

# **REPORT**

**TO MAYOR CHRISTOPHER B. COLEMAN  
ON IMPLEMENTING THE RECOMMENDATIONS  
CONTAINED IN THE INTERNAL PERFORMANCE AUDIT  
CONDUCTED BY MR. JAMES HALL, JR., ESQ.**

Submitted by:

Dated: June 4, 2008

Saint Paul City Attorney John J. Choi

**CITY ATTORNEY'S REPORT TO MAYOR CHRISTOPHER B. COLEMAN  
ON IMPLEMENTING THE RECOMMENDATIONS  
CONTAINED IN THE INTERNAL PERFORMANCE AUDIT  
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**A.     INTRODUCTION**

On November 28, 2007, Mayor Chris Coleman, in response to an internal review and performance audit of the City of Saint Paul ("City") and its Housing & Redevelopment Authority's ("HRA") efforts related to inclusion in City/HRA economic opportunities conducted by James Hall, Jr. ("Hall Audit"), charged the undersigned with the responsibility of creating a report on how the City and HRA could best implement the recommendations contained in the Hall Audit. A copy of the Hall Audit can be found at <http://www.stpaul.gov>.

The Mayor requested that accountability be a primary hallmark of any recommendation for reform and that the report focus on how the City and HRA could be more inclusive toward people with disabilities, women and minorities in its contracting practices. Through extensive outreach and engagement with stakeholders, it also became abundantly clear that improved workforce development strategies focused on increasing the participation of people with disabilities, women, and minorities should be an important part of the City and HRA's efforts to implement the recommendations contained in the Hall Audit. Accordingly, this report is intended to be a thorough and comprehensive strategy to realize City policy makers' vision of a more economically inclusive Saint Paul.

The Mayor requested that this report be completed within three months so that the City could act quickly and in a thoughtful way. As a part of this process, it was important to the Mayor that this report be a product of significant community and stakeholder engagement. As a result of this expectation and wanting to be thorough, additional time was necessary to engage the community and stakeholders on the recommendations in this report. The Mayor's expectation for significant community and stakeholder engagement resulted in recommendations that are more comprehensive and strategic in nature. In addition, the recommendations in the report will challenge every stakeholder to think and do things differently.

In addition, it was anticipated that this report would consider important data and recommendations from a disparity study conducted by the City's consultant, MGT of America ("MGT"). However, the disparity study was not completed by MGT in time to be incorporated into this report. Therefore, the recommendations contained in this report do not include consideration or analysis of disparity study data that will be significant to the City's future policy decisions.

## **B. COMMUNITY AND STAKEHOLDER ENGAGEMENT PROCESS**

From the outset, Mayor Coleman requested that this report reflect meaningful input from the public and the stakeholders involved in the Hall Audit's recommendations. This report was drafted after careful consideration and significant input from the following:

1. Mayor Chris Coleman, Saint Paul City Councilmembers and other appointed and elected officials representing Saint Paul and Ramsey County.
2. Interested citizens who participated in public meetings. Six community meetings were convened with total estimated attendance exceeding 300 people. Public meetings occurred on November 28, 2007 (convened by City Council and Mayor's Office at the MLK Center), November 29, 2007 (convened by City Council at Mount Olivet Baptist Church), December 18, 2007 (convened by Saint Paul Human Rights Commission at the MLK Center), January 31, 2008 (convened by City Attorney at the MLK Center), March 17, 2008 (convened by Chair of the Human Rights Commission, Equal Access Group and City Attorney), and May 1, 2008 (convened Chair of the Human Rights Commission, Equal Access Group and City Attorney). Numerous media organizations like the Pioneer Press, Star Tribune, Spokesman Recorder and Minnesota Monitor reported extensively on the progress and community input received from these meetings in a number of news articles. In addition, the transcript from the Human Rights Commission that occurred on December 18, 2007, is attached for your review.
3. Directors of the following departments: Human Rights, Office of Financial Services, Planning and Economic Development, Department of Safety and Inspections, and Human Resources.
4. City staff who are engaged in activities that have an impact on implementing contracting decisions, monitoring and enforcement of contracting and fair labor standards, and capacity building. Specifically, meetings occurred with staff from the following departments: Human Rights, Office of Financial Services (Contract Analysis Services Division), and Planning and Economic Development.
5. Community coalitions and organizations involved with lobbying the City to conduct the Hall Audit and significantly interested in its implementation, which included groups such as the Equal Access Working Group, Isaiah, Community Stabilization Project, Saint Paul NAACP, Jewish Community Action, Kaposia, Association of Women Contractors, and the National Association of Minority Contractors – Upper Midwest. Multiple meetings were held with these groups and they served in many ways as a community task force. Many of their ideas form the basis of the recommendations contained in this report.
6. Minority contractors who are currently or have participated in contracts let by the City or the Housing and Redevelopment Authority.

7. Minority contractors who have tried but never participated in contracts let by the City or the Housing and Redevelopment Authority.
8. Saint Paul Building Trades Assembly and other interested labor organizations.
9. Trade associations and general contractors who conduct significant construction work in the region including Associated General Contractors of Minnesota and Mortenson Construction.
10. Ramsey County Manager's Staff.
11. Saint Paul Area Chamber of Commerce and various ethnic chambers of commerce.
12. Organizations, committees, councils and commissions like the Metropolitan Economic Development Association, African American Leadership Council, Saint Paul Human Rights Commission, Minnesota Minority Suppliers Development Council and Ramsey County Small Business Enterprise Advisory Committee.
13. Organizations who are representative of human and civil rights.
14. Vendors who sell software that assist public agencies with capacity building and contract compliance.
15. Other interested individuals who have requested a meeting to discuss the Hall Audit or whose input was specifically sought by the City Attorney.

The recommendations in this report reflect a significant commitment to proactively seeking interested stakeholders and listening to and working with every interested person or organization that chose to participate in the process. Every person or organization who requested a meeting had the opportunity to meet with the City Attorney to discuss the Hall Audit. Many of the recommendations in this report are a product of the stakeholder engagement process.

Many of the stakeholders are pleased with the public engagement process and are listed in the attached list of organizations as supporters of the recommendations contained in this report (see attachment). Moreover, the auditor, Mr. James Hall, Jr., has reviewed the recommendations contained in this report and he believes that the plan of action suggested by this report is consistent with his overall performance audit and recommendations (see attachment).

Notably, almost every stakeholder interest or group expressed strong support for the creation by merger of one City department focused on improving coordination, accountability and communication in the City's contracting efforts. Intuitively, this idea

seemed to make sense to virtually everyone, including the majority of City staff and Department Directors. Also, the community and stakeholders voiced strong support that a new City department be created by ordinance and that a person be appointed through a transparent community selection process to lead this effort and manage the newly merged City department. In addition, there was universal recognition and support for additional City funding or non-profit foundation support that could be allocated or secured to help implement the recommendations of this report.

There were, however, divergent opinions about the details of such reorganization among some stakeholders. Some questioned whether the proposal for re-organization and merger would diminish the City's commitment to enforcing the City's Human Rights Ordinance (Chapter 183) and whether there was a need to create a new department rather than incorporate everything into the existing Human Rights Department.

Since the time that Mayor Coleman began the implementation process of the Hall Audit on November 28, 2007, a total of 92 meetings have taken place with the City Attorney in addition to the six public meetings that occurred. At least 300 people attended the six public meetings on this subject. Public interest and participation was robust. In the January 31st public meeting (where an estimated fifty people attended), the agenda included a breakout session involving small groups to ensure that everyone had the opportunity to meaningfully participate. Recommendations compiled by ISALAH (unedited) from each small group at the January 31<sup>st</sup> meeting are attached to this report.

On March 17 and May 1, further discussion occurred at public meetings on a number of concerns expressed by those who questioned the proposal for re-organization and merger. Considerable outreach and one on one meetings occurred after the March 17 meeting to address outstanding concerns. Some changes were made to this report to address some of the concerns. However, the report and those that support it were adamant that re-organization and merger must occur with a leader chosen through an inclusive and transparent community selection process.

### **C. DISCUSSION OF HALL AUDIT**

In reviewing all of the recommendations in the Hall Audit, it is clear that each finding and recommendation could be categorized into three broad themes of accountability, communication and resources. Moreover, many of the findings and recommendations in the Hall Audit stem from organizational issues, which relates specifically to accountability.

#### ***ACCOUNTABILITY***

At present, the City and HRA's contracting function and efforts to increase inclusiveness are performed by a myriad of staff who work for either the Office of Financial Services, Planning & Economic Development, or the Department of Human Rights. In addition, staff from the Department of Safety & Inspections conducts work on licensing matters that sometimes involve contractors. This disjointed paradigm exists because of the

numerous legal obligations that have been charged to different departments and enacted over a long period of time and on a piecemeal basis. A coordinated and comprehensive strategy to achieve contracting, labor standards, and workforce goals are not reflected in the City's organizational structure and ordinances that govern this area.

The mission or purpose of all the City departments that are engaged with contracting and efforts to increase inclusiveness do not exist primarily to connect policy goals in this area with the City's contracting decisions. In fact, sometimes the practicalities of economic development projects and the realities of purchasing decisions may actually conflict with inclusiveness goals in some instances.

Moreover, it is difficult to ascertain which department is in charge of implementing the City Council and Mayor's policy goals on inclusiveness and expanding economic and employment opportunities in the City. Through staff interviews it was also clear that because of the fragmented organizational structure, department staff throughout the City were not always on the same page as it related to who was responsible for what. Any Chief Executive Officer, like the Mayor, would have a difficult task in attempting to reach policy objectives under the current system. In some departments, management tools like performance evaluations do not necessarily connect with policy goals on inclusiveness and expanding economic and employment opportunities in the City of Saint Paul.

The work conducted in the Office of Financial Services, Planning & Economic Development, and the Department of Human Rights is incredibly important to expanding economic and employment opportunities. However, the current system does not allow for City staff to act in a coordinated and powerful way.

### ***COMMUNICATION***

In addition, there is a divide between some members of the public and City staff with regard to the work that is being done in the City of Saint Paul. On the one hand, some members of the community believe that City staff are in violation of the law and are purposefully discriminating against minority vendors and contractors. On the other hand, my interviews with numerous City staff and some minority contractors shed light on a legalistic culture that is very focused on doing what the law requires, not because of any specific intention but primarily due to limited resources that are available and, at times, a lack of clarity in mission and authority to implement change. The law is the lowest common denominator of acceptable behavior and doing things in accordance with the law is what currently guides the City and HRA.

Yet, it is clear that the system overall is not working as it should and is inconsistent with the overall policy objectives and goals of the City's leadership. The Hall Audit confirms this reality. Universally speaking, City staff and managers want to do better in the area of inclusive contracting practices and expanding economic opportunities. Unfortunately, a strategic approach that goes beyond the law has not been communicated in a coordinated way to City staff. The reality of the City's current structure and approach leads most City

staff to focus primarily on what is mandated by their department's legal obligations rather than a strategic mission and an ethic of achieving policy objectives.

In addition, communication and outreach to external stakeholders seems to be uncoordinated, fragmented and not necessarily led by a high level executive on a global or strategic basis. There are many positive initiatives and efforts going on in the City that deserve special recognition but are not readily known in the community. As an example, the City through its Minority Business Development and Retention (MBDR) Program have successfully provided entrepreneurial and technical training leading to tangible public contracts and job placements. The City, through its Human Rights Department and PED, also works in partnership with the Metropolitan Economic Development Association (MEDA) on their Construction Partnering Program ("CPP"), which has resulted in increased opportunities and results for minority contractors since its inception in 1996. The Apprenticeship Opportunity Pilot Program (AOPP) is another recognized effort that is designed to build a pipeline of diverse workers prepared to enter the constructions trades. Recently, the City partnered to create a joint certification program with Minneapolis and the counties of Hennepin and Ramsey (C.E.R.T.). Although reviews have been mixed about this effort, it is a start of an important multi-jurisdictional strategy and partnership in the area of inclusive contracting practices and expanding economic opportunities.

## ***RESOURCES***

Given the current level of resources, the City performs relatively well in doing what is required but there is little ability to do more. Contract monitoring, investigation and enforcement are time and labor intensive. Technological investments that would greatly improve the City's efforts in monitoring and investigation have not been made over the course of many years. City staff who are expected to monitor, investigate and initiate enforcement actions are also managing many other responsibilities within their respective departments. In some instances they are the project managers themselves.

There is no doubt that additional resources are needed to do more than what the City currently does. However, additional investments should only be made after thoughtful consideration about the City's policy objectives and approach. In addition, there may be better and more cost effective ways to accomplish certain critical functions through coordination and consolidation of work assignments between departments and an investment in technology like software that can help manage contract compliance issues. In some areas, working smarter will lead to better outcomes and greater efficiencies. The Hall Audit and MGT Disparity Study will also provide important guidance on a number of critical resource and organizational decisions.

Although there is considerable expectation that the City move forward quickly on implementing the Hall Audit, it is critical that the City move forward in a thoughtful and strategic way. The recommendations in this report can be a first step in that process.

## **D. SPECIFIC RECOMMENDATIONS FOR MOVING FORWARD**

### **1. Make Applicable Chapters 84 and 183 to the HRA.**

This recommendation was completed on December 12, 2007, when the HRA passed a resolution making Chapters 84 (Vender Outreach Program) and 183 (Human Rights) applicable to the HRA's contracting practices.

### **2. Create by Ordinance a Consolidated Department Through Merger and Consolidation of Existing City Staff and Budget Resources.**

It is recommended that a single department be created through merger, established in ordinance and functionally named as the "Department of Human Rights and Equal Economic Opportunity." This decision, however, should be made after consultation with City staff and community stakeholders. The department should seek to re-organize existing City staff into one department. The department's functions should include four primary areas. Those functions would include the following: (1) Civil Rights Enforcement and Outreach, (2) Capacity Building and Workforce Development, (3) Contract Monitoring, Investigation and Enforcement, and (4) Contract Analysis and Procurement. By including all aspects of contracting, capacity building and workforce development, and civil rights into one department, it is believed that accountability and communication will improve greatly. Moreover, all City staff will operate under the same leadership and mission and can approach their work in a way that will lead to outcomes that meet the policy objectives of the City's elected officials (i.e., Mayor and City Council).

This department could be formed by reorganizing budget resources, work responsibilities and personnel primarily from the Office of Financial Services, Contract Analysis and Services Division, Planning and Economic Development, Human Rights and the Department of Safety and Inspections. It is proposed that the department would be comprised of four functions, all working under the same mission and management by way of a department director and administrative enabling ordinance.

- (1) **Civil Rights Enforcement.** It is recommended that all of the responsibilities of the City's current Human Rights Ordinance (Chapter 183) be taken on by the new department. It is critical to include the entire Human Rights Department in the reorganization because of its important work in affirmative action and contract monitoring on workforce issues. If coordinated with other City functions, Chapter 183 could be a critical tool in reaching workforce development goals and reducing racial disparities. Utilizing Chapter 183 as a part of an overall compliance rating system will also allow contracting decisions to be exercised consistent to the City's values and in accordance with applicable municipal contracting laws. In addition, this function should continue its outreach efforts on issues identified by ordinance, policy leaders and the community. As a part of this reorganization, it is recommended that only conforming edits to Chapter 183 be made and that the department continue to be legally charged with handling



discrimination complaints. In no way should this reorganization diminish the City's commitment to enforcing the City's Human Rights Ordinance (Chapter 183).

- (2) **Contract Analysis and Procurement.** It is recommended that the current Contract Analysis and Services function be moved in its entirety to the department. All of the employees who currently serve this function work in the Office of Financial Services. This function would include responsibility for the City's contract procurement, purchasing and municipal bidding process. It is critical to ensure that the City's buying decisions are better coordinated and monitored and connected to other functions such as capacity building and enforcement.

Staff in this division must work closely with the capacity building staff and each City Department. The success of this unit will depend heavily upon its ability to connect with other departments and for the Mayor to establish a clear expectation for all department directors to adhere to the policies established by this unit. It is also recommended that the City, along with partner jurisdictions through a joint powers entity, invest in software development that could assist in bringing new diverse participants into the City's purchasing and contracting function.

- (3) **Contract Monitoring, Investigation and Enforcement.** Currently, contract monitoring and enforcement is performed primarily by OFS, PED, DSI and DHR. It is recommended that the City's current contract monitoring and enforcement functions be consolidated into the department. At present, various departments are in charge of bits and pieces of contract compliance, investigation and monitoring in a number of different subject areas such as affirmative action compliance and hiring on construction sites, vendor outreach program, fair labor standards, prevailing wage, living wage and business subsidy, and other areas. This new approach will lead to a unified mission and approach to contract compliance and monitoring throughout the City and will lead to economies of scale and improved coordination of resources.

In addition to enforcing the City's contractual rights, it is also proposed that this unit enforce a new contract compliance ordinance that will form the basis of a compliance rating system and possibly lead to debarment for any contractor found to be in gross violation of the law. This new ordinance (discussed below) would be very similar to how the City handles adverse licensing actions in that the City Council could make adverse enforcement decisions in their quasi-judicial capacity. More investigative training and developing new protocols will be critical to the success of this unit. It will also be important for project managers in other departments to work closely with this unit.

- (4) **Capacity Building and Workforce Development.** At present, capacity building and workforce development within the City is done by OFS, PED and DHR. It is recommended the City's current capacity building and workforce development

efforts be consolidated into this department. Staff should be assigned to work on outreach efforts to increase participation and the quality of interaction with the City in the CERT program and VOP, build partnerships between contractors and vendors, work with contractors and labor organizations, and develop partnerships with non-profit organizations that assist small business owners and the private sector. In addition, workforce development strategies and initiatives like apprenticeship programs should also be a part of the City's capacity building efforts by partnering with employers, labor unions, and post-secondary institutions.

Numerous conforming ordinance amendments or administrative changes will be necessary in a number of areas. The task of drafting the new ordinance should be assigned to the City Attorney's Office as soon as possible so that the City Council can hold public hearings and pass the new ordinance by October 1, 2008. As a part of this process, the Human Rights Commission and City Council should continue the public engagement process on drafting the details of the new administrative enabling ordinance. Human Resources and OFS staff should be engaged as well. Ordinance and administrative changes are necessary in the following areas:

- (1) Conforming Edits to Chapter 183, Human Rights Ordinance.
- (2) Conforming Edits to Chapter 84, Vendor Outreach Program.
- (3) Conforming Edits to Chapter 82.07, Prevailing Wage Ordinance.
- (4) Conforming Edits to Chapter 98, Living Wage Ordinance.
- (5) Administrative protocol changes to Business Subsidy Program.
- (6) Administrative protocol changes in Apprenticeship Opportunities Pilot Program.
- (7) Administrative protocol changes to federal funding sources including CDBG and HOME Programs and Section 3 Requirements.
- (8) Administrative protocol changes to reporting internal hiring, external hiring and business utilization consistent with this report.
- (9) Other conforming changes that may be identified by the City Council, Human Rights Commission and City staff.

### **3. Appoint a Department Director Through a Community Process.**

It is proposed that a department director be appointed to lead and manage the department. The appointment process should be established by ordinance and the director should be given a three year term. Removal during the term could be initiated by the Mayor with majority approval by the City Council. In addition, the Human Rights Commission

should be given the ability to initiate removal of the director during the term with the Mayor's approval.

It is also strongly recommended that a community process similar to the Police and Fire Chief selection be employed to hire the director given the intense community interest. It is recommended that Councilmember Melvin Carter be appointed to lead this effort because of his strong interest and ability to build consensus. The community process should also include community involvement in developing the job description, recruiting for the position and recommending to the Mayor a list of finalists. The process to recruit and hire the director should occur immediately so that the director can be ready to officially start the new job in conjunction with the necessary ordinance changes and creation of the department. Ideally, the director will have exceptional leadership and management skills and experience, broad based community support and will be announced to the public sometime by the end of this year.

In the interim, the Mayor should appoint a coordinator as soon as possible to lead the continued community and stakeholder engagement process, manage the drafting of ordinance revisions, manage human resource and budget issues, coordinate and manage City staff, and manage the implementation of the disparity study and the Mayor's directives. Sufficient staffing for the interim coordinator should be made available on a priority basis.

#### **4. Seek Grant Funding to Enhance the Department.**

Grant funding should be sought to assist the City in funding the department's goals. It is also critical that PED maintain its funding obligations to support capacity building as required by Chapter 84.

#### **5. Incorporate Community Involvement and Oversight.**

A public commission like the Human Rights Commission should be maintained as a part of the ordinance that establishes the department. It is recommended that the commission be expanded to twenty-one (21) members and be appointed by the Mayor and City Council. The commission should be a diverse representation of interested community members and stakeholders. Appointments to this commission should be staggered so that the department and commission's work will be sustainable regardless of election outcomes.

The role of the commission should be to hear discrimination cases as required by Chapter 183 and serve as a public body that would review regular reporting information and department performance data that could be presented by the director. In addition, a comprehensive annual report should be prepared and presented to the commission and the public as a part of an annual community meeting. The Commission should require that the department develop a work plan that establishes project goals, timelines and benchmarks for accountability.

The commission should also review and monitor the City's internal hiring on an annual basis and advise the Mayor, Human Resources Director, and City Council on the City's workforce development goals. The City's internal hiring results should be reported to the commission by the Human Resources Director as a part of an annual report and meeting.

An extensive assessment of the department should be conducted by the commission every three years to coincide with the director's three year term. As a part of this assessment, the Commission should have the specific responsibility to recommend to the Mayor whether the director should be re-appointed after his or her three year term has expired. A Mayoral re-appointment would require City Council approval. As discussed above, the power to recommend termination of the Director during the term should be given to the Commission to ensure accountability to the public.

In addition, the commission could serve an advisory role to policy makers on a number of issues involving human rights, racial disparities, contracting and purchasing policies and workforce development issues. It is recommended that the new ordinance make clear that the department should provide adequate staffing for the commission.

**6. Develop Uniform Contract Language and a Contract Compliance Ordinance that Provides for Stronger Enforcement and Expanded Workforce Investments.**

It is proposed that all contracts in the City and HRA moving forward incorporate a uniform and coordinated strategy to address non-compliance issues and to encourage outcomes that connect with the City's values in workforce development and use of public funds. It is also suggested that liquidated damages and immediate enforcement provisions be employed where a contractor has not complied with its obligations.

In addition, the City should develop a contract compliance enforcement ordinance that would ultimately lead to debarment for contractors who have significant or multiple ordinance violations or contract compliance issues. It is critical that this ordinance also include the affirmative action and contract auditing data gathered pursuant to Chapter 183. In essence, this ordinance would be the first step in developing a formalized compliance rating system that will allow contracting decisions to be exercised consistent to the City's values and in accordance with applicable municipal contracting laws.

In addition, a multi-jurisdictional approach should be considered so that findings of negative performance can be documented and used in an inter-jurisdictional basis to arrive at value-based contracting decisions and in the most severe cases preclude bad actors from participating in the contract process. By incorporating a multi-jurisdictional approach, compliance will be taken more seriously by contractors and provide for a consistent set of regulations throughout the regional system.

**7. Develop a Multi-Jurisdictional Approach to Technology Investments that Enhance Capacity Building and Performance Monitoring.**

It is also recommended that the City develop partnerships to invest in technology that will assist in building capacity, streamline business regulation and monitor contract compliance. Investments in the area of capacity building by any jurisdiction will inevitably lead to benefits that are multi-jurisdictional. In addition, a multi-jurisdictional enforcement approach that is focused on scoring contractor performance and sharing data with other jurisdictions will lead to better outcomes and stronger incentives to comply with contracting laws. In addition, businesses will appreciate a uniform and coordinated process to access public contracts and business opportunities.

It is recommended that the City take the lead on developing a multi-jurisdictional effort to implement a comprehensive technology investment to manage regional buying decisions and improve the availability of minority and local small business vendors in the region. In many ways, this effort would be an expansion of the C.E.R.T. program that currently exists with the Cities of Saint Paul and Minneapolis and Ramsey and Hennepin Counties.

**8. Partner with Outside Resources, Labor Unions and the Private Sector.**

The federal government and non-profit organizations like the Metropolitan Economic Development Association ("MEDA") have a number of different programs designed to support small and minority businesses. For example, local efforts to help minority firms become bonded can make use of the Federal Small Business Administration's Office of Surety Guarantees. For qualified contractors, this program will guarantee a certain percentage of the bonding company's surety, making them more comfortable in offering bonds to smaller or newer contractors. Federal incentives and federal databases of "disadvantaged businesses" can also be a resource for the City's efforts.

It should also be noted that many labor unions and private contractors understand the changing demographics of our region and have expressed a strong willingness to partner with the City's efforts on capacity building and workforce development. The Saint Paul Regional Chamber of Commerce, labor unions such as the building trades, and companies like Mortenson Construction have expressed a strong desire and commitment to working with the City on contracting issues and they should be commended for their sincere interest.

In addition, there is significant interest in the foundation community to address racial and economic disparities and it should be noted that the Hall Audit was funded by two foundation grants. The City should begin to seek outside foundation assistance in this area.

**9. Look Beyond Construction to Incorporate Policy Values in Buying Decisions.**

Although City and HRA construction projects are a significant portion of the economic pie, it is also important to examine participation in the City's procurement function, especially in the area of professional services. Where the disparity study may find underrepresentation in certain areas, legally defensible "minority business utilization plans" should establish goals for minority participation in the City's procurement activities. Each City Department plays an important role in buying decisions. The department director should be empowered to manage the City's buying decisions in a centralized and service orientated way much like how the City Attorney's Office manages legal issues, Human Resources manages labor relations, Office of Technology manages technology decisions and Office of Financial Services manages the budget.

**10. Immediately Issue an Executive Order to All Department Directors and Relevant City Staff.**

By executive order, it is recommended that the Mayor immediately issue the following directives to all Department Directors and relevant City staff:

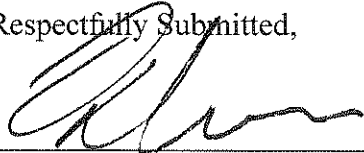
- (a) On an interim basis appoint a department director level coordinator to lead the continuation of implementing the Hall Audit's recommendations, oversee the management of the MGT Disparity Study, coordinate all relevant City departments and staff on contracting and workforce policies on an interim basis, continue community and stakeholder engagement, manage human resource and budgetary issues associated with the department and begin the work of implementing the recommendations contained in the report until such time a permanent director is in place.
- (b) To the extent necessary, re-assign necessary staff and amend applicable budgets to support and prioritize the implementation of this report in the interim.
- (c) Order the drafting of edits to Chapter 84, Vendor Outreach Program, to conform to Judge Kathleen Gearin's Order and Judgment dated December 5, 2007, in the matter of Conover v. City of Saint Paul. In essence, Chapter 84 should be amended to require prime contractors to provide reasons why a subcontractor was not utilized on a project, and more advance notice should be given to potential subcontractors on potential bidding opportunities.
- (d) Order the drafting of an enabling ordinance for the department and conforming ordinance and administrative protocol changes so that an ordinance creating a department is passed by the City Council on or before October 1, 2008.

- (e) Order the drafting of a new contract compliance ordinance so that it can be in place by October 1, 2008, and review applicable liquidated damage limits for compliance matters in conjunction with this ordinance.
- (f) Order the development of a hiring process and intensive recruitment for the permanent director consistent with this report so that a person can be named before the end of this year.
- (g) Order a review of all job specifications, job descriptions and performance evaluation forms that are relevant to City staff who perform critical functions in the area of contracting and economic development (including Department Directors). All such documents should reflect the City's values as it relates to expanding economic opportunities, inclusiveness and diversity.
- (h) Order a review of current City and HRA policies and put into place practices that are consistent with this report, the Hall Audit and the MGT Disparity Study.
- (i) Work with stakeholders to determine if persons with significant disabilities can be excluded from local and federal labor standards; research inclusion of persons with disabilities in hiring goals on construction sites within Chapter 183 and through adding a category for business owners with disabilities to Chapter 84.
- (j) Begin discussions with other possible public agencies to develop a coordinated and multi-jurisdictional approach to technology investments, capacity building and contract compliance.

#### **E. CONCLUSION**

The recommendations in this report are bold and it will take considerable leadership to make the recommendations in this report a reality. This report suggests more resources in challenging budget times and another re-organization after forming the Department of Safety and Inspections last year. Nothing in this report is easy but it is what must be done in order to achieve better outcomes that are accountable to the public and reflect the City's values.

Respectfully Submitted,



John J. Choi  
City Attorney

6.4.08

Date

## **ATTACHMENTS**



**List of Organizations Supporting  
City Attorney's Report  
on Implementing The Hall Audit Recommendations**

Saint Paul Human Rights Commission

Saint Paul NAACP

National Association of Minority Contractors – Upper Midwest

Association of Women Contractors

ISAIAH

Community Stabilization Project

Jewish Community Action

Kaposia

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March 17, 2008

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CITY ATTORNEY

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RE: Performance Audit Implementation

Dear Mr. Choi:

Thank you for forwarding a draft of your report on implementing the recommendations contained in the review and performance audit that was recently conducted by the Hall Legal Team. Our team has reviewed the draft, and, overall, we believe your implementation plan is consistent with our findings and recommendations. We are encouraged by the process reflected in your report for involving the community in connection with these efforts.

Our team was impressed by the attention and response of Mayor Coleman and President Lantry upon receiving our report. We believe that it is significant that the Mayor appointed you to promptly review the report and propose a plan for implementation. The fact that there appears to be a consensus among community representatives for many of your recommendations for implementation is certainly positive and constructive as a basis for moving forward.

Pardon the cliché, but we know that it is all too often that well-meaning reports are consigned to "sit on a shelf and collect dust." In this instance, we are interpreting the actions and responses of the City of Saint Paul to our report to indicate otherwise with respect to these recommendations.

1. We believe it was important that HRA took action to clarify that Chapters 84 and 183 are applicable to it, as we found that the lack of clarity and uncertainty that existed contributed greatly to problems with implementation.

2. In our audit report, we strongly suggest that the goal of achieving the policy objectives of Chapters 84 and 183 would be greatly enhanced by establishing clear responsibility for monitoring, reporting, accountability and communication functions. It was, perhaps, one of the most serious problems that we identified. We suggested creation of an "oversight function" with duties and responsibilities for implementation. You have proposed creation of a new single department, through merger, to be known as the "Department of Human Rights and Equal Opportunity," with an appointed director, which accomplishes the goal that we envisioned. Under the current structure, the disjointed nature of implementation results in a failure to fully benefit from effective use of Chapters 183 and 84 as tools to accomplish compliance. We believe that the structuring of the new

department to include the four primary functions identified (civil rights enforcement and outreach, capacity building, contract monitoring, investigation and enforcement and contract analysis and procurement) is logical and practical. It will also have the effect of streamlining administration, reducing redundancies and maximizing the benefits of limited and valuable staff and resources.

3. Another theme in our recommendations is the benefit of involving community, to the extent possible, in various aspects of the City's efforts. In order to increase the likelihood of engendering community support for the new department, its purpose and functions, we believe that it would be important to involve the community in the selection process for the department director, as suggested. An open and transparent process increases the likelihood of community "buy-in" and participation. It would appear from the description in your report that Councilman Melvin Carter possesses the types of qualities that would be desirable in leading this selection process, importantly, a strong commitment in this area and consensus-building ability. As your recommendations contemplate, this is not only important when the department is established but, we believe, continues to be beneficial going forward. This includes the idea of a diverse, functioning Human Rights Commission and comprehensive annual reports to be presented to the Commission and the public as part of an annual community meeting, which, again, is consistent with our recommendations.

4. Your recommendation number ten enumerates key steps necessary for accomplishing the implementation plan. It is important to identify the steps that need to be taken and establish time-lines in order to move the process forward. This recommendation sets forth the types of immediate steps that will be required to move forward. To create a new, merged department, it is obviously necessary to start drafting edits and enabling language. We were pleased to see that you have included references to Judge Gearin's November 5, 2007 Order and Judgment in Conover v. City of Saint Paul. It is also important that this recommendation involves a directive to all relevant departments and staff to start actions necessary to accomplish the implementation. Significantly, it includes directing further focus upon efforts relating to persons with disabilities. As with any process, naming an effective coordinator to lead this effort during the interim period until a department director is on board will be critical to keep the process on track.

5. Recommendation number six, which involves developing uniform contract and compliance language that provides for stronger enforcement, is completely consistent with another of our findings and recommendations. Liquidated damages and immediate enforcement provisions, where appropriate, will give teeth to the implementation effort.

While I have not mentioned each of your recommendations in this letter, we believe the others are useful and constructive as well and contribute to the policy goal of greater inclusion of women, minorities and persons with disabilities in the City's contracting efforts. As we have previously stated, if we may be of further assistance to you, the City of Saint Paul or the community in this matter, please do not hesitate to call upon us.

Very truly yours,

A handwritten signature in black ink that reads "James H. Hall Jr." in a cursive, slightly slanted script.

James H. Hall, Jr.

cc: Ms. Trudy Moloney

SMALL GROUP Notes and Discussion Points  
January 31, 2008  
MLK St. Paul Meeting  
Attorney John Choi  
Audit Results Meeting

The following are from recorders for small group breakout session during the community meeting with Attorney John Choi on January 31, 2008 on the topic of VOP audit results.

Notes from Community Meeting about the St. Paul Audit addressing Minority Contracting—  
Recommendations [**Aneesa Parks, notetaker**]

- We recommend that an itemized budget of the financial resources needed to implement recommendations made by John Choi's be included in his report. The itemized budget should include staff positions. Primarily a director of compliance at the cabinet level who will have the power to oversee and enforce the law. We made this recommendation because we believe a city budget reflects the priorities of the city. If complying with equitable contracting practices is a priority, it will be reflected in budget.
- We recommend that contractors awarded contracts by the city be evaluated based on their ability to submit binding contracts with women, small businesses, and minority owned businesses. We make this recommendation because we believe that if compliance is expected and rewarded, contractors will find ways to comply.
- We recommend that communication be improved; 1) communication between city departments 2) communication between the city and contractors about expectations 3) communication about open bids for minority contractors and 4) communication with the community about the compliance accountability of the city. We made this recommendation because communication allows for transparency. Transparency builds trust.
- We recommend that there be an immediate moratorium on contracts that do not meet compliance. We ask that the city council stop signing off on contracts that do not comply. We made this recommendation because sometimes urgency is the greatest motivator. If contracts are not signed until there is a process that ensures the law is followed, the contractors will help create the process that ensures compliance.
- We recommend that there be at least yearly accountability of compliance. The clearest way to show that accountability would be to report the percentage of money spent on contracts by the city awarded to women, small businesses, and minority owned businesses. These accountability reports should be made public because St. Paul residents deserve a record with minority contractors that they can be proud of.
- We recommend the city spend time building capacity of minority owned businesses. Stop making the process exclusionary and make the process inclusionary when considering the pool of minority owned businesses.
- We recommend the removal of "Alternative compliance" we believe this method has helped perpetuate the status quo. Further, following the "good faith effort" 84.08c would demonstrate the cities true efforts to include minority businesses in the contracting process. Thusly living up to the true intend of chapter 84.
- We recommend that as a community we ought to require a percentage of city contract be available for businesses that reside in the area.
- We recommend sanction be placed on all contractor's that don't live up to the requirements of ch 84 and 183, section 3. with hold 25% until compliance is meet.

**Notes from 1/31 Community Meeting  
Carol Rydell**

System in place needs to be fully funded and include training

Discontinue putting things in the drawer – need transparency in city actions

Website – more user-friendly, better details

Clarify how program will be implemented, how information will be shared – community meeting, on website, document contractors involved, information about \$

One department head to bring different parts together, director with power, cabinet level, public selection process like fire and police chiefs

Citizen review board similar to police chief

Shared vision by city – one view with focus, people pulling in one direction, involve community in process

How can people not know who vendors are?

Involve other communities of color – Asian, Latino

HRA should not be letting any contracts that don't include VOP – should be consequences for non-compliance – no more city business, fine of 25% of total contract, cancellation of contract

Innovative ways to involve skilled labor, to help contractors connect with minority labor

Mayor needs to give clear message to city employees – need to follow Ch. 84 & 183, do things the right way, the way intended, start with compliance, Norm Coleman and Kelly eras are over, it's your job – also press conference with message

Go beyond compliance – need to do better than that, follow good faith efforts

Contractors need to do more than search for minority contractors, they need to find them

Open search process for director – don't just appoint someone, need public process like fire chief

Address bonding and licensing issues, insurance is barrier – find innovative ways and training, up front \$ to help businesses get started

## Notes from Jan. 31, 2008 Small Group Discussion

Facilitator: Irene Markley

Notes: Arline Datu

- Need better accountability on the part of vendors.
- Need stronger enforcement/accountability on the part of the city.

Accountability to come in the form of performance-based measures—the withholding or denying of raises or bonuses should specific goals not be met.

City Council needs to be more engaged in process. Why is the City Council signing off on contracts that aren't compliant with the laws/statutes.

- Need to create a cabinet-level position, reporting to the mayor to oversee HRA, PED and other departments that get involved in the awarding of contracts.
- Need to establish a department to manage/oversee the work of awarding city contracts and minority contracts.
- Need to recruit new blood/fresh faces to this cabinet level position—someone who is energetic, enterprising but isn't beholden to special interests.
- Selection of individual to assume this position should be transparent; need to have input from the community.
- City should make available a listing of minority contractors.

**From another group [Connie Wiegel, notetaker]**

**\* Get rid of alternative compliance**

\* Small/minority businesses have value, needs to be recognized, city provide training, relationship-building between large developers and minority business owners like it has training for small business-owners. City would make clear that "this is our value", "this is the way we do business, so if you want to do business with us, you'll have to do business that way too."

\* Often smaller contractors don't have the up-front money required to take on some projects – city could address

\* City should promptly pay smaller contractors so they can pay their employees and other expenses. City could create a revolving fund for this purpose.

\* City employees (individuals) need to be accountable for enforcing these laws.

\* Opportunities need to be communicated so that everyone hears about them at the same time. No insider group who knows well before anyone else. Also, communicate in ethnic publications.

\* The city should guarantee that contractors being awarded contracts are employee minorities.

\* The city should somehow challenge private businesses to follow the same practices.

\* No contractor is awarded a contract until he shows that he has signed contract agreements with minorities. Can just say he's going to hire them.

\* Hire a department head to enforce these laws. He/she must have the authority, a staff and a substantial budget.

- Show consideration or preference for local contractors, so money/investment stays in the community.

**Mike Thomas ( did not repeat same comments )**

Protect city staff members who are trying to advocate and promote increased minority inclusion from recrimination or loss if their employment

- Stop using "celebratory Negroes" to give an appearance that the City values diversity and is fairly awarding contracts to African Americans
- Hire a new compliance director and allocate a \$750,000 to \$1 million dollar budget to support staff salary, operational and contract enforcement efforts
- Remove Linda Camp from the VOP manager position