



Evaluation of The City of Minneapolis Department of Civil Rights Contract Compliance Unit

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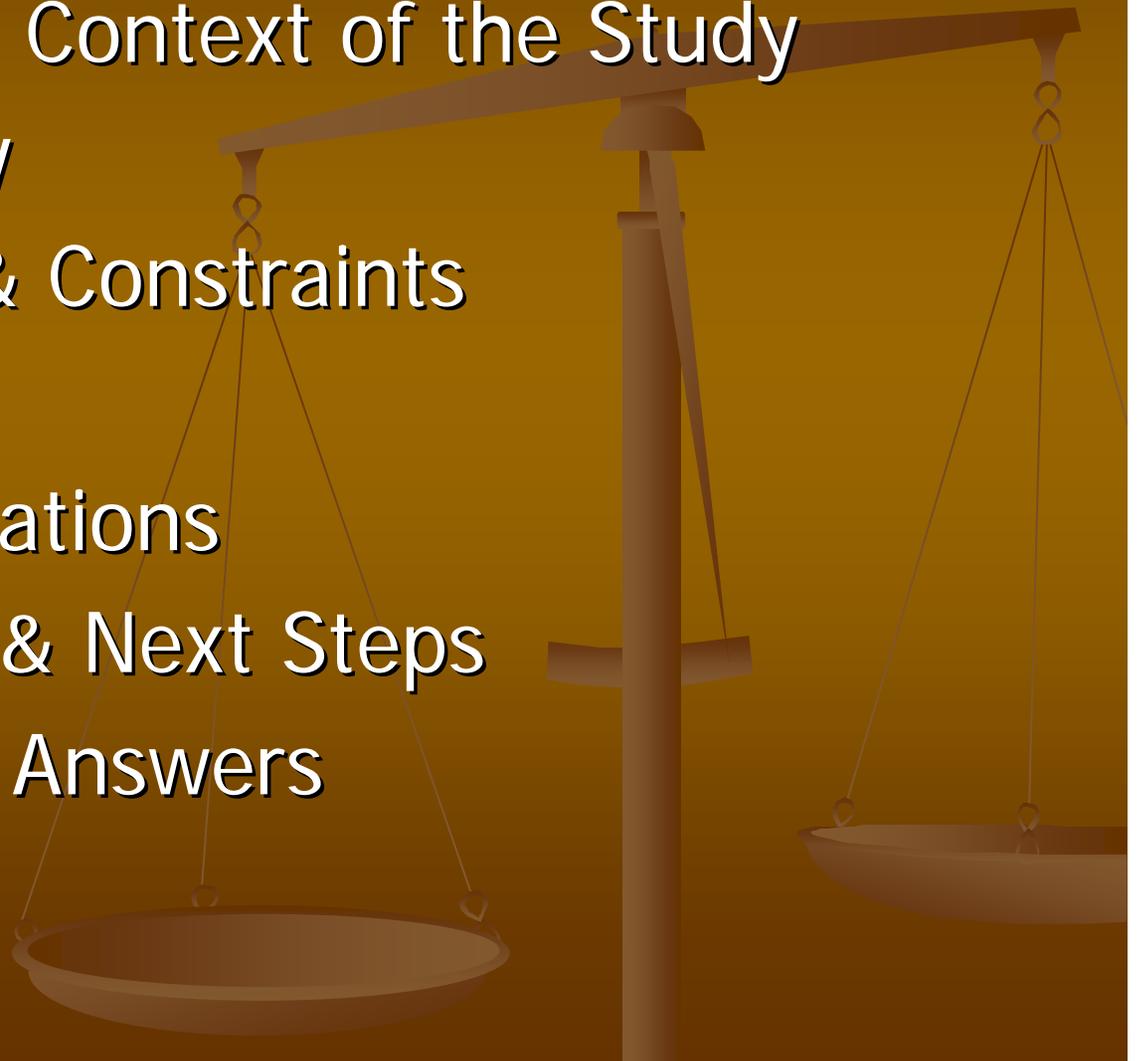
Judge LaJune Thomas Lange and Lawrencina Mason Oramalu,

Project Evaluators

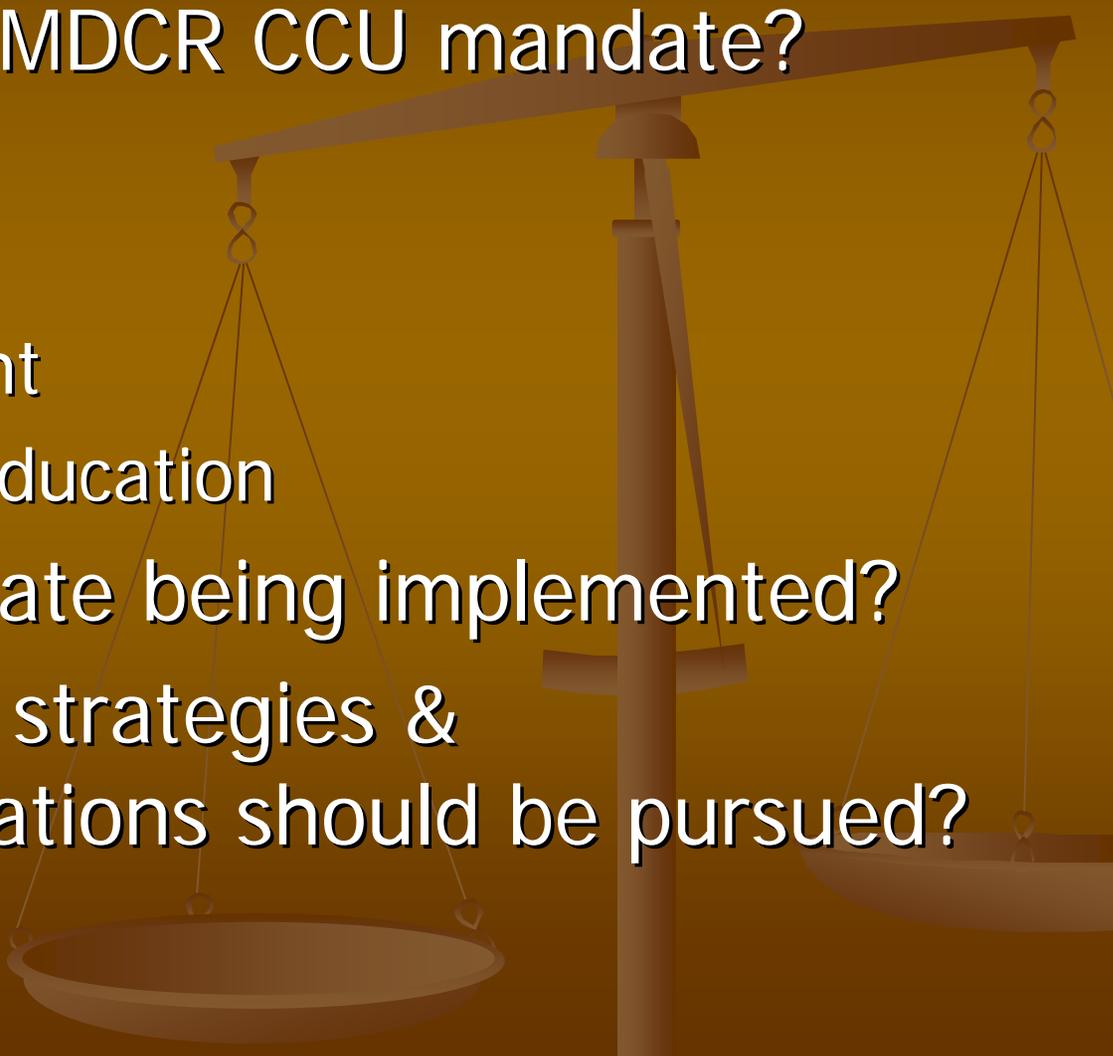
July 23, 2007

Agenda

- Purpose and Context of the Study
- Methodology
- Limitations & Constraints
- Findings
- Recommendations
- Conclusions & Next Steps
- Questions & Answers



Purpose & Context

- What is the MDCR CCU mandate?
 - Monitoring
 - Reporting
 - Enforcement
 - Outreach/Education
 - Is the mandate being implemented?
 - If not, what strategies & recommendations should be pursued?
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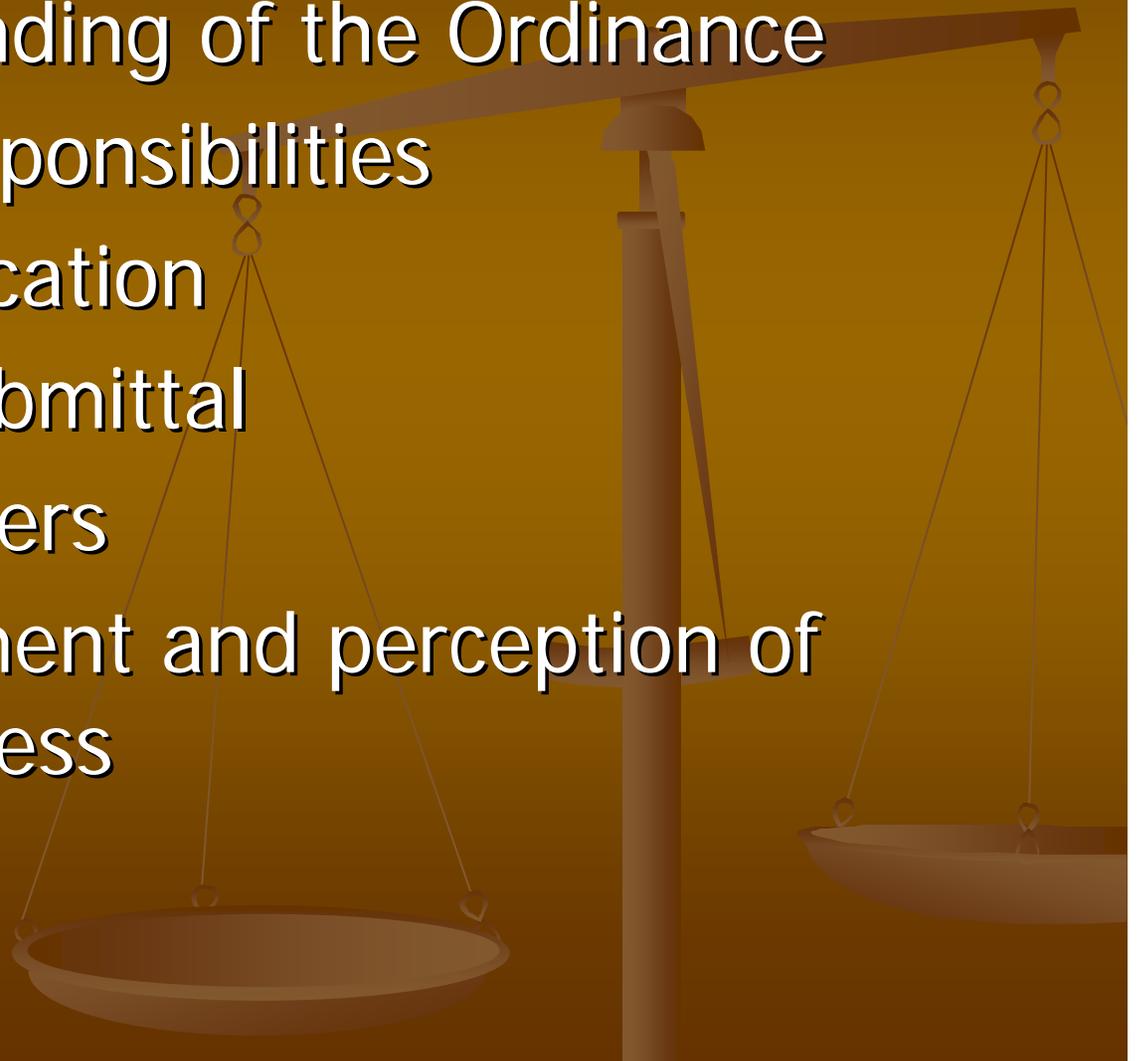
Methodology

- Interviews
- Document Review
- Legal Analysis



Interviews

- Understanding of the Ordinance
- Staff's responsibilities
- Communication
- Report submittal
- Stakeholders
- Measurement and perception of effectiveness



Document Review

- Documents Reviewed
- Issues Identified
 - Non-Compliance
 - Notification
 - Monitoring



Legal Analysis



- Local, State and Federal Regulations
 - Monitor – AAP submittal and goal attainment
 - Enforcement – conciliation and sanctions
- Legislative Intent
 - Prevent discrimination
 - Expand equal employment & contracting opportunities
- “Good Faith” Standard
 - Black’s Law Dictionary
 - Office of Federal Contract Compliance (OFCC)
 - MDCR CCU
 - City of Denver

Legislative Intent - Local

The council finds that **discrimination** in employment, labor union membership . . . **adversely affects** the health, **welfare, peace and safety of the community**. Such discriminatory practices degrade individuals, foster intolerance and hate, and create and intensify unemployment, substandard housing, undereducation, ill health, lawlessness and poverty, thereby injuring the public welfare . . . It is the public policy of the City of Minneapolis and the purpose of this title to recognize and declare that the **opportunity to obtain employment**, labor union membership . . . is a **civil right**.

Minneapolis, Minn. Code §139.10(a)(b).

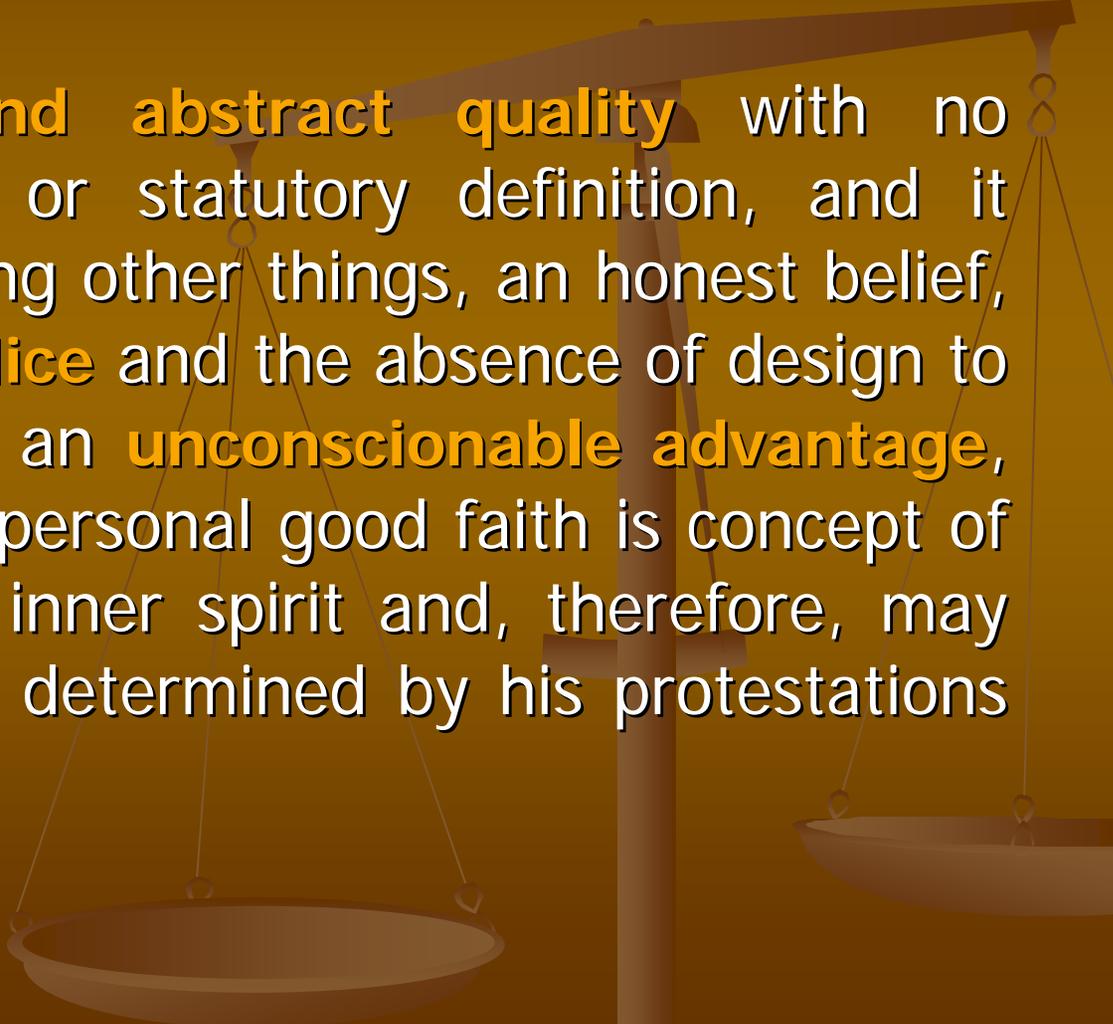
Legislative Intent - State

It is **the public policy of this state** to secure for persons in this state, **freedom from discrimination**: in employment because of race, color, creed, religion, national origin, sex, marital status, disability, status with regard to public assistance, sexual orientation, and age. ... Such discrimination threatens the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy. ...The **opportunity to obtain employment**...without such discrimination as is prohibited by this chapter is hereby recognized as and **declared to be a civil right**.

Minn. Stat. § 363A.02 (1)(a) and (b) (2006) (emphasis added)

“Good Faith” – Black Law’s Dictionary

“an **intangible and abstract quality** with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the **absence of malice** and the absence of design to defraud or to seek an **unconscionable advantage**, and an individual’s personal good faith is concept of his own mind and inner spirit and, therefore, may not conclusively be determined by his protestations alone.”



“Good Faith” – OFCC

a contractor's efforts to make **all aspects** of its affirmative action plan work. Designing and implementing an effective affirmative action plan requires **sustained attention**. The contractor must analyze its employment and recruitment practices as they affect equal opportunity, **identify problem areas**, design and **implement measures to address the problems**, and **monitor** the effectiveness of its program, making adjustments as circumstances warrant...The **basic components of good faith efforts are:**

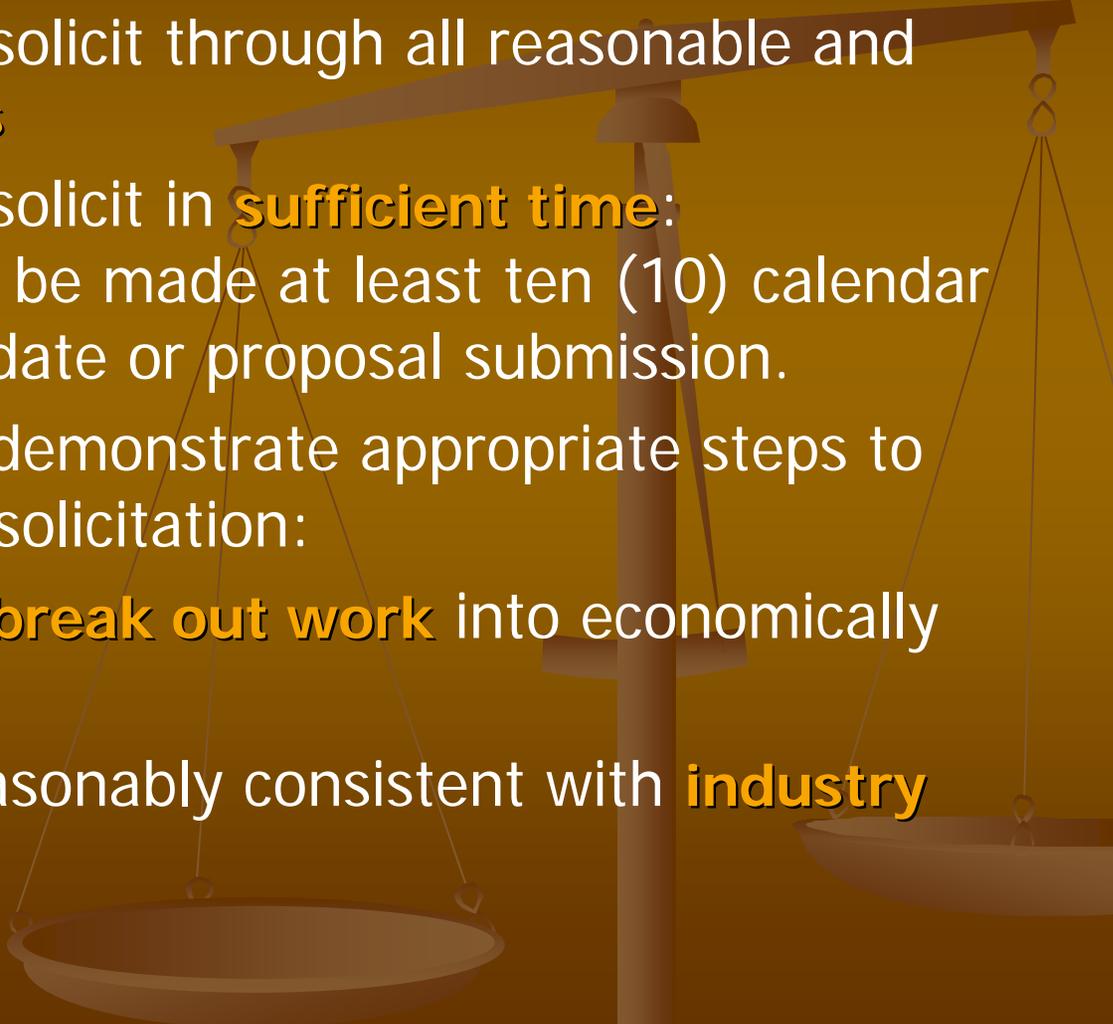
- a) Outreach and recruitment measures to broaden candidate pools from which selection decisions are made to include minorities and women; and
- b) **Systematic efforts** to assure that selections thereafter are made without regard to race, sex, or other prohibited factors.

“Good Faith Standard” – MDCR CCU

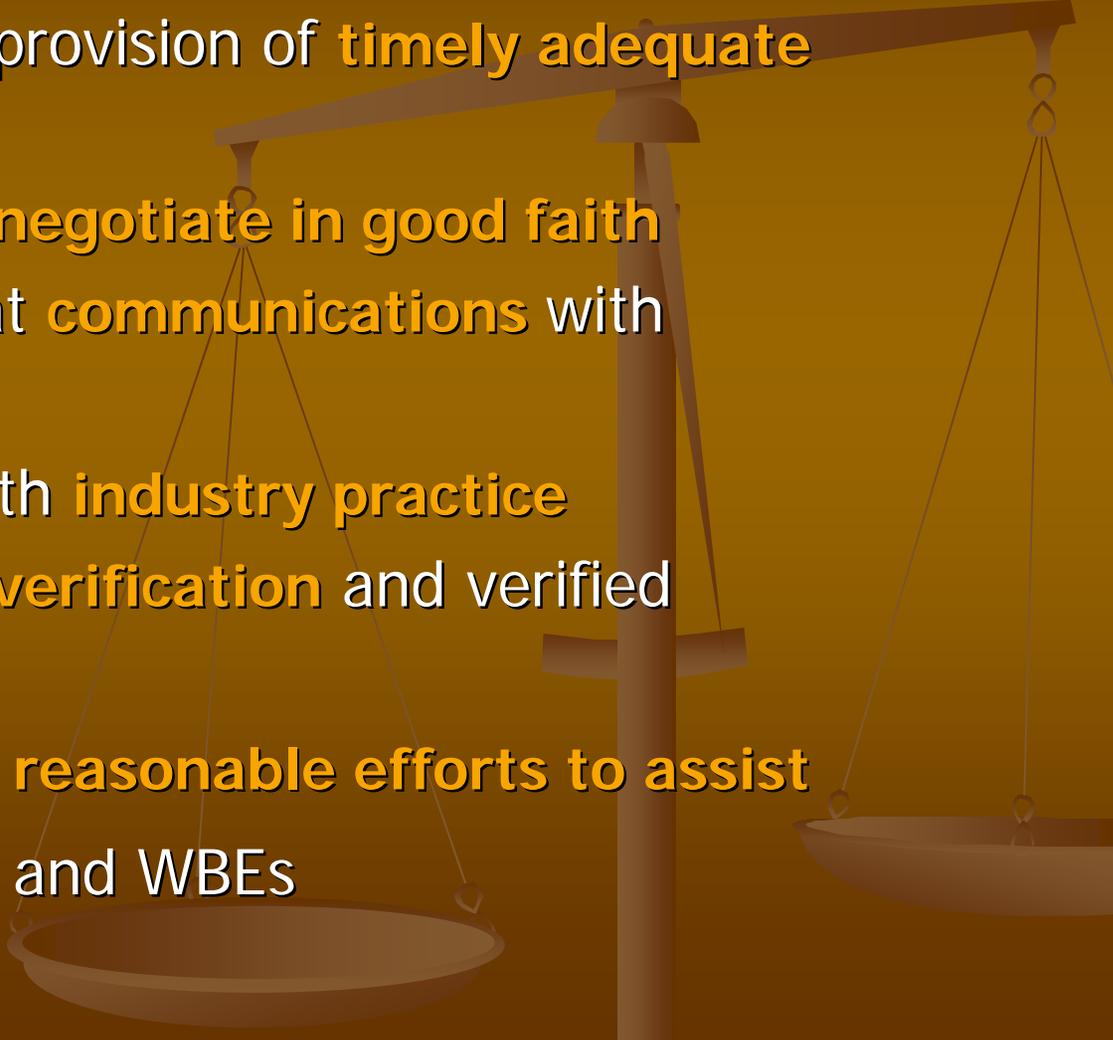
Our task of determining good faith efforts must be controlled by facts and not the numbers. It is sometimes a time consuming task; [sic] but necessary. In our approach, we must understand that at times W/MBE companies may not have the skill, capacity or financial structure to perform certain task or contracts. We must also understand that in an effort to deny participation, some general **contractors may purposely contact the weakest W/MBE's** and ignore the ones capable of performing the job.

Contract Compliance Training Staff Manual (2006).

“Good Faith” - Denver Standard

1. Requirement to solicit through all reasonable and **available means**
 2. Requirement to solicit in **sufficient time**:
Solicitation must be made at least ten (10) calendar days before bid date or proposal submission.
 3. Requirement to demonstrate appropriate steps to **follow up** initial solicitation:
 4. Requirement to **break out work** into economically feasible units:
 5. Conditions of reasonably consistent with **industry practice**
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“Good Faith” – Denver Standard

6. Requirement of provision of **timely adequate access**
 7. Requirement to **negotiate in good faith**
 8. Requirement that **communications** with MBE/WBE be consistent with **industry practice**
 9. Requirement of **verification** and verified statements
 10. Requirements of **reasonable efforts to assist** interested MBEs and WBEs
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Limitations & Constraints

- Interviews
- Document Review



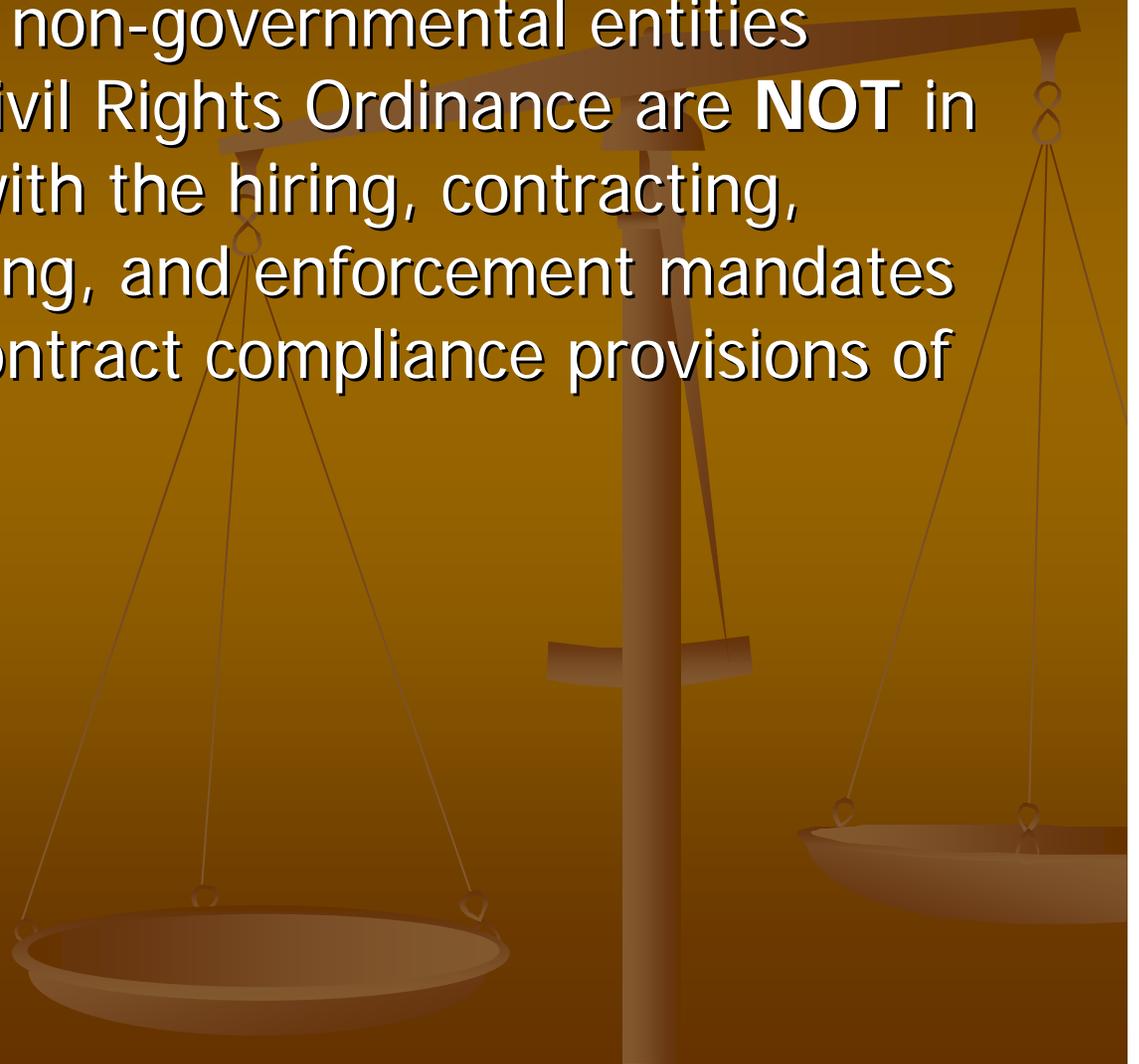
Findings

- Compliance
- Consequences
- Communication
- Clarity & Coordination
- Capacity
- Commitment
- Community

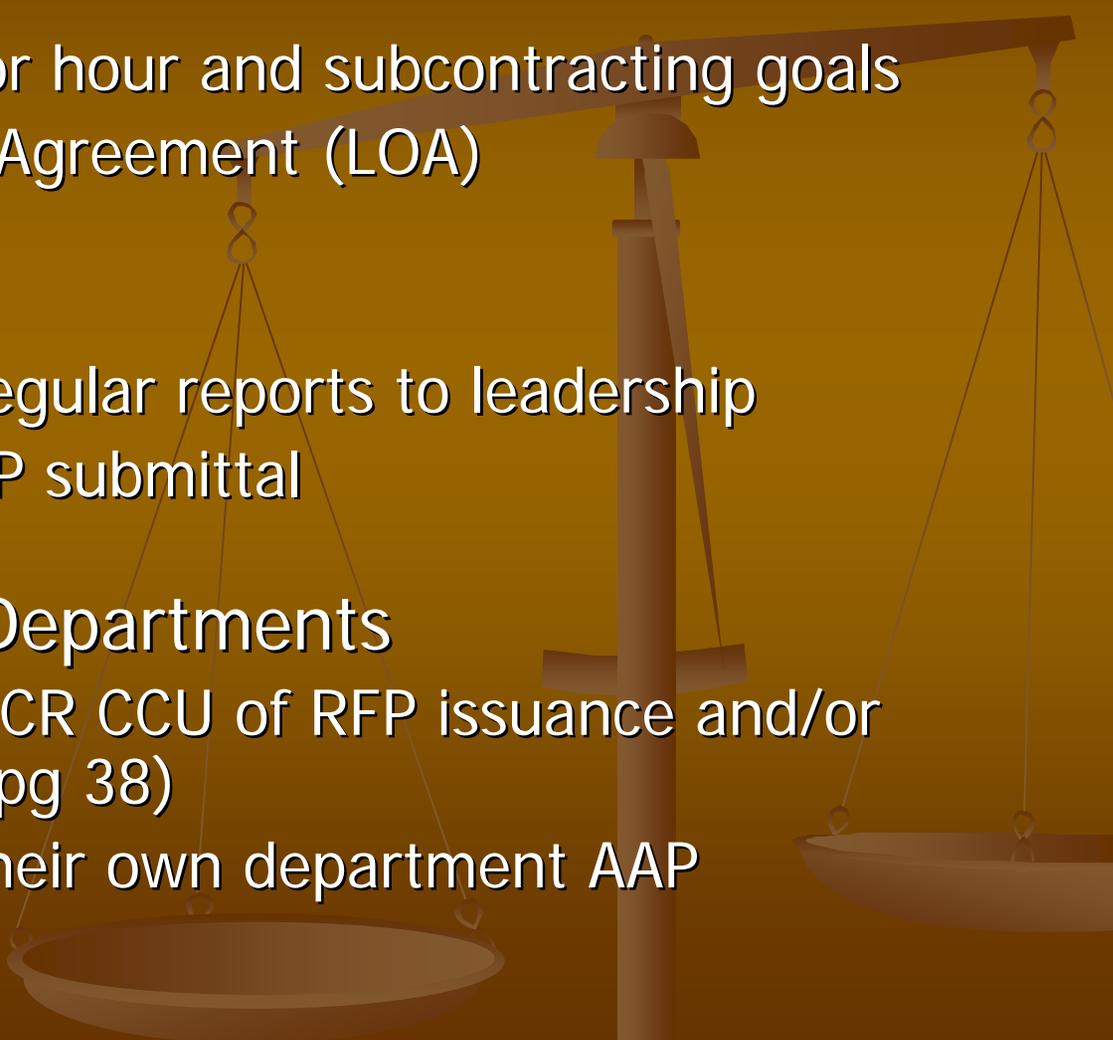


Compliance

Governmental and non-governmental entities governed by the Civil Rights Ordinance are **NOT** in full *compliance* with the hiring, contracting, reporting, monitoring, and enforcement mandates described in the contract compliance provisions of the Ordinance.

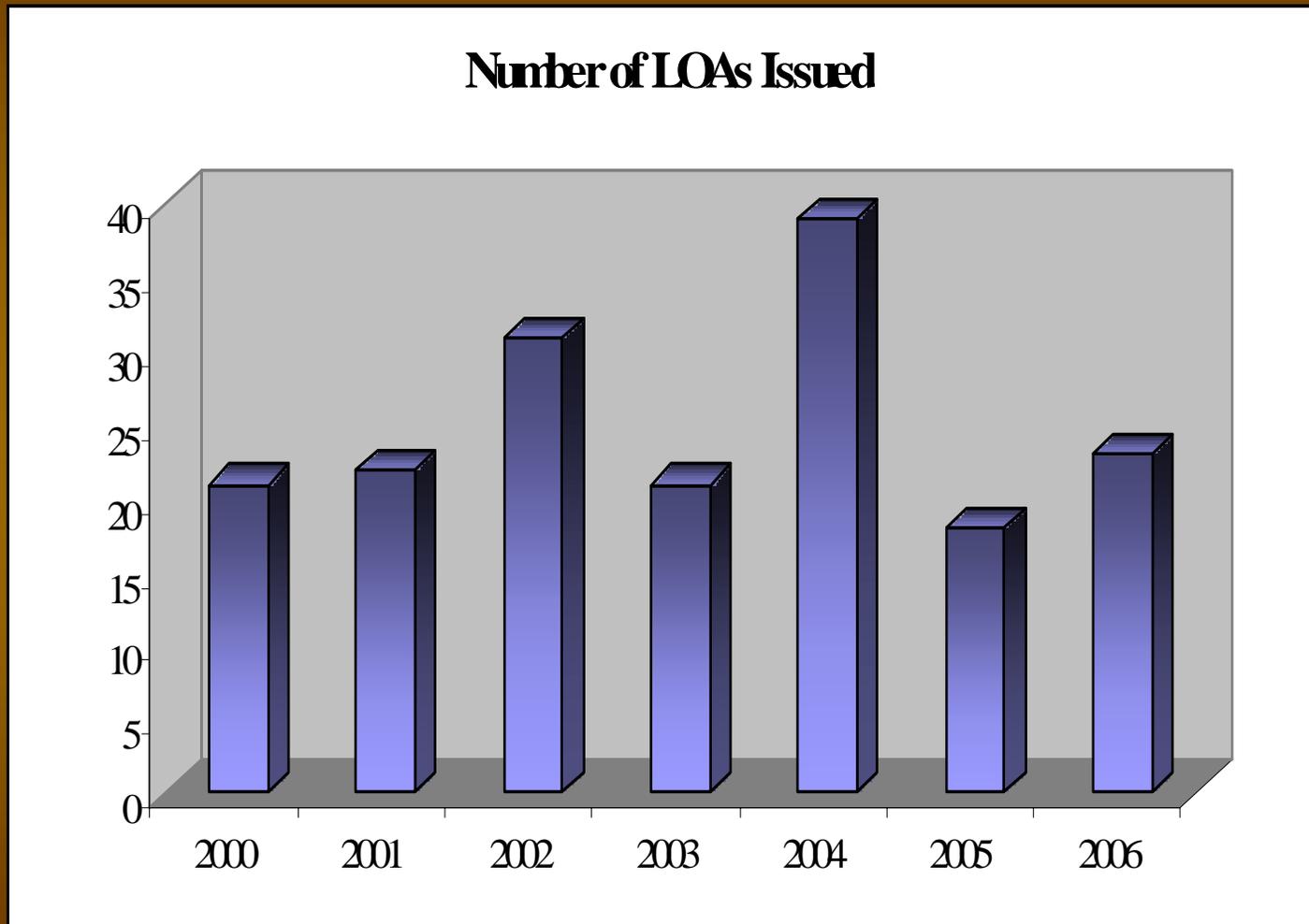


Non-Compliance



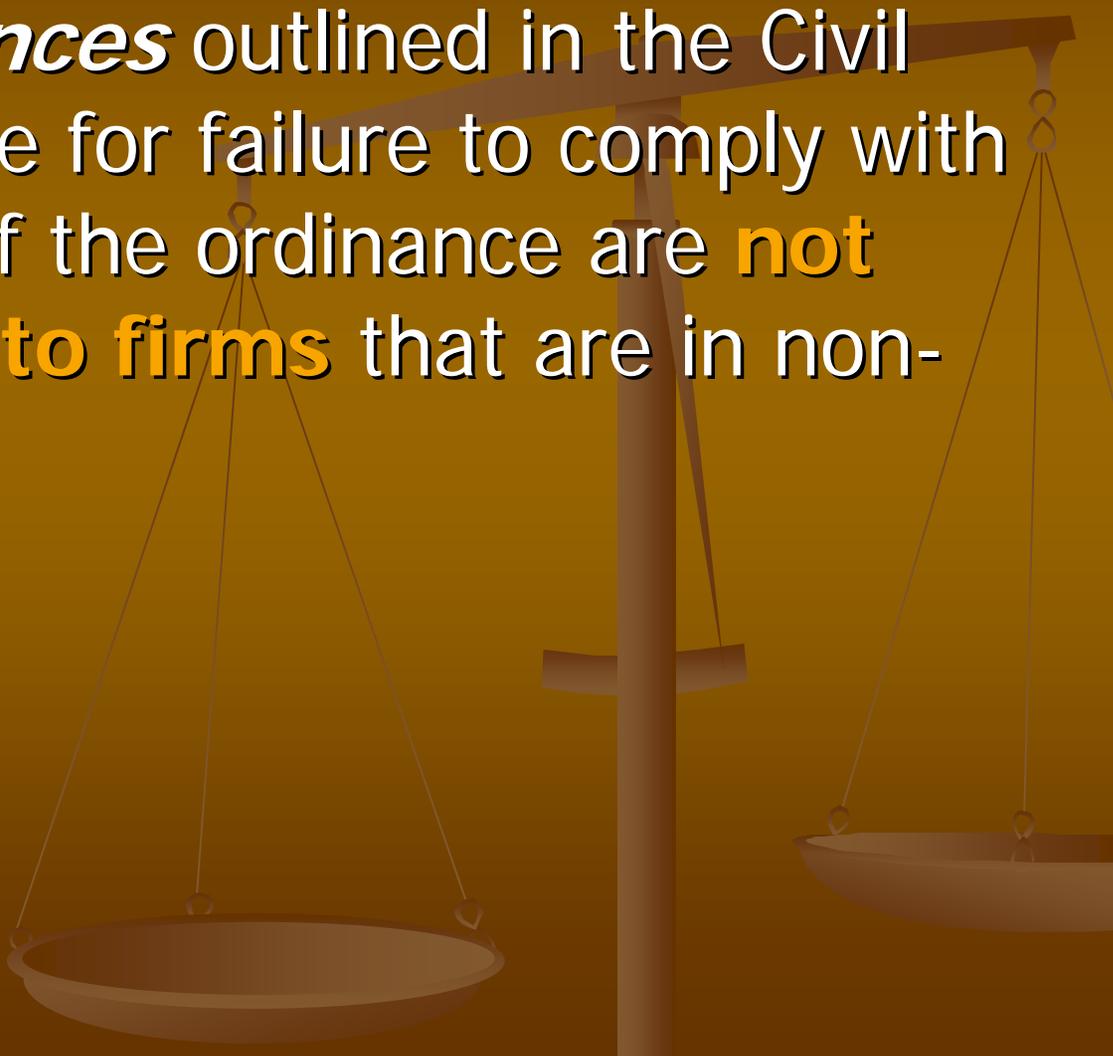
- Contractors
 - NOT meeting labor hour and subcontracting goals
 - Receive Letter of Agreement (LOA)
- MDCR CCU
 - NOT submitting regular reports to leadership
 - NOT requiring AAP submittal
- Minneapolis City Departments
 - NOT notifying MDCR CCU of RFP issuance and/or contract awards (pg 38)
 - NOT submitting their own department AAP

Letters of Agreement



Consequences

The *consequences* outlined in the Civil Rights Ordinance for failure to comply with the provisions of the ordinance are **not being applied to firms** that are in non-compliance.



Consequences – The Law

In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or provisions of Title 7, this contract may be **canceled, terminated or suspended**, in whole or in part, and the contractor may be declared ineligible by the Minneapolis city council for further city contracts in addition to other remedies as provided in Title 7.

Minneapolis, Minn. Code § 139.50(a)(7).

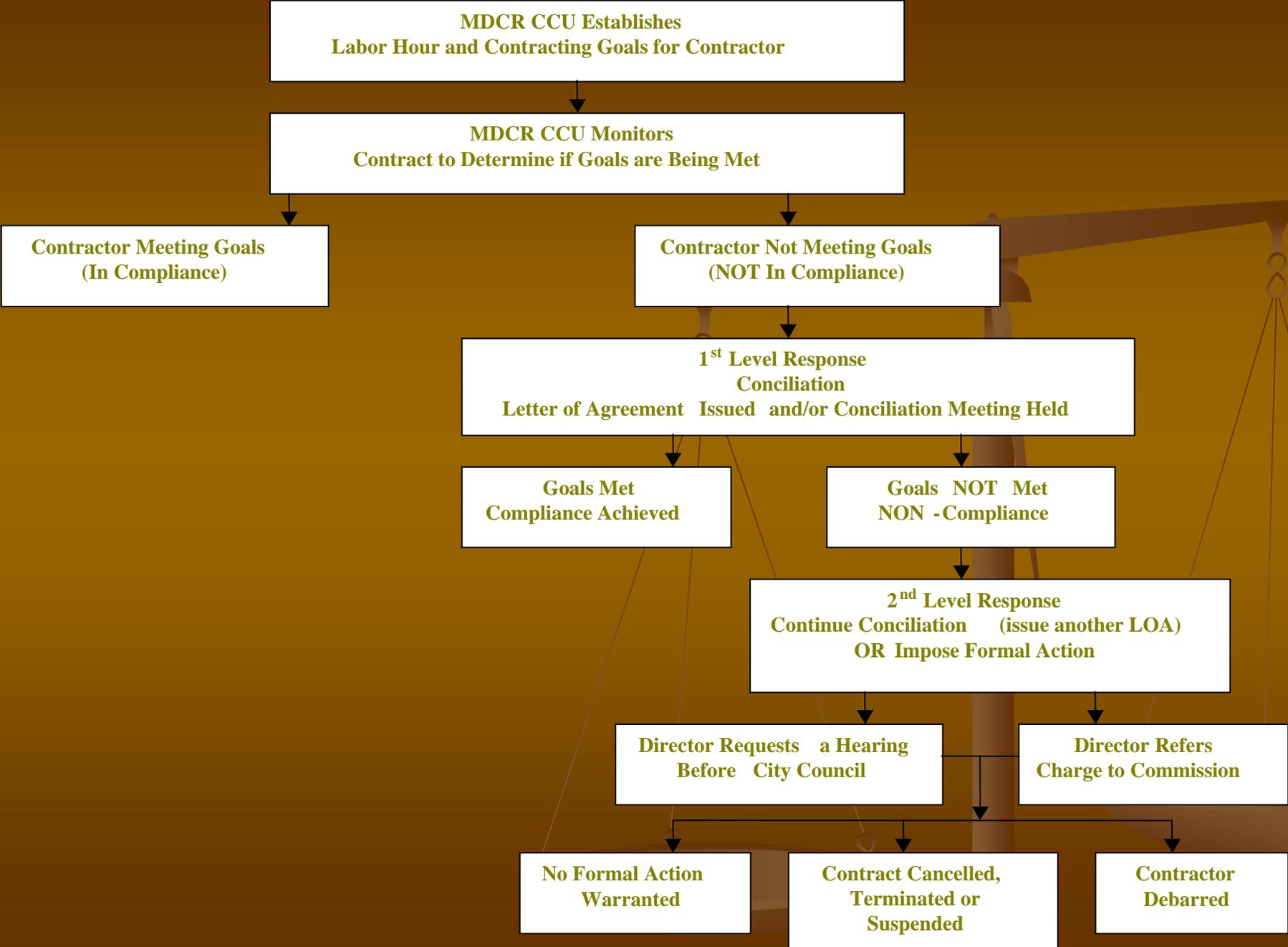
Consequences

Informal Conciliation vs. Formal Action

Should conciliation and persuasion fail to eliminate the noncompliant acts or practices, the director or the director's designee shall either

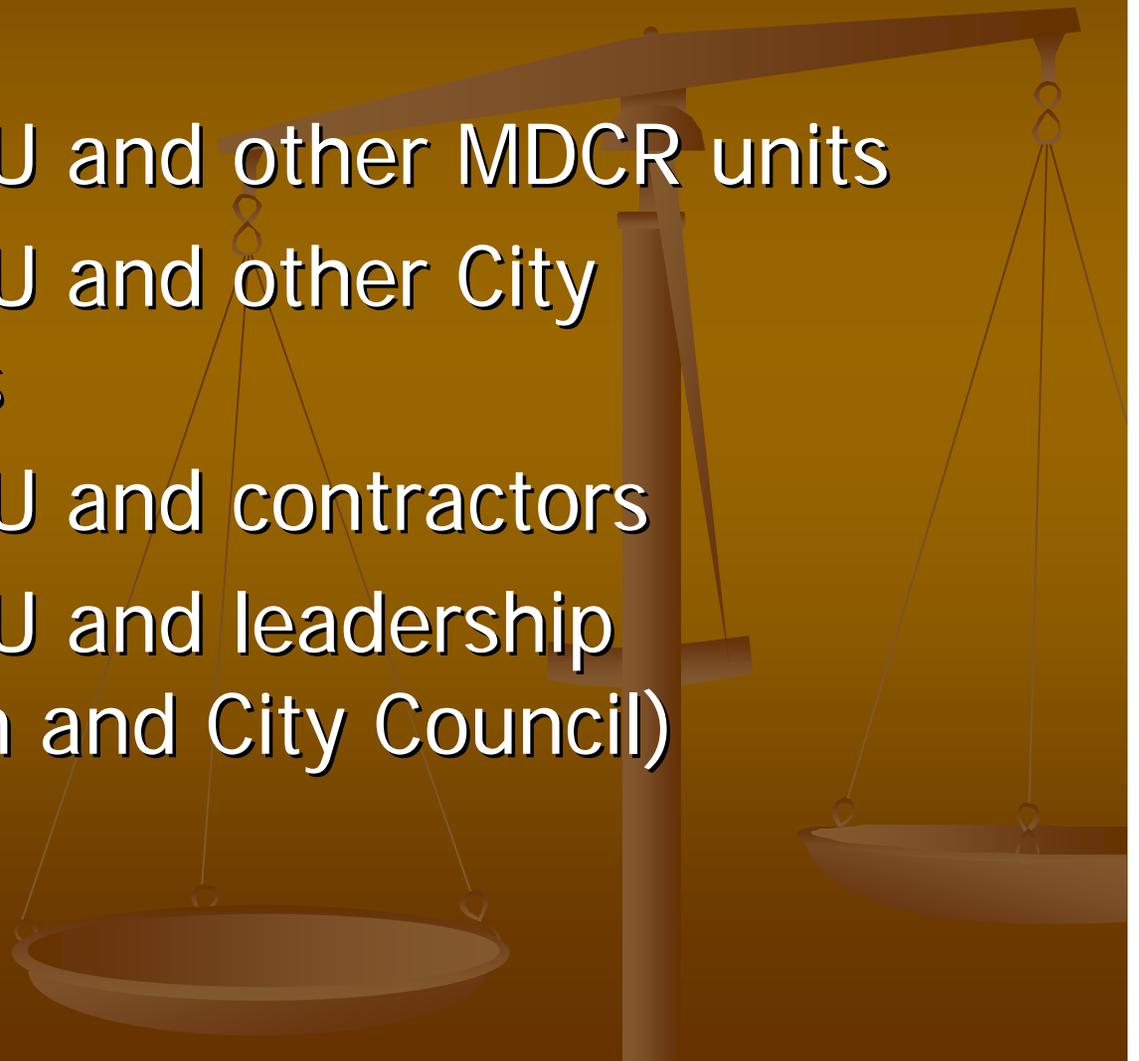
- Request a hearing before the city council on the subject matter of the noncompliance or
- File a director's charge and refer said charge to the commission demanding a hearing panel of the commission be convened to hear the charge.

Minneapolis, Minn. Code § 139.50 (b).



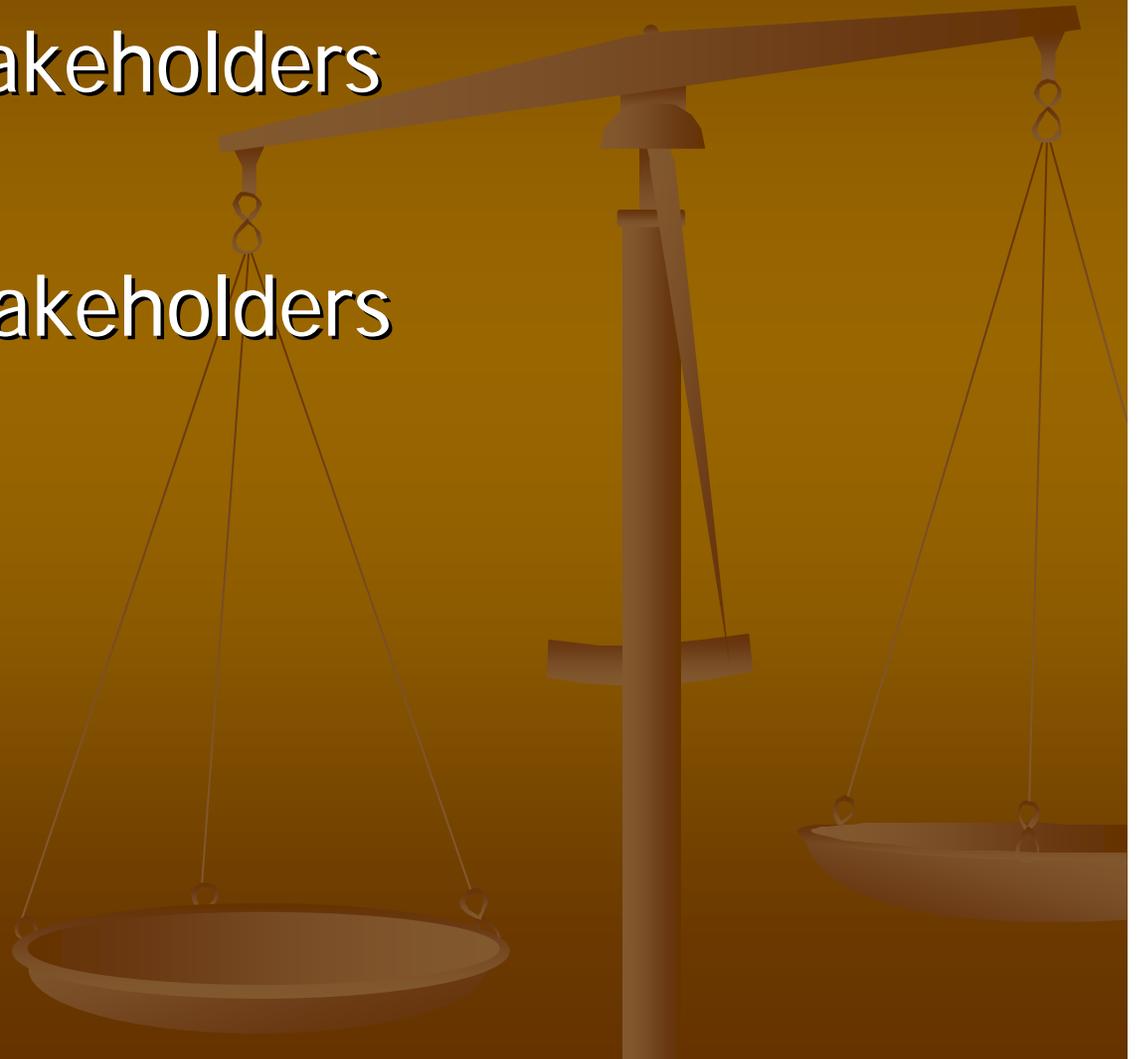
Communication

- Within CCU
- Between CCU and other MDCR units
- Between CCU and other City departments
- Between CCU and contractors
- Between CCU and leadership (Commission and City Council)



Clarity & Coordination

- Internal Stakeholders
- External Stakeholders



Capacity

- Staffing
- Resources
- Technology
- Training



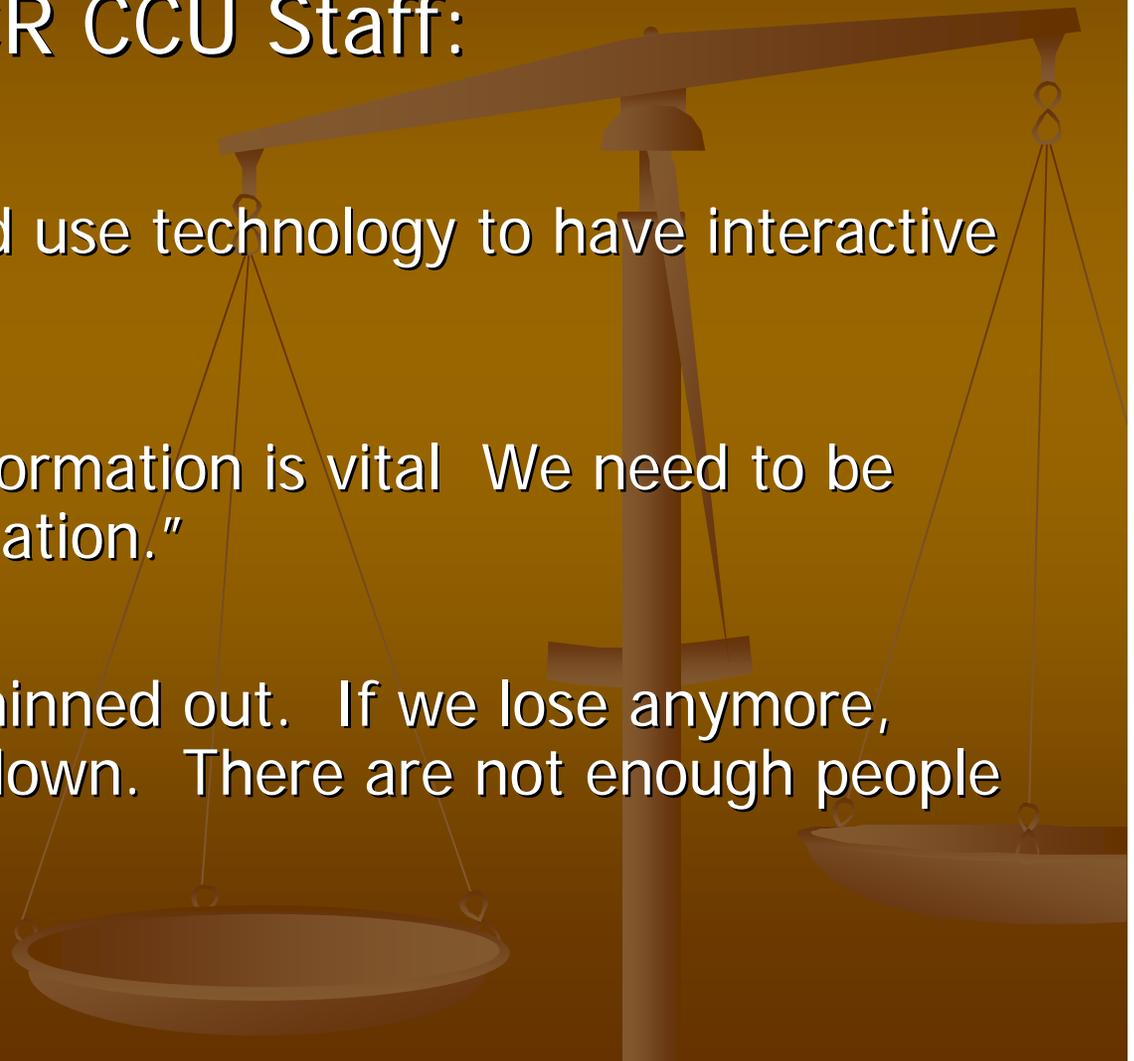
Capacity

According to MDCR CCU Staff:

"The department should use technology to have interactive reports"

"In our Department, information is vital We need to be able to access information."

"We have really been thinned out. If we lose anymore, they might close us down. There are not enough people to do [the work]."



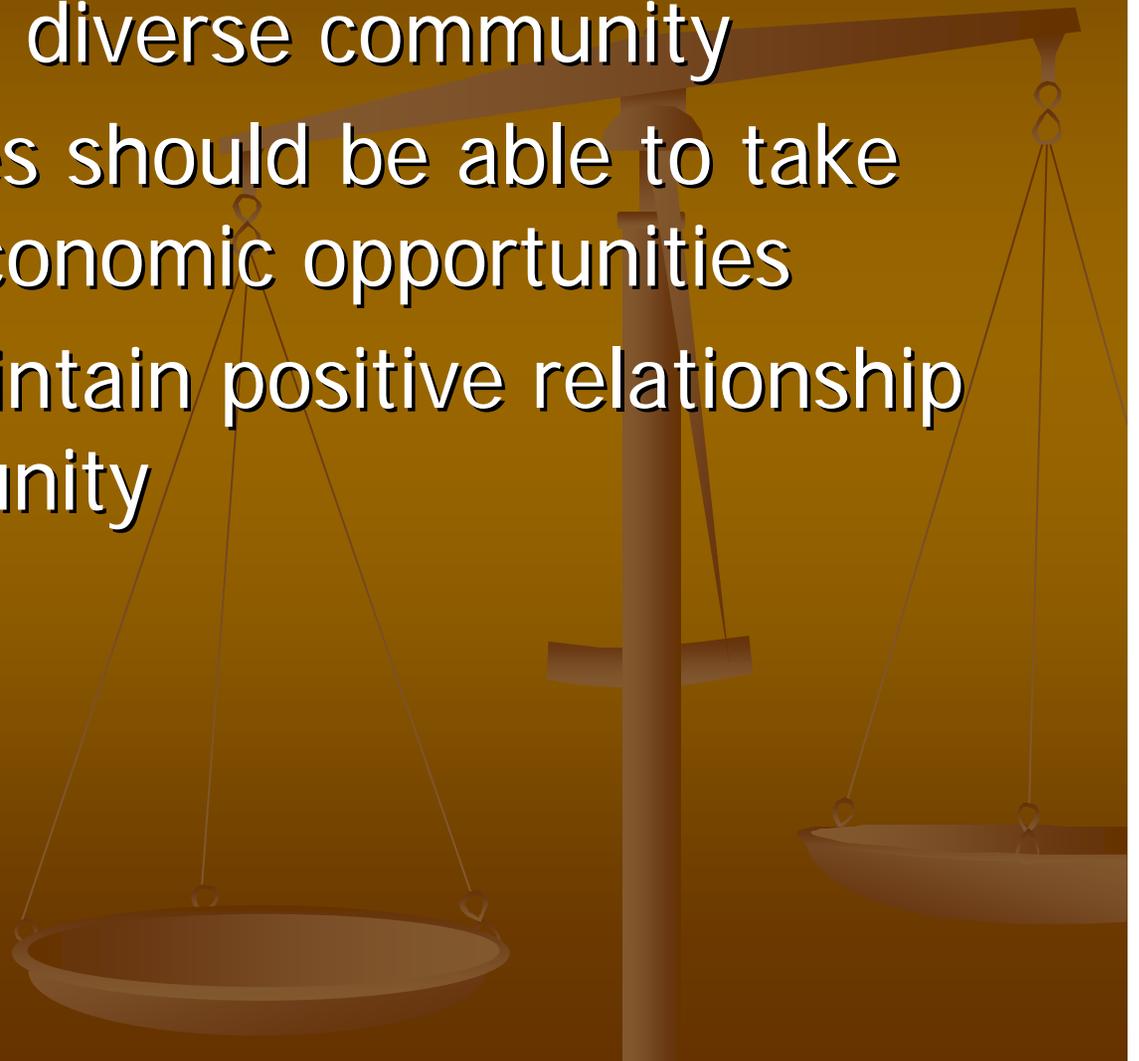
Commitment

- City Council & Mayor
- Civil Rights Commission
- Civil Rights Director
- CCU Manager & Staff
- City Departments
- Contractors
- Community

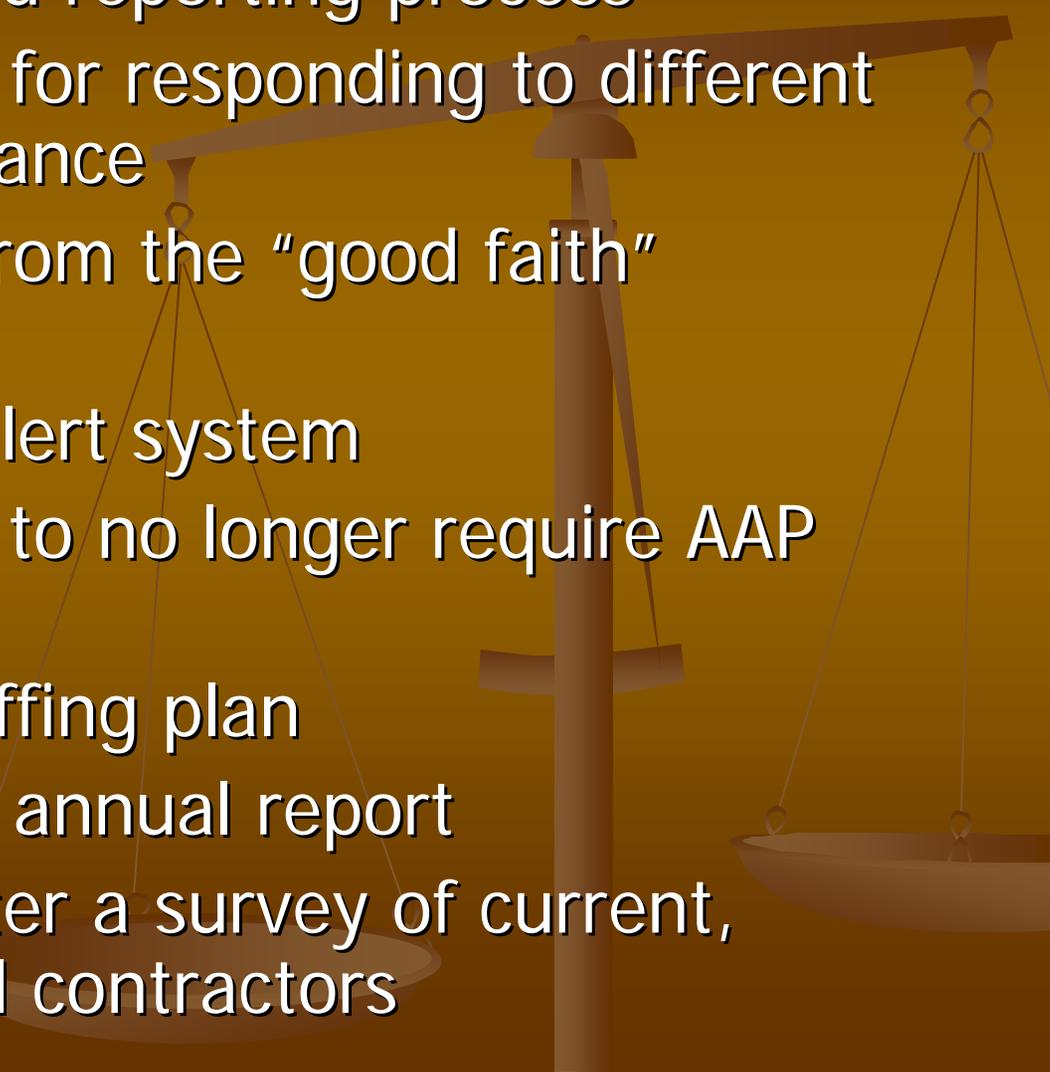


Community

- Minneapolis is a diverse community
- ALL communities should be able to take advantage of economic opportunities
- MDCR must maintain positive relationship with the community

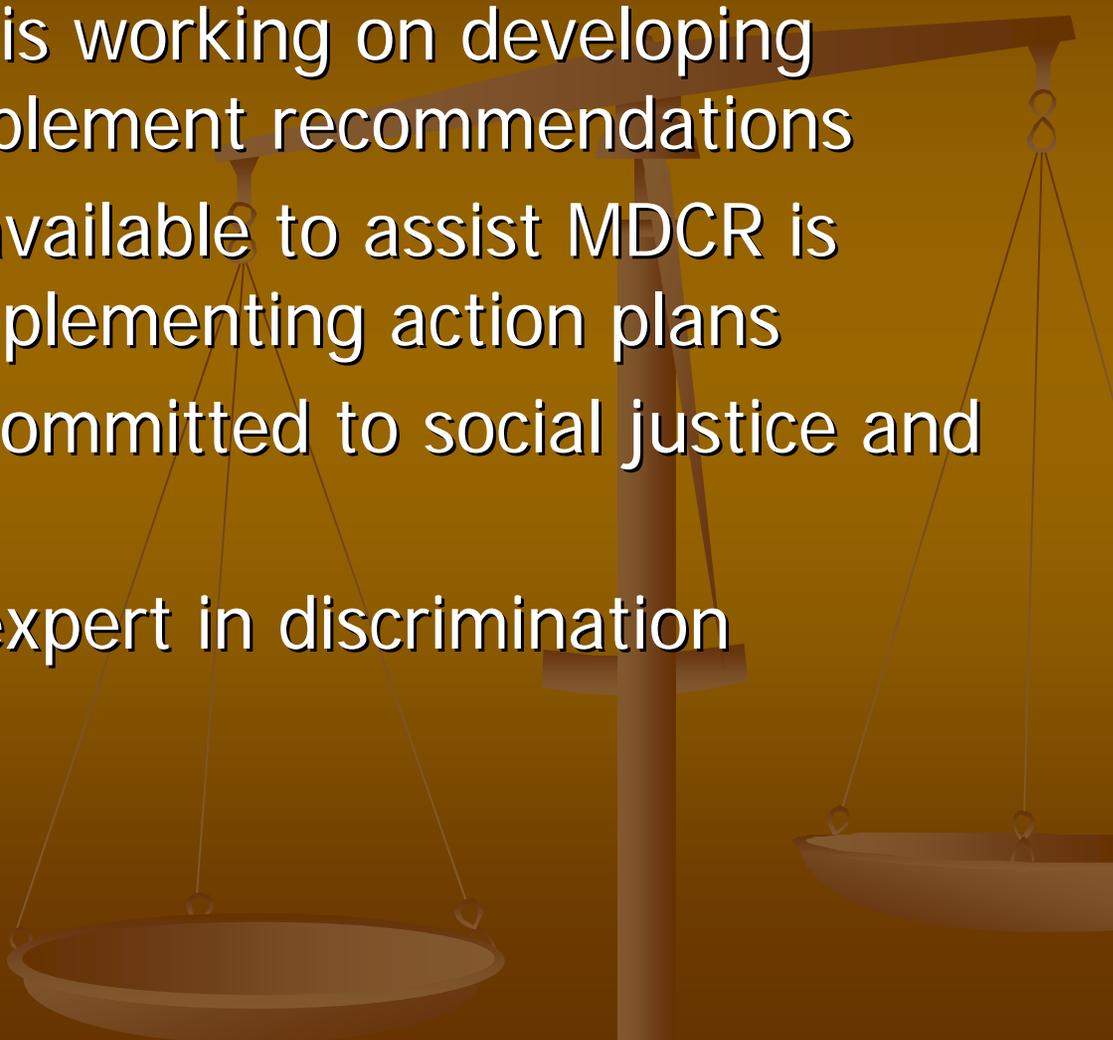


Recommendations



- Improve tracking and reporting process
- Develop procedures for responding to different levels of non-compliance
- Remove discretion from the “good faith” standard
- Develop electronic alert system
- Reevaluate decision to no longer require AAP submittals
- Develop realistic staffing plan
- Prepare and publish annual report
- Design and administer a survey of current, former and potential contractors

Conclusion & Next Steps

- MDCR Leadership is working on developing action plans to implement recommendations
 - Wilkins Center is available to assist MDCR is developing and implementing action plans
 - Wilkins Center is committed to social justice and human rights
 - Wilkins Center is expert in discrimination analysis
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Questions & Answers

Thank You

