

**CITY OF MINNEAPOLIS
DEPARTMENT OF CIVIL RIGHTS**



**EVALUATION OF THE CITY OF MINNEAPOLIS
DEPARTMENT OF CIVIL RIGHTS
CONTRACT COMPLIANCE UNIT**

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EXECUTIVE SUMMARY

This report addresses seven major issues that emerged from the consultant interviews, legal analysis, and document review. The major themes and findings are summarized below:

KEY ISSUE	FINDING
Compliance	Governmental and non-governmental entities governed by the Civil Rights Ordinance are NOT in full <i>compliance</i> with the hiring, contracting, reporting, monitoring, and enforcement mandates described in the contract compliance provisions of the Ordinance.
Consequences	The <i>consequences</i> outlined in the Civil Rights Ordinance for failure to comply with the provisions of the Ordinance are NOT being applied to firms that are in non-compliance.
Communication	<i>Communication</i> within the Civil Rights Department, between the MDCR and other City departments, as well as between MDCR and contractors needs to be improved.
Clarity & Coordination	There is inconsistent and ineffective <i>coordination</i> between MDCR and other City departments at the pre-bid, bid, and contract award stages of the contract compliance process, which may be the result of a lack of <i>clarity</i> regarding the roles and responsibilities of internal and external stakeholders.
Capacity	The CCU does not have the <i>capacity</i> to effectively fulfill its mandate.
Commitment	The excessive non-compliance, failure to implement consequences, poor communication, ineffective coordination, lack of clarity, and lack of resources needed to operate at full capacity and fulfill the mandate prescribed in the Ordinance do not convey a sincere <i>commitment</i> to achieve full compliance with the Ordinance.
Community	The City's diverse <i>community</i> deserves to have a government committed to fulfilling the social and economic goals of the Civil Rights Ordinance and the intent of the Civil Rights Ordinance through effective implementation and evaluation, thus ensuring that the civil rights policy has the impact it was designed to produce.

Each of these issues is important; however, some are more critical to the ultimate effectiveness of the Contract Compliance Unit. Although this report will address all seven issues, it will discuss the first two issues – compliance and consequences – in greater detail, as they are two of the most critical components of an effective compliance program. The recommendations can be found on pages 60 to 64.

I. INTRODUCTION

A. *The Purpose of the Study*

In 2006, the Interim Director of the Minneapolis Department of Civil Rights (MDCR) commissioned the University of Minnesota's Roy Wilkins Center for Human Relations & Social Justice to evaluate the MDCR's Contract Compliance Unit (CCU) to determine:

- (1) What are the administrative and enforcement policies and procedures the Contract Compliance Unit has been mandated to implement?
- (2) Is the Contract Compliance Unit effectively implementing these administrative and enforcement policy and procedures?
- (3) What strategies and recommendations for the Department of Civil Rights will assist the Contract Compliance Unit effectively comply with its mandate?

This report addresses these key questions and other related issues that emerged during the study. This report was commissioned was to satisfy the City's obligation after a civil lawsuit and because the Interim Director had not received regular or consistent reports documenting the status of the CCU's activities. Report submittal is not only a critical operations task for the CCU, but more importantly, it is mandated by the Civil Rights Ordinance. The CCU's failure to submit regular reports is a critical issue that warranted attention and investigation.

Although this report seeks to provide a comprehensive evaluation of the CCU, there are likely other issues that need to be addressed but do not specifically fall within the scope of this project. One issue that will not be addressed in this report, but will be addressed in a subsequent study, is whether or not there is a disparity between the City's utilization of women and minority-owned firms and their relative availability in the City's narrowly defined geographical market. Although this issue is important, it does not fall within the purview of this project, which primarily focuses on the internal operations of the Contract Compliance Unit.

This project is a process evaluation, whereas the Disparity Study will be more of an outcome-based evaluation.¹ The Disparity Study will examine the actual goals that have been established by the City Council and whether the City has attained those goals. Some of the questions the Disparity Study will likely address are:

- (1) Is the City's Small & Underutilized Business Program (SUBP) legally defensible?²
- (2) Has the City followed the methodology approved by the courts to determine if there is a statistically significant disparity between the utilization of women and minority-owned firms in relation to their relative availability in the narrowly defined geographical market?³
- (3) If there is a disparity, are there legitimate reasons to explain the disparity such as qualifications of the firms, access to capital, bonding etc. or could the disparity be attributed to either active or passive discrimination?⁴

The primary purpose of this study is to evaluate the effectiveness of the Contract Compliance Unit in its implementation of the City's public policy that seeks to both protect traditionally disadvantaged groups from discrimination and to expand employment and economic opportunities to all city residents, regardless of race, ethnicity, gender, or disability.⁵

Implementation and evaluation are critical components of the public policy process needed to determine how effective a public policy is and whether it meets the intent of the policymakers. In his book, *Public Policy Making: Process and Principles*, author Larry Gerston discusses the role implementation and evaluation play in the public policy process.

¹ The MDCR is currently in the process of finalizing the Disparity Study along with Hennepin County.

² The U.S. Supreme Court has established criteria for developing a legally defensible minority, women, and disadvantaged business enterprise (M/W/DBE) goal program. In *City of Richmond v. J.A. Croson Company*, 488 U.S. 469, 504 (1989), the Court established a two-prong test for determining whether a city contracting program designed to increase the utilization of traditionally underrepresented groups, violates the Constitution. A legally defensible M/W/DBE goal program must address a "compelling government interest" and must be "narrowly tailored to remedy the effects of past discrimination." *Id.*

³ See *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 and *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 958 (10th Cir. 2003).

⁴ Passive discrimination involves situations where an agency or department engages in business with firms that participate in or industries where there is sizable discrimination against M/W/DBEs. The issue examined is whether the private marketplace is discriminatory. Active discrimination involves situations where the agency or department is observed to treat equally qualified M/W/DBEs and non-M/W/DBEs differently.

⁵ MINNEAPOLIS, MINN. CODE § 139 – 142 (2006).

According to Gerston: "Implementation represents the conscious *conversion of policy plans into reality*. It is the follow-through component of the public-policy making process."⁶

Gerston outlines three elements that must be in place in order for implementation to occur:

- (1) There must be an entity with sufficient resources assigned to carry out the implementation task.
- (2) The implementing agency must be able to translate goals into an operational framework.
- (3) The entity assigned the implementation task must deliver on its assignment and be accountable for its actions.⁷

For the purposes of this study, the entity assigned to carry out the implementation of the contract compliance process is the Minneapolis Department of Civil Rights' Contract Compliance Unit (CCU). It must be able to translate the goals of the Minneapolis Civil Rights Ordinance, which include promoting and expanding employment and contracting opportunities to all Minneapolis residents, into an operational framework. Lastly, CCU must deliver on the assignments or mandates prescribed in the ordinance, and it must be held **accountable** for its actions, which includes the monitoring and enforcement of affirmative action plans, and the establishment and monitoring of small and underutilized business program goals. The chart on the following page describes the operational framework the consultant developed after conducting the evaluation of the CCU. The concepts presented in the below chart are again addressed in the "Executive Summary," and in the "Findings" section of the report. Ultimately, this report will address the overarching question of how well the City's Civil Rights policy, with regard to contract compliance, is being implemented.

⁶ Gerston, Larry, *Public Policy Making: Process and Principles*, 94. (New York: M.E. Sharpe, Inc.) (2004)(emphasis added).

⁷ *Id.* at 98.