

March 8, 2021

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U.S. Department of Justice, Civil Rights Division  
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Christine Stoneman  
Principal Deputy Chief, Performing Duties as Chief  
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U.S. Department of Justice, Civil Rights Division  
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Irene Marion  
Director, Departmental Office of Civil Rights  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**Re: *Black Economic Council of Massachusetts v. City of Boston* (Title VI  
Complaint)**

Dear Principal Deputy Assistant Attorney General Karlan, Principal Deputy Chief Stoneman,  
and Director Marion:

We are writing to apprise you of three recent developments concerning the Title VI complaint that we submitted on February 17, 2021 on behalf of the Black Economic Council of Massachusetts, Greater Boston Latino Network, and Amplify Latinx, against the City of Boston (“City”) for its creation and maintenance of a discriminatory public contracting system.

First, more community organizations and minority-owned business enterprises (“MBE”) experiencing discrimination in the City’s public contracting system have approached Lawyers for Civil Rights since we filed the Title VI complaint. They are eager to participate in an investigatory and remediation process led by federal authorities. Second, on February 18, 2021, the City publicly released the full report on the 2020 Disparity Study<sup>1</sup> that we cited in our complaint.

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<sup>1</sup> BBC Research & Consulting, *2020 Disparity Study City of Boston* (Feb. 2021), available at [https://www.boston.gov/sites/default/files/file/2021/02/2020%20City%20of%20Boston%20Disparity%20Study%20Final%20Report\\_1.pdf](https://www.boston.gov/sites/default/files/file/2021/02/2020%20City%20of%20Boston%20Disparity%20Study%20Final%20Report_1.pdf).

Third, concurrent with the release of the Disparity Study, and without any opportunity for public review, engagement or comment, the City of Boston issued an Executive Order<sup>2</sup> proclaiming changes to Boston’s municipal contracting system in response to the 2020 Disparity Study.

These developments confirm that federal investigation and intervention are necessary. As the Executive Order concedes, the City has a “compelling governmental interest...to remedy the past and present effects of discrimination” in its municipal contracting and “race, ethnicity- and gender-neutral measures and efforts are insufficient...”<sup>3</sup> Yet the Executive Order – issued without an opportunity for public comment two days after our Title VI complaint was filed – falls short of implementing the kind of meaningful measures necessary to tackle the stark racial disparities. For example:

- The Executive Order sets an aspirational goal of 10% utilization for MBEs, but that goal is woefully insufficient in light of the underutilization found in the 2020 Disparity Study, the study’s overly conservative estimate of available MBEs, and the compounding effect of historical disparities on the ability of MBEs to participate in city contracting.
- The Executive Order provides very little detail on how the City will operationalize its aspirational goal, stating only that a “Supplier Diversity Plan” will be developed. Meaningful measures to counteract the past and present discrimination in city contracting are almost entirely absent. For example, the Executive Order imposes no measures to hold the City’s department heads accountable for meeting prime contracting goals, beyond stating they should “act in good faith.” Issues highlighted by the Disparity Study, such as unbundling large contracts and requiring outreach, are not addressed.
- Similarly, the Executive Order is silent on how (or if) the City will break down barriers encountered by MBE subcontractors, stating only that within 6 months the City should “lay out the process” for determining whether contract-specific goals are appropriate. As outlined in our complaint, concrete steps are necessary to address this problem, such as allowing prime contract bids to be rejected if compliance or good faith effort to comply with MBE goals cannot be shown. Similar measures are in place in cities across the country including New York City, Philadelphia, Memphis, Charlotte, Houston, Baltimore, Portland, Seattle, and Denver, yet remain absent in Boston.

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<sup>2</sup> Executive Order of Mayor Martin J. Walsh, *An Executive Order Establishing Equitable Procurement Goals in Support of Minority and Woman-Owned Businesses* (2021), available at <https://www.boston.gov/sites/default/files/file/2021/02/An%20Executive%20Order%20Establishing%20Equitable%20Procurement%20Goals%20in%20Support%20of%20Minority%20and%20Woman-Owned%20Businesses.pdf>.

<sup>3</sup> Executive Order Establishing Equitable Procurement Goals, *supra* note 2, at 3-4.

- The Executive Order vaguely states that over the next 6 months the City should “identify the group or groups of City employees” who might set contract goals – with no mention of staff to monitor departments’ compliance and no mention of expanding compliance staff, as recommended by the Disparity Study. As outlined in our complaint, to break down entrenched old boys’ networks, the City must hire a dedicated contract compliance staff with real enforcement power for monitoring MBE inclusion. Other cities, including Philadelphia, San Francisco, and Houston, have more robust staff.

In sum, the Executive Order, much like numerous prior orders and proclamations referenced in our complaint, contains lofty language but falls far short of taking concrete steps to tackle the deeply entrenched racial disparities evident in the City’s own Disparity Study. The Executive Order was rushed through an opaque process two days after our complaint was filed, without an opportunity for public input, and before the public even had access to the Disparity Study.

The rushed nature of the Executive Order, the City’s history of similar proclamations without meaningful results, and the lack of effective accountability provisions consistent with that of other municipalities highlight why federal investigation and intervention remain critical to address the racial crisis in Boston’s municipal contracting.

We are hopeful that through such an investigation, the Department of Justice and the Department of Transportation can foster a community-centered process for developing a new and inclusive municipal contracting program. We stand ready to assist this investigation.

Sincerely,

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Priya Lane, Esq.  
Srish Khakurel, Esq.  
Erin Fowler, Esq.  
Oren Sellstrom, Esq.  
*Counsel for Complainants*

cc: City of Boston  
Boston City Councilors  
Black Economic Council of Massachusetts  
Greater Boston Latino Network  
Amplify Latinx