4: Other Private Sector Evidence**

Statistical analysis of data in the 2003 National Survey of Small Business Finance (NSSBF), Survey of Business Owners, Public Use Micro Sample, and local survey data also found substantial disparities by race and gender, many of which persisted after controlling for other factors besides race and gender (e.g., company capacity, ownership level of education and experience). These disparities were corroborated in part by anecdotal evidence from surveys and interviews with M/WBE vendors.

#### **SELECTED RECOMMENDATIONS**

##### **HRA COMMENDATION E-1: Economic Development**

The HRA should be commended for the level of effort expended on S/M/WBE inclusion for the HRA, that is unusual nationally. The HRA should also be commended for its Small Developer Ownership Construction Program, a unique initiative nationally.

##### **HRA RECOMMENDATION E-2: Joint Ventures**

The HRA should consider adopting a joint venture policy similar to the one implemented by the City of Atlanta. The City of Atlanta requires establishment of joint ventures on large projects of over \$10 million.<sup>1</sup> Primes are required to joint venture with a firm from a different ethnic/gender group in order to ensure prime contracting opportunities for all businesses. This rule applies to female and minority firms as well as non-minority firms. This rule has resulted in tens of millions of dollars in contract awards to female and minority firms.

##### **HRA RECOMMENDATION E-3: M/WBE Subcontractor Project Goals and Good Faith Efforts**

The HRA should consider review its good faith effort requirements in its contracts. The core theme should be that prime contractors should document their outreach efforts and the reasons why they may have rejected qualified M/WBEs who were the low-bidding subcontractors.

##### **HRA RECOMMENDATION E-4: HRA Annual Aspirational M/WBE Goals**

This study provides evidence to support the continuance of a moderate program by the HRA to promote M/WBE utilization. This conclusion is based primarily on some statistical disparities in current M/WBE utilization, substantial disparities for construction subcontracting in the private marketplace, evidence of discrimination in business formation and revenue earned from self-employment, and some anecdotal evidence of discrimination. The HRA should tailor its minority participation programs to remedy each of these specific disparities.

To establish a benchmark for goal setting, goals should be based on relative M/WBE availability and past M/WBE utilization. The goals should be adjusted each year according to the utilization of M/WBEs by business category, gradually reducing race- and/or gender-conscious goals and increasing race- and gender-neutral goals. The ultimate objective is to

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<sup>1</sup> City of Atlanta Ordinance Sec. 2-1450 and Sec. 2-1451.

eliminate the need for a race- and/or gender-based program and to replace it completely with race- and gender-neutral options.

Consequently, the HRA aspirational goals should be adjusted. The HRA VOP S/M/WBE goals are not expressly linked to business availability. Goals of 5 percent MBE and 10 percent WBE would be more in line with estimated business availability.<sup>2</sup> Note that SBE goals do not have to be linked to business availability and many agencies have small business goals ranging from 25 percent to 50 percent.

The primary means for achieving these aspirational goals should be the SBE program, race-neutral joint ventures, outreach, and adjustments in City procurement policy.

**HRA AND CITY RECOMMENDATION E-5: Narrowly Tailored S/M/WBE Program for the City and HRA**

Recent developments in court cases involving federal DBE programs provide important insight into the design of local M/WBE programs.

**EXHIBIT HRA/E-4  
NARROWLY TAILORED M/WBE PROGRAM FEATURES**

Narrowly Tailored Goal-Setting Features	DBE Regulations
The City should not use quotas.	49 CFR 26(43)(a)
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If the City exceeds M/WBE goals with contract goals for two years, then the City should reduce use of contract goals the next year.	49 CFR 26(51)(f)(4)
If the City uses M/WBE goals, then The City should award only to firms that made good faith efforts.	49 CFR 26(53)(a)
The City should give bidders an opportunity to cure defects in good faith efforts.	49 CFR 26(53)(d)

<sup>2</sup> These goals are based on a weighted average of prime and subcontractor availability for WBEs and MBEs, where the weights are the share of prime and subcontract dollars on HRA projects. The subcontractor percentage was roughly 48 percent and the prime contractor percentage was roughly 52 percent. Thus, for example, MBE prime and sub construction availability was approximately 2.2 percent and 8.2 percent respectively. Applying the weights, (2.2% \* 52%)+(8.2%\*48%) yields a 5.1 percent aspirational goal. Aspirational goals for each ethnic group can be created using the same method (resulting in goals of roughly 2.1 percent, 1 percent, 1 percent and 1 percent, for African American, Hispanic American, Asian American and Native American contractors). Note further that project goals for subcontractors would in general be higher than overall aspirational goals. For example, a 10 percent subcontract goal achieves about a 5 percent aspirational goal given that subcontracts are somewhat less than 50 percent of an overall project.

In January 1999, the United States Department of Transportation (USDOT) published its final DBE rule in Title 49, Code of Federal Regulations, Part 26 (49 CFR 26). In the latest round of the DBE litigation, the Courts found the new DBE regulations to be narrowly tailored.<sup>3</sup> The federal DBE program has the features in **Exhibit HRA/E-4** that contribute to this characterization as a narrowly tailored remedial procurement preference program. The City and the HRA should consider adopting these features in any new narrowly tailored M/WBE program. The City and HRA should also have a sunset date for the program.

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<sup>3</sup> *Adarand v. Slater*, 228 F.3d 1147 (10<sup>th</sup> Cir. 2000), *Gross Seed. v. State of Nebraska*, 345 F.3d 968 (8<sup>th</sup> Cir. 2003); cert denied, 158 L.Ed. 2d 729 (2004), *Northern Contracting v. Illinois DOT*, 2005 U.S. Dist. LEXIS 19868 (ND IL 2005).