

CITY OF SAINT PAUL

REVIEW AND PERFORMANCE AUDIT OF
CITY OF SAINT PAUL
/HOUSING AND
REDEVELOPMENT AUTHORITY
EFFORTS RELATED TO
INCLUSION IN CITY/HRA
ECONOMIC OPPORTUNITIES

NOVEMBER 2007

PREPARED BY:

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EXECUTIVE SUMMARY

This review and performance audit assesses the efforts of the City of Saint Paul Department of Planning and Economic Development (PED) and its Housing and Redevelopment Authority (HRA) to include women, minorities and persons with disabilities in economic development opportunities. The period covered by the audit is approximately 2002 to the present. This report contains the results of the study and evaluation of the practices of the City and Housing and Redevelopment Authority, along with findings and recommendations for improvement.

Overall, the audit confirms that the City and Housing and Redevelopment Authority engage in considerable activities designed to meet the objectives of the applicable laws. While there is no one measure to determine effectiveness of these efforts, the results in terms of contract dollars that certified vendors receive demonstrate that improvements need to be made in order to meet the policy objectives of the City's inclusion efforts. In 2006, less than 7 % of over \$220 million in contract dollars went to MBEs and WBEs (6.6%). MBEs received less than 3 % of contract dollars. WBEs received less than 4 % of contract dollars.¹ For 2006, African-American owned MBE's received only .3% of contracts processed by Contract and Analysis Services (CAS), a little over \$300,000 of over \$94 million.² Hispanic owned businesses received less than \$50,000, .05%.³ Asian-American owned businesses received less than \$200,000, .2%.⁴ In 2006, only Native-American owned businesses received more than a percent of CAS processed contract dollars. They received over \$1.3 million, 1.4%.⁵ Taken together, MBEs received less than \$2 million, 2% of the CAS processed city contracts. For contracts processed by PED/HRA, MBEs received 3.2% and WBE's 4.0% of the \$128 million in contracts awarded in 2006. PED/HRA does not provide figures separately for African-American, Hispanic, Asian and Native American businesses.

Well over half of the contract dollars spent in 2006 are on contracts processed by PED/HRA. HRA, however, has not adopted the provisions of the Vendor Outreach Program (VOP) ordinance, Chapter 84, or the Affirmative Action in Employment ordinance, Chapter 183. The lack of a firm, clear commitment of HRA to apply all of the provisions of these ordinances has contributed not only to confusion and inefficiency, but also to lost opportunities for more completely accomplishing inclusion goals. No one takes responsibility for monitoring and enforcement of the VOP and AA requirements of contracts processed by HRA. HRA does not require a business with which it contracts to either demonstrate before the contract is signed that it has made arrangements with certified vendors that meet participation goals, or to document it has and will take the very specific steps prescribed by the VOP ordinance for outreach designed to meet the participation goals. A clear commitment by HRA to adoption and implementation of Chapters 84 and 183 is essential.

Generally speaking, we found a lack of monitoring and enforcement procedures and practices on PED/HRA contracts, both those PED/HRA processes itself and those processed by CAS. Effective monitoring and enforcement are essential to the credibility of the City/HRA's inclusion efforts. Those who do business with the City/HRA need to know that the City and HRA are serious about their inclusion policies, and that compliance is not just a "paperwork" requirement.

Currently, duties and responsibilities for inclusion efforts on PED/HRA contracts are divided among three departments, CAS, the Department of Human Rights (DHR) and PED/HRA. While

generally speaking the division of responsibilities is appropriate, communication and coordination needs significant improvement. Our report discusses the specific areas where we identified communication and coordination deficiencies and our recommendations are designed to improve how the City/HRA as a whole achieves its inclusion objectives. A particularly significant matter is improvement of monitoring after contracts are let and enforcement when deficiencies are identified. We recommend steps designed to ensure that all participants in the inclusion effort understand the importance of what they are doing and how it fits with the efforts of others. We recommend steps that will increase sharing of experience among inclusion staff.

As with any effort, it is important to maintain an overview and to be able to identify opportunities for improving how the program operates as a whole. During this audit, consultants endeavored to determine the overall operation of the effort. By taking this approach we were able to identify communication and coordination deficiencies and needs for revision of policies and procedures to better meet program objectives. We recommend that the City identify a City staff person of appropriate rank who will have the continuing responsibility for maintaining an overview of the inclusion programs and their components and coordinating the inclusion effort. Our audit also benefitted from consultants' points of view as outsiders, not part of the system being audited. In the future, such outside review will also benefit the programs. We recommend that outside performance audits be conducted every three years.

It is very important to achieving the policy objectives of the inclusion programs for the City and HRA to contract with businesses with a strong record of inclusion of certified vendors and of affirmative action in employment. We recommend more systematic evaluation of and consideration of contractors' inclusion efforts on their St. Paul, other government and private business when identifying and selecting developers and prime contractors.

The changes and improvements we recommend will require devotion of additional staff and budget. The current staff level devoted to inclusion is inadequate to meet the expectations that have been identified prior to this audit. Implementing the recommendations in this audit for improving the effort will require even more staff and budget. The priority afforded by the City and by HRA to these programs, however, is reflected in the willingness of the City and HRA to provide staff and budgets for them. To spur affirmative action in employment, DHR must have additional staff to monitor contractors and to work with them to achieve affirmative action goals.

We recommend rule, procedure, and policy changes that will mean new and improved training for staff.

To be successful, inclusion efforts require public understanding and support. We make recommendations for improving public understanding of the inclusion programs. We recommend improvements in reports and obtaining access to them. We also recommend that at least once a year the primary people involved with the City/HRA inclusion efforts meet with the public to exchange information on what the programs' operations and results have been and to hear from the community perceptions and concerns that hold promise for better meeting program objectives.

There are several recommendations that specifically address the issue of what steps may be

taken to increase contracting opportunities for businesses owned by persons with disabilities and employment opportunities for persons with disabilities. There are many factors to consider which are discussed in the report. The recommendations are measured. Our research establishes that the City of Saint Paul is, in fact, a leader in this area and, accordingly, its policies are more progressive than those of most municipalities. Among the municipalities that have progressive policies in this area are Chicago and Montgomery County, Maryland. The report includes discussion and suggestions gleaned from our review of the efforts in those and other municipalities, as interpolated with the efforts in Saint Paul. We believe that the establishment of a task force is a prudent way to study and consider the various factors identified and discussed, including legal and “definition” issues, and to provide policy makers with a sound basis for making decisions.

In order to adopt and implement the recommendations in this report, those who are concerned about inclusion will need to come together to develop and execute an implementation strategy. We recommend that the City and HRA create an implementation task force. The task force should include key City/HRA staff and officials and public members who can devote their expertise and experience to making the improvements recommended in this report a reality. Representation should include prime contractors and subcontractors and certified vendors committed to increased inclusion. There also should be representation from the Coalition for Diversity to further adoption and implementation of the recommendations related to increased inclusion of persons with disabilities.

We trust that this audit will serve the purpose of increasing economic opportunities for women, minorities, and persons with disabilities, and that it will be useful to the City of Saint Paul, the Housing and Redevelopment Authority and the community.

The Hall Legal Team

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1 MBEs received \$1,902,600 of the \$94,222,285 of contracts processed by CAS (2.0%) and \$4,156,440 of the \$127,913,670 of contracts awarded in 2006 on PED/HRA processed contracts (3.2%). WBEs received \$3,513,399 of the \$94,222,285 of contracts processed by CAS (3.7%) and \$5,074,497 of the \$127,913,670 of contracts awarded in 2006 on PED/HRA processed contracts (4.0%). In 2006 PED/HRA provided assistance to projects with over \$480 million in total development costs but only \$128 million of contracts were awarded on these projects in 2006. Sources: VOP Detail Report for 2006, HRA/PED Projects Compliance Report Card Dec. 31, 2006

2 \$306,978 of \$94,222,285. 0.3% VOP Detail Report for 2006

3 \$46,637 of \$94,222,285. 0.05% VOP Detail Report for 2006

4 \$192,651 of \$94,222,285. 0.2% VOP Detail Report for 2006

5 \$1,356,334 of \$94,222,285. 1.4% VOP Detail Report for 2006

VII FINDINGS AND RECOMMENDATIONS

Our findings and recommendations are arranged in accordance with eight categories listed A through H. While many of the findings and recommendations listed at A through G relate to more than one area, for convenience we have listed each only once in the category that we believe to be most applicable. We have included at “H” additional recommendations that we believe will lead to overall improvement. Appendix I is a chart that lists each finding and recommendation, references where it is located in the report and identifies which City department or unit of government would have primary responsibility for implementation.

A. Increasing Effectiveness and Enforcement

The City/HRA can better achieve inclusiveness goals by considering findings and recommendations that will enhance the effectiveness of VOP/AA programs and increase enforcement of vendor outreach and affirmative action employment requirements. A key to doing so is more clearly defining roles and responsibilities for achieving goals and strengthening enforcement.

1. **Finding:** Lack of clarity about responsibility for post contract formation monitoring of compliance with VOP promises made by contractors in both City and HRA contracts contributes to the deficiencies of monitoring of VOP compliance and results identified in this report.. Inadequate monitoring contributes to deficiencies in required reports. Monitoring and reporting of compliance are essential to accomplishment of the purposes of the VOP program. Coordination of DHR and VOP monitoring will increase the effectiveness of monitoring and eliminate duplication of reports contractors must supply. For these responsibilities and duties as for all VOP/AA responsibilities and duties, when considered for pay raises, promotion and related matters, evaluation of PED/HRA project managers and other staff and CAS and DHR staff should include how well they discharge responsibilities and perform VOP and AA duties.

Recommendation: The mayor and HRA should clarify who has responsibility for monitoring and reporting of compliance with the VOP program after contracts are signed, and direct that policies and procedures be established to monitor and report on VOP compliance after contracts are signed. The procedures should specify what the roles of department staff, the VOP program coordinator, and the Department of Human Rights will be in monitoring. PED/HRA project managers should have first line responsibility for monitoring. The VOP program coordinator should be designated as compliance staff to work with the project managers on monitoring and enforcement. The DHR director with respect to affirmative action employment and the CAS manager with respect to vendor outreach should each have responsibility for monitoring and enforcement of all City and HRA contracts. The City and HRA should supply staff and budget to accomplish effective monitoring and enforcement. Staff evaluation for pay, promotion and related matters should include how well VOP/AA responsibilities and duties are discharged.

2. **Finding:** The compliance and investigation functions of the Department of Human

Rights are in conflict for limited resources.

Recommendation: The Director of DHR should consider restructuring the Department into two sections: HRS employees responsible only for enforcement and HRS employees responsible only for compliance.

3. **Finding:** Contractors with accumulated contracts of greater than \$50,000 are not registering an affirmative action plan with the City.

Recommendation: HRA/PED and CAS should implement a process to identify those contractors who have accumulated contracts, which add up to \$50,000 per year. Once such a contractor is identified, the contractor should be referred to DHR for an affirmative action plan registration.

4. **Finding:** When projects are subdivided into smaller bidding packages and VOP goals are set for each package, VOP participation can be increased. Joint ventures between certified and non certified vendors can contribute to increased availability of certified vendors.

Recommendation: When structuring projects for bidding increased use should be made of subdividing the project to improve opportunities for utilization of certified vendors. The City should continue and expand its efforts to increase opportunities for joint ventures. Subdividing work into economically and operationally feasible units that will increase opportunities for certified vendors should be added as a vendor outreach requirement of Sec. 84.08(c).

5. **Finding:** VOP staff is not regularly informed of change orders and additional work to be done on projects after the contract is let. VOP input could result in additional opportunities for certified vendors. Change orders are not considered when reporting on results of efforts to meet VOP participation goals. PED requests its project managers to consider change orders and to update the total development cost of projects to reflect them. When this requirement is followed the changes are reflected in the total development costs reported in the "Completed" section of the HRA/PED Compliance Report Card.

Recommendation: When PED/HRA staff determines that change orders for additional work are necessary, VOP staff should be informed and have an opportunity to participate in the discussions to advocate for meeting the need for additional work in a way that increases opportunities for certified vendors and to set an appropriate VOP goal for the additional subcontract work. Reports on the VOP program should include change orders in the calculations of percentage participation of certified businesses.

6. **Finding:** The requirement that contractors notify project managers of the need to change subcontractors is not always enforced. Project managers do not always notify the VOP program coordinator of subcontractor performance problems or of the need to change subcontractors. As with other opportunities for certified vendor

participation, notice as far in advance as possible of selecting a replacement increases chances of certified vendor participation. In the absence of procedures requiring vendor outreach when replacing a subcontractor, it may be that opportunities to promote increased participation by certified vendors are being missed. Also it may be that the business development needs of the certified business with performance problems or being replaced are not being addressed.

Recommendation: Project managers should regularly report to the VOP program coordinator on VOP performance matters that arise after a contract is signed and of the need to replace subcontractors. The VOP program coordinator should take steps to assure that vendor outreach policies are followed when replacing a subcontractor. The project manager, in consultation with the VOP program coordinator, should identify any business development assistance needs of the certified subcontractor with performance problems or who is being replaced and make appropriate referrals to business development resources.

7. **Finding:** VOP goals are often not applied to certain professional services which include such items as architectural, legal, surveying and real estate services which are sometimes referred to as “soft costs” or pre-construction costs. The degree of involvement of project managers with respect to efforts to include the participation of MBE’s, WBE’s and SBE’s at that stage is lacking and inconsistent at best. Proactive involvement of project managers at that stage could serve to enhance opportunities for inclusion.

Recommendation : Project managers should be encouraged to become actively involved with efforts to identify business opportunities at the earliest possible stage in the process to maximize occasions to set VOP goals for professional service contracts. These efforts should include arranging and attending conferences with owners, developers and others for that purpose at the earliest possible stage in the process.

8. **Finding :** There could be benefits from increased clarity with regard to the various compliance goals, including VOP and affirmative action goals, applicable to a specific project. Including all of the goals in one document along with responsibilities for implementation and consequences for non-compliance, could provide increased clarity to both compliance staff and contractors. Specifically, with projects where the City and HRA do not control the draw, there is no opportunity for project managers to withhold payment to “leverage” compliance.

Recommendation : Consideration should be given to expanding the use of Regions - type liquidated damages provisions to achieve compliance, particularly in contract situations where draws are not controlled by the City or HRA and possibly in other situations, where appropriate.

9. **Finding:** It is not clear that PED/HRA staff consistently engages in the types of outreach activities described in the HUD guidelines for procurement activities with respect to programs, including HOME and CDBG, in all cases.

Recommendation : PED/HRA staff should consistently follow the HUD guidelines for outreach to include small, minority-owned and women owned businesses in procurement activities for CDBG and HOME programs, which include:

- including such businesses on solicitation lists whenever they are potential sources
- ensuring that such businesses, when identified, are solicited whenever they are potential sources
- dividing procurement requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses
- requiring prime contractors when subcontracts are let, to take affirmative steps to select small, minority-owned businesses in grant-funded contracts

10. **Finding :** It is not clear that PED/HRA staff follows the HUD guidelines targeting low and very-low income persons for employment and business opportunities on a contract by contract basis.

Recommendation : PED/HRA staff should routinely follow the HUD guidelines for targeting low and very-low income persons for employment and business opportunities, and seek to implement the guidelines, as follows:

- Recipients and their contractors and subcontractors must show preferences for giving training and employment opportunities to low-income persons, to the greatest extent feasible. They should show priority considerations for hiring low-income persons as follows:
 - 1) Low- income persons residing in the service area or neighborhood in which the project is located.
 - 2) Participants in HUD Youthbuild programs.
 - 3) If project is assisted under the McKinney Act, homeless persons in the project area of the project.
 - 4) Other Section 3 residents.

The persons hired should be qualified to perform the work required.

- Recipients and their contractors and subcontractors must direct their efforts to award Section 3 business concerns, to the greatest extent feasible, to Section 3 business concerns in the following preference order:
 - 1) Section 3 business that operate in the project area.
 - 2) Entities that carry Youthbuild programs.
 - 3) Other Section 3 business concerns.

The business must be able to demonstrate that it can successfully perform under the terms and conditions of the proposed contract. In addition, these requirements do not restrict competition to only businesses meeting one of the priorities, nor do they authorize set-asides.

- Numerical goals for meeting the greatest extent feasible requirement:
 - For training and employment opportunities resulting from Section 3-covered housing assistance, a commitment to employ 10% of the aggregate number of new hires each year over the duration of the Section 3 project.
 - For training and employment opportunities resulting from Section 3-covered community development assistance, a commitment to employ 30% of the aggregate number of new hires for a one-year period.
 - For contracts awarded in connection with Section 3-covered projects, a commitment to award at least 10% of the total dollar amount of contracts for building trades work and at least 30% of the total dollar amount of all other Section 3-covered contracts.
 - All recipients of assistance must:
 - Amend their employment and procurement policies to comply with Section 3.
 - Include the Section 3 clause in covered contracts and subcontracts.
 - Document their best efforts to comply with Section 3 and their success at hiring low-income persons.
 - Monitor their own compliance and the compliance of the contractors and subcontractors.
 - Provide annual reports to the Assistant Secretary for Fair Housing and Equal Opportunity as required.
 - Recipients must maintain the following records:
 - The good faith efforts made to make low-income persons aware of the positions, and to encourage and facilitate their application.
 - The number and dollar value of all contracts awarded to businesses and, in particular, Section 3 businesses during the fiscal year.
 - A description of the best efforts made to award contracts to Section 3 businesses.
 - The mechanisms by which they ensured that contractors and subcontractors complied with the Section 3 preferences for training, employment and contract awarding.
11. **Recommendation:** PED/HRA staff should be required to make available and share with the community on an annual basis the information contained in the HUD Section 3 Summary Report, found at Appendix D.
 12. **Finding:** A number of PED initiatives, such as the Working Capital Loan Fund and the Small Business Developer Ownership Construction Program, are not operating in a manner to maximize capacity building with respect to targeted vendors. These programs could benefit by focusing on steps to make the programs more accessible to targeted businesses, additional training for staff and further promoting the programs in the community. Additional resources are needed to support these

efforts.

Recommendation: PED initiatives to support capacity building should be reviewed in order to implement steps designed to make programs more accessible to targeted businesses, provide additional staff training and promote the programs in the community. An emphasis should be on making the programs more focused upon eliminating barriers to inclusion identified in Chapter 84. Additional resources should be made available to support these efforts.

13. **Finding:** DHR is not currently conducting regular audits of contractors, is not consistently monitoring construction projects, and is not using the full range of corrective actions for increasing compliance with the good faith efforts criteria.

Recommendation: Processes should be put into place to ensure that all contractors are audited on a regular basis and all construction projects are monitored on a regular basis. Consequences of the failure to comply with the good faith criteria must be made clear to all contractors. HRS staff should be trained on the enforcement tools available under the implementing rules. Policies should be put in place to clarify under what circumstances a particular action might be taken and the process whereby the HRD initiates that process.

14. **Finding:** In the near future a shortage of qualified workers in the construction industry can be expected. However, due to the current downturn in the construction industry, resulting in a shortage of available construction work and the short time the AOPP program has been in place, it is difficult to assess the program's effectiveness.

Recommendation: The City must continue to be aware of and prepared to address the impending shortage of qualified employees in the construction industry. Therefore, the City should continue to fund and actively support the work of the AOPP in order to fairly assess the effectiveness of the program in light of the current labor market conditions.

B. Resolutions and Rule Changes

To better achieve inclusion goals, resolutions and rule changes should be made to make clear HRA's commitment to implementation of the procedures and requirements of the vendor outreach program ordinance and the affirmative action in employment program. Rules implementing Chapter 183 need updating. The City/HRA should take steps necessary to develop expanded outreach to businesses owned by persons with disabilities. Steps should also be taken to improve the effectiveness of vendor certification.

1. **Finding:** The fact that HRA has not adopted resolutions specifically stating the Chapter 84 and Chapter 183 are applicable to it, contributes to confusion and uncertainty about requirements and duties pertaining to compliance with VOP and affirmative action goals.

Recommendation: The HRA Board of Commissioners should adopt resolutions specifically stating that Chapter 84 and the affirmative action requirements of Chapter 183 are applicable to HRA. The resolution should define responsibilities for HRA staff for coordinating with VOP and DHR staff with respect to implementation and monitoring of goals.

2. **Finding:** The implementing rules for section 183 are out of date and do not accurately reflect the current work being done by the DHR.

Recommendation: The DHR Director and the Human Rights Commission need to work to update and enact current implementing rules. These rules should include a definition of Good Faith Efforts as defined in the DHR handout, Good Faith Efforts Criteria (attached as Appendix G).

3. **Finding:** Lack of clarity of definitions and requirements of proof are negatively affecting the decision of appeals from denials of certification.

Recommendation: The City's representative to CERT should participate in and support development of CERT program rules or guidelines that will more clearly define certification eligibility.

4. **Finding:** The continuation of several separate certification programs in the Twin Cities marketplace limits the effectiveness of the inclusiveness efforts of PED/HRA and the City of Saint Paul.

Recommendation: The City should play a leadership role in the consolidation of government certification programs that include the Twin Cities marketplace. Steps should be taken to broaden participation of jurisdictions in the certification program. Any expanded certification program should comply with the requirements of Chapter 84 of the Saint Paul Administrative Code and have sufficient staff and resources to accomplish its tasks in a timely and efficient manner.

5. **Recommendation:** Saint Paul should amend Chapter 84 to provide for outreach to businesses owned by persons with disabilities and provide the necessary staff and budget to fully implement this outreach effort.
6. **Recommendation:** The task force on inclusion of persons with disabilities recommended at p.83 should study the provisions of the ADA Restoration Act, the definitions used by other states and programs, and other proposals for more inclusive definitions of disability and person with a disability and affirmatively endorse and lobby for changes to definitions that would more effectively accomplish inclusion of persons with disabilities, including changes in the federal ADA.
7. **Recommendation:** The task force on inclusion of persons with disabilities recommended at p.82 should develop a program for providing vendor outreach to businesses owned by persons with disabilities, for certifying such businesses and for establishing vendor subcontracting goals for such businesses. The task force should consider the matters discussed in this report and endeavor to identify other concerns that might impact on achieving the goal of increased participation of vendors who are disabled. Saint Paul should implement the resulting program and provide it with the necessary staff and resources identified by the task force. The task force membership should be supplemented to include City employees with responsibilities for vendor

outreach and City/HRA contracting, contractors who are disabled and other individuals who advocate on behalf of persons with disabilities and who have appropriate expertise.

8. **Recommendation:** Saint Paul should identify businesses that employ persons with disabilities to provide services and supply goods and provide the information obtained to its buyers and to contractors. Saint Paul should encourage purchases of goods and services provided by persons with disabilities or manufactured by them and recognize such purchases as contributing to the City's goals for inclusion of persons with disabilities as vendors and contractors. The City should collect data on utilization of such businesses and report on it publicly.
9. **Finding:** The City of Saint Paul has demonstrated great leadership in implementing a 10 percent hiring goal for persons with disabilities. However, little follow-up work has been done to implement the goal.

Recommendation: A task force should be set-up to study and make recommendations about the best way in which the 10 percent hiring goal for persons with disabilities should be implemented. Issues addressed by this task force should include how the person with a disability is identified, sources for recruitment and outreach, training for City staff and contractors, and how the goal should be publicized within the community. Members of the task force should include the Director of Human Rights, members in the community who advocate on behalf of persons with disabilities, and lawyers and/or legal scholars with expertise in the ADA.

C. Process Clarification and Communication

Our interviews with staff from each of the three areas of the City government made clear that there are many processes that are not clearly defined and are being conducted on an ad hoc basis. Clarifying the task that needs to be done and the person or department responsible for the work would enhance the effectiveness of these programs. Improved communication will contribute to improved inclusiveness results.

1. **Finding:** Practices of HRA/PED project managers with respect to confirming the level of compliance with VOP and affirmative action goals prior to making payments vary to a considerable degree. There is no standard procedure, which results in a lack of consistency and does not contribute to the likelihood of maximizing compliance opportunities.

Recommendation : A uniform process should be established whereby project managers consistently check with VOP and DHR compliance staff concerning the status of compliance prior to making payment. This should include a procedure for project managers to routinely receive updates from compliance staff and status reports prior to making payments. The procedure should include guidelines for the possible actions that a project manager is expected to take in the event of non-compliance, including but not limited to, initiating steps to achieve compliance and withholding payments. Project managers should be required to complete the compliance check list form located

in the compliance section of project files.

2. **Finding:** VOP staff are not always advised of PED/HRA projects in the conceptual and pre-development phases prior to making a funding commitment and offered an opportunity to have input on VOP goals, developer and contractor selection, and funding approval.

Recommendation: PED/HRA should be required to involve VOP staff at the conceptual and pre-development stages and prior to making a funding commitment on all of its projects.

3. **Finding:** The City is not always obtaining from contractors, who are claiming compliance with VOP requirements by fulfilling the proposed VOP goal, signed acknowledgments by certified subcontractors of the subcontract and its amount prior to final action on a City contract. Commitments by prime contractors to subcontract with a certified business are not regularly communicated to project managers, and changes in subcontractors are not being adequately tracked and monitored. Subcontractor changes are taking place without the knowledge of VOP staff. The consequences of subcontractor changes are not being evaluated. The result is that prime contractors can fail to abide by the subcontractor commitments made to qualify as a responsive bidder without any consequences. Failure to identify such matters contributes to a belief by contractors that reports are filed, but nothing is done with them.

Recommendation: As a precondition to signing the City's contract with the prime contractor, the City should require prime contractors who claim compliance with VOP requirements by fulfilling the VOP goal to submit acknowledgments signed by each certified subcontractor of the intent of the prime contractor to subcontract with that subcontractor. The nature of the work and the contract dollar amount should be specified. The VOP program should establish procedures for tracking and monitoring after the contract is signed to assure that subcontractor commitments and any need for changes to them are communicated to both the project manager and to VOP staff. Working together with the prime contractor, the project manager and VOP staff should assess any need for a change in certified subcontractors and act on requests for changes in a manner that advances the purposes of the VOP program.

4. **Finding:** The DHR works diligently to sign contracts in a timely manner. However, because DHR requires all of the affirmative action registration paper work before it can sign a contract, there can be a delay in the ability of the DHR to sign a contract.

Recommendation: (a) DHR should continue to monitor the time it takes to sign a contract once it is in the Department. (b) A procedure should be put into place to notify DHR earlier in the process to allow time for the Department to obtain the necessary affirmative action registration from the contractor prior to signing the contract. (c) DHR should reinstitute the process of obtaining specific agreements from contractors on the contractor's implementation of the good faith criteria at the time of the affirmative action plan registration.

5. **Finding:** Procedures for alerting the CERT program of the need to review certification status have not been established nor has staff been trained to identify them.

Recommendation: The VOP program should establish procedures for identifying and taking appropriate action on information related to a business' certification and provide training to staff on them.

6. **Finding:** Communication between the Departments is often limited or ineffectual.

Recommendation: Processes should be put in place, which encourage regular communication between HRS staff and HRA/PED project managers regarding specific problems with contractors or projects.

7. **Finding:** The City's inclusion efforts would be enhanced if the City and private GEPS purchasers increased sharing of their experiences with vendor outreach and with each other.

Recommendation: The City should encourage, sponsor and initiate means for City buyers and private GEPS purchasers to share their experiences with vendor outreach, including e-mail, periodic meetings and other means.

D. Documentation

Documentation is an important part of the City's compliance and inclusion efforts. Proper documentation allows the City to assess how it is doing in the accomplishment of its goals. This information can be used for purposes such as analyzing the effectiveness of a program or providing evidence to the community that the City is serious about achieving these inclusion goals. Proper documentation is also critical for the sharing of knowledge and experience, making the City less dependant on particular employees personal knowledge or experiences.

1. **Finding:** While the list of vendors certified by the CERT program is available on CERT's website, www.govcontracts.org, the list cannot be searched nor can the viewer of it reorder the information to create lists of contractors with specific characteristics. The VOP program coordinator spends time developing lists of specific certified businesses and supplies them to contractors that request them. This reduces the time available for performing the other aspects of VOP program coordination and for supervision of the CERT program. With better software the contractors could generate these lists themselves. Use of the information is difficult if the viewer is not already familiar with the business classification system used in the list. The directory is not as user friendly as it could be.

Recommendation: The City should obtain an electronic certification data system that is more effective. All users should have access to the data on certified companies including private companies and staff of other government jurisdictions. The system should be compatible with

commonly used computer systems and software or be able to be converted for use by such systems. A goal should be elimination of the need to input data more than once. In designing the system current government and private users should be consulted. The system should be designed to assure that only authorized persons involved with certification and updating data on certification can generate or change the data on certified businesses. If possible these changes should be undertaken with the other jurisdictions that participate in CERT and the costs shared by the jurisdictions. If not possible, Saint Paul should obtain such a system. Users of the system should be able to conduct electronic searches of the data and produce lists of certified vendors meeting specified characteristics. A means for searching for classification codes by commonly used descriptions of businesses should be included. The City alone or in conjunction with other jurisdictions should review directories produced by other programs and revise its printed directory to make it easier to use.

2. **Finding:** The loss of two experienced HRS staff members has resulted in a inexperienced DHR staff, lacking the knowledge gained through experience in auditing and monitoring contracts.

Recommendation: Processes should be put into place to better document and maintain the knowledge gained through experience of HRS staff in order to make the Department less dependant on individual knowledge and experience.

3. **Finding:** There is no procedure for compiling records documenting contractors and developers past performance accepting and achieving VOP and AA goals. Uniform records of past performance of developers and contractors are not regularly maintained.

Recommendation: PED and the other City departments, in conjunction with VOP staff, should establish procedures for the recording and evaluation of the performance of developers and prime contractors in accepting and fulfilling VOP goals. A system for compiling information on VOP/AA performance and documenting it should be established.

4. **Finding:** Because setting goals on a project by project basis involves weighing of many factors and facts specific to each contract, determinations of whether or not an appropriate goal was set on any particular project is difficult. Also the factors considered and the weight given to them are not recorded in the project files. Audit of the goals figures in therefore not feasible.

Recommendation: The factors considered and the weight given them when setting a project VOP participation goal should be disclosed in the project file. The goals set and results achieved, however, should be analyzed to enhance determination of whether goals are being appropriately set. CAS should aggregate and analyze the information on the contracts for which it is responsible to improve evaluation of the setting and achievement of goals.

E. Budget and Staffing

Improvement in achieving inclusiveness goals means increasing staff and budgets. The commitment of the City/HRA to inclusion is reflected by its willingness to devote staff and dollars necessary to do so.

1. **Finding:** The Department of Human Rights is not adequately funded to accomplish the responsibilities it has for compliance monitoring and investigation.

Recommendation: The City should provide adequate resources to support the Department of Human Rights.

2. **Finding:** Current staffing levels are inadequate to meet the needs of the VOP program. Presently there is only one staff person devoting 80% of her time to the VOP program. Implementation of the recommendations of this report will increase the need for VOP staff.

Recommendation: VOP staff should be increased by at least ½ time.

3. **Finding:** Due to the DHR Director's many responsibilities, he is not available for day-to-day management of the Department.

Recommendation: The DHR needs intermediate level supervision with the responsibility for:

- (a) day-to-day work distribution;
- (b) ensuring that regular audits are being completed;
- (c) ensuring that construction projects are being monitored; and
- (d) serving as a resource for technical assistance for the staff.

F. Training

We identified a need for additional training in several areas. This, of course, is closely related to all of the other areas, including the recommendations pertaining to budget and staffing.

1. **Finding:** In light of the relative inexperience of the DHR staff, little training has been provided. This is particularly true with respect to on-the-job training, formalized mentoring, and training on the construction industry.

Recommendation: The DHR Director should ensure that all HRS staff receives adequate training on compliance, including conducting audits, monitoring construction projects, good faith effort criteria, and the construction industry. The training should include both written or classroom training and formalized mentoring and on-the-job training.

2. **Finding:** Generally, many HRA/PED project managers do not assume responsibility to take affirmative steps to ensure compliance with VOP and affirmative action goals, unless information reflecting compliance problems is brought to their attention by VOP or DHR monitoring and compliance staff.

Recommendation : Procedures should be established and training should occur for project managers to delineate clear lines of responsibility for monitoring and tracking compliance, set duties with regard to cross-checking and establish communication protocols to enhance the implementation, monitoring and reporting of compliance requirements. Adequate resources should be provided to support the training and implementation of the communication, monitoring and reporting protocols by PED/HRA project managers.

3. **Finding:** The DHR staff has not been trained or provided direction on the Department's responsibilities under the AOPP. Therefore, it is unclear to what extent DHR is fulfilling its obligations under the Resolution.

Recommendation: DHR staff should be trained on the obligations under the Resolution with respect to AOPP. Processes should be put into place to ensure that DHR is fulfilling its obligations under the AOPP

G. Reporting

We make recommendations intended to improve reporting and to enhance the public's understanding of the City and HRA's inclusion efforts.

1. **Finding:** Reports on inclusion efforts do not include all PED/HRA projects. Projects where VOP goals are set by a jurisdiction other than Saint Paul are not accounted for. This underreporting excludes significant construction projects undertaken by PED/HRA.

Recommendation: Reports of inclusion efforts should include all PED/HRA projects, including those where VOP goals are set by another jurisdiction with appropriate notation.

2. **Finding:** Change orders are not considered when reporting on results of efforts to meet VOP participation goals.

Recommendation: Reports on the VOP program should include change orders in the calculations of percentage participation of certified businesses.

3. **Finding:** The VOP Ordinance requires not only reports documenting goals established, but also requires reports on results of efforts to meet them. Not all the information necessary to understand the VOP and its impacts is aggregated and analyzed and reported to the public. Aggregation and analysis of additional information not now included in reports on VOP participation would advance understanding of the VOP and its impact. PED/HRA and CAS should aggregate and analyze the information on the contracts for which they are responsible. The analysis should include, (a) number and percentage of all contracts for which goals were set. (b) the dollar amount of contracts for which goals were set and the percentage that dollar amount is of the total contract dollars, (c). the number and percentage of all contracts where the actual VOP participation met or exceeded the goal set, (d) the

dollar amount and the percent of the total contract dollars of contracts where the actual VOP participation met or exceeded the goal set. (e) the number and percentage of all contracts where the actual VOP participation was less than the goal set, (f) the dollar amount and percent of the total contract dollars of contracts where the actual VOP participation was less than the goal set, (g) the number and dollar amount of contracts where no goal was set because no subcontracting was anticipated, (h) the number and dollar amount of contracts where no goal was set because no subcontracting was anticipated that resulted in VOP participation, and the dollar amount of that participation, (i) the overall VOP goal percentage set weighted by contract amount, (j) the overall VOP participation percentage achieved weighted by contract amount. By undertaking this analysis each year comparisons will assist in evaluating whether the goals being set are increasing or decreasing, whether goals are being set more frequently or less frequently, whether goals are being met and exceeded more often or less often, and whether VOP participation in vendor contracts where no goal is set is increasing or decreasing. The overall VOP goal percentage set and achieved can be tracked over time. These figures also provide a basis for comparison with the 15 % overall goal that applies to HRA contracts where CAS is not involved in setting up the contract.

Finding: CAS's reports on VOP compliance are based on initial promises by the prime contractor, not on what the prime contractor has in fact done. Therefore, the City's understanding of the extent to which the VOP program is achieving its purposes is distorted. Inaccurate reporting contributes to public misunderstanding of the program, its operation and its value. The PED/HRA Compliance report card, however, reports both on contract awards in its "In Process" section and on amounts actually paid on its "Completed" section. CAS's reports should also include both promises made and results achieved. While CAS's reports include information on contracts separately for African-American, Hispanic, Asian and Native American businesses, the reports of PED/HRA do not. Results of outreach efforts to each of these groups is important to understanding the impact of VOP and to designing measures to increase its effectiveness.

Recommendation: The reports of both PED/HRA and CAS on the results of efforts to meet VOP goals required by the VOP Ordinance should include actual results of contracting and subcontracting, not just initial VOP participation promises from the prime contractor and results for African-American, Hispanic, Asian and Native American owned businesses, not just for minorities. Both CAS and PED/HRA should aggregate, analyze and report the additional information specified in the finding above.

4. **Finding:** Information from subcontractors respecting use of second tier subcontractors is not obtained and analyzed in all cases to accurately report the level of VOP participation achieved.

Recommendation: Information should be collected from subcontractors respecting use of second tier subcontractors. Such information should be obtained and analyzed in all cases and reflected in

reports on results of VOP efforts.

H. Additional Recommendations and Proposed “Best Practices”

Because inclusiveness efforts involve staff and programs in numerous departments and many actors both in and outside of government, it is very important to be able to continually coordinate efforts to maximize their impact. Responsibility for oversight and coordination needs to be clearly identified and adequately staffed. Means for assuring that the participants in inclusion efforts will share their experiences with each other and with the community should be fostered. Exceptional performance and improvement should be honored and recognized. Periodically, the inclusiveness efforts of the City/HRA will benefit from outside review and audit.

1. Oversight Function

Under the current administrative structure, the duties and responsibilities for implementing, monitoring and reporting on the City and HRA’s inclusion efforts are reposed with staff in three City departments and HRA. In addition to the needs for clarification discussed in the findings and addressed in the recommendations, the audit reveals a particular challenge in coordinating the efforts of various staff. We recommend that the City and HRA consider authorizing the Mayor to designate a staff person to provide oversight and coordination with respect to the inclusion efforts and activities occurring at CAS, DHR, PED and the HRA. In order for this position to be meaningful, the HRA Board of Commissioners should take appropriate action to sanction the position. The designated oversight person should receive, review and evaluate reports on inclusion activities. Appropriate staff support and resources should be provided in connection with this function.

2. Annual Meeting

The desire to maximize inclusive participation of women, minorities and persons with disabilities in the economic development opportunities of PED and HRA is shared by the City, HRA developers, contractors, and the broader community. The City and PED, and the MBDR program in particular, provide considerable information to the community pertaining to the activities of PED and HRA. We believe that those efforts could be enhanced through establishing an annual meeting at which City and HRA staff would share with the community information relating to inclusion efforts and activities during the prior year. Ideally, the meeting would include City and HRA staff, representatives from interested parties (contractors, MBEs, WBEs, disability community, labor unions and others) and representatives from the broader community. In addition to providing a forum for the City/HRA to share information and thereby promote its efforts, the meeting would present an opportunity for the City/HRA to receive feedback and input from interested parties.

3. Recognition

The establishment of some type of recognition or acknowledgment for contractors who perform exceptionally well or projects that achieve or exceed goals could serve as a useful tool to promote the City and HRA’s compliance efforts. Many programs, initiatives and campaigns utilize such a recognition to show appreciation for good performers and to provide motivation or incentive

to others. This would involve establishing criteria for such recognition and determining the best method and occasion for presentation.

4. Future Audit

We recommend that the City and HRA conduct an audit of inclusion efforts and practices at a future date to assess the participation levels of women, minorities and persons with disabilities and to determine the impact of the implementation of recommendations from this audit toward achieving improved outcomes. We believe three years is a reasonable time period to allow for implementation of recommendations, to receive the benefit of the work of any task forces and to respond to any findings from the current disparity study.

		I. Department of Human Rights	II. Division of Contract and Analysis Services	III. Department of Planning and Economic Development	IV. Housing and Redevelopment Authority	V. Human Rights Commission	VI. City of Saint Paul		
A. Increasing Effectiveness and Enforcement									
pp. 50-51	1				X		X		
pg. 73	2	X							
pg. 75	3		X	X					
pg. 46	4		X	X					
pg. 48	5		X	X					
pg. 49	6		X	X					
pg. 16	7		X	X					
pg. 25	8	X	X	X					
pg. 29	9			X					
pp. 29-31	10			X					
pg. 31	11			X					
pp. 32-33	12			X					
pg. 77	13	X							
pg. 89	14	X					X		
B. Resolutions and Rule Changes									
pg. 12	1				X				
pg. 76	2					X			
pp. 63-64	3		X				X		
pg. 62	4		X				X		
pg. 65	5						X		
pp. 66-67	6						X		
pg. 67	7						X		
pp. 67-68	8						X		
pg. 82	9	X				X			
C. Process Clarification and Communication									
pg. 23	1	X	X						
pg. 44	2		X	X					
pp. 43-44	3		X						
pg. 79	4	X	X	X					
pp. 49-50	5		X				X		
pg. 78	6	X		X					

pg. 56	7						X
D. Documentation							
pp. 60-61	1		X				X
pg. 72	2	X					
pg. 44	3		X	X			
pg. 38	4		X				
E. Budget and Staffing							
pp. 71-72	1						X
pg. 56	2						X
pp. 79-80	3					X	
F. Training							
pg. 75	1	X		X			
pg. 19	2	X					
pp. 84-85	3	X					
G. Reporting							
pg. 53	1		X	X			
pg. 53	2		X	X			
pp. 51-52	3		X	X			
pg. 53	4		X	X			
H. Additional Recommendations							
pg. 100	1				X		X
pp. 100-101	2	X	X	X	X		X
pg. 101	3			X	X		X
pg. 101	4				X		X