

January 25, 2024

VIA EMAIL

Mayor Denise Simmons
City of Cambridge
195 Brookline Street
Cambridge, MA 02139

Pardis Saffari, Director of Economic Opportunity and Development
City of Cambridge
344 Broadway
Cambridge, MA 02139

Cambridge City Council
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Dismantling Disparities in M/WBE Participation in City Contracts

Dear Mayor Simmons, Director Saffari, and Cambridge City Councilors:

Lawyers for Civil Rights (LCR) respectfully writes concerning the dearth of Minority and Women Business Enterprises (M/WBE) participation in the City's contracting that was laid bare by the City's newly released Disparity Study. We are deeply troubled over the economic opportunities lost and the harm this does to both M/WBEs and your community.

Lawyers for Civil Rights works with communities of color and immigrants to fight discrimination and foster equity through creative and courageous legal advocacy, education, and economic empowerment. In partnership with law firms and community allies, we provide free, life-changing legal support to individuals, families, and small businesses. Through our BizGrow Project, we provide free legal assistance, business support, and technical assistance to minority, immigrant, and women business owners ensuring they encounter fewer obstacles and more opportunities.

The problems identified by the Disparity Study are directly within the City's power to fix. To that end, this letter highlights best practices Cambridge should immediately adopt to advance equity and fair competition, and to ensure the City does not perpetuate the exclusion of M/WBEs from contracting opportunities.

I. Minority and Women Business Enterprises Left Out of Cambridge's Procurement System

Recent reporting from the [Boston Globe](#)¹ and [WGBH](#)² have highlighted disturbing statistics on Cambridge's seeming inability to ensure equal contracting opportunity for M/WBEs. Cambridge conducted a [Disparity Study](#) that showed that over a five-year span from July 2016 to July 2021, only 0.5% of the City's \$260 million spent on municipal contracts went to MBEs.³ Additionally, only 0.5% of municipal contract money went to white women-owned business, meaning that **99% of all Cambridge municipal contract money went to white male-owned businesses.**

As the Disparity Study documents, M/WBEs are ready, willing, and able to contract with the City in much higher proportions than those utilized but are actively being excluded. The disparities identified by the Study are particularly concerning when considering the racial makeup of Cambridge. [The City](#) itself is 57.3% White, 19.2% Asian/Pacific Islander, and 10.6% Black. Yet of the \$260 million in municipal contracting analyzed for the Study, less than \$60,000 went to Black-owned businesses -- a staggeringly small amount.⁴

The consequences of a contracting system dominated by white male-owned businesses are ongoing and highly detrimental. According to [Cambridge's Demographic Summary](#) produced by the Community Engagement Team in 2023, the median income of a white family in Cambridge was just over \$180,000, *three time higher* than Black families.⁵ Family poverty rates show even more disturbing trends with white families having a poverty rate well under 5% -- in direct contrast to Black families that have a poverty rate of well over 20%.⁶ Cambridge is contributing to this staggering wealth gap by excluding MBEs from equal contracting opportunities. The harm this does to communities is real.

¹ *In Cambridge, Women and People of Color Get Few City Contracts, Study Finds*, BOSTON GLOBE (December 29, 2023) (retrieved from <https://www.bostonglobe.com/2023/12/29/business/cambridge-city-contracts-study/>)

² *Minorities and Women Have Been Largely Locked Out of Cambridge City Contract, Study Shows*, <https://www.wgbh.org/news/local/2023-12-22/minorities-and-women-have-been-largely-locked-out-of-cambridge-city-contracts-study-shows> (last visited Jan 23, 2024).

³ See *City of Cambridge Massachusetts Disparity Study Report October 2023*, Griffin & Strong, at Pg 16 (retrieved from https://www.documentcloud.org/documents/24235062-cambridge-disparity-study_full-report_released-dec-21-2023).

⁴ *In Cambridge, Women and People of Color Get Few City Contracts, Study Finds*, BOSTON GLOBE (December 29, 2023) (retrieved from <https://www.bostonglobe.com/2023/12/29/business/cambridge-city-contracts-study/>)

⁵ See Cambridge Demographic Summary Community Engagement Team September 20, 2023 Presentation, Clifford Cook at 29 (retrieved from https://www.cambridgema.gov/-/media/Files/CDD/FactsandMaps/presentations/demo_pres_20230920_cet.pdf).

⁶ See Cambridge Demographic Summary Community Engagement Team September 20, 2023 Presentation, Clifford Cook at 34 (retrieved from https://www.cambridgema.gov/-/media/Files/CDD/FactsandMaps/presentations/demo_pres_20230920_cet.pdf).

It leaves generations of Cambridge residents behind, excluding them from the millions of dollars flowing into government contractors' coffers. It also deprives Cambridge of the skills and talents of the many M/WBE firms left out of this process.

II. The Status Quo Will Continue to Perpetuate Racial and Gender Disparities without Aggressive Policies to Ensure Equal Contracting Opportunity

The reasons why M/WBEs are systematically under-utilized in government contracting are well-known, having been studied and analyzed for years. Although observed disparities may vary, one theme is constant: if a city does not take proactive steps to ensure equal contracting opportunity, then M/WBEs will continually be [excluded](#).⁷

- For [prime contracts](#), particularly those that are discretionary, city officials making contracting decisions often limit M/WBE participation -- either through conscious or unconscious bias, or simply because they prefer to contract with firms they have always contracted with in the past. The [Disparity Study](#) highlights evidence of an informal network of businesses with ties to the City that represent a closed off process for contracting opportunities.⁸
- Prime contracts also often contain unnecessary qualifications that preclude newer or smaller firms (which M/WBEs tend to be) from participating. For example, a purchasing contract may require a firm to bid for an entire year's worth of supplies, rather than breaking down the contract into smaller components. Or an architectural contract may require that a firm have 20+ years of experience in a particular type of design, even though other skills and abilities of a newer firm might be transferable. Without proactive steps to eliminate this type of exclusionary practice, the problem persists.
- Many prime contracts also include opportunities for [subcontracting](#). Without affirmative steps to address bias and exclusion in subcontracting M/WBEs are too often denied equal subcontracting opportunities. Prime contractors tend to simply go back to subcontractors they have used in the past -- an "old boys network" that exclude M/WBEs.

Cities that fail to address the issue of M/WBE exclusion head on become a part of the problem, funneling taxpayer dollars into a system that unfairly excludes M/WBEs. A laissez faire attitude leads directly to M/WBE exclusion.

⁷ See *Contracting for Equity: Best Local Government Practices that Advance Racial Equity in Government Contracting and Procurement*, INSIGHT CENTER FOR COMMUNITY ECONOMIC DEVELOPMENT, GOVERNMENT ALLIANCE ON RACE AND EQUITY (2017) at 6-8 (retrieved from http://haasinstitute.berkeley.edu/sites/default/files/gare-contract_for_equity_0.pdf).

⁸ See *City of Cambridge Massachusetts Disparity Study Report October 2023*, Griffin & Strong P.C., at 19 (retrieved from https://www.documentcloud.org/documents/24235062-cambridge-disparity-study_full-report_released-dec-21-2023).

III. Proven Methods and a Call to Action to Increase Diversity and Equity in City Contracting

Lawyers for Civil Rights urges the City to undertake immediate steps to alleviate the disparities highlighted. The most successful M/WBE programs are those that directly target the problem of M/WBE under-utilization, through race-and gender-conscious measures. **Having identified persistent disparities in its recent Disparity Study, Cambridge now has the requisite factual predicate to implement race-conscious steps**, as courts have routinely held.⁹

A first step to dismantling Cambridge’s exclusionary system would be creating a sheltered market program. Sheltered market programs are used to set aside contracts just for competition among underrepresented businesses. This is a tried-and-true approach to breaking down “old boys networks” as it allows for M/WBEs to get their foot in the door while building their capacity, which in turn, allows them to engage in larger contracts in the future.

At the prime contracting level, Cambridge should set overall goals for M/WBE participation; provide bid preferences or bid discounts for M/WBE firms; and otherwise take affirmative steps to promote diversity in the selection process.¹⁰ At the subcontracting level, Cambridge should set contract-specific subcontracting goals on construction (and other) contracts, requiring that prime contractors either meet those goals or demonstrate that they made good-faith efforts to do so.

There are also many race-neutral efforts that Cambridge should enact to bolster M/WBE participation. Although, [The Disparity Study](#) notes that the City’s race- and gender-neutral efforts “have not been effective in resolving the identified disparities,”¹¹ they should be reinvigorated, since they provide a foundation upon which race-conscious efforts thrive.

⁹ See, e.g., *North Shore Concrete and Associates, Inc. v. City of New York*, 1998 U.S. Dist. Lexis 6785 at *28-29 (E.D.N.Y. 1998) (“There is no indication that the statistical analysis performed by [the consultant] in the present case, which does contain statistics regarding minority contractors in New York City, is not sufficient as a matter of law under Croson.”); see also *Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo*, 981 F.2d 50, 61-62 (2d Cir. 1992); *Concrete Works of Colorado, Inc. v. County of Denver*, 36 F.3d 1513, 1528 (10th Cir. 1994).

¹⁰ See Contracting for Equity: Best Local Government Practices, supra note 7. To encourage inclusion efforts amongst prime contractors, some local governments utilize a grading system, in which prime contractors are given an ‘A’ to ‘F’ grade for their inclusion of M/WBE firms in their sub-contracting. These grades are then published online. See State Policies and Programs for Minority- and Women-Business Development, INSIGHT CENTER FOR COMMUNITY ECONOMIC DEVELOPMENT (2007) (Retrieved from <http://ww1.insightccd.org/uploads/publications/assets/50%20state%20inclusive%20business%20policy%20scan.pdf>).

¹¹ See *City of Cambridge Massachusetts Disparity Study Report October 2023*, Griffin & Strong P.C., at 10 retrieved from https://www.documentcloud.org/documents/24235062-cambridge-disparity-study_full-report_released-dec-21-2023.

Race-neutral efforts that the City should aggressively pursue include:

1. Breaking down large prime contracts into smaller pieces that smaller companies can successfully compete for. This also has the advantage of increasing competition, thus resulting in better prices for the City.
2. Establishing small or local business programs that provide incentives and/or subcontracting requirements for all small or local businesses. Since M/WBEs are disproportionately small, a local or small business program will often increase M/WBE participation.
3. Requiring each city department to conduct an annual assessment of future needs for goods and services, and proactively communicating these future needs in outreach efforts to small businesses through community-based partners such as the NAACP, BECMA, Amplify Latinx, and the Greater Boston Latino Network (GBLN).
4. Enacting prompt payment programs, to ensure that prime contractors pay their subcontractors in a timely fashion.
5. Quarterly public reporting of M/WBE participation, disaggregated to reflect MBE and WBE participation separately, as a means for city officials, the M/WBE community, and the public to see where progress is being made and where more work needs to be done.
6. Performance measures for department heads that include success at meeting M/WBE participation goals.
7. Eliminating unnecessary RFP/RFQ and other bid criteria to ensure that overly-stringent requirements do not unnecessarily inhibit competition and limit the ability of M/WBE firms to compete.
8. Providing bonding assistance by playing a brokering role between M/WBEs and financial institutions and bonding companies to help secure a required loan or bond.¹²
9. Creating a publicly accessible dashboard and scorecard for transparency and accountability with respect to progress on M/WBEs.

¹² A bond essentially constitutes a legal guarantee that a particular project will be completed as expected. In instances where a bonded contractor fails to perform, the bonding company will provide some form of restitution. States such as Rhode Island, South Dakota, Washington, and Wisconsin play a brokering role between M/WBEs and financial institutions and bonding companies to help obtain a loan or bond.

10. Formalizing outreach and engagement partnerships with community-based organizations such as the NAACP, BECMA, Amplify Latinx, and the Greater Boston Latino Network (GBLN).

IV. Increasing Collaboration and Partnerships

City contracting has had a deleterious effect on Cambridge's diverse business community and will continue to do so unless the City takes immediate action to eliminate existing barriers. For a City with a minority population of approximately 43%, having merely 1% of contracting funds going to M/WBEs is unacceptable and shameful. It also raises serious legal concerns surrounding the deliberate, intentional and discriminatory exclusion of M/WBEs.

We respectfully request an emergency meeting with you, so that we can discuss these concerns in greater detail. We can help the City to come up with a concrete plan to foster fairness in contracting efforts -- starting immediately and continuing until the disparities that currently exist are erased. Please contact Russell Paul at rpaul@lawyersforcivilrights.org or call 617-971-8082 to discuss this matter in greater detail.

Sincerely,

Russell Paul
Senior BizGrow Attorney