

INDEPENDENT SCHOOL DISTRICT NO. 625
Saint Paul, Minnesota
COMMITTEE OF THE BOARD MEETING
Administration Building
360 Colborne Street

August 7, 2018
4:30 PM

A G E N D A

I. CALL TO ORDER

A. Introductions

II. AGENDA

A. Superintendent's Announcements

B. Summer Programs Update

1. Introduction

2. Presentation

3

3. Discussion

C. Referendum Update

1. Introduction

2. Presentation

4

3. Discussion

D. Supplier Diversity

1. Introduction

2. Presentation

5

3. Discussion

E. Organizational Chart Update

1. Introduction

2. Presentation

92

3. Discussion

III. ADJOURNMENT

IV. Work Session

A. Board Member Attendance at Council of the Great City Schools Conference

B. SEAB Project Proposals from the Board of Education

**INDEPENDENT SCHOOL DISTRICT NO. 625
SAINT PAUL PUBLIC SCHOOLS**

PLACE HOLDER

SUMMER PROGRAMS UPDATE

**INDEPENDENT SCHOOL DISTRICT NO. 625
SAINT PAUL PUBLIC SCHOOLS**

PLACE HOLDER

REFERENDUM UPDATE

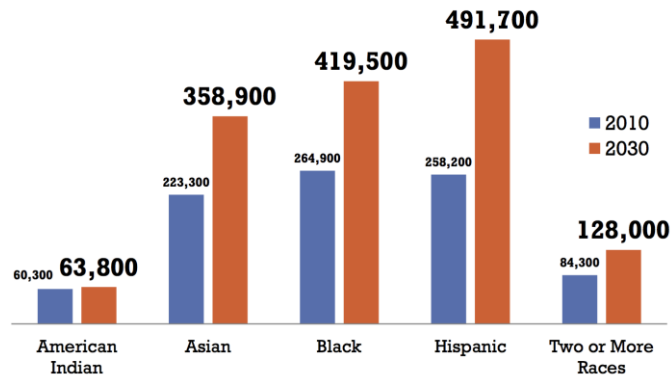
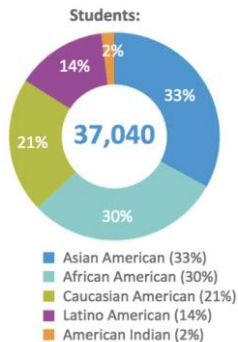
Small Business Inclusion Program

5



WHY DOES SPSS NEED A SMALL BUSINESS INCLUSION PROGRAM?

SPPS at a Glance



MINNESOTA



513,118
99.5% Small Businesses
of Minnesota Businesses

1.2 million
47.8% Small Business Employees
of Minnesota Employees



EMPLOYMENT
34,242
net new jobs



DIVERSITY
47,277
minority-owned
businesses



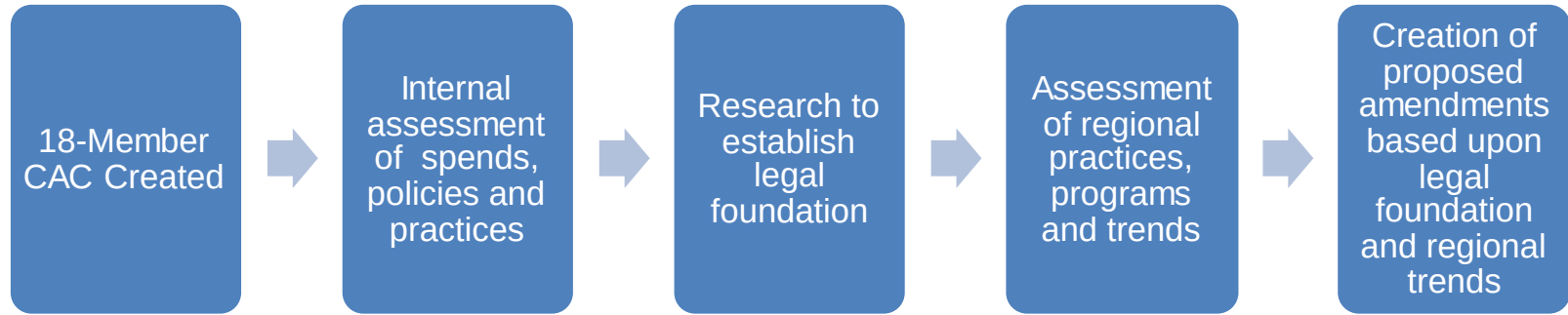
TRADE
7,191
small business
exporters

SMALL BUSINESS INCLUSION PROGRAM: TIMELINE



PROCESS OVERVIEW

∞



ACKNOWLEDGEMENT AND THANK YOU

Community Advisory Council

- Business Advocate, Business Inclusion
- Representatives overseeing similar programs
- Community Action Partnership (nonprofit)
- Contractors, Suppliers
- Trades, Labor Union
- Compliance, Financial, Legal
- Facilities Dept. and Purchasing leaders

Governmental Entities

- City of Saint Paul
- Ramsey County
- City of Minneapolis
- Hennepin County
- Minneapolis Public Schools
- Minnesota Department of Administration
- Metropolitan Council

Consultants

- Powers Consulting
- Strong & Starlike Consulting, Inc.



BOE QUESTIONS REGARDING PROGRAM

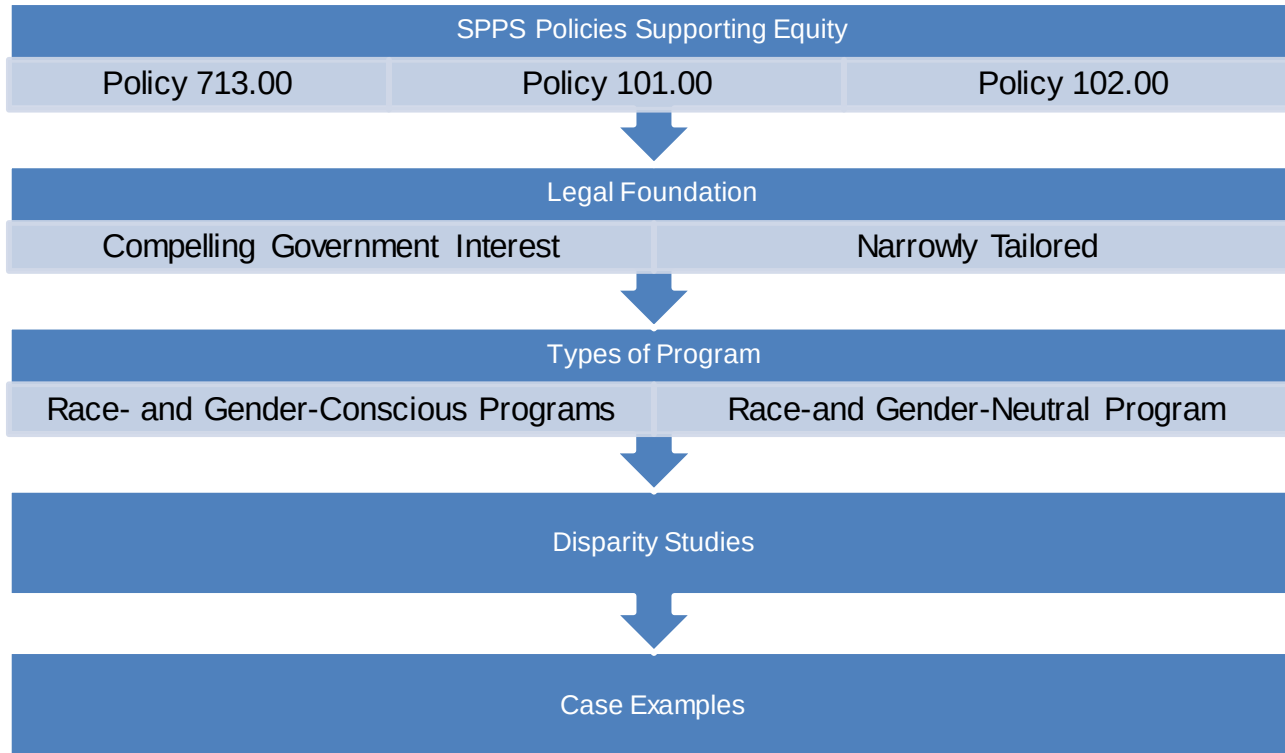
Is it legal?



What will the
program cost?

What will the
program look
like?

EXISTING POLICY SUPPORT & LEGAL FOUNDATION



REGIONAL PRACTICES

Procurement	Vendor Inclusion	Workforce Inclusion	Data Management	Outreach
• Use of best value • Programs designed for direct SBE contracting under \$100,000 • Quick pay options for small businesses of a certain size • Unbundling work scopes • Adjusting bonding and insurance requirements for smaller businesses	• Conducting a disparity study • Having at least an SBE inclusion program that allows for tracking of MWBEs • Programming that assists with capacity building of MWBEs • Setting and enforcing contracting goals	Enforcing the State's 32% minority and 20% women participation goals	• Having data management systems that can 'talk' to each other • Having an online platform for vendor registration • Using an online compliance monitoring system • Having electronic procurement and contracting systems in place	• Hosting annual procurement fairs • Establishing relationships with local S/SMBE/SWBE associations • Hosting vendor meet and greets • Attending annual regional vendor inclusion events



PROPOSED SMALL BUSINESS INCLUSION PROGRAM OVERVIEW



POLICY 713.00 AMENDMENTS

Race- and Gender Neutral Program

Proposed Amendment:

- Applies to all construction projects
- 10% SBE and 15% micro-SBE goals
- Annual evaluation of aspirational goals
- Staff dedicated to enforcing compliance

Rationale:

- Program that can be created without a disparity study
- Regional practices support need for staff to lead this work

Disaggregation of Data

Proposed Amendment:

- Collect and maintain vendor and consultant race, gender, veteran's status, and geographic location data

Rationale:

- Maintaining timely and reliable vendor and consultant data allows the District to (1) increase contracting transparency (2) increase efficiency in contracting



REVISIONS TO PRACTICES

Procurement

- Unbundling work scopes

Vendor Inclusion/Certification

- Join CERT Collaborative

Workforce Inclusion

- Adopt 32% minority and 20% female workforce goals

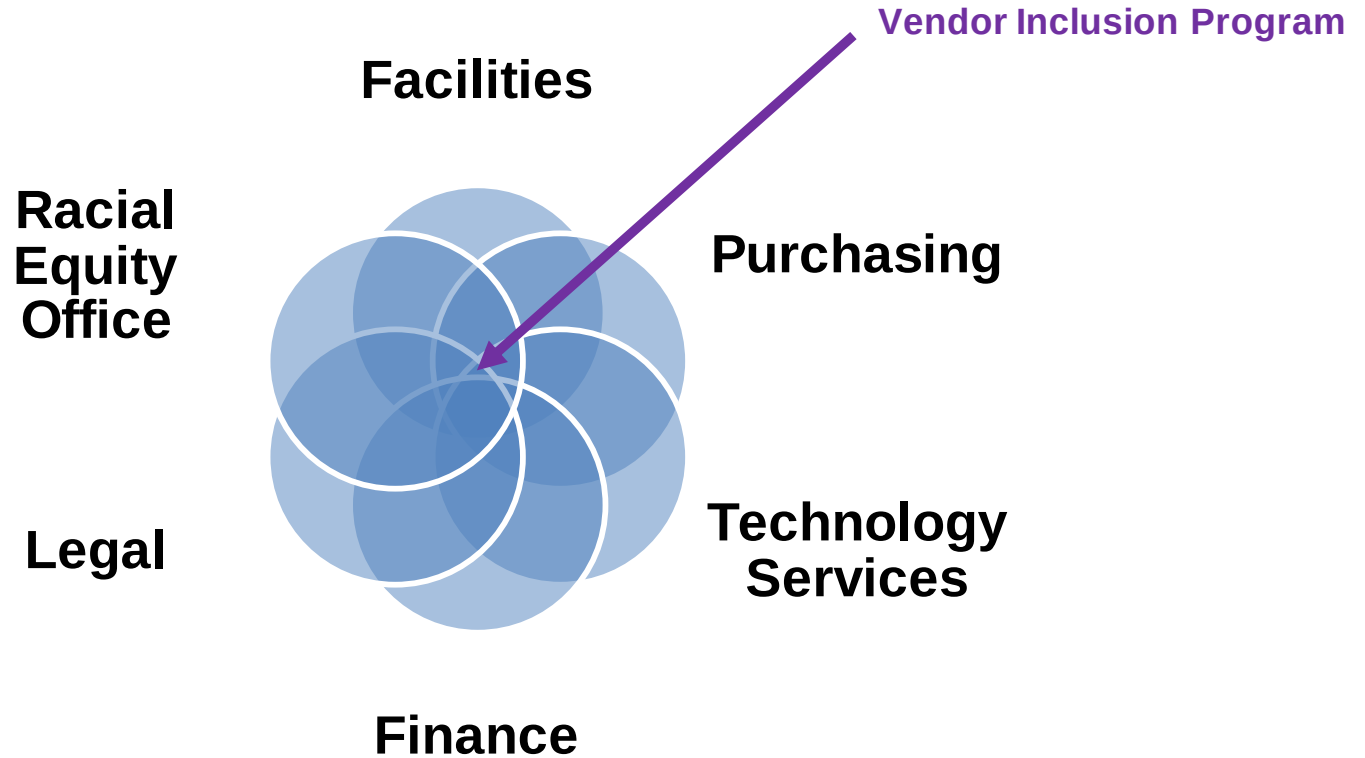
Increased Outreach & Marketing

- Contractor Meet & Greets
- Procurement Fairs
- Engage local SMWBE associations

Compliance & Data Management

- Update existing systems and forms
- Explore compliance agreement with the City of Saint Paul

POTENTIAL DEPARTMENTS IMPACTED



HIGH LEVEL IMPLEMENTATION & POTENTIAL COST ANALYSIS

YEAR 1

- *Policy and procedural review
- * Data management assessment and plan
- *Program staff hired
- *Join CERT
- *Meet & Greet
- *Program launched
- Goal setting & compliance monitoring of projects
- *Program outreach
- *Begin Disparity Study consultant engagement

Year 1 Projected Cost:

- Option 1: \$2,333,000
- Option 2: \$1,033,000
- Option 3: \$483,000
- Option 4: \$483,000

YEAR 2

- * Start 18-month Disparity Study
- *Ongoing goal setting and compliance monitoring
- *Ongoing outreach
- * Ongoing reporting

Year 2 Projected Cost:

- Option 1: \$941,270
- Option 2: \$1,441,270
- Option 3: \$921,270
- Option 4: \$721,270

YEAR 3

- * Disparity study ends
- * Assessment of disparity study recommendations to implement
- *Presenting procedural amendments for Administrative review
- *Implementation of approved recommendations
- * Ongoing compliance monitoring
- * Ongoing outreach
- * Ongoing reporting

Year 3 Projected Cost:

- Option 1: \$641,270
- Option 2: \$1,141,270
- Option 3: \$571,270
- Option 4: \$571,270

NEXT STEPS & KEY DECISIONS IF THE BOARD WANTS TO MOVE FORWARD

AUGUST

Board Policy Work Group Meeting:
Discuss Proposed Amendment to 713.00

SEPTEMBER

BOE Meeting: First reading of policy amendment and vote on Resolution authorizing and directing staff to develop proposed procedures and program budget

OCTOBER

BOE Meeting: Second reading of Amended Policy 713.00

NOVEMBER

BOE Meeting: Third reading of Amended Policy 713.00 and vote on procedures recommended by staff





**STRONG &
STARLIKE CONSULTING, INC.™**

Saint Paul Public Schools Equity in Contracting Report

VENDOR INCLUSION PROGRAMS

PREPARED BY STRONG & STARLIKE CONSULTING, INC.

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ACKNOWLEDGEMENTS

Thank you, Community Advisory Council members, as well as the staff from all government entities interviewed while assessing regional practices. We appreciate each of you graciously sharing your time, insights, and experiences with us.

EXECUTIVE SUMMARY

Saint Paul Public Schools (SPPS) has a number of policies that support equity and inclusion. Such policies include the following:

- Racial Equity Policy 101.00
- Equal Opportunity/Non-Discrimination Policy 102.00
- Equal Opportunity Procurement Policy 713.00

Despite having policies that reference to equity in contracting, SPPS currently does not have a vendor inclusion program. Over the next five years, SPPS is projected to have over \$500 million dollars' worth of contracting opportunities available in construction and modernization projects. This Executive Summary presents an overview of the efforts made by the Facilities Department to assess (1) the need for a vendor inclusion program (2) regional practices pertaining to government vendor inclusion programs (3) the feasibility of implementing such a program at SPPS and (4) a vendor inclusion program for SPPS and relevant policy amendments.

Vendor Inclusion Program Need & Authority

Between the years 2015-2017, SPPS Facilities Department had 324 contracting opportunities totaling \$311,042,890.00 available at the first-tier contracting level. Of those contracts available, 15 contracts totaling \$ \$22,919,190.00 were awarded to small minority-owned and women-owned businesses (MWBEs). This accounted for 7.37% of the total contracting dollars available and only 4.85 % of the total contracts.

Vendor inclusion programs may either be race and gender-neutral (a small business enterprise, 'SBE' program) or race and gender-conscious (an MWBE program). Following the 1989 U.S. Supreme Court case, *City of Richmond v. J.A. Croson Company*, government entities looking to have race and gender-conscious programs must demonstrate that (1) there is a *compelling government interest* in remedying past discrimination that exists in contracting for that entity and (2) any programs created must be *narrowly tailored* to accomplish the goal of remedying the past discrimination that exists, specific to the entity seeking to have the program. Disparity studies have become the means by which government entities have been able to satisfy the two requirements noted above. Disparity studies analyze (1) past utilization of MWBE contractors for a government entity (2) the availability of such contractors in the entity's marketplace (3) the extent to which there is a disparity between the availability and the entity's utilization and (4) the entity's race and gender neutral and race-conscious programs, policies, and efforts.

In terms of contracting practices, SPPS' policies noted above rely upon the following state statutes:

- Minn. Stat. § 471.345 (Uniform Municipal Contracting Law)
- Minn. Stat. § 123B.52 (Education Code: Prekindergarten-Grade 12)(Contracts)
- Minn. Stat. §16C.28, subdivision 1(a)(2)(c) (Contracts; Award)

- Minn. Stat. Chapter 363A (Minnesota Human Rights Act)—363A.17(3) (Business Discrimination)
- Minn. Stat. § 181.59 (Discrimination by Contractors)— (Discrimination on Account of Race, Creed, or Color Prohibited in Contract)

Regional Practices

SPPS engaged Powers Consulting and Strong & Starlike Consulting, Inc. to assist with this effort. A Community Advisory Council (CAC) consisting of professionals across relevant industries and sectors was also created. The CAC was later divided into committees to address specific areas that aligned with their expertise. Below is a summary of the top recommendations from each committee:

EXISTING PROGRAMS	DATA MANAGEMENT
<u>Top Recommendation:</u> The City of Saint Paul CERT Program is a positive way to go, should SPPS decide on it along with vendor outreach program.	<u>Top Recommendation:</u> SPPS should consider partnering with the City of Saint Paul. Additionally, it should act to correct its contractor database.
COMMUNITY ENGAGEMENT	POLICY/LEGAL
<u>Top Recommendation:</u> SPPS should conduct meet and greet events with S/SMBE/SWBES and large contractors.	<u>Top Recommendation:</u> SPPS should conduct a disparity study and in the interim create and enforce a small business inclusion program that is race and gender neutral and includes all small businesses (small, small minority-owned, small women owned).

In 2017, the largest multi-jurisdictional joint disparity study was conducted in the state of Minnesota. It consisted of the following government entities:

- | | |
|--|--|
| <ul style="list-style-type: none"> • Minnesota Department of Administration • Hennepin County • Metropolitan Airports Commission • Metropolitan Council • Mosquito Control District | <ul style="list-style-type: none"> • Minnesota Department of Transportation • City of Minneapolis • Minnesota State Colleges and Universities • City of Saint Paul |
|--|--|

Although some entities had a higher percentage of inclusion of MWBEs, all had a stark underutilization of MWBEs. The study and public forums presented an opportunity to learn about programs, policies and practices that are working for entities and recommendations for changes moving forward.

In working with the CAC and conducting entity interviews with entities that did and did not participate in the disparity study, the following regional practices emerged:

REGIONAL PRACTICES

Procurement	Vendor Inclusion	Workforce Inclusion	Data Management	Outreach
• Use of best value • Programs designed for direct SBE contracting under \$100,000 • Quick pay options for small businesses of a certain size • Unbundling work scopes • Adjusting bonding and insurance requirements for smaller businesses	• Conducting a disparity study • Having at least an SBE inclusion program that allows for tracking of MWBEs • Programming that assists with capacity building of MWBEs • Setting and enforcing contracting goals	Enforcing the State's 32% minority and 20% women participation goals	• Having data management systems that can 'talk' to each other • Having an online platform for vendor registration • Using an online compliance monitoring system • Having electronic procurement and contracting systems in place	• Hosting annual procurement fairs • Establishing relationships with local S/SMBE/SWBE associations • Hosting vendor meet and greets • Attending annual regional vendor inclusion events

Proposed Vendor Inclusion Program

This section highlights the proposed vendor inclusion program in the following manner: (1) program overview (2) proposed policy changes (3) proposed changes not requiring a policy change.

Program Overview

The chart below provides an overview of the vendor inclusion program structure.

VENDOR INCLUSION PROGRAM STRUCTURE		
Program Objective	Summary	Rationale
	To create a local small vendor inclusion program	Over the next five years, SPPS is projected to have over \$500 million dollars' worth of contracting opportunities available in construction and modernization projects. This presents a wonderful opportunity to impact our local economy by ensuring local small businesses have an opportunity to contract on these projects.
Applicability	All SPPS construction contracts	Initially, the vendor inclusion program will only apply to construction contracts. As infrastructure pieces are established, such as data management systems, the program can be applied to all SPPS contracting opportunities.

Parties Needing to Comply	1. All vendors on all construction contracts. 2. SPPS project managers and procurement staff must ensure SBE inclusion requirements are included in contracts.	1. As SPPS shifts to better data management systems and prepares for a disparity study, tracking spends at all contracting levels will be essential. So, all vendors must comply. 2. Project managers and procurement staff will need to work with the vendor inclusion program staff to ensure that SBE inclusion requirements are a part of the contracts, otherwise such requirements cannot be enforced.
Key Components	1. <u>Procurement Strategies:</u> (1) Implementing use of best value (2) SBE inclusion considered in low bid and best value procurement methods (3) Direct quotes from SBEs under \$175,000¹ (4) Unbundling work scopes (5) Adjusting bonding and insurance requirements. 2. <u>Payment:</u> Allowing for 15-day quick pay to contractors with annual gross receipts (AGR) under \$1,000,000, if requested, on contracts under \$175,000. 3. <u>Vendor Inclusion Program Strategies:</u> (1) Accepting CERT, and other relevant certification of S/M/WBEs (2) Creation of (a) overall SBE program and (b) a Micro-SBE program for SBEs with AGR under \$1M and less than 25 employees (3) Compliance enforcement of goals (4) Required submission of good faith efforts (GFE) for failure to meet goals (5) Failure to satisfy GFE resulting in penalty (6) Member of the CERT Collaborative Board (7) Regular community outreach and engagement activities. 4. <u>Data Management Strategy:</u> Creation of online inter-operable systems for vendor registration, procurement, and compliance.	1. <u>Procurement:</u> All program components align with regional practices surfaced during research and entity interviews that have seen some success. 2. <u>Payment:</u> Through research and entity interviews one of the major barriers for small businesses when engaged in government contracting is cash flow and extended pay periods. Jurisdictions across the region have quick pay options available for small businesses. 3. <u>Vendor Inclusion Program:</u> This program structure is the result of assessing the regional practices as well as practices of other public schools across the country. This approach seeks to use the most successful strategies. 4. <u>Data Management:</u> Having timely, clear, and reliable data is essential for assessing where process improvements may exist, increasing efficiency, and assessing outcomes.

¹ During the 2018 legislative session Minn. Stat. § 471.345, subd. 3 was amended to increase the threshold from \$100,000 to \$175,000. The effective date of this amendment is August 1, 2018. In section 4.0 of the report, entities with practices citing “under \$100,00” as the threshold were relying upon the previous threshold in citing to Minn. Stat. § 471.345, subd. 3

Contracting Goals	1. Implement a 10% SBE goal and a 15% Micro-SBE goal for an overall annual aspirational goal of 25% for total construction spends. 2. Set project specific goals based on the availability of SBEs and micro-SBEs.	Most of the entities interviewed had an annual aspirational goal around 25%. In addition, project specific goals were set based off of availability.
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Proposed Policy & Procedural Amendments

In considering policies SPPS already has in effect, coupled with the state statutes it currently relies upon for such policies, the proposed policy amendments are not drastic, but rather aligned with existing policies and providing an infrastructure to create supportive programs.

PROCUREMENT & FINANCE RELATED		
Policy/Procedure	Proposed Policy & Procedural Changes	Rationale
713.00 Equal Opportunity in Procurement	1. Implementing 15-day quick pay. 2. Drafting or amending administrative procedures to explicitly state SPPS' ability to use a best value procurement method. 3. Drafting or amending existing administrative procedures to allow for negotiation or seeking quotations directly from SBEs and micro-SBEs on contracts under \$175,000. 4. Drafting or amending existing administrative procedures to allow for adjustments to bonding and insurance requirements. In addition, where possible removing bonding requirements on contracts under \$175,000. 5. Include language regarding procurement from micro-SBEs defined as those with annual gross receipts under \$1,000,000 and less than 25 employees. 6. Include language regarding disaggregating data.	1. Most jurisdictions in the region have a quick pay option for small businesses of a certain size. 2. SPPS policies cite to Minn. Stat. § 471.345 and Minn. Stat. § 123B.52. Both provide authority to use a best value procurement method. 3. Other government entities have programs and policies allowing for directing opportunities to small businesses for contracts under \$175,000, in relying upon parameters cited in Minn. Stat. § 471.345. 4. Several entities interviewed and recent disparity studies across the country have identified bonding and insurance requirements as barriers to contracting opportunities for otherwise qualified small businesses. 5. Similar to the rationale in item (3) above. In addition, contracting with the smallest of small businesses ensures all have an opportunity to do business with SPPS 6. This would improve reporting and allow for increased transparency.

VENDOR INCLUSION RELATED		
<u>Policy/Procedure Gap</u>	<u>Proposed Change/Action</u>	<u>Rationale</u>
Absence of a race and gender-conscious program	Begin preparing for a disparity study to take place within the next 12 months. Post-disparity study, provided underutilization is discovered, update relevant procedures to reflect needed amendments. In addition, seek to partner with other entities on the disparity study, if possible.	Under the Equal Protection Clause of the Fourteenth Amendment, creating a race and gender-conscious program requires a <i>compelling government interest</i> and that interest must be <i>narrowly tailored</i> . A disparity study would help with satisfying those requirements. In terms of the business case, by 2035 the demographics of the Twin Cities will be approximately 37% people of color. The business owners, residents, students and workforce of Minnesota is changing.
Absence of a small business program	Update Policy 713.00 to reflect the creation of an SBE and Micro-SBE program with staff designated.	In the absence of having a disparity study, SPPS could create an SBE program pre-disparity study and a Micro-SBE program to target the smallest of local business owners

Proposed Changes not Requiring a Policy Amendment

The charts below reflect changes that can be made immediately and do not require a policy amendment.

PROCUREMENT RELATED	
<u>Proposed Change/Action</u>	<u>Rationale</u>
Unbundling Work Scopes	Through research, the recent disparity study, CAC discussions, and entity interviews it was noted that unbundling work scopes helps to remove barriers for small businesses to access government contracting opportunities

VENDOR INCLUSION RELATED	
<u>Proposed Change/Action</u>	<u>Rationale</u>
Join the CERT collaborative board and partnering on existing programs	Joining the collaborative would provide SPPS access to the largest certification program in the state, as well as decision making authority regarding the program. Lastly, it would eliminate the need to create another system.

WORKFORCE INCLUSION RELATED

<u>Proposed Change/Action</u>	<u>Rationale</u>
Compliance procedure creation for enforcement of the State's 32% minority and 20% women workforce inclusion goal	In 2017 the Minnesota Department of Human Rights increased the workforce goals to better reflect our marketplace. Most entities in our region are enforcing these goals currently.

INCREASED OUTREACH AND MARKETING

<u>Proposed Change/Action</u>	<u>Rationale</u>
Host a meet and greet with contractors this fall/winter	As the program launches, hosting a meet and greet will allow SPPS to connect with new businesses
In partnership with the Procurement Department, the Facilities Department may host annual procurement fairs prior to construction season.	Other jurisdictions host annual procurement fairs as a best practice. SPPS could implement this within the first year of the program.
Start sharing contracting opportunities with local SMWBE associations and having staff periodically attend meetings.	Connecting with local SMWBE associations allows SPPS to start building those new relationships and community trust

COMPLIANCE AND DATA MANAGEMENT SYSTEMS

<u>Proposed Change/Action</u>	<u>Rationale</u>
Create an online supplier page that allows for vendor registration. This page should store the registrations in a manner that is searchable and reportable for staff.	Currently, SPPS has a paper form that is difficult to track and it is not consistently used. This action would remedy that.
Execute a compliance partnership with the City of Saint Paul.	SPPS does not have any compliance systems in place. By executing a compliance agreement with the City of Saint Paul it could benefit from the existing system and potentially bring down costs.

REPORT

1.0 Introduction, Purpose, and Overview

Over the next five years, Saint Paul Public Schools (SPPS) is projected to have over \$500 million dollars' worth of contracting opportunities available in construction and modernization projects.² Currently, SPPS does not have a vendor inclusion program. This presents a unique and wonderful opportunity for SPPS. In acknowledging this, in September of 2017, SPPS engaged Powers Consulting to assist with this effort and curate the Community Advisory Council (CAC). The CAC consists of 18 members of professionals across sectors with deep experience in public sector vendor and workforce inclusion. The purpose of this report is to:

- Summarize the legal authority pertaining to a public entity's creation of a vendor inclusion program
- Provide an assessment of SPPS' existing policies and practices
- Provide an assessment of the policies and practices of other similarly situated public entities in our marketplace
- In light of the research and information surfaced, provide recommendations for
 - Policy and procedure amendments
 - Changes in practices that do not require policy and procedure amendments
- Provide recommendations from the CAC
- Provide an appendix that includes (1) a cost and implementation analysis and (2) resources

2.0 Legal Foundation for Recommendations

Under the law, government entities seeking to create vendor inclusion programs have two primary options in terms of the type of program they may create: (1) a race and gender-conscious program or (2) a race and gender-neutral program.

Race- and Gender-Conscious Programs

A race and gender-conscious program is one that considers the race, ethnicity and/or gender of a business owner. Such programs may set goals and/or have programs targeting minority-owned businesses (MBEs) and/or woman-owned businesses (WBEs). In our marketplace, such businesses may be referred to as MWBEs. Under the Equal Protection Clause of the Fourteenth Amendment, strict scrutiny is applied by the courts when a government actor is creating policies based on race. Strict scrutiny is the highest level of judicial review that can be applied. It requires the government actor to demonstrate that (a) past discrimination exists such that the entity has a *compelling government interest* in rectifying it and (b) the policies and programs created to do so are *narrowly tailored*. The Supreme Court has determined that, "[t]o show that a plan is justified by a compelling government interest, a municipality that wishes to employ a racial preference cannot rest on broad-brush assumptions of historical

² Powers Consulting Diversity and Inclusion Analysis of 3-Year Facilities (Construction) Spend Activity 2015-2017

discrimination”.³ Furthermore, “[f]indings of societal discrimination will not suffice; the findings must concern ‘prior discrimination *by the government unit involved.*’”⁴

In instances where only a gender-conscious program is being evaluated, some courts have applied intermediate scrutiny instead of strict scrutiny. Intermediate scrutiny is a lower level of judicial review than strict scrutiny and requires that (a) “sufficient probative” evidence or “exceedingly persuasive justification” supporting the program exists and (b) that having the WBE program is “substantially related to the achievement of that underlying objective.”⁵ When a program is both race and gender conscious, strict scrutiny has been applied.

Race and Gender-Neutral Program

Race and gender-neutral programs are programs that are not only accessible to MWBEs, but to all small businesses. In our marketplace such programs are often referred to as small business enterprise (SBE) programs. Under the law, the level of judicial review applied to such a policy to determine its constitutionality is rational basis, which is the lowest threshold for a government to satisfy. For a government entity to satisfy rational basis the policy or program created must be “related to a legitimate government purpose”⁶.

In some instances where government actors have created a race and gender-conscious program, courts have determined that race and gender-neutral methods could be used in programming.⁷

Disparity Studies

The pivotal Supreme Court case that has shaped the present legal foundation related to government vendor inclusion programs is *City of Richmond v. J.A. Croson Company*. In *Croson*, the court determined that the City of Richmond failed to provide a strong evidentiary basis for creating its race-conscious program.⁸ The City of Richmond needed to present direct evidence of its entity’s past discrimination in its contracting practices. It failed to do so. As a result, its program was found to be unconstitutional.⁹

In the years following *Croson*, disparity studies have become a standard tool used to assist a government entity in withstanding a challenge to its race- and gender-conscious vendor inclusion programs. Under the law, it has been determined that “the government has a compelling interest in remedying past discrimination against a racial or ethnic minority. The

³ *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989), citing *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986).

⁴ *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989), citing *Wygant v. Jackson Board of Education*, 476 U.S. 267, 274 (1986).

⁵ Keen Independent Research, *2017 Joint Disparity Study-City of Saint Paul*, Appendix B, page 17, https://mn.gov/admin/assets/KeenIndependentSaintPaulDisparityStudyFullReport03122018_tcm36-331979.pdf, last visited 23 May 2018.

⁶ *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989)

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

past discrimination must have been persistent and readily identifiable.”¹⁰ A disparity study demonstrates whether a government entity has engaged in past discrimination in its contracting practices. Disparity studies assess (a) a government entity’s utilization of MWBEs in its contracting practice (b) the number of MWBE contractors ‘available’ in the entity’s marketplace and (c) whether the government entity is underutilizing MWBEs, in comparison to the availability in the marketplace, such that it has a compelling government interest in creating a race- and gender-conscious vendor inclusion program to remedy the disparity in utilization. Lastly, disparity studies present recommendations that are both race- and gender-conscious, as well as race- and gender-neutral. Even with the evidence of past discrimination, the government entity must ensure that its policies and programs are narrowly tailored.

Recently in Minnesota, the following jurisdictions participated in the largest multi-jurisdictional joint disparity study (joint disparity study) to take place in Minnesota.¹¹

- Minnesota Department of Administration
- Hennepin County
- Metropolitan Airports Commission
- Metropolitan Council
- Mosquito Control District
- Minnesota Department of Transportation
- City of Minneapolis
- Minnesota State Colleges and Universities
- City of Saint Paul

The joint disparity study, conducted by Keen Independent Research, found that massive underutilization of MWBEs existed for all study participants. This creates a unique time in this field in Minnesota. Although government entities must conduct their own disparity study to have the best legal foundation to withstand a challenge, SPPS is in a position to learn from the other government entities in terms of regional practices, as well as assess whether new initiatives and efforts being created by other entities present opportunities for SPPS to collaborate.

Case Summaries

In an effort to assist SPPS in assessing which factors post-*Croson* have led to government entities being (1) challenged and failing to meet thresholds and (2) other instances where they have been challenged and prevailed, the fact patterns below provide a couple examples to clarify this.

¹⁰ *Id.*

¹¹ 2017 Minnesota Joint Disparity Study, <https://mn.gov/admin/disparity-study/resources/reports/>, last visited 23 May 2018.

Program Failed “Narrowly Tailored” Requirement

In *Virdi v. DeKalb County School District*, the court determined that “[b]ecause the government interest at stake in this case could be achieved through race-neutral means, and because the racial classifications in question are not temporally limited, the [Minority Vendor Involvement Program’s] racial goals cannot withstand strict scrutiny.”¹²

The DeKalb County School District’s program’s constitutional shortcomings in the eyes of the Court are instructive for government entities seeking to avoid a similar fate. As the foundation for its program, the DeKalb County School District appointed a committee to assess the District’s contracting with minority-owned and women-owned businesses.¹³ The report concluded that the District’s minority participation in contracting did not appropriately reflect the percentage of minorities in its community. The only basis for this finding was a “general feeling” that minorities were underrepresented. There was no specific evidence of past discrimination or factual findings. Despite this, the District proceeded with creating its Minority Vendor Involvement Program (MVIP) to track its activities to avoid “unwitting discrimination” moving forward. The MVIP set aspirational goals specifically for black-owned businesses, women-owned businesses, and businesses owned by other minorities. Although the program merely considered these goals as aspirational and not set asides or quotas, the court concluded that the program still needed to be analyzed under strict scrutiny because it contained explicit racial classifications. As a result, the Court determined that DeKalb County School District had failed to narrowly tailor its program to serve a compelling government interest.

There are several important lessons from DeKalb County School District’s experience. First, the legal foundation (evidentiary and procedural basis) for a vendor inclusion program is critical to its survival. Second, a legal challenge to the program may not be immediate, and in fact, could occur years after the programs creation. Third, government entities need to have regular monitoring and evaluation of any program created, as well as, good data and record keeping regimes and well-defined metrics for success.

Program Satisfied “Compelling Government Interest” and “Narrowly Tailored” Requirements

In *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*¹⁴, the 8th Circuit determined that the disadvantaged business enterprise (DBE) program was narrowly tailored to serve a compelling government interest and therefore constitutional. Two non-minority contractors brought an equal protection claim challenging the implementation of the DBE program that required a portion of federal highway construction funds be paid to socially and economically disadvantaged individuals. The contractors argued that Congress lacked “‘hard evidence’ of widespread intentional race discrimination in the contracting industry”. The 8th Circuit disagreed with the contractors and concluded that “Congress had a strong basis in the evidence to support its conclusion that race-based measures were necessary” thus, demonstrating a compelling government interest.¹⁵ Congress had decades of evidence pertaining to discrimination in

¹² *Virdi v. DeKalb County School District*, 135 Fed. Appx. 262, 268 (11th Cir. 2005).

¹³ *Virdi v. DeKalb County School District*, 135 Fed. Appx. 262, 268 (11th Cir. 2005).

¹⁴ *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d 964, 971 (8 Cir. 2003)

¹⁵ *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, 345 F.3d 964, 969-972 (8 Cir. 2003)

government highway contracting. The contractors further challenged the implementation of the program and whether it was narrowly tailored. They failed on that challenge, as well. The court stated that “[n]arrow tailoring does not require exhaustion of every conceivable race-neutral alternative, but it does require ‘serious, good faith consideration of workable race-neutral alternatives.’”¹⁶ The court concluded that the program was narrowly tailored.

Section Conclusion

In light of the cases above, this report presents policy and program recommendations that may distinguish SPPS from cases like *Viridi*, where the program was found unconstitutional. The appendices to this report also present various policy and program implementation options that take into consideration the timing and need for a disparity study. As demonstrated by *Croson* and the case summaries above, an entity seeking to create a race-and gender-conscious program needs an entity specific assessment that provides data and evidence of past discrimination in its contracting practices. Without that, an entity would struggle to satisfy the compelling government interest requirement. At this time, it appears that a disparity study is the most defensible means by which to demonstrate this.

3.0 Review of the District’s Current Policies and Utilization of MWBEs

An assessment was conducted of SPPS’ existing policies to determine what policies (1) are currently in effect that support equity across SPPS and (2) are specific to its interaction with vendors. The policy assessment highlights additional laws that SPPS policies rely upon. In addition, a review of SPPS’ current utilization of MWBEs was performed by Powers Consulting. The utilization review was limited to the Facilities Department’s expenditures at the first-tier level of contracting.

3.1 Equity Policies, Practices, and Goals

SPPS has a number of policies, practices and goals in place that support equity. Relevant policies are summarized in the following subsections.

3.1.1 Racial Equity Policy 101.00

In 2013, SPPS adopted Racial Equity Policy 101.00 (Policy 101.00). This policy specifically confronts institutional racism and inequity within the school district. Within Section 2(B)(3), the policy notes that SPPS will “ensure that racial equity guides employee actions and leads to improve academic results by modeling racial equity in *business practices*”. (emphasis added). Section 2(B)(3) also addresses replacing inequitable operational practices. Although Policy 101.00 is largely addressing racial equity from the standpoint of the students, it truly highlights SPPS’ commitment to racial equity in its efforts and as an organizational value.

¹⁶ *Sherbrooke Turf, Inc. v. Minnesota Department of Transportation*, at 971 (8 Cir. 2003), citing *Grutter v. Bollinger*, 539 U.S. 306

Relevant Legal Reference Citations within the Policy:

Minn. Stat. Chapter 363A (Minnesota Human Rights Act)—(363A.17(3) Business Discrimination)¹⁷

Minn. Stat. § 181.59 (Discrimination by Contractors)—(Discrimination on Account of Race, Creed, or Color Prohibited in Contract)¹⁸

3.1.2 Equal Opportunity/Non-Discrimination Policy 102.00

In 2014, SPPS revised its Equal Opportunity/Non-Discrimination Policy 102.00 (Policy 102.00). Policy 102.00 provides that

Saint Paul Public Schools does not discriminate on the basis of race, creed, sex, marital status, national origin, immigration status, age, color, religion, ancestry, status with regard to public assistance, socio-economic status, sexual or affectional orientation, gender identity and expression, familial status, physical appearance or disability. Saint Paul Public Schools also makes reasonable accommodation to the known disabilities of qualified disabled individuals. This policy applies to all areas of education, employment, programs and services operated by the school district. (*emphasis added*).

Policy 102.00 further states that the Superintendent shall designate appropriate staff to coordinate the efforts to implement and ensure compliance with this policy.

Again, although this policy does not specifically address vendors, it does address the “programs and services operated by the school district.” That could ultimately include the vendor inclusion program. It further seeks to ensure that discrimination does not occur within the school district and that compliance with this policy is resourced, monitored, and complied with by all areas of the enterprise.

Relevant Legal Reference Citations with the Policy:

Minn. Stat. Chapter 363A (Minnesota Human Rights Act)—363A.17(3) “Business Discrimination”

3.1.3 Equal Opportunity Procurement Policy 713.00

In 2008, SPPS revised its Equal Opportunity Procurement Policy 713.00 (Policy 713.00). Policy 713.00, in part states the following:

1. The District shall maintain a centralized purchasing department with sound accounting procedures.
2. *The District shall seek business and/or bids from all eligible vendors and consultants, regardless of race, creed, sex, marital status, national origin, age, color, religion,*

¹⁷ Minn. Stat. Chapter 363A (Minnesota Human Rights Act)—(363A.17(3) Business Discrimination), <https://www.revisor.mn.gov/statutes/?id=363a.17>, last visited 23 May 2018.

¹⁸ Minn. Stat. § 181.59 (Discrimination by Contractors)—(Discrimination on Account of Race, Creed, or Color Prohibited in Contract), <https://www.revisor.mn.gov/statutes/?id=181.59>, last visited 23 May 2018.

ancestry, status with regard to public assistance, sexual or affectional orientation, familial status or disability.

3. The District's Purchasing Department shall endeavor to procure from small and protected class businesses. (emphasis added)

The policy further provides guidance in terms of purchasing practices for SPPS. Under this policy,

1. The Purchasing Department shall perform the administrative functions necessary to the procurement of goods and services for the Board of Education and maintain accurate records of all transactions for audit purposes.
2. The Board of Education shall award all contracts which exceed the dollar limit specified in Minn. Stat. § 471.345 (Uniform Municipal Contracting Law) requiring solicitation by public notice, while awards under that amount shall be made by the Chief Business Officer of the District or his/her designee.¹⁹
3. *Any purchase or lease of goods and/or services for the District shall be made in accordance with Minn. Stat. § 471.345, Uniform Municipal Contracting Law, and Minn. Stat. § 123B.52, Independent School District, Contracts. (emphasis added)*

Under the Minn. Stat. § 471.345 "Uniform Municipal Contracting Law", guidance is provided regarding contracting (1) over \$100,000 (2) contracts exceeding \$25,000 but not \$100,000 and (3) contracts \$25,000 or less. For each category, there is language providing municipalities, which include school districts, the authority to use best value as a procurement method. Under Minn. Stat. § 123B.52 it cross-references to Minn. Stat. § 471.345 and also provides authority for use of the best value procurement method.

Relevant Legal Reference Citations with the Policy:

Minn. Stat. § 471.345 (Uniform Municipal Contracting Law)

Minn. Stat. § 123B.52 (Education Code: Prekindergarten-Grade 12—Contracts)

Relevant Cross References:

Equal Opportunity/Non-Discrimination Policy 102.00

3.2 Powers Consulting Review of Prime Construction Contractors

Powers Consulting evaluated all of the Facilities Department's construction expenditures for SPPS from 2015-2017. The goal of this evaluation was to determine the extent of SPPS' spends with MWBE contractors. Currently, although SPPS has forms available to track its spends with various vendors, it does not appear that this information is consistently tracked in an easily accessible data management system. As a result, review of all data was performed manually. Due to the state of the data management, Powers Consulting was only able to evaluate first tier contractor data and could not assess spends at the second-tier level and beyond.

¹⁹ During the 2018 legislative session Minn. Stat. § 471.345, subd. 3 was amended to increase the threshold from \$100,000 to \$175,000. The effective date of this amendment is August 1, 2018.

To evaluate for MWBE status, Powers Consulting compared SPPS' list of contractors awarded contracts with the following lists:

- CERT database of certified SMWBEs²⁰
- State of Minnesota Department of Administration's list of TG/ED/VO certified vendors²¹
- Minnesota Unified Certification Program (MNUCP) list of certified DBE vendors²²

Through this process, 14 contractors that were certified as M/WBEs were identified. Only certified vendors were identified and confirmed through this assessment. In an effort to identify vendors that are not certified but may qualify for certification, industry experts on the CAC reviewed the list

The review discovered that from 2015-2017, SPPS awarded 324 contractors contracts totaling \$311,042,890.00 in contracting opportunities at the first-tier level. Of the available contracting opportunities in the three-year period, only 15 contracts were awarded to 14 MWBE firms (one MBE firm was awarded two contracts). Of the 14 MWBEs awarded contracts, 6 MBE firms and 9 WBE firms received those contracts. Below is a table breaking down the total number of contracts and spends with MWBEs.

Certification	Total Number of Contracts	Percentage of Participation	Total Spend	Percentage of the Total Spend
Non-M/WBE	309	95.37%	\$288,123,700.00	92.63%
MBE	6	1.85%	\$21,513,237.00	6.92%
WBE	9	3%	\$1,405,953.00	0.45%

For contracts under \$100,000, there were 150 contracts awarded in that range. For a small contractor, a project under \$100,000 can present a great opportunity. There were 7 WBE awards discovered under \$100,000. There were no MBE awards discovered. This is of note because the recent joint disparity study found that in our marketplace, most companies reported that "their largest contract was less than \$100,000."²³ In addition, contracts assessed in the study within the sub-industry of school building construction had a median bid capacity

²⁰ CERT business list available at: <https://www.stpaul.gov/departments/human-rights-equal-economic-opportunity/contract-compliance-business-development/central>

²¹ TG/ED/VO List (Directory) available at: <http://www.mmd.admin.state.mn.us/process/search/>, last visited 23 May 2018.

²² MNUCP DBE Directory available at: <https://mnucp.metc.state.mn.us/>, last visited 23 May 2018.

²³ Keen Independent Research, *2017 Joint Disparity Study-City of Saint Paul*, Appendix H, page 2, https://mn.gov/admin/assets/KeenIndependentSaintPaulDisparityStudyFullReport03122018_tcm36-331979.pdf, last visited 23 May 2018.

of \$100,000 or less.²⁴ The joint disparity study further determined that for the City of Saint Paul's geographic reach there is a 21.9% availability of MWBEs. Based off of the information available, as depicted in the chart above, SPPS' 4.85% participation with MWBE contractors at the first-tier level is far below 21.9%. To best further assess all SPPS procurement activity, including spends beyond the first-tier level and whether a non-certified business is an MWBE would require (1) improved data management systems and (2) the level of assessment included with a disparity study.

3.3 2017 Joint Disparity Study – City of Saint Paul Geographic Overlay

As mentioned in section 2.0 above, any government entity seeking to create policies that lay the foundation for a vendor inclusion program should conduct an entity specific disparity study. With that said, with the City of Saint Paul participating in the joint disparity study the geographic overlay of the marketplace analysis is worth noting. According to the joint disparity study, there is a 21.09% availability of MWBEs. Broken down further, there was a 7.57% availability for MBEs and a 13.52% availability of WBE (white women-owned businesses). In looking at the data presented from Powers Consulting's review of first-tier construction contractors, SPPS is at 1.85% for MBEs and 3% for WBEs. Based off of sharing the same geography as the City of Saint Paul, it may be reasonable to determine that the availability of MWBEs in the shared marketplace is similar.

It is not recommended to rely solely on this assessment in the absence of a disparity study. The utilization of MWBEs by SPPS from 2015-2017 is greatly below what appears to be available in the marketplace. However, conducting a full disparity study is advisable, as noted in section 2.0 above, to ensure all SPPS contracting data for the appropriate period of time²⁵ is evaluated to provide the full picture of underutilization.

4.0 Survey of Other Government Entities' Approach to Vendor Inclusion

This section presents summaries of several vendor inclusion programs within the state of Minnesota. Entities included in this section were interviewed with the intention of surfacing regional practices that have been successful. The focus was primarily on state and local programs because (1) those programs seem most aligned with the type of program SPPS could implement and (2) SPPS currently has policies that cite to several state statutes relied upon by all entities interviewed. All entities interviewed offered to be available for further questions in their respective areas of expertise as SPPS develops its program(s).

4.1 City of Saint Paul

The City of Saint Paul Human Rights & Equal Economic Opportunity Department (City) houses both the Procurement and the Contract Compliance Divisions for the City of Saint Paul. This

²⁴ Keen Independent Research, *2017 Joint Disparity Study-City of Saint Paul*, Appendix H, page 34, https://mn.gov/admin/assets/KeenIndependentSaintPaulDisparityStudyFullReport03122018_tcm36-331979.pdf, last visited 23 May 2018.

²⁵ The joint disparity study assessed entity practices for a 5-year period (July 2011-June 2016).

was done intentionally to better foster the relationship between Procurement and Contract Compliance (which includes the vendor and workforce inclusion programs).

4.1.1 Vendor Inclusion Program Overview

The City's vendor inclusion program is governed by Chapter 84-Vendor Outreach Program (VOP) of the City's municipal code of ordinances.²⁶ Chapter 84 was revised in December of 2015 in response to the changes in the marketplace. The City's VOP responds to the its past underutilization and has set MBE and WBE sub-goals within its program. VOP has had a 25% SBE goal with a 5% sub-goal for MBEs and a 10% sub-goal for WBEs. On projects failing to meet goals, good faith efforts must be established. Until 2015, VOP applied to all City contracts, regardless of dollar amount. With the 2015 revisions to the ordinance, VOP now applies to all City contracts in excess of \$50,000.

Certification Program:

The City is a member of the Central (CERT) Certification Program. The CERT Program certifies local small (SBE), small minority-owned (SMBE), and small woman-owned (SWBE) business enterprises (collectively SMWBEs). The CERT Program houses the largest database of certified SWMBEs in the state with 2052 active businesses and 3813 certifications²⁷. The CERT Program is the local government certification program consisting of the following collaborative board members: City of Saint Paul, Hennepin County, Ramsey County, and City of Minneapolis. The City of Saint Paul is the lead agency for the CERT Program. The CERT Board meets monthly and governs the CERT Program. The CERT Board has collaborated on policies and legislation in the past and is currently working on shared legislation related to small business data. As a CERT Board member, an entity also has an opportunity to collaborate on policies and share best practices. In addition to collaborative board members, the CERT Program also has subscribers. Subscribers consist of other government entities and corporations seeking to have access to and use the CERT database for its vendor inclusion efforts. Subscribers neither sit on the board nor engage in policy initiatives and best practice sharing.

The CERT Program is also a part of the Minnesota Small Business Certification Portal. This is a partnership, governed by a JPA, between the federal, state, and local government certification programs (DBE, TG/ED/VO, and CERT, respectively) that allows businesses to go to one portal to apply for all certifications.

4.1.2 Procurement Policies and Small Business Set-Aside Program

Between July 2011-June 2016 (the 5-year disparity study period) the City of Saint Paul had 9,423 procurements totaling \$1.5 billion dollars.²⁸ Section 84.10(b) "Small Business Set-Aside

²⁶ City of Saint Paul Municipal Code, https://library.municode.com/mn/st._paul/codes/code_of_ordinances?nodeId=PTIIIADCO_TITIVPOPR_CH84VE_OUPR, last visited 23 May 2018.

²⁷ These totals reflect the total number of businesses and certifications as of April 2018.

²⁸ Keen Independent Research, *2017 Joint Disparity Study-City of Saint Paul*, Chapter 4, page 4 https://mn.gov/admin/assets/KeenIndependentSaintPaulDisparityStudyFullReport03122018_tcm36-331979.pdf, last

Program” provides City departments the authority to engage a CERT-certified SMWBE in the following two instances:

1. **Contracts between \$25,001-\$99,999.** *If the amount of the contract is estimated to exceed twenty-five thousand dollars (\$25,000.00), but not to exceed one hundred thousand dollars (\$100,000.00), the contract may be made either upon sealed bids, by direct negotiation, or by other means, by obtaining two (2) or more quotations for the purchase or sale when possible, with at least one (1) quote to a CERT certified vendor, and without advertising for bids or otherwise complying with the requirements of competitive bidding. First consideration will be given to a CERT certified vendor if its quotation is within five (5) percent of the lowest quote received.*
2. **Contracts \$25,000 or less.** *If the amount of the contract is estimated to be twenty-five thousand dollars (\$25,000.00) or less, the contract may be made either upon quotation or in the open market, in the discretion of the governing body. If the contract is made upon quotation it shall be based, so far as practicable, on at least two (2) quotations, with at least one (1) quotation to a CERT certified vendor. First consideration will be provided to the CERT certified vendor if its quotation is within five (5) percent of the other quotation received. All quotations must be kept on file for a period of at least one (1) year after their receipt. Alternatively, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals.*

This program has yet to be implemented. However, it was recommended in the disparity study to use it as a race and gender-neutral effort.²⁹

4.1.3 Data Management Systems

The chart below summarizes the type of data management systems used by the City along with its strengths and weaknesses.

Data Management System	Compliance Area / Procurement	Strengths	Weaknesses
B2Gnow	Used for VOP Compliance and CERT database	Allows for the certification side of the system (CERT) and the compliance side of the system (VOP) to ‘talk’	Data migration into the compliance side of the system may be challenging when implementing the system

visited 18 July 2018. The disparity study notes that the total number of procurements reflects a total “after exclusions”.

²⁹ Keen Independent Research, *2017 Joint Disparity Study-City of Saint Paul*, Chapter 10, page 11 https://mn.gov/admin/assets/KeenIndependentSaintPaulDisparityStudyFullReport03122018_tcm36-331979.pdf, last visited 23 May 2018.

LCP Tracker	Used for prevailing wage compliance and workforce inclusion compliance	Eliminates paper reporting for contractors and provides comprehensive training	Does not 'talk' to B2Gnow, although owned/operated by the same company
Infor Lawson	Used by the procurement division for vendor registration and posting contracting opportunities	Allows for potential vendors to register online and get notified when opportunities are available in their line of work	Compliance systems do not 'talk' to this system

4.1.4 Examples of Ongoing Outreach

The City has held procurement fairs that allow potential vendors and SWMBEs to connect with (1) buyers and (2) key staff from other City departments. These procurement fairs were often held early in the year prior to the opportunities being posted for bid or as an RFP.

In addition, the CERT Program conducts CERT Monthly Workshops. These workshops allow for businesses to have a 'one-stop shop' experience. The following resources are available:

- CERT Specialists present to assist in completing and submitting CERT applications
- Procurement staff from all CERT collaborative board members to aid in registering for their respective vendors portals
- LegalCORPS to provide free legal advice
- SCORE mentors to assist with business questions
- Staff from other certification programs to talk about their programs

In addition, it has participated in the following annual events:

- "Is Certification Right for You?" Lunch & Learn Workshop
- Small and Disadvantaged Business Opportunity Council (SADBOC) Procurement Fair
- North Central Minority Supplier Development Council (NCMSDC) Business Opportunity Fair

Lastly, on City projects, pre-bid and pre-construction meetings are held. The goal of such meetings is to inform contractors of the laws and policies with which they must comply, as well as provide packets with information about resources to assist.

4.2.5 Other Compliance Areas³⁰

In addition to the VOP compliance area, the City of Saint Paul has three other compliance areas managed by staff with expertise in each compliance area. The three areas are: (1) AA/EEO & Workforce Utilization (2) Labor Standards/Prevailing Wage and (3) HUD Section 3 Compliance.

Affirmative Action & Equal Employment Opportunity (AA/EEO) & Workforce Utilization

Requirements:

Under City of Saint Paul Leg. Code § 183.04, the City monitors affirmative action and equal employment opportunity efforts. There is a \$50,000 threshold for applicability. Vendors must develop an affirmative action plan and register this plan with the City for a \$75 fee.

As it relates to workforce inclusion, the City adheres to the State of Minnesota Department of Human Rights (MDHR) workforce inclusion goals of 32% minority and 20% women. In 2017, MDHR increased the women workforce goal from 6% to 20% after completing an assessment of the workforce in its marketplace. In recent reports, the City was accomplishing 25% minority inclusion and 7% women inclusion.

Labor Standards/Prevailing Wage Compliance:

Under Chapter 185 of the Saint Paul Legislative Code, Section 82.07 of the Saint Paul Administrative Code, Section 5200 of the Minnesota Administrative Rules, Minnesota Statutes Section 175.171, and the Davis-Bacon and Related Acts, the City of Saint Paul enforces prevailing wage on federally-, state-, and city-funded construction projects. The federal Davis-Bacon and Related Acts applies on federally-funded construction projects in excess of \$2,000. The Little Davis Bacon City ordinance is enforced on all city- and state-funded construction projects in excess of \$25,000.

Section 3 Compliance:

The HUD Section 3 Program is guided by a provision of the Housing and Urban Development Act of 1968. It applies to construction projects or rehabilitation of housing, or other public construction such as: street repair, sewage line repair or installation, update to building facades, etc. This is a race- and gender-neutral program that focuses on vendor and workforce inclusion of low income business owners and residents.

4.1.6 Disparity Study, Data Management System and Programmatic Costs

Appendix A below provides a comprehensive assessment of costs associated with running a vendor inclusion program in this region.

4.2 Hennepin County

Hennepin County has had a race- and gender-neutral program since the 1990s. It has referred to its program as an SBE program. In this context, SBE does allow for tracking of SDBEs and SWBEs. Although it has had a race- and gender-neutral program, of all the entities participating in the disparity study, it ranked second in terms of its utilization of MBEs. Hennepin County has

³⁰ Website reference: <https://www.stpaul.gov/departments/human-rights-equal-economic-opportunity/contract-compliance-business-development>

been able to make strides in increasing inclusion of MWBEs in its contracting in a number of ways, without having a race- and gender-conscious program. Although this is impressive, the disparity study did find disparities and underutilization such that the Hennepin County Board has now approved implementation of a race- and gender-conscious program. The sections below summarize Hennepin County's existing programs, practices and efforts in recent years.

4.2.1 Vendor Inclusion Program Overview

Hennepin County houses its vendor inclusion programs in its Purchasing and Contract Services Department.

Certification Program

Hennepin County has been a collaborative member of the CERT Program for a number of years. As such, although it has an SBE program, it had access to the CERT database which has a list of over 2050 actively certified SMWBEs. This has allowed Hennepin County to have access to and track spends with MBEs and WBEs even though it did not have the authority to set goals for such businesses prior to the recent joint disparity study.

Vendor Inclusion Programs

SBE goals might apply on Hennepin County contracts exceeding \$100,000. The determination of applicability may depend on opportunities for subcontracting and small business availability to work on the project. If a goal is not met, good faith efforts must be demonstrated.³¹ Hennepin County has a number of other programs in place to support SBEs. The chart below highlights four of these programs:

Program Name	Program Description
Targeted SBE Program (TSBE)	<i>Applied on facilities construction projects. SBE construction firms with an AGR in the bottom 10th percent of its industry size standard are prequalified for facilities remodeling projects between \$25000-\$100,000. 83% of firms are MBEs.³²</i>
Job Order Contracting Program (JOC)	<i>Uses pre-qualified SBEs for certain construction related disciplines³³</i>
Pre-qualification Public Works Consultants	<i>This program gives first consideration to CERT certified businesses.³⁴</i>

³¹ County Construction Contract Compliance website, <https://www.hennepin.us/your-government/open-government/construction-contractors-compliance>, last visited 23 May 2018.

³² Keen Independent Research, 2017 Minnesota Joint Disparity Study, Hennepin County, Executive Summary, page 11, https://mn.gov/admin/assets/KeenIndependentHennepinCountyDisparityStudyFullReport03122018_tcm36-331965.pdf

³³ Keen Independent Research, 2017 Minnesota Joint Disparity Study, Hennepin County, Chapter 3, page 1, https://mn.gov/admin/assets/KeenIndependentHennepinCountyDisparityStudyFullReport03122018_tcm36-331965.pdf

³⁴ For more information on the program, visit the website: <https://www.hennepin.us/business/work-with-henn-co/pwbiz>

Rehabbing tax-forfeited homes

*SBE construction firms within a specific geographic region of concentrated poverty are prequalified for rehabbing tax-forfeited homes. 90% are MBEs.*³⁵

4.2.2 Procurement Policies

Between July 2011-June 2016 (the 5-year disparity study period) Hennepin County had 3,857 procurements totaling \$1.4 billion dollars.³⁶ The section below summarizes Hennepin County's relevant procurement policies that have had positive outcomes for local small businesses.

10 Day Pay for Contractors. Small businesses on projects of a certain size may request a payment be made within 10 days. This has helped small businesses (1) manage their cash flow while taking on government contracts and (2) gain experience on public sector projects without concern of delayed payments.

Best Value Procurement Method. Since 2011, Hennepin County has been trained in and implementing projects using the best value procurement method. Minn. Stat. § 471.345 subdivisions 3(a) and 4(a) provide municipalities the authority to use best value as further detailed in 16C.28, subdivision 1, (a)(2)(c). Under 16C.28, further details are provided on requirements when using best value. Since 2012, Hennepin County has used best value on over 120 projects. One component that sets their program apart is the inclusion of SBE participation (weighted at 100 points) as one of the non-cost factors. Overall, these projects are reported as having better quality, better working relationships, and being delivered on time and on budget, as compared with low-bid projects overall. Over 50% of the best value contracts awarded have been awarded to the lowest proposer. The chart below depicts the percentage of best value contract awards to the lowest proposer each year since implementation.³⁷

Year	Percentage (%)
2011	100%
2012	71%
2013	67%
2014	57%
2015	77%
2016	53%
2017	90%

³⁵ Keen Independent Research, 2017 Minnesota Joint Disparity Study, Hennepin County, Executive Summary, page 11, https://mn.gov/admin/assets/KeenIndependentHennepinCountyDisparityStudyFullReport03122018_tcm36-331965.pdf

³⁶ Keen Independent Research, 2017 Joint Disparity Study-Hennepin County, Executive Summary, page 2 https://mn.gov/admin/assets/KeenIndependentSaintPaulDisparityStudyFullReport03122018_tcm36-331979.pdf, last visited 18 July 2018. The disparity study notes that the total number of procurements reflects a total “after exclusions”.

³⁷ Information shared during entity interview in ‘An Overview of Best Value Procurement: As Applied to Design Build Projects’ January 2018 presentation

Unbundling Larger Contracts. Hennepin County has been unbundling some work scopes, such as janitorial maintenance services. As a result of such effort, SBE utilization increased. For example, four African American owned firms were awarded janitorial services contracts totaling at least \$1,000,000.³⁸

4.2.3 Data Management Systems

The chart below details Hennepin County’s compliance data management systems.

Data Management System	Compliance Area / Procurement	Strengths	Weaknesses
B2Gnow	Used for vendor inclusion Compliance and CERT database	Allows for the certification side of the system (CERT) and the compliance side of the system to ‘talk’	Data migration into the compliance side of the system may be challenging
LCP Tracker	Used for prevailing wage compliance and workforce inclusion compliance	Eliminates paper reporting for contractors and provides comprehensive training	Does not ‘talk’ to B2Gnow, although owned/operated by the same company

4.2.4 Examples of Ongoing Outreach

Hennepin County also participates in the CERT Monthly Workshops detailed in the City of Saint Paul section of this report. In addition, it has participated in the following annual events:

- “Is Certification Right for You?” Lunch & Learn Workshop
- Small and Disadvantaged Business Opportunity Council (SADBOC) Procurement Fair
- North Central Minority Supplier Development Council (NCMSDC) Business Opportunity Fair

Hennepin County has had relationships with associations like the Association of General Contractors (AGC), Upper Midwest National Association of Minority Contractors (NAMC), and the Association of Women Contractors (AWC).

4.2.5 Other Compliance Areas

In addition to vendor inclusion compliance, Hennepin County enforces contract compliance for the following:

³⁸ Keen Independent Research, 2017 Minnesota Joint Disparity Study, Hennepin County, Chapter 8, page 6, https://mn.gov/admin/assets/KeenIndependentHennepinCountyDisparityStudyFullReport03122018_tcm36-331965.pdf

- Affirmative Action Program: Required for contractors with one or more non-construction contracts totaling over \$100,000 and who have over 30 employees.
- Workforce Inclusion: Enforces 32% minority and 20% female goals established by the Minnesota Department of Human Rights on construction contracts. Hennepin County also has a Workforce Entry Program (WEP) that requires successful bidders to hire a specific number of graduates from local training job programs.³⁹
- Prevailing Wage: This is enforced as required by contract, code, statute, rule, and/or resolution⁴⁰

4.2.6 Disparity Study, Data Management System and Programmatic Costs

Appendix A below provides a comprehensive assessment of costs associated with running a vendor inclusion program in this region.

4.3 City of Minneapolis

The City of Minneapolis administers its various vendor inclusion efforts through the Procurement Department and the Department of Civil Rights. To ensure compliance with respective program goals, the City of Minneapolis has processes in place that allow for Procurement and the Compliance team within the Civil Rights Department to work together throughout the contracting process from solicitation to contract award and through ongoing compliance. Between July 2011-June 2016 (the 5-year disparity study period) The City of Minneapolis had 6,750 procurements totaling \$1.3 billion dollars.⁴¹

4.3.1 Vendor Inclusion Program Overview

The City of Minneapolis Department of Civil Rights administers the Small and Underutilized Business Program (SUBP) and monitors compliance for the City. It is a certifying member of the Minnesota Unified Certification Program (MNUCP). In addition, the City of Minneapolis Procurement Department administers the Target Market Program (TMP) and has staff serving as members on the CERT collaborative board. The sections below detail these programs further.

Certification Programs

MNUCP

The City of Minneapolis is a member of the MNUCP. The MNUCP is a group of state and local agencies who work together to certify disadvantaged business enterprises (DBEs). The DBE program is a federal business certification program and required by the U.S. Department of

³⁹ County Construction Contract Compliance website, <https://www.hennepin.us/your-government/open-government/construction-contractors-compliance>, last visited 23 May 2018.

⁴⁰ Hennepin County's Contract Compliance System, <https://hennepin.diversitycompliance.com/Default.asp?>, last visited 23 May 2018

⁴¹ Keen Independent Research, *2017 Joint Disparity Study-City of Minneapolis*, Chapter 4, page 4 https://mn.gov/admin/assets/KeenIndependentSaintPaulDisparityStudyFullReport03122018_tcm36-331979.pdf, last visited 18 July 2018. The disparity study notes that the total number of procurements reflects a total “after exclusions”.

Transportation on relevant federally funded projects. The MNUCP consists of the following entities:

- City of Minneapolis
- Metropolitan Airports Commission
- Metropolitan Council
- Minnesota Department of Transportation

The MNUCP database houses 1,006 certified DBEs⁴². The MNUCP also collaborates with the CERT and TB/ED/VO programs by accepting certification applications through the Minnesota Small Business Certification Portal.

Target Market Program & CERT

The design and implementation of the TMP was a two-year effort. An internal team that consisted of staff from the Procurement Department, Compliance Division, City Attorneys, and the Innovations Team was created to implement this program. The criteria for the program defines a small business and places an eligibility cap based on (1) sector, (2) our marketplace and (3) annual gross receipts of the business. For a sector or category to be considered a TMP purchase opportunity there must be three TMP certified vendors in that category. To be eligible for the TMP a vendor must be located within the 13-county metropolitan area. In its first year the program registered 800 vendors. Currently, TMP has 1200 vendors registered. In creating this program, the Procurement Department joined CERT as a collaborative member and worked with CERT staff in assessing the vendors in the database and creating the pool from which they could evaluate annual gross receipts for establishing their category caps.

Vendor Inclusion Programs⁴³

Contracting Opportunities \$100,000 or Over

Under Chapter 423 of the City Code, the City's SUBP governs the City's race- and gender-conscious MBE and WBE efforts. Although goals are set on a project by project basis, the City has set a 12% MBE goal and 13% WBE goal on construction contracts. All construction projects are procured through low bid. Under the ordinance, bidders or proposers must either meet or demonstrate good faith efforts to meet a contract's SUBP goal as a condition of contract award.

Contracting Opportunities Under \$100,000

In addition to SUBP, in 2017, the City launched its TMP. The TMP limits bidding to qualified small businesses for contracts up to \$100,000. This program is race and gender-neutral and seeks to expand opportunities and build capacity of local small businesses. Since launching the program, the Procurement Department (along with other City departments using the list of vendors for other professional services) has spent \$14 million dollars with TMP businesses.

⁴² MNUCP DBE Directory, <https://mnu cp.metc.state.mn.us/>, last accessed 7 May 2018

⁴³ City of Minneapolis Contract Compliance website, <http://www.minneapolismn.gov/civilrights/contractcompliance/index.htm>, last visited 23 May 2018.

4.3.2 Procurement Policies

The section below summarizes the City's relevant procurement policies that have had positive outcomes for local small businesses.

Reduced insurance coverages. The City brought down requirement thresholds so that otherwise eligible businesses could satisfy requirements.

Due now term for TMP businesses. For businesses under the TMP, as soon as an invoice is approved by the manager payment will be issued. Most payments are now delivered via direct deposit.

Reducing payment turn time for all vendors. Accounts payable is now under procurement. There was a goal to bring down the amount of time they were taking to pay invoices. As of their last report, their turn time was at 16 days for all vendors.

Bonding requirements. Bonding requirements are only required on projects over \$100,000. As a result, TMP businesses do not have to face bonding requirements.

4.3.3 Data Management Systems

The chart below details the City's data management systems:

Data Management System	Compliance Area / Procurement	Descriptions
-MNUCP Directory -System created in-house for the Target Market Program	Certification	-MNUCP Directory: Online searchable database -TMP vendor registration: Created and maintained in-house. City of Minneapolis IT Department worked with the Procurement Department to develop this.
LCP Tracker	Used for prevailing wage compliance and workforce inclusion compliance	Eliminates paper reporting for contractors and provides comprehensive training
PeopleSoft & Comet ⁴⁴	Used for procurement	Allows for potential vendors to register online and get notified when opportunities are available in their line of work

⁴⁴ City of Minneapolis e-Supplier Portal, https://comet-fs.ci.minneapolis.mn.us/psc/fs92prdsupplier/SUPPLIER/ERP/c/NUI_FRAMEWORK.PT_LANDINGPAGE.GBL?&, last visited 23 May 2018

4.3.4 Examples of Ongoing Outreach

The City participates in the Monthly CERT Workshops described in the City of Saint Paul section above. It hosts training for general contractors related to doing business with the City and understanding the compliance. Lastly, it has participated in the following annual events:

- “Is Certification Right for You?” Lunch & Learn Workshop
- Small and Disadvantaged Business Opportunity Council (SADBOC) Procurement Fair
- North Central Minority Supplier Development Council (NCMSDC) Business Opportunity Fair
- Attends Upper Midwest National Association of Minority Contractors (NAMC) meetings
- Check in meetings/calls with the Association of Women Contractors (AWC)
- Ongoing connections with industry specific groups and associations
- “Doing Business with the City” outreach events hosted by the Minneapolis Department of Civil Rights
- The City’s Annual Community Connections Conference
- The East African Business Forum
- PRIDE
- Juneteenth Celebrations
- Outreach efforts through the MNUCP

4.3.5 Other Compliance Areas

In addition to the SUBP compliance area, the City has other compliance areas managed by staff. Each compliance officer is expected to work across compliance areas. These compliance areas are listed below.

- Affirmative Action Program: Minneapolis Ordinance 139.50(d) requires every developer, contractor, consultant, supplier, or vendor (Company) have an approved AAP on file with the Minneapolis Department of Civil Rights prior to entering into a City contract that is (1) over \$100,000 (2) an amended contract with a cumulative amount over \$100,000 or (3) more than one current contract with a combined total over \$100,000.⁴⁵
- Workforce Inclusion: Enforces 32% minority and 20% female goals established by the Minnesota Department of Human Rights on construction contracts.⁴⁶
- Prevailing Wage: The Davis-Bacon and Related Acts is enforced on federally funded construction contracts in excess of \$2,000. The City of Minneapolis Prevailing Wage Ordinance is also enforced on construction contracts in excess of \$50,000.⁴⁷

⁴⁵ City of Minneapolis Affirmative Action Planning, http://www.ci.minneapolis.mn.us/civilrights/contractcompliance/subp/civil-rights_affirmative-action-plan, last visited 23 May 2018

⁴⁶ City of Minneapolis Construction Workforce Goals, <http://www.ci.minneapolis.mn.us/civilrights/contractcompliance/subp/WCMS1P-125075>, last visited 23 May 2018

⁴⁷ City of Minneapolis Prevailing Wage, <http://www.ci.minneapolis.mn.us/civilrights/contractcompliance/WCMS1P-144728>, last visited 23 May 2018

- HUD Section 3: This is a race- and gender-neutral program that applies to construction projects that contain certain HUD financial assistance.⁴⁸

4.3.6 Disparity Study, Data Management System and Programmatic Costs

Appendix A below provides a comprehensive assessment of costs associated with running a vendor inclusion program in this region.

4.4 Minnesota Department of Administration

The Minnesota Department of Administration (Admin) administers the purchases for 88 units in Minnesota state government and leads the states' vendor inclusion efforts. Admin's Office of Equity in Procurement (OEP) operates a program for Targeted Group, Economically Disadvantaged and Veteran-owned businesses (TG/ED/VO). Although in recent years the state program adopted some similar eligibility requirements as the DBE program, it is a separate program with a separate list of certified vendors. Between July 2011-June 2016 (the 5-year disparity study period) Admin had 76,010 procurements totaling \$ 3.1 billion dollars.⁴⁹

4.4.1 Vendor Inclusion Program Overview

Certification Program

Admin is not a part of any certification collaborative. It administers the TG/ED/VO Small Business Procurement Program as the only entity.⁵⁰ It does however, participate in the Minnesota Small Business Certification Portal with MNUCP and CERT.

Vendor Inclusion

Under Minnesota Statute § 16C and Minnesota Rules, Chapter 1230, guidance is provided as to certification requirements and goal setting. Under 16C.16, small businesses are to "receive at least 25% of the value of anticipated total state procurement of goods and services, including printing and construction."⁵¹ A similar 25% goal is established for professional and technical procurements. Certified TG/ED/VO businesses may receive up to a 6% preference in selling their products or bidding on construction projects. For contracts \$25,000 and under, the commissioner of Admin may directly award a contract to a small business or TG/ED/VO without a competitive solicitation process. Goals may be set on projects that require a prime to subcontract a portion of the contract to small or TG/ED/VO businesses.

Admin also has a sheltered market program that applies to proposed projects from the Real Estate and Construction Services Division. OEP reviews the bid request forms and determines

⁴⁸ City of Minneapolis HUD Section 3 Program,

<http://www.ci.minneapolis.mn.us/civilrights/contractcompliance/subp/WCMS1P-125079>, last visited 23 May 2018

⁴⁹ Keen Independent Research, *2017 Joint Disparity Study-Department of Administration*, Chapter 4, page 4 https://mn.gov/admin/assets/KeenIndependentSaintPaulDisparityStudyFullReport03122018_tcm36-331979.pdf, last visited 18 July 2018. The disparity study notes that the total number of procurements reflects a total "after exclusions".

⁵⁰ TG/ED/VO Small Business Procurement Program, <http://www.mmd.admin.state.mn.us/mn02001.htm>, last visited 23 May 2018.

⁵¹ Minn. Stat. § 16C.16, subd. 1(a)

whether there are sufficient TG/ED/VO vendors such that the project is eligible for the set aside. If it is, then the project manager will post the project as a set-aside exclusively for TG/ED/VO vendors.

4.4.2 Procurement

In addition to the 6% preference mentioned above, Admin has Equity Select. Equity Select is a procurement method that allows an agency buyer to award directly to a certified TG/ED/VO small business a contract or purchase over \$5,000 and at or below \$25,000.

Efforts are also being made to pay contractors in less than 30 days.

4.4.3 Data Management Systems

The chart below details Admin’s certification and procurement systems.

Data Management System	Compliance Area / Procurement	Website
-Online Searchable Database	Certification	http://www.mmd.admin.state.mn.us/process/search/
-Minnesota Small Business Certification Portal		https://sbcp.mn.gov/
Online Supplier Portal “SWIFT”	Procurement	https://supplier.swift.state.mn.us/psp/fmssupap/SUPPLIER/ERP/h/?tab=SUP_GUEST

4.4.4 Examples of Ongoing Outreach

Admin’s OEP hosts Procurement Opportunity Fairs. In addition, it has participated in the following annual events:

- “Is Certification Right for You?” Lunch & Learn Workshop
- Small and Disadvantaged Business Opportunity Council (SADBOC) Procurement Fair
- North Central Minority Supplier Development Council (NCMSDC) Business Opportunity Fair

Admin’s OEP also engages in the following ongoing outreach activities:

- Use of Gov Delivery to share opportunities with vendors
- Serve on all the relevant small business boards, committees and councils

4.4.5 Other Compliance Areas

For the State of Minnesota, laws pertaining to and administration of affirmative action, workforce inclusion and prevailing wage rests with the Minnesota Department of Human Rights and the Minnesota Department of Labor and Industry.

4.4.6 Disparity Study, Data Management System and Programmatic Costs

Appendix A below provides a comprehensive assessment of costs associated with running a vendor inclusion program in this region.

4.5 Ramsey County

Ramsey County's Procurement Division administers its vendor inclusion programming and procurement. Ramsey County operates a race- and gender-neutral SBE program. Ramsey County's Procurement Division, as it is structured today, is a newer department created about five years ago. As a result, Ramsey County could speak to implementing a new program and systems simultaneously. This is beneficial for SPPS as it looks to implement the recommended changes in this report.

Certification Program

Ramsey County has been a collaborative member of the CERT Program for a number of years. Although it has an SBE program, it has access to the CERT database which has a list of over 2050 actively certified SMWBEs. As a result, in recent years Ramsey County has been able to work with CERT to start tracking its spends with SMWBEs.

Vendor Inclusion Programs

Ramsey County does not set annual aspirational vendor inclusion goals. Project managers and departments set their project goals based on the availability of vendors in the CERT database for a particular work scope. The Procurement Policies and Procedures section below further detail's their efforts to include SBEs in their contracting practices.

4.2.2 Procurement Policies & Procedures

The section below summarizes Ramsey County's relevant procurement policies and procedures that have had positive outcomes for local small businesses.

SBE Q. For contracts up to \$25,000, there is delegated authority built into the policies. This allows those with the delegated authority to receive a quote from one CERT vendor and enter a contract directly with that vendor. The main exception to this is if an engagement is determined to be a 'high risk engagement/complex procurement'. When determining whether a procurement is a high-risk engagement/complex procurement, Ramsey County has a matrix that departments use to assess this. When a procurement is considered high risk/complex, then the Purchasing and Contracting Center of Excellence (COE) must review.

Competitive SBEQ. For contracts from \$25,000.01 up to \$100,000.00 a competitive SBEQ process can take place. With this process departments are seeking to receive quotes from three CERT vendors. One of the goals was to have some competition among the CERT vendors.

4.5.3 Data Management Systems⁵²

The chart below details Ramsey County's procurement data management systems, modules, and recommended modules.

Data Management System / Module	Comments
Onvia DemandStar	This is currently used for posting solicitations. It allows registered vendors to receive immediate and automatic notifications of contracting opportunities.
PeopleSoft	This is the same system used by the City of Minneapolis and currently used by SPPS. As SPPS looks to develop processes and systems that allow for timely and reliable data, connecting with entities using similar systems may be useful.
E-Procurement Module	Allows for management and tracking of requisitions.
Data Portal Module ⁵³	This is used to log in electronically to approve contracts. This is recommended because vendors can (1) log in and see all payments made to them (2) update W-9s (3) do electronic payments (4) update all contact information and (5) submit electronically through the portal. This also has a dashboard that helps with reporting.
Supplier Contract Management (SCM) Module ⁵⁴	This module helps unify contract writing and processes which results in the whole process being electronic.
Strategic Sourcing Module ⁵⁵	This module is used to create solicitations and can perform electronic bidding. It allows for everyone to score electronically. Then all information feeds into SCM module when creating the contract.

⁵² Ramsey County is also working to identify nonprofits in their data tracking and hopes to be able to report on that beginning next year.

⁵³ Ramsey County does not currently use the full functionality of this module. They only use the function of allowing vendors to log in and electronically approve professional and client service contracts.

⁵⁴ Ramsey County also configured this module to write solicitations as they did not implement the strategic sourcing module.

⁵⁵ Ramsey County does not use this module but recommends it.

4.5.4 Examples of Ongoing Outreach

Ramsey County also participates in the CERT Monthly Workshops detailed in the City of Saint Paul section of this report. In addition, it has participated in the following annual events:

- “Is Certification Right for You?” Lunch & Learn Workshop
- Small and Disadvantaged Business Opportunity Council (SADBOC) Procurement Fair
- North Central Minority Supplier Development Council (NCMSDC) Business Opportunity Fair

Annually, Ramsey County hosts an SBE procurement fair. The procurement fair is held in the fall and primarily for SBE vendors. In the past, they have had departments present on what they typically purchase and their estimated annual spend. In addition, departments will set up booths to talk to vendors during the resource fair segment of the event. During the resource fair they will have other small business resource providers present to connect with CERT vendors. Lastly, throughout the day they will have various workshops discussing how to do business with Ramsey County. Each year they receive feedback from attendees and adjust for the following year.

4.5.5 Other Compliance Areas

Ramsey County does not have a separate compliance team. Procurement staff ensures compliance in solicitations and contracts when developing them. Then, departments are responsible for contract administration, which includes contract compliance. As it relates to workforce inclusion, they adopted the Minnesota Department of Human Rights goals of 32% minority and 20% female. In adopting this they received feedback regarding the lack of a ‘box’ for people who are multi-ethnic. Ramsey County has since updated their forms to allow for those who are multi-ethnic to select boxes that best describe their ethnicity.

4.5.6 Data Management System and Programmatic Costs

Appendix A below provides a comprehensive assessment of costs associated with running a vendor inclusion program in this region.

4.6 Minneapolis Public Schools

Minneapolis Public Schools (“MPS”) houses its efforts related to vendor inclusion within its Procurement Division. In addition, individual construction coordinators and department heads lead aspects of vendor inclusion. The sections below summarize its efforts.

4.6.1 Vendor Inclusion Program Overview

Certification Program

MPS is not a member of any one certification program in our region and does not conduct its own business certification program. It does, however, accept certifications from the following:

- CERT
- Midwest Minority Supplier Diversity Council

- U.S. Small Business Administration
- Women’s Business Development Center

MPS may also accept a “Letter of Good Standing” from the following Chambers of Commerce or Construction Councils:

- National Association of Minority Contractors
- Association of Women Contractors
- Asian American Chamber of Commerce
- Minnesota Black Chamber of Commerce
- Minnesota Hispanic Chamber of Commerce
- Minnesota American Indian Chamber of Commerce
- GLBTA Chamber of Commerce

Vendor Inclusion

In 2010, MPS adopted Policy 3310 “Business Partner Diversity”. This policy sets forth MPS’ statement to promote the participation of businesses owned and operated by minorities, women, and diverse communities in its procurement and contracts for goods and services. The policy also addresses ensuring that those they contract with certify their compliance with laws prohibiting discrimination.

In recent years, MPS’ approach to business development for small, minority-owned and women-owned businesses was to obtain spends from each department from the Finance Department. Once that data was acquired, it would then identify potential contracting opportunities for small, minority-owned and women-owned businesses.

In addition to finding department specific contracting opportunities for small, minority-owned and women-owned businesses, MPS would assess departmental practices for any barriers to opportunities for small, minority-owned and women-owned businesses. If a barrier existed in the departmental practices, MPS would work to propose revisions to such practices and systems. Such changes included:

- Reviewed and adjusted contract language
- Reviewed affirmative action plan
- Contracted with software developer to track participation
- Reported outcomes both internally and externally for full transparency
- Met with department heads, reviewed historical spends, researched legitimate DBE alternatives and facilitated engagements

MPS also would establish projected departmental spends with small, minority-owned and women-owned businesses. These goals were based off of historical spend and availability of certified vendors within a particular industry.

4.6.2 Data Management Systems

MPS has an online vendor registration page (<https://diversebusiness.mpls.k12.mn.us/>) managed by UpNet where MWBEs may register. In addition, it has a “Diverse Business Directory” listing such businesses that have completed the “Business Partner Diversity Certification Form”. Currently, MPS is developing a new program that will be using an SAP ERP system.

As noted above, MPS set department specific inclusion goals. Its compliance practices included tracking each department’s compliance against the projected goals established based off of the contracting opportunities available. To accomplish this, MPS staff dedicated to this effort meet monthly with the Finance Department to review monthly spends for each department. Acquiring this data is streamlined by using a compliance system that is compatible with its ERP system. By these systems “talking” to each other, MPS is able to have real, timely and reliable data. Following the monthly meetings, spends reports will be generated and shared with MPS leadership.

4.6.3 Examples of Ongoing Outreach

MPS created a strategy and plan for outreach and engagement. This plan included engagements such as the following:

- A series of “How to do Business with MPS” events
- Partnering with community stakeholders
- Marketing and communication strategy including: radio spots, reporting spends on its website, quarterly newsletter, strategic bid solicitations via associations

4.6.4 Disparity Study, Data Management System and Programmatic Costs

Appendix A below provides a comprehensive assessment of costs associated with running a vendor inclusion program in this region.

4.7 Metropolitan Council

The Metropolitan Council’s Office of Equal Opportunity (OEO) operates two small business programs: the Disadvantaged Business Enterprise Program (DBE), and the Metropolitan Council Underutilized Business Program (MCUB).⁵⁶ Between July 2011-June 2016 (the 5-year disparity study period) The Metropolitan Council had 7,184 procurements totaling \$1.4 billion dollars.⁵⁷ The sections below further summarize the Metropolitan Council’s efforts.

⁵⁶Metropolitan Council Small Business Programs, <https://metro council.org/About-Us/What-We-Do/Office-of-Equal-Opportunity/Small-Business-Programs.aspx?source=child>, last visited 3 July 2018

⁵⁷ Keen Independent Research, *2017 Joint Disparity Study-Metropolitan Council*, Chapter 4, page 4 https://mn.gov/admin/assets/KeenIndependentSaintPaulDisparityStudyFullReport03122018_tcm36-331979.pdf, last visited 18 July 2018. The disparity study notes that the total number of procurements reflects a total “after exclusions”.

4.7.1 Vendor Inclusion Program Overview

Certification Program

The Metropolitan Council is a member of the Minnesota Unified Certification Program (MNUCP). Through the MNUCP, the Metropolitan Council has access to certified DBEs. The DBE program applies to projects that are: (1) federally funded projects (2) \$50,000 or more (3) where subcontracting opportunities exist and (4) DBE opportunities exist. Largely, DBE certification is accepted on Department of Transportation projects and Environmental Protection Agency projects.

In addition to the DBE certification, in 2012, the Metropolitan Council received an executive order from the Governor to foster a local program for small businesses. This program is their MCUB program. The MCUB certification is accepted on local capital or engineering projects over \$100,000. MCUB business are certified every other week. They currently have more MCUB projects than DBE projects.

Vendor Inclusion

As noted above, the Metropolitan Council has both a DBE and the MCUB program. Contracting goals are set under both programs. In addition, when projects will not meet a goal, good faith efforts are enforced.

DBE Program

Annual goals are set base on availability of businesses within the region. If a scope of work exists where they do not have any DBEs, they do outreach to further determine what potential DBEs may exist. When setting goals, they have goal setting meetings. At the meetings they invite stakeholders such as the construction manager and experts in the field. They then look at the marketplace to set goals. They have indicated that this has been a successful process for them in getting buy-in. Currently, they are meeting the goal at 90%.

MCUB

For the MCUB program, the Metropolitan Council follows the same practices for assessing availability of DBEs. Although they are still developing the MCUB program, last year they had \$7 million dollars awarded to MCUBs on environmental projects alone.

4.6.2 Procurement

The Metropolitan Council engages in the following procurement strategies to better support small, minority-owned and women-owned businesses:

- Unbundling, where feasible
- Encouraging departments to have contracts only for small businesses where they only contact DBEs for solicitations
- In instances where Procurement is soliciting 3 quotes, they seek to have at least one of the quotes come from a DBE

As it relates to how procurement and vendor inclusion intersection, OEO staff will work with the Procurement Department during the planning initiation of the contract.

4.7.3 Data Management Systems

As it relates to their compliance monitoring, the Metropolitan Council created a system in-house. OEO staff worked with the IT department to design the software. The system tracks compliance for DBEs. In addition, contractors enter the system for billing and pay applications. The Facilities Department will not process payment for pay applications unless the DBE/MCUB report is attached with the pay applications.

The chart below details the Metropolitan Council's procurement and compliance systems.

Data Management System	Compliance Area / Procurement	Website
PeopleSoft	Procurement	Goals are entered into PeopleSoft and will automatically populate in their contracting system. Contractors can log in and enter information
In-House System	Compliance	A compliance system was created in-house and they upgrade it as needed

4.7.4 Examples of Ongoing Outreach

The Metropolitan Council engages in the following outreach efforts:

- Working to create a DBE roundtable for DBEs in engineering
- Outreach events specific to IT
- Hosting "Constructing Success" every other year

In addition, it has participated in the following annual events:

- "Is Certification Right for You?" Lunch & Learn Workshop
- Small and Disadvantaged Business Opportunity Council (SADBOC) Procurement Fair
- North Central Minority Supplier Development Council (NCMSDC) Business Opportunity Fair

4.7.5 Other Compliance Areas

The Metropolitan Council does not have the authority to enforce workforce inclusion goals, but rather the Minnesota Department of Human Rights enforces the goals on their projects.

4.7.6 Disparity Study, Data Management System and Programmatic Costs

Appendix A below provides a comprehensive assessment of costs associated with running a vendor inclusion program in this region.

4.8 Regional Practices, Challenges and Opportunities for Vendor Inclusion Programs in Minnesota

Through the entity interviews and CAC engagement, the following regional practices emerged:

REGIONAL PRACTICES				
Procurement	Vendor Inclusion	Workforce Inclusion	Data Management	Outreach
• Use of best value • Programs designed for direct SBE contracting under \$100,000 • Quick pay options for small businesses of a certain size • Unbundling work scopes • Adjusting bonding and insurance requirements for smaller businesses	• Conducting a disparity study • Having at least an SBE inclusion program that allows for tracking of MWBEs • Programming that assists with capacity building of MWBEs • Setting and enforcing contracting goals	Enforcing the State's 32% minority and 20% women participation goals	• Having data management systems that can 'talk' to each other • Having an online platform for vendor registration • Using an online compliance monitoring system • Having electronic procurement and contracting systems in place	• Hosting annual procurement fairs • Establishing relationships with local S/SMBE/SWBE associations • Hosting vendor meet and greets • Attending annual regional vendor inclusion events

Through the entity interviews, CAC discussions, internal SPPS discussions, recent disparity studies and SPPS vendor survey, the following challenges surfaced for program administrators and businesses contracting with such entities.

CHALLENGES		
	Program Administrators	Vendors & Community Members
Procurement	• Awarding to the lowest responsive and responsible bidder does not guarantee a quality project delivered on time and on budget	• Notification of contracting opportunities • Bonding and insurance requirements • Prompt payment / cash flow challenges due to payment delays
Certification	• Certification allows for tracking certified S/M/WBEs, but, it is difficult to track non-certified business owners without the	• Multiple certifications for S/M/WBEs can be confusing. Seeking a more regional approach.

	appropriate data management systems	
Compliance	• Sufficient staff dedicated to ensuring compliance on all applicable contracts • Ensuring all entity departments are complying with or enforcing compliance program requirements • Garnering internal support and implementation of inclusion programs	• Too much red tape • Submitting documentation that is duplicative • Different compliance requirements and programs for different entities / a desire for a more regional approach to this work
Data Management	• Lacking systems that allow for tracking and providing timely and reliable data • Systems that are not intuitive and challenging to navigate • Systems that do not talk to each other (ex: procurement system ‘talking’ to compliance systems)	• Systems that are not intuitive and challenging to navigate
Outreach	Staffing capacity dedicated to outreach	Too many outreach events that do not lead to work/contracting opportunities

As a result of conducting an assessment of this magnitude across enterprises, SPPS is positioned to build a program without having to experience some of the challenges that other programs have faced when being implemented. Section 5.0 below outlines the recommended amendments to policies, procedures and practices. These recommendations seek to build a program rooted in the regional practices within our region that have resulted in a positive impact for our local small, small minority-owned, and small women-owned businesses.

5.0 Options Available to the District to Increase Vendor Diversity

In light of the laws, policies and regional practices shared above, recommendations are being made that either (1) require revisions to existing board policies and administrative procedures or (2) do not require such revisions, but rather, changes to SPPS practices. It is not the expectation that all recommendations be implemented immediately. However, there are some recommendations that require less process, policy, and procedural changes and could reasonably be implemented more readily. Appendices A and B present a cost analysis and proposed implementation timelines over the course of three years.

5.1 Revisions to Existing Board Policies or Administrative Procedures

In considering the existing laws, policies, and regional practices in our marketplace, the sections below present recommendations for changes to existing board policies related to (1) procurement (2) vendor inclusion and (3) workforce inclusion.

Throughout Section 3.0 above, for each SPPS policy highlighted, the relevant legal citations for each policy were included. The bullets below outline each relevant legal citation and summarizes the authority it provides for the recommendations that follow in this section.

- ***Minn. Stat. Chapter 363A (Minnesota Human Rights Act)—(363A.17(3) Business Discrimination)***: Under 363.17(3), it provides protection of protected class business owners from discrimination by other business owners or those in the trades. May assist with workforce and business inclusion enforcement and compliance if issues are to arise.
- ***Minn. Stat. § 181.59 (Discrimination by Contractors)—(Discrimination on Account of Race, Creed, or Color Prohibited in Contract)***: Provides protection of protected class individuals from discrimination in contracting and hiring. May assist with workforce inclusion enforcement and compliance if issues are to arise.
- ***Minn. Stat. § 471.345 (Uniform Municipal Contracting Law)***: This statute provides authority for (1) use of the best value procurement method and (2) receiving direct quotes from vendors on contracts exceeding \$25,000 but not \$175,000, as well as contracts \$25,000 or less.
- ***Minn. Stat. § 123B.52 (Education Code: Prekindergarten-Grade 12)—(Contracts)***: This statute (1) references to Minn. Stat. § 471.345 and (2) provides further authority for use of the best value procurement method in subdivision 1b.

In light of the existing authority above, less amendments are needed. At this time, the Equal Opportunity Procurement Policy 713.00. (Policy 713.00) is the only board policy impacted by the recommendations below.

5.1.1 Procurement

Implementing a Quick Pay Procedure

Through the entity interviews it was discovered that more than half of the entities interviewed have procedures in place that allowed for small businesses to be paid within 10-16 days.

Recommended Revision: Drafting or amending existing administrative procedures to allow for small businesses of a certain size to request payment within 15 days.

Use of a Best Value Procurement Method

Under Minnesota Statute 123B.52, SPPS has the authority to use best value as an alternative to low bid on a contract for construction, building, alteration, improvement, or repair work. Under 16C.28 best value is defined as “...the result determined by a procurement method that considers price and other criteria...” Such criteria may include non-cost factors like percentage

of subcontracts awarded to SBEs. Under 16C.28 one of the requirements for an entity using best value is that the entity must be trained. The type, duration, and curriculum for the training are not specified. As noted in Section 4.0 above, Hennepin County has been using the best value procurement method since its training in 2011. It has offered to train SPPS free of charge.

Recommended Revision: Drafting or amending administrative procedures to explicitly state SPPS' ability to use a best value procurement method.

Contracts Under \$175,000: Provision Permitting Purchasing to Contract Directly with SBEs and Micro-SBEs

Under Minnesota Statute 471.345, contracts exceeding \$25,000 but not \$175,000 may be made “*either by sealed bids or direct negotiation*”. In addition, for contracts \$25,000 or less, the contract may be made either “upon quotation or in the open market, in the discretion of the governing body”. Under Minnesota 123B.52, it cites to Minnesota Statute 471.345 in terms of complying with the terms of the section. Policy 713.00 cites to Minnesota Statute 471.345 as a legal reference. In considering the authority and relationship between the two laws Policy 713.00 heavily relies upon, it is reasonable to conclude that SPPS could create a policy, procedures and a program targeting small businesses for purchases under \$175,000. In further support of this are practices in the region that have seen more success, such as local ordinances, policies and programs like those highlighted by all entities included in Section 4.0.

Recommended Revision: Drafting or amending existing administrative procedures to allow for negotiation or seeking quotations directly from SBEs and micro-SBEs on contracts under \$175,000.

Adjusting Bonding and Insurance Requirements

Several of the entities interviewed and recent disparity studies across the country have identified bonding and insurance requirements as barriers to contracting opportunities for otherwise qualified small businesses.

Recommended Revision: Drafting or amending existing administrative procedures to allow for adjustments to bonding and insurance requirements. In addition, where possible removing bonding requirements on contracts under \$175,000.

5.1.2 Vendor Inclusion

Conduct a Disparity Study

As noted throughout this report, a disparity study provides the best legal foundation for the creation of a race and gender-conscious program. SPPS currently has policies in place that support a culture of equity in its practices, as noted in Racial Equity Policy 101.00 and its Equal Opportunity/Non-Discrimination Policy 102.00. As stated in *Croson*, “[t]o show that a plan is justified by a compelling government interest, a municipality that wishes to employ a racial preference cannot rest on broad-brush assumptions of historical discrimination. Furthermore, “[f]indings of societal discrimination will not suffice; the findings must concern ‘prior discrimination by the government unit involved.’” As evidenced in the Powers Consulting report,

SPPS' utilization of MWBEs on expenditures made by the Facilities Department alone is less than 5%. This is far below what appears to be available in recent disparity studies conducted for other entities in our marketplace. Despite this, SPPS truly ought to fully assess its underutilization across all procurement through a disparity study.

Recommendation: Begin preparing for a disparity study to take place within the next 12 months. Post-disparity study, provided underutilization is discovered, update Policy 713.00 and administrative procedures to appropriately reflect any necessary policy and programmatic changes. Appendix B further details the proposed timeline and workplan for undertaking the disparity study.

Disparity Study Cost Considerations—Finding Partners

With the recent joint disparity study concluding this year, it may be several years before the entities involved in that study conduct another joint disparity study. As a result, SPPS may either (1) conduct the disparity study on its own or (2) seek to partner with local entities that did not take part in the recent joint disparity study. As evidenced in the Cost Analysis in Appendix A, a disparity study conducted with one entity costs more than when conducted with other entities. The following entities have not recently conducted a disparity study and may be available to serve as partners:

- Minneapolis Public Schools
- Ramsey County
- Saint Paul Port Authority

Recommendation: Seek to pursue conducting a disparity study with partners. Outside of the entities listed above, other school districts may also be ripe for conducting a study and could serve as partners. If this is not feasible, conduct the disparity study as an individual entity.

Pre-Disparity Study: Create a Small Business Enterprise (SBE) and Micro-SBE Inclusion Program

A race and gender-neutral small business inclusion program may be created immediately, pre-disparity study. As opposed to the strict scrutiny applied to a race- and gender-conscious program, a race- and gender-neutral program would come under rational basis review. Similar to Hennepin County, before the joint disparity study, SPPS could have an SBE program with access to SMBEs and SWBEs, as well. The majority of the entities interviewed with goals had annual aspirational inclusion goals around 25%. Project specific goals may be set for SBEs and micro-SBEs on upcoming construction projects. In addition, with accepting the revision to explicitly permit use of the best value procurement method, SPPS may include SBE and micro-SBE inclusion as a non-cost factor, as Hennepin County has done since 2011.

Lastly, in addition to the efforts of entities within our jurisdiction that contract with small businesses with an annual gross receipt under a specific threshold, there are other school districts across the country that engaged in similar efforts. For example, in Virginia local and state entities, including public schools, have created a micro business program within its overall small business program that targets small business owners with (1) less than 25 employees and

(2) three-year average annual gross receipts of \$3,000,000 or less.⁵⁸ Creating an SBE program would ensure all local small businesses have an opportunity to do business with SPPS. In addition, creating a micro-SBE program will allow the smallest businesses in respective sectors would have the opportunity to connect and contract with SPPS.

Recommendation: Update Policy 713.00 to reflect (1) the creation of an SBE (which includes access to SMBEs and SWBEs and micro-SMWBEs) (2) creation of a micro-SBE program for SBEs with annual gross receipts under \$1,000,000 and less than 25 employees and (3) the annual aspirational goals of 10% SBE and 15% micro-SBE, for an overall 25% annual aspirational goal for total SPPS construction procurement.

5.2 Procedure, Practice and Programmatic Changes Available Not Requiring Board Policy Revisions

There are some changes that SPPS is able to make currently, without needing to change any policies or conduct a disparity study. These changes are summarized below.

5.2.1 Procurement

Unbundling Work Scopes

Several of the entities interviewed and recent disparity studies across the country have highlighted unbundling work scopes as a race- and gender-neutral method to increase opportunities for small businesses.

Recommended Revision: Drafting or amending existing administrative procedures to allow for unbundling specific work scopes where SBEs and micro-SBEs are available.

5.2.2 Vendor Inclusion / Certification

Joining the CERT Collaborative

As noted in section 6.0 below, one of the top recommendations from the CAC was to join the CERT Program. In addition, the following should be noted:

- CERT is the local certification program within our marketplace. It is also the largest S/SMBE/SMWBE database of certified vendors in the state.
- By joining CERT as a collaborative member, SPPS would be at the table with other entities in our region that are leading the way. Through assessing the various entities in our marketplace in Section 4.0, of the 3 collaborative partners that did participate in the disparity study (1) Hennepin County and the City of Minneapolis had the highest MBE utilization (2) Hennepin County had the second highest MBE utilization, but yet it was the only race and gender-neutral entity participating and (3) the City of Saint Paul had the highest overall utilization.
- CERT collaborative members collaborate on pushing relevant legislative items relevant.

⁵⁸ Virginia Department of Small Business and Supplier Diversity-Micro Business Certification Program, <https://www.sbsd.virginia.gov/certification-division/micro/>, last visited 23 May 2018.

- As a collaborative member, SPPS could have access to the use of cooperative contracts with the other collaborative members. This could potentially bring down some costs associated with procurement.
- As a CERT collaborative member, the City of Saint Paul would manage all the certifications and the data management system associated with that. Therefore, SPPS would not have to design and manage its own system, as it would be within the collaborative partner fee.
- CERT also shares outreach efforts and opportunities of collaborative members to the full CERT database. This would aid SPPS as it is making its programmatic changes and expanding its marketing.

Recommendation: Join the CERT collaborative board by winter of 2018.

5.2.3 Workforce Inclusion

In 2017, the Minnesota Department of Human Rights amended the female workforce inclusion goal such that now the goals are 32% minority and 20% female. All entities interviewed in Section 4.0 have adopted these goals.

Recommendation: Adopt the 32% minority and 20% female workforce inclusion goals. In addition, ensure your systems provide for reporting of multi-racial and multi-ethnic individuals.

5.2.4 Increased Outreach and Marketing

In looking at the regional practices noted in Section 4.0, as well as the CAC recommendations in Section 6.0 below, the following outreach and marketing efforts could be implemented immediately.

Conduct a Meet and Greet with Contractors in the Winter

With over \$500 million dollars' worth of contracting opportunities over the next five years, SPPS has a great opportunity to start building additional relationships within the small business community prior to the projects. A meet and greet with the contractors is one way to do this. Many other entities and large construction companies in our area have done this as they were preparing to begin major projects.

Recommendation: Host a meet and greet with contractors this winter.

Begin Hosting Annual Procurement Fairs

Entities like Ramsey County and the City of Saint Paul have hosted annual procurement fairs for the last few years. These events allowed contractors to learn about upcoming projects, meet key points of contact, and better understand how to do business with each entity.

Recommendation: In partnership with the Purchasing Department, the Facilities Department may host annual procurement fairs prior to construction season.

Start Building Relationships with the Local SMBE and SWBE Associations

There are a number of SMBE and SWBE associations in our marketplace, such as NAMC and AWC. Attending these organizations' monthly meetings provides government entities an opportunity to connect with those communities. Over the years, representatives from MNUCP, TG/ED/VO, and CERT attend such meetings as government members.

Recommendation: Start sharing contracting opportunities with such associations and having staff periodically attend meetings and events.

5.2.5 Compliance and Data Management Systems

Update Existing Registration Form & Process

Currently, SPPS uses a paper form for vendor registration. The form is then filed, and the information is not placed in a searchable database. The current form does have questions that could yield valuable information for SPPS to track. However, without being tied to a data management system the data is not as useful.

Recommendation: Create an online supplier page that allows for vendor registration. This page should store the registrations in a manner that is searchable and reportable for staff.

Compliance Partnership with the City of Saint Paul

The City of Saint Paul currently uses B2Gnow and LCP Tracker for its compliance areas. B2Gnow also houses the CERT database and 'talks' to the compliance side of the system. The City of Saint Paul has offered the possibility of creating a compliance partnership.

Recommendation: In sharing a similar geography and in joining the CERT collaborative board, SPPS could have an opportunity to explore a compliance partnership with the City of Saint Paul. Doing this may potentially cut down costs related to implementing a data management system.

6.0 Community Advisory Council (CAC) Recommendations

The CAC was broken out into four committees during the assessment period. The charts below highlight the primary recommendations provided by each committee.

EXISTING PROGRAMS	DATA MANAGEMENT
<u>Top Recommendation:</u> The CERT Program is a positive way to go should SPPS decide on it along with a vendor outreach program.	<u>Top Recommendation:</u> SPPS should consider partnering with the City of St. Paul. Additionally, it should act to correct its contractor database.
<u>Other Recommendations:</u> • Look at City of Saint Paul programs as a start to set proper goals	<u>Other Recommendations:</u> • Vendors should be able to use a Portal to supply information to SPPS • SPPS should develop a supplier page online

- Do not consider DBE programs, as they are federal and you are seeking a more local program
- Use Hennepin County workforce actions
- Should look at SBE (25%) but it should not be exclusive but include WMBE goals
- Establish workforce goals for the project and even bigger
- Use the AA policy and the disparity study to enforce your requests
- Use the construction contractor information data format
- Collection of data from contractors should include NAIC codes
- Current data maintained in the system is not reliable and the system is incapable of generating data in support of vendor diversity
- Further explore partnering with the City of Saint Paul for the benefit of B2Gnow. (note: there are discussions with UpNet regarding data management for the City)
- Data management must support outreach and compliance concerns as well

COMMUNITY ENGAGEMENT

Top Recommendation: Conduct meet and greet events

Other Recommendations:

- Start using associations to get the word out about contracting opportunities. Such associations include: UM-NAMC, AWC, AALC, AALF, NC-MSDC, BCC. These entities will get it to their members.
- Conduct pre-bid meetings and informational meetings
- Conduct meet & greet events
- Conduct an open house event and have prime contractors set up for contractors to sign in and register. This open house should include SPSS' primes & subs.

POLICY/LEGAL

Top Recommendation: Conduct a disparity study and in the interim implement a race-and gender-neutral SBE program.

Other Recommendations:

- Creation of a race- and gender-neutral program
- Conducting a disparity study
- Evaluation of workforce inclusion goals within our marketplace and what is needed to implement the goals

APPENDICES

The appendices included with this report are as follows:

[Appendix A: Cost Analysis](#)

[Appendix B: Process Flow Chart & Implementation Proposals - Options 1-4](#)

[Appendix C: Saint Paul Public Schools Construction Data and Three-Year Data Analysis Report](#)

[Appendix D: Draft Job Descriptions](#)

Appendix A: Cost Analysis

Marketplace Averages

Through research and the entity informational interviews the project team was able to determine the costs of administering a program of this nature in our region. The chart below summarizes our findings:

ITEM	Low	Medium	High	Actual	TOTAL LOW	TOTAL HIGH	Comments
Personnel							
<i>Number of FTEs</i>	6	8	10		6	10	
<i>Total personnel costs</i>	\$515,000.00	~\$800,000.00 (assumes ~40% for benefits, taxes and workstation; assumes all entry level positions)	\$1,100,000.00 (includes benefits and a combination of entry level and management positions)		\$515,000.00	\$1,100,000.00	All entities assessed to arrive at these numbers have staff dedicated to cover compliance for vendor inclusion, workforce inclusion, and prevailing wage. In addition, the medium and high programs had staff dedicated to certifying small businesses.
Procurement							
<i>Total number of procurements over 5-year period</i>	3,800.00		76,010				
<i>Total dollar amount of procurements over 5-year period</i>	\$1.3 billion	\$1.5 billion	\$3.1 billion				
Data Management Costs							
<i>Certification System</i>				\$14,500.00	\$14,500.00	\$14,500.00	
<i>Compliance System</i>				\$39,200.00	\$39,200.00	\$39,200.00	
<i>Procurement Supplier Portal / Procurement Modules that Help with Reporting</i>	\$650,000.00	\$1,000,000.00	\$1,700,000.00		\$650,000.00	\$1,700,000.00	For different procurement modules each may cost approximately \$500,000. For a 5-year license for a portal may cost approximately \$3,200,000. These numbers reflect what an annual cost may be for such things

Memberships/Partnerships							
<i>CERT Collaborative Member</i>				\$34,270.00	\$34,270.00	\$34,270.00	
<i>SMWBE Capacity Building Partnerships, Memberships and Annual Outreach Events</i>				\$10,000.00	\$10,000.00	\$10,000.00	
Joint Disparity Study / Individual Disparity Study Low / Individual Disparity Study High	\$156,000.00	\$300,000.00	\$500,000.00		\$156,000.00	\$500,000.00	
TOTAL					\$1,418,970.00	\$3,397,970.00	

Recommendations for SPPS

To successfully design, launch and administer a vendor inclusion program there are six primary areas that must be maintained. These include:

- Internal /external relationship management
 - Internal Relationships: Informing other relevant departments of program requirements; designing and providing training on such requirements; and serving as the main point of contact for other department's questions.
 - External Outreach: Informing relevant communities and stakeholders about the program and how to be involved.
- Updating and maintaining relevant program documents (ex: policies, procedures, practices).
- Certification of eligible businesses: Assisting business owners with the certification process, certifying businesses and ensuring certification system is up to date and accurate.
- Partnerships / memberships: Maintaining partnerships /memberships with other government entity collaborative partners (ex: CERT).
- Compliance:
 - Ensuring certified businesses are complying with program requirements
 - Ensuring that SPPS contractors are complying with small business contracting requirements
 - Establishing project goals
 - Evaluating contractor good faith efforts
 - Monitoring projects from start to finish at all tiers for compliance
 - Ensuring that SPPS departments and staff are complying with the program requirements
- Data Management: Serving as the primary administrator of relevant data management systems for the program and generating relevant program reports

Based off of the conversations with different government entities and the CAC, this section presents recommendations as to what should be implemented as it relates to (a) personnel (b) data management systems (c) memberships/partnerships and (d) the disparity study. Appendix B presents four proposed timelines for implementing this program along with the associated costs per proposed timeline.

Personnel. Of the entities interviewed and those entities discussed during the CAC meetings, it was well established that for a program to be successful it needs to have people dedicated to this effort. There was a correlation between program outcomes and the number of staff dedicated to the effort. For those entities with one staff dedicated to the effort it was a struggle to balance the certifications, compliance, and outreach. Often, compliance enforcement and outreach suffered. For those entities with a high number of staff dedicated to its vendor inclusion programs it allowed for certification and compliance staff to ‘specialize’ in one area. This allowed for such staff to work deeply and broadly in those areas. Such entities tended to have higher inclusion percentages in the recent disparity study. It must be noted that all of the highly staffed programs did not start out that way and some did have to grow over time.

Recommendation. In the initial year of implementing this program, SPPS does not need to have 9 staff dedicated to this effort, however, it is recommended that it does not have less than 2 people dedicated to this effort through the implementation phase.

Rationale. The rationale for this is that there will need to be:

- a person dedicated to the external outreach, training, and certification related aspects of the program; and
- a person dedicated to getting the infrastructure in place, ensuring internal compliance, internal relationship building and ensuring external compliance.

It is noted that two people are needed for this effort initially because although staff must be dedicated to this effort for it to be sustainable, SPPS may consider hiring contractors for the period of time needed to build out the program and implement it. That may significantly cut down costs for the first year. SPPS can find further capacity assistance and minimize costs by (1) joining the CERT Collaborative and (2) entering a compliance agreement with the City of Saint Paul. Joining the CERT Collaborative will result in CERT maintaining the certification process primarily for businesses, as well as the database. Even with the proposed micro-SBE program (which would be SPPS specific and not covered by CERT), CERT would still be handling a notable portion of the work. If SPPS were to enter into a compliance agreement with the City of Saint Paul, that could potentially minimize the amount of internal staffing capacity needed to enforce compliance with external contractors.

Data Management Systems. Currently, SPPS uses hard copy forms to track its vendors. Similarly, with the staffing capacity, for entities interviewed those with better systems in place for tracking data were better positioned to track outcomes, conduct targeted outreach, and assess where their time and resources are being allocated. In addition, entities with better data management resulted in less time investment from a disparity study consultant, which in cases of an individual disparity study could minimize costs. The primary areas that need to be track are as follows:

- Vendor registration
- Small, minority-owned, and women-owned business status and certifications
- Contracting data
- Compliance data (business inclusion and workforce inclusion outcomes)

Recommendation: It is recommended that SPPS have an electronic vendor registration process that allows SPPS to track all vendors; vendor owner race and gender; vendor certifications; NAICS codes; zip code; address; and average annual gross receipts. In addition, SPPS should have a procurement system in place that can connect with the vendor registration system that tracks contracts awarded. Lastly, when setting project goals, there will need to be a system in place to track projects and compliance. This system will allow SPPS to track its spends at all contracting levels. As with the other systems, this system should be able to communicate with the other data management system to allow for the most streamlined approach to data management. As mentioned under the “Personnel” section, certification and compliance monitoring may be handled by the City of Saint Paul through CERT and a compliance agreement. If this is pursued, infrastructure and systems must be put in place that allow for SPPS to track its own data collectively.

Memberships/Partnerships. Many of the entities interviews have relationships with local small, minority-owned, and women-owned business associations. Involvement with these associations greatly assists in the outreach for such programs. In addition, each government entity is involved in at least one collaborative partnership effort with another government entity. Such partnerships allow for spaces to share best practices as well as costs associated with administering such programs.

Recommendation: SPPS should build relationships with local MBE and WBE business associations such as the National Association of Minority Contractors and the Association of Women Contractors. It is also recommended that SPPS join the CERT Collaborative. By joining the CERT Collaborative, it will present opportunities for SPPS to split the cost of running and administering the

certification program as well as allow for sharing of resources and infrastructure already created by the other Collaborative Partners.

Disparity Study. As mentioned in Section 2.0 of the report, the largest multi-jurisdictional disparity study in Minnesota has recently completed. With SPPS not involved with the study, at this point it has the option of (1) conducting a disparity study on its own or (2) seeking to partner with other jurisdictions that did not participate in the recent disparity study.

Recommendation: It is recommended to see if other entities not in the recent disparity study would be interested in partnering on a disparity study. Such entities could include the Saint Paul Port Authority, Ramsey County, and Minneapolis Public Schools. By pursuing a joint disparity study, it would bring down the cost for the study per entity significantly. If SPPS is unable to partner with other entities on the study, then it will need to pursue a study on its own.

Analysis

Although implementing a new program has a cost associated with it, by implementing a vendor inclusion program aligned with the recommendations presented, the following is projected (a) in learning from other entities this program can cost less to build, implement and maintain and (b) through implementing the procurement recommendations made there will be cost savings and quality increases. The tables below reflect such cost savings.

Cost Savings: Building, Implementing, and Maintaining				
	Average Entity Cost	SPPS Cost	Cost Savings	Rationale for the savings
Personnel	\$800,000.00	\$300,000.00	\$500,000.00	Joining the CERT minimizes the need to have staff dedicating all of their time to certification. In addition, entering a compliance agreement with the City of Saint Paul may potentially bring down the staffing costs for monitoring all of the compliance for all SPPS projects (programs have 5-9 staff dedicated to this per entity). With these changes, SPPS can begin its program with 2 people to start the program: One director or manager level position and one specialist position.
Data Management (certification and compliance)	\$53,700.00	\$127,000.00	(\$73,300.00)	By joining CERT and entering the compliance agreement with the City of Saint Paul, SPPS will not have to pay the costs for procuring and maintaining its own systems. In addition, as most entities have between 6-10 FTEs dedicated to this work, through this agreement SPPS would have access to additional staff to aid with the compliance.
Vendor Registration Portal	\$400,000.00	\$20,000.00	\$380,000.00	Some entities worked with their IT departments to build out a system in house for vendor registration. Initially, this is a cost saving option. However, it should be noted that investing in a data management system

that is interoperable and connects procurement, vendor registration, certification, and compliance would be the most comprehensive option.

CERT Collaborative Fee	\$34,270.00	\$26,000.00	\$8,270.00
TOTAL	\$1,287,970.00	\$473,000.00	\$814,970.00

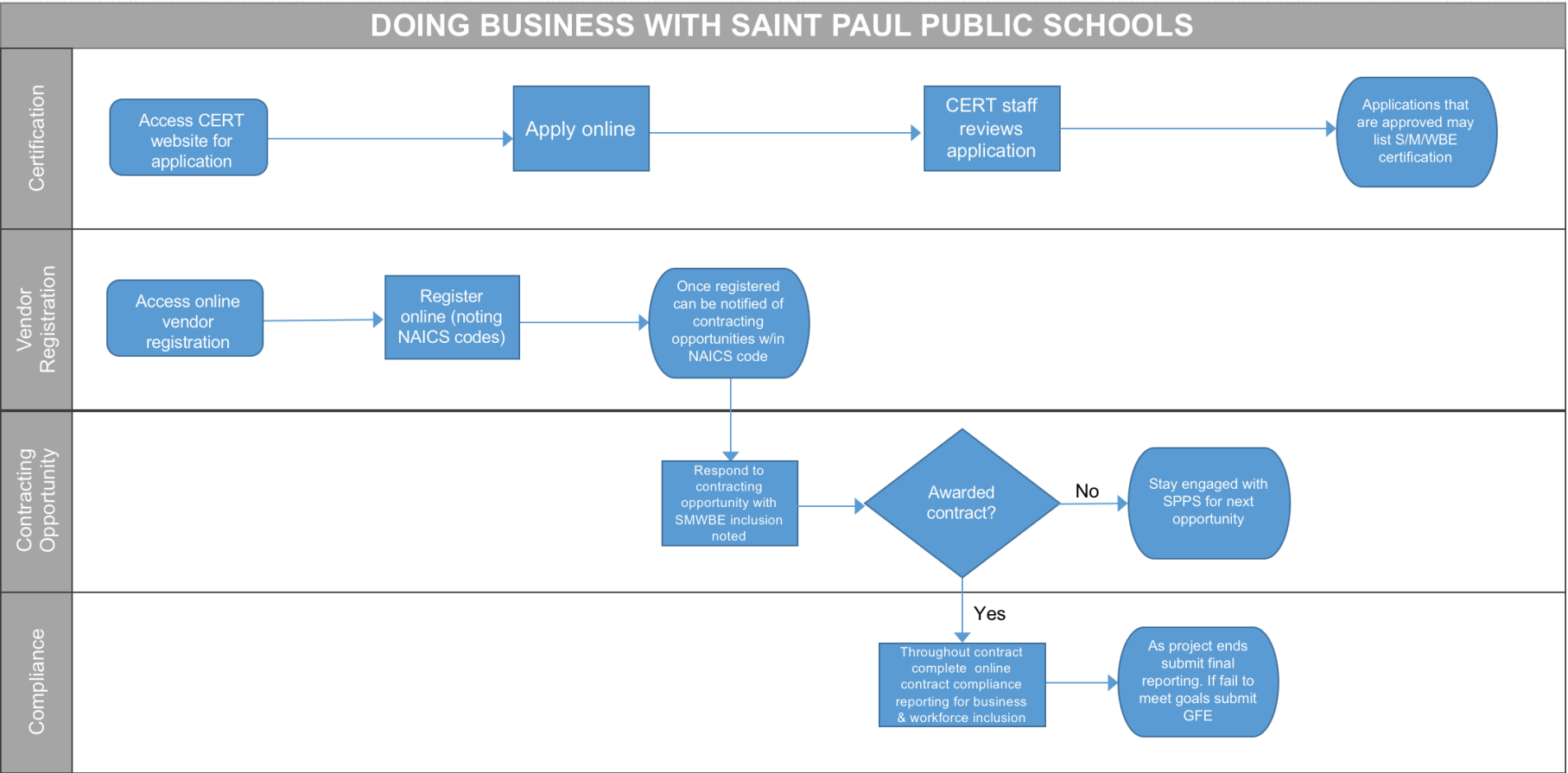
The CERT Collaborative Partner rate is \$34,270. By joining CERT this fall the rate for joining may be prorated for the first year.

Other Cost Savings & Quality Increases		
	Low Bid	Best Value
Strengths	Ensures that the contract is awarded to the lowest responsive and responsible bidder	Entity is able to establish non-cost factors to evaluate which may result in better quality projects delivered on time and on budget
Weaknesses	Non-cost factors are not taken into consideration outside of "responsibility"	In choosing the vendor with the highest score does not guarantee that the vendor is the lowest bidder. However, for entities like Hennepin County, in its first year using best value 100% of the contracts awarded through best value were also the lowest bidders
SPPS Opportunities	-To include small business contracting goals in the bid specifications -Require completion of requirements noted in the bid specification for a vendor to be deemed responsive or responsible	-To receive training from Hennepin County free of charge to satisfy the best value statutory requirements. -To design the non-cost factors to align with what is of most value to SPPS
Threats	-Awarding to the lowest responsive and responsible bidder does not guarantee the quality of the vendor -Adding compliance requirements may result in pushback from vendors and project managers	-If the proposal review process is not appropriately designed, it could result in challenges to the vendor selection that may prevail

Appendix B: Process Flow Chart & Implementation Proposals - Options 1-4

As evidenced by the research, entity informational interviews, and CAC, there are varying scales of vendor inclusion programs throughout our region. The charts below depict (1) a process flow that combines elements of what is being recommended (2) a work plan listing all of the various components needed to implement the program recommendations and (3) four implementation proposals with corresponding timelines and costs for each.

High Level Vendor Process Flow



Overview: High Level Program Component List & 3-Year Workplan

Task Overview	Proposed Schedule											
	FY 1 (2018-2019)				FY 2 (2019-2020)				FY 3 (2020-2021)			
	Quarter 1 Jul-Sept.	Quarter 2 Oct.-Dec.	Quarter 3 Jan.-March	Quarter 4 April-June	Quarter 1 Jul-Sept.	Quarter 2 Oct.-Dec.	Quarter 3 Jan.-March	Quarter 4 April-June	Quarter 1 Jul-Sept.	Quarter 2 Oct.-Dec.	Quarter 3 Jan.-March	Quarter 4 April-June
Hiring staff or consultant to lead program design and implementation												
BOE review of drafted policy amendments												
Administrative review of procedures for the vendor inclusion program												
Cross-departmental data management system assessment and joint planning to ensure streamlined processes and systems are created and implemented where work intersects												
Joining the CERT collaborative board												
Execute compliance agreement with the City of Saint Paul												
Design program summaries, overview, and web content												
Finalize program summaries, overview, and web content												
Online vendor registration form launched												
Verifying all internal stakeholders (departments and staff impacted)												
Designing training for internal stakeholders (departments and impacted staff)												
Executing training enterprise-wide for relevant internal stakeholders												
Public launch of the SBE program (design and distribution of save the dates for vendor meet and greet)												
Identifying key internal stakeholders to involve in the vendor meet and greet												
Designing and planning vendor meet and greet												
Hosting meet and greet where vendors are able to register via the online vendor registration												
Begin compliance enforcement and tracking of projects with goals												
Ongoing compliance												
Ongoing outreach												
Ongoing reporting (internal and external)												
Identification of disparity study project manager												
Design of disparity study workplan												
Begin engagement of potential disparity study partners												
Identify and notify key internal stakeholders of pending disparity study and plans for how to work together to ensure a smooth and efficient project												
Securing other disparity study partners												
Drafting and review of disparity study RFP												
Posting of disparity study RFP												
Review of responses and selection of disparity study consultant												
Begin 18-month disparity study												
Ongoing project management and administration of the disparity study												
Continue previous outreach efforts as well as disparity study specific outreach												
Completion of the disparity study with recommendations												
Assessment of disparity study recommendations to implement												
Drafting of procedure amendments												
Presenting procedure amendments for Administrative review												
Post-Administrative review, designing of work plans identifying what has been approved to be implemented, project leads and timelines for implementation post-disparity study												
Implementation of relevant recommendations from the disparity study												

Implementation Options

IMPLEMENTATION OPTION 1				
	FY 1 (2018-2019)		FY2 (2019-2020)	
	FY3 (2020-2021)			
Estimated Total Cost	\$2,333,000.00		\$941,270.00	
Staffing/Consultant Costs	\$300,000.00		\$300,000.00	
Compliance System Costs/Compliance Agreement	\$197,000.00		\$197,000.00	
Interoperable Vendor Portal / Procurement System	1,800,000.00			
CERT Collaborative Fee	\$26,000.00		\$34,270.00	
Outreach and Partnership Fees	\$10,000.00		\$10,000.00	
Disparity Study	\$0.00		\$400,000.00	

ITEMS IMPLEMENTED		
FY 1	FY2	FY3
Hiring staff or consultant to lead program design and implementation	Begin 18-month disparity study	Ongoing project management and administration of the disparity study
BOE review of drafted policy amendments	Ongoing project management and administration of the disparity study	Continue previous outreach efforts as well as disparity study specific outreach
Administrative review of procedures for the vendor inclusion program	Disparity study specific outreach	Completion of the disparity study with recommendations
Cross-departmental data management system assessment and joint planning to ensure streamlined processes and systems are created and implemented where work intersects	Ongoing compliance	Assessment of disparity study recommendations to implement
Joining the CERT collaborative board	Ongoing outreach	Drafting of procedure amendments
Execute compliance agreement with the City of Saint Paul	Ongoing reporting (internal and external)	Presenting procedure amendments for Administrative review
Design program summaries, overview, and web content		Post-Administrative review, designing of work plans identifying what has been approved to be implemented, project leads and timelines for implementation post-disparity study
Finalize program summaries, overview, and web content		Implementation of relevant recommendations from the disparity study
Online vendor registration form launched		Ongoing compliance
Verifying all internal stakeholders (departments and staff impacted)		Ongoing outreach
Designing training for internal stakeholders (departments and impacted staff)		Ongoing reporting (internal and external)
Executing training enterprise-wide for relevant internal stakeholders		
Public launch of the SBE program (design and distribution of save the dates for vendor meet and greet)		
Identifying key internal stakeholders to involve in the vendor meet and greet		
Designing and planning vendor meet and greet		
Hosting meet and greet where vendors are able to register via the online vendor registration		
Begin compliance enforcement and tracking of projects with goals		
Ongoing compliance		
Ongoing outreach		
Ongoing reporting (internal and external)		
Identification of disparity study project manager		
Design of disparity study workplan		
Begin engagement of potential disparity study partners		
Identify and notify key internal stakeholders of pending disparity study and plans for how to work together to ensure a smooth and efficient project		
Securing other disparity study partners		
Drafting and review of disparity study RFP		
Posting of disparity study RFP		
Review of responses and selection of disparity study consultant		

IMPLEMENTATION OPTION 2				
	FY 1 (2018-2019)		FY2 (2019-2020)	
Estimated Total Cost	\$1,033,000.00		\$1,441,270.00	
Staffing/Consultant Costs		\$300,000.00		\$300,000.00
Compliance System Costs		\$197,000.00		\$197,000.00
Interoperable Vendor Portal / Procurement System		\$500,000.00		\$500,000.00
CERT Collaborative Fee		\$26,000.00		\$34,270.00
Outreach and Partnership Fees		\$10,000.00		\$10,000.00
Disparity Study		\$0.00		\$400,000.00

ITEMS IMPLEMENTED		
FY 1	FY2	FY3
Hiring staff or consultant to lead program design and implementation	Begin 18-month disparity study	Ongoing project management and administration of the disparity study
BOE review of drafted policy amendments	Ongoing project management and administration of the disparity study	Continue previous outreach efforts as well as disparity study specific outreach
Administrative review of procedures for the vendor inclusion program	Disparity study specific outreach	Completion of the disparity study with recommendations
Cross-departmental data management system assessment and joint planning to ensure streamlined processes and systems are created and implemented where work intersects	Ongoing compliance	Assessment of disparity study recommendations to implement
Joining the CERT collaborative board	Ongoing outreach	Drafting of procedure amendments
Execute compliance agreement with the City of Saint Paul	Ongoing reporting (internal and external)	Presenting procedure amendments for Administrative review
Design program summaries, overview, and web content		Post-Administrative review, designing of work plans identifying what has been approved to be implemented, project leads and timelines for implementation post-disparity study
Finalize program summaries, overview, and web content		Implementation of relevant recommendations from the disparity study
Online vendor registration form launched		Ongoing compliance
Verifying all internal stakeholders (departments and staff impacted)		Ongoing outreach
Designing training for internal stakeholders (departments and impacted staff)		Ongoing reporting (internal and external)
Executing training enterprise-wide for relevant internal stakeholders		
Public launch of the SBE program (design and distribution of save the dates for vendor meet and greet)		
Identifying key internal stakeholders to involve in the vendor meet and greet		
Designing and planning vendor meet and greet		
Hosting meet and greet where vendors are able to register via the online vendor registration		
Begin compliance enforcement and tracking of projects with goals		
Ongoing compliance		
Ongoing outreach		
Ongoing reporting (internal and external)		
Identification of disparity study project manager		
Design of disparity study workplan		
Begin engagement of potential disparity study partners		
Identify and notify key internal stakeholders of pending disparity study and plans for how to work together to ensure a smooth and efficient project		
Securing other disparity study partners		
Drafting and review of disparity study RFP		
Posting of disparity study RFP		
Review of responses and selection of disparity study consultant		

IMPLEMENTATION OPTION 3				
	FY 1 (2018-2019)		FY2 (2019-2020)	FY3 (2020-2021)
Estimated Total Cost	\$483,000.00		\$921,270.00	\$571,270.00
Staffing/Consultant Costs		\$300,000.00	\$350,000.00	\$400,000.00
Compliance System Costs		\$127,000.00	\$127,000.00	\$127,000.00
Interoperable Vendor Portal / Procurement System		\$20,000.00	N/A	N/A
CERT Collaborative Fee		\$26,000.00	\$34,270.00	\$34,270.00
Outreach and Partnership Fees		\$10,000.00	\$10,000.00	\$10,000.00
Disparity Study			\$400,000.00	

ITEMS IMPLEMENTED		
FY 1	FY2	FY3
Hiring staff or consultant to lead program design and implementation	Begin 18-month disparity study	Ongoing project management and administration of the disparity study
BOE review of drafted policy amendments	Ongoing project management and administration of the disparity study	Continue previous outreach efforts as well as disparity study specific outreach
Administrative review of procedures for the vendor inclusion program	Disparity study specific outreach	Completion of the disparity study with recommendations
Cross-departmental data management system assessment and joint planning to ensure streamlined processes and systems are created and implemented where work intersects	Ongoing compliance	Assessment of disparity study recommendations to implement
Joining the CERT collaborative board	Ongoing outreach	Drafting of procedure amendments
Execute compliance agreement with the City of Saint Paul	Ongoing reporting (internal and external)	Presenting procedure amendments for Administrative review
Design program summaries, overview, and web content		Post-Administrative review, designing of work plans identifying what has been approved to be implemented, project leads and timelines for implementation post-disparity study
Finalize program summaries, overview, and web content		Implementation of relevant recommendations from the disparity study
Online vendor registration form launched		Ongoing compliance
Verifying all internal stakeholders (departments and staff impacted)		Ongoing outreach
Designing training for internal stakeholders (departments and impacted staff)		Ongoing reporting (internal and external)
Executing training enterprise-wide for relevant internal stakeholders		
Public launch of the SBE program (design and distribution of save the dates for vendor meet and greet)		
Identifying key internal stakeholders to involve in the vendor meet and greet		
Designing and planning vendor meet and greet		
Hosting meet and greet where vendors are able to register via the online vendor registration		
Begin compliance enforcement and tracking of projects with goals		
Ongoing compliance		
Ongoing outreach		
Ongoing reporting (internal and external)		
Identification of disparity study project manager		
Design of disparity study workplan		
Begin engagement of potential disparity study partners		
Identify and notify key internal stakeholders of pending disparity study and plans for how to work together to ensure a smooth and efficient project		
Securing other disparity study partners		
Drafting and review of disparity study RFP		
Posting of disparity study RFP		
Review of responses and selection of disparity study consultant		

IMPLEMENTATION OPTION 4 (Assumes Joint Disparity Study)				
	FY 1 (2018-2019)	FY2 (2019-2020)	FY3 (2020-2021)	
Estimated Total Cost	\$483,000.00	\$721,270.00	\$571,270.00	
Staffing/Consultant Costs	\$300,000.00	\$350,000.00	\$400,000.00	
Compliance System Costs	\$127,000.00	\$127,000.00	\$127,000.00	
Interoperable Vendor Portal / Procurement System	\$20,000.00			
CERT Collaborative Fee	\$26,000.00	\$34,270.00	\$34,270.00	
Outreach and Partnership Fees	\$10,000.00	\$10,000.00	\$10,000.00	
Disparity Study		\$200,000.00		

ITEMS IMPLEMENTED			
FY 1	FY2	FY3	
Hiring staff or consultant to lead program design and implementation	Begin 18-month disparity study	Ongoing project management and administration of the disparity study	
BOE review of drafted policy amendments	Ongoing project management and administration of the disparity study	Continue previous outreach efforts as well as disparity study specific outreach	
Administrative review of procedures for the vendor inclusion program	Disparity study specific outreach	Completion of the disparity study with recommendations	
Cross-departmental data management system assessment and joint planning to ensure streamlined processes and systems are created and implemented where work intersects	Ongoing compliance	Assessment of disparity study recommendations to implement	
Joining the CERT collaborative board	Ongoing outreach	Drafting of procedure amendments	
Execute compliance agreement with the City of Saint Paul	Ongoing reporting (internal and external)	Presenting procedure amendments for Administrative review	
Design program summaries, overview, and web content		Post-Administrative review, designing of work plans identifying what has been approved to be implemented, project leads and timelines for implementation post-disparity study	
Finalize program summaries, overview, and web content		Implementation of relevant recommendations from the disparity study	
Online vendor registration form launched		Ongoing compliance	
Verifying all internal stakeholders (departments and staff impacted)		Ongoing outreach	
Designing training for internal stakeholders (departments and impacted staff)		Ongoing reporting (internal and external)	
Executing training enterprise-wide for relevant internal stakeholders			
Public launch of the SBE program (design and distribution of save the dates for vendor meet and greet)			
Identifying key internal stakeholders to involve in the vendor meet and greet			
Designing and planning vendor meet and greet			
Hosting meet and greet where vendors are able to register via the online vendor registration			
Begin compliance enforcement and tracking of projects with goals			
Ongoing compliance			
Ongoing outreach			
Ongoing reporting (internal and external)			
Identification of disparity study project manager			
Design of disparity study workplan			
Begin engagement of potential disparity study partners			
Identify and notify key internal stakeholders of pending disparity study and plans for how to work together to ensure a smooth and efficient project			
Securing other disparity study partners			
Drafting and review of disparity study RFP			
Posting of disparity study RFP			
Review of responses and selection of disparity study consultant			

Appendix C: Saint Paul Public Schools Construction Data and Three-Year Data Analysis Report



1619 Florida Avenue North
Golden Valley, MN 55427
763-458-7677
<https://sites.google.com/site/spowersconsulting/>
Procurement- Strategic Sourcing, Government Administration



**Analysis of Three Year
Spend Activity
Facilities Department
(Construction)
St. Paul Public Schools**

Prepared for:

**St. Paul Public Schools
District 625
360 Colborne Street, Saint Paul, MN, 55102**

Vendor Diversity and Workforce Participation Project

Prepared by:

Powers Consulting
1619 Florida Avenue North
Golden Valley, MN 55427
763-458-7677
<https://sites.google.com/site/spowersconsulting/>

May 9, 2018 (revised)

Background:

The St. Paul Public Schools in anticipation of an extensive five-year construction and modernization project, expected to impact a significant number of properties and facilities with expenditures expected to exceed \$500 million, wishes to ensure this comprehensive economic undertaking positively impacts the community it serves by insuring projects are inclusive, diverse and representative of the rich diversity found in the student body and neighborhoods they share. Powers Consulting convened a Community Advisory Council composed of community representatives from private and public organizations to assist with examining and sharing pertinent information regarding current community diversity and inclusion programs and assist the St. Paul Public Schools with this initiative.

Historical Data:

In order to better understand the scope and magnitude this undertaking a look at past performance in the area of construction contracting was performed. All construction expenditures for the years 2015 through 2017 made by the Facilities Department were examined to determine the current extent to which diversity and inclusion exists. Focusing on actual dollars contracting spent reflects who in the community is benefitting and is a quick determinate as whether the greater community is participating.

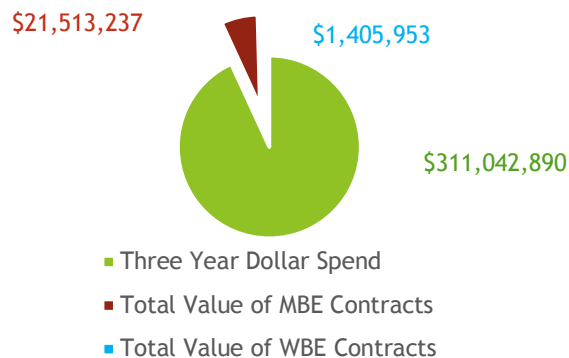
Findings:

The data provided by SPPS Facilities Department lacked WMBE identifiers. There appears to be a lack of adequate systems support for capturing, reporting and monitoring WMBE activity. The lack of this critical information led to a manual review of all the data in the report to identify and determine WMBE activity. Utilizing existing lists of certified WMBE vendors from The State of Minnesota, The City of St. Paul's CERT and the MNUCP list of WMBE contractors, a line by line comparison was made of the contractor information provided by the Facilities Department to determine if any the bid awards included WMBE's. The result of this analysis assisted in the identification of fourteen (14) contractors identified as certified WMBE's with other organizations.

Of the 324 contracts SPPS let out for public bid during the three year reporting period, a total fifteen (15) contracts were awarded to W/MBE's (one organization was awarded two contracts).
Figure 1

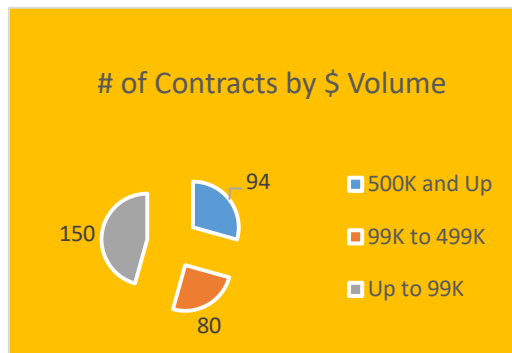
Activity	Volume Totals
Three Year Dollar Spend	\$ 311,042,890
Number of Contracts	324
Number of W/MBE Contracts	15
% W/MBE Contracts	5%
Dollar Value of W/MBE Contracts	\$ 22,919,190
% W/MBE Contract Value	7%
# of MBE'S	6
% MBE Participation	2%
Total Value of MBE Contracts	\$ 21,513,237
% MBE Contract Value	7%
# of WBE's	9
% WBE Participation	3%
Total Value of WBE Contracts	\$ 1,405,953
% WBE Contract Value	0.5%

W/MBE Contracting Activity



- Minority and Women owned business comprised **5%** of all contracts awarded.
- Minority owned businesses were awarded 6 contracts, valued at: \$21,513,237.
- Women owned businesses were awarded 9 contracts, valued at: \$ 1,405,953.

Of particular interest were awards made in the up to 100K range (the low hanging fruit category) Data was sorted by dollar volume to provide a clearer view of the contracting activity involved:



The adjoining chart indicates 150 contracts were let in the 'up to 100K' range. Seven (7) WBE awards were recorded among these contracts, representing 5% of bid activity in this dollar range.

Disparity Study:

According to the Keen Report's "City of St. Paul 2017 Disparity Study" there is a 21.9% availability of WMBE's in the jurisdictional area shared with the St. Paul Public Schools. The school district currently reports a 5% W/MBE participation rate.

In 2016 The City of St Paul reported a 5.17% MBE inclusion level totaling over \$4.8 million dollars. WBE participation experienced a reported 12.38% inclusion rate totaling over \$11.5 million dollars

Discussion Recommendations:

SPPS staff and Community Advisory Council members were not surprised by the data. Concern was expressed with the lack of accurate contractor demographic information in SPPS data files and the system's inability to produce any sort of reports from which to measure progress. The process for loading contractor data onto the system needs to be improved to include capturing all needed demographics with a quality control component to insure data is verified and accurate. The group felt the data needs to be used for comparison purposes with other public

entities as it serves as validation for the activities of the CAC. A great of deal of effort will be required to bring measurable results. Consideration should be given to bringing on an FTE to lead SPPS efforts. Others offered the need to connect on a human level with WMBE's and the scope any efforts must broader than Construction. Additional consideration should be given to establishing goals for diversity in all purchasing activity by department, i.e. 3% of all purchases and contracts less the \$100K. Other ideas mentioned for considerations included:

- Partnering with Prime Contractors and assisting with goal attainment.
- Open houses with both Primes and WMBE's
- Establishing a 'go to' person for WMBE's
- Scrubbing the database so accurate information can be obtained
- When seeking low bid include diversity outreach and inclusion with set goal

Appendix D: Draft Job Descriptions

Draft Job Description: Director of Business Inclusion

Job Title:	Director of Business Inclusion
Job ID:	TBD
Location:	TBD
Regular /	Regular
Temporary	
Salary Range:	\$90,000-\$109,000 Annually

General Information

Provide leadership to the Business Inclusion Division. The Division seeks to ensure that Saint Paul Public Schools procurement of construction and development services, commodities and supplies, and professional and technical services includes local small businesses.

Qualifications

Minimum Qualifications

Completion of three (3) years of law school from an accredited institution of law. OR

A Bachelor's Degree and three (3) years-experience in contract compliance which includes contract monitoring and auditing. Experience must include contract administration and enforcement of contract compliance related to business inclusion.

Preferred Qualifications

Three years of progressively responsible related experience, which includes at least three years of supervisory and employee performance management experience.

Responsibilities

- Provide analysis and advice on strategies and courses of action to meet the objectives of the Business Inclusion Division.
- Serve as the representative of the Business Inclusion Division, both internally to staff and externally to the Board of Education, communities and affected stakeholders.
- Manage and provide for the administrative and fiscal oversight and management of personnel within the Business Inclusion Division so that the programs and policies achieve the mission of the Business Inclusion Division.
- Responsible for ensuring compliance with local, state and federal laws pertaining to business.

- Provide strategic direction and respond to alleged violations of rules, regulations, policies and procedure related to the inclusion of local small businesses in District contracting.
- Provide administrative oversight over the Business Inclusion Division budget.
- Exercise broad latitude to work independently and use initiative to make decisions for the good of the Division and stakeholders.
- Serve as a representative on the Central CERT Certification Collaborative board, a local collaboration that certifies small woman-owned and minority-owned businesses.

Knowledge, Skills and Abilities

- Knowledge of the regulations and practices for small, woman-owned, and minority owned firms in purchasing and contracting.
- A good understanding of affirmation action, disparity studies, compliance monitoring good faith efforts evaluation, workforce inclusion, and business certification requirements.
- A good understanding of the legal implications of compliance and must be able to understand current and proposed legislation.
- Successful experience in enforcing regulations; must have a breadth of knowledge to be able to recommend effective compliance processes.
- Good knowledge of the legal risks of non-compliance.

Pay, Benefits, & Work Schedule

This is a full-time, regular position working 40 hours per week.

Salary and benefits are in accordance with the PEA negotiated labor agreement. The labor agreement and salary schedule can be found at <https://www.spps.org/Page/3525>. The salary range for this position is \$90,000-\$109,000 annually.

Benefits are available to new employees after 30 days of active employment. Benefits include medical insurance, life insurance, sick leave, pension plan, tax-free retirement account, and flexible spending account. Some employee groups also receive vacation, dental insurance and disability insurance. A benefits summary is available at <https://www.spps.org/Page/27876>.

How To Apply

To be considered further, please apply for this position and attach a resume and cover letter to your online application.

The Human Resource Department will review your application materials and contact you regarding the next steps.

To attach additional documents to your online application, click on the "Additional Attachments" link from the applicant homepage and upload your documents as attachments. Valid file extensions for attaching a document include .doc, .txt, .rtf, and .pdf.

[INSERT POSTING CLOSING DATE]

Equal Employment Opportunity

Saint Paul Public Schools is an equal opportunity employer and supports an inclusive workplace environment.

Equity Statement

SPPS is committed to an equitable workforce where all employees represent this commitment through equitable practices in their job position.

Draft Job Description: Business Inclusion Specialist

Job Title: Business Inclusion Specialist
Job ID: TBD
Location: TBD
Regular / Regular
Temporary
Salary Range: \$50,000.00 - \$69,000.00 Annually

General Information

Performs intermediate level professional work in areas such as coordinating business inclusion efforts, auditing compliance with contractual and legislative provisions of federal, state and municipal standards. Facilitates recruitment, education and certification efforts, to assist small businesses with capacity building and increase their participation in the public contracting and purchasing process. Conducts preliminary research of potential non-compliance issues and complaints. Serves as a liaison to business and community groups and organizations. Performs other related duties and responsibilities as required.

Qualifications

Minimum Qualifications

A Bachelor's Degree and one year of full time experience performing responsible work in vendor outreach, small business consulting, contract compliance or work with diverse communities OR

Two years of relevant college coursework and three years of experience in one of the aforementioned areas.

Responsibilities

- Demonstrates an understanding of the full range of theories, principles, terminology, and procedures, regarding small business operations, the construction industry, government procurement, economic development programs, grant administration, and/or labor standards and contract compliance. Applies this understanding in resolving the full range of problems associated with business inclusion and contract compliance work.
- Conduct compliance reviews, pre and post award reviews, and compliant investigations.
- Identify systemic discrimination where it exists in contractor's organizations based on facts developed through reviews and investigations and develop applicable standards of proof.
- Identify and define losses due to discrimination and develop remedies.
- Monitor reports and/or other activities of contractors to ensure compliance with letters of commitment, consent decrees and/or other contractor commitments.

- Locate, analyze and develop EEO and workforce data for application in conducting compliance reviews and complaint investigation.
- Maintain current knowledge of developments in the business arena using market trends, labor market statistics, expanding and contracting markets, etc. to conduct comparative analysis of businesses within various industries.
- Establish and maintain contacts with minority, women, disabled and veteran's interest groups, community organizations, job training and development organizations and trade and business organizations to obtain information on employment trends and equal opportunity problems.

Knowledge, Skills and Abilities

- Considerable knowledge of all Federal, State and Local laws regulating funding and grants.
- Knowledge of current developments in business inclusion.
- Good oral and written communication skills.
- Good knowledge of investigative techniques and data compilation and evaluation.

Pay, Benefits, & Work Schedule

This is a full-time, regular position working 40 hours per week.

Salary and benefits are in accordance with the PEA negotiated labor agreement. The labor agreement and salary schedule can be found at <https://www.spps.org/Page/3525>. The salary range for this position is \$50,000.00 - \$69,000.00 annually.

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[INSERT POSTING CLOSING DATE]

Equal Employment Opportunity

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Equity Statement

SPPS is committed to an equitable workforce where all employees represent this commitment through equitable practices in their job position.

**INDEPENDENT SCHOOL DISTRICT NO. 625
SAINT PAUL PUBLIC SCHOOLS**

PLACE HOLDER

ORGANIZATIONAL CHART UPDATE