

A photograph of a city street scene in Cambridge, Massachusetts. The image shows a row of brick buildings. A large, vibrant mural of a woman with colorful face paint and a pink flower is on the side of one building. Below the mural, a sign for 'CAFFÈ NERO' is visible. The scene is captured with long-exposure light trails from traffic, creating a sense of movement. The sky is a clear, pale blue. The image is framed by dark blue and light grey geometric shapes.

**GRIFFIN  
STRONG**

CITY OF

# CAMBRIDGE

MASSACHUSETTS

EXECUTIVE SUMMARY

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# STUDY TEAM

## Griffin & Strong, P.C. Project Team

- Rodney K. Strong, Project Executive
- Dr. J. Vincent Eagan, Principal Investigator
- Dr. Gregory Price, Senior Economist
- Calvin Walden, Data Analyst
- David Maher, Legal and Policy Analyst
- Michele Clark Jenkins, Project Manager
- Jerrica M. Lighting, Deputy Project Manager
- Marcus Garner, Anecdotal Analyst
- Susan G. Johnson, Project Administrator
- Creative Research Solutions, Online Survey of Business Owners

## Local Partner

- Butler Perez & Associates, Anecdotal Interviews

## SCOPE OF WORK

In March of 2022, the City of Cambridge, Massachusetts (“City”) contracted with Griffin & Strong, P.C. (GSPC)

“...to design and conduct a Disparity Study to provide a basis to determine whether a sheltered market program under G.L. c. 30B, § 18 can be implemented in the City (G.L. c. 30B is the Uniform Procurement Act, which establishes procedures for the City to use when contracting for supplies and services). In particular, the Consultant will work with the City’s Purchasing Department, Office of Equity and Inclusion, and Community Development Department (“CDD”) and will conduct a Disparity Study to review and analyze whether there are present effects of past discrimination within markets of business enterprises from which the City procures supplies and services.

Based on the results of the Disparity Study, the City will review whether a basis exists for the City to implement a sheltered market program in conformance with G.L. c. 30B, § 18, to remedy past discriminatory effects for certain groups going forward (determining whether a basis exists for the City to implement a sheltered market program is not part of this scope of work).”

Toward achievement of these ends, GSPC analyzed the City of Cambridge’s procurement processes and outcomes, as well as those of the marketplace during the five (5) year study period of FY2017 through FY 2021 (“Study Period”).

GSPC used empirical and anecdotal evidence, including evidence of the impact of the City of Cambridge’s purchasing and contracting practices on Minority Business Enterprises (“MBE”), Women Business Enterprises (“WBE”), and Veteran Business Enterprises (“VBE”).

The scope of work included the three (3) Industry Categories of:

**Professional Services** such as consultants, medical services, legal services, financial services;

and specifically excluding all construction (vertical and horizontal) and construction-related professional services such as architecture, engineering, surveying, and construction management.

**Other Services** such as marketing, advertising, printing, janitorial, IT, lawn service, and all other services not included in Professional Services; specifically excluding all construction (vertical and horizontal) and construction-related professional services.

**Supplies** which include all tangible items.

## **OBJECTIVES**

The principal questions of the Study were:

- Is there a statistically significant disparity in the relevant geographic market between the percentage of qualified Minority and Women Owned Business Enterprises and Veteran Owned Business Enterprises willing and able to provide supplies or services in each of the Industry Categories of contracts covered by G.L. c. 30B, and the percentage of dollars spent by the City with such firms?
- If a statistically significant disparity exists for MBE/WBEs have factors, other than race and gender been ruled out as the cause of that disparity?
- Are there present effects of past discrimination within markets of business enterprises from which the City procures supplies and services?
- Can the disparities for MBEs/WBEs be adequately remedied with race and gender-neutral remedies?

## **TECHNICAL APPROACH**

In conducting this Study and preparing its recommendations, GSPC followed a carefully designed work plan that allowed Study team members to fully analyze Availability, Utilization, and Disparity with regard to participation. The final work plan consisted of, but was not limited to, the following major tasks:

- Establishing data parameters and finalizing a work plan;
- Reviewing policy and procurement processes and M/WBE program analysis;
- Collecting electronic data, inputting manual data, organizing, and cleaning data, as well as filling any data gaps;
- Conducting geographic and product market area analyses;
- Conducting Utilization analyses;
- Determining the Availability of qualified firms;
- Analyzing the Utilization and Availability data for disparity and statistical significance;
- Conducting private sector analysis including credit and self-employment analysis;
- Collecting and analyzing anecdotal evidence; anecdotal interviews, public hearings, focus groups, business owners' interviews and Survey of Business Owners results;
- Establishing findings of fact regarding the existence and nature of marketplace discrimination and/or other barriers to M/WBE participation in City of Cambridge contracts; and
- Preparing a final report that identifies and assesses the efficacy of various race- and gender-neutral and narrowly tailored race- and gender-based remedies if indicated by the findings.

## **HISTORICAL OVERVIEW- DEVELOPMENT OF THE LAW**

The use of disparity studies was in large measure a response to constitutionally based legal challenges made against federal, state, and local minority business enterprise programs enacted to remedy past or present discrimination. Such studies effectively were invited by the United States Supreme Court in its seminal decision in *City of Richmond v. J. A. Croson Co.*,<sup>1</sup> and subsequent judicial decisions have drawn a direct line between Croson and the utilization of disparity studies.<sup>2</sup>

State and local laws that, on their face, favor one class of citizens over another – like M/WBE legislation -- may run afoul of the Equal Protection Clause of the Fourteen Amendment to the United States Constitution. Thus, race-based programs must satisfy the “strict scrutiny” constitutional standard, and gender-based programs may be subject either to strict scrutiny or to a less-rigorous “intermediate scrutiny” standard, depending on the federal circuit within which the public entity is located.

“Strict scrutiny” review involves two co-equal considerations: the need to demonstrate a compelling governmental interest in taking remedial action; and implementation of a program or method narrowly tailored to achieve/remedy the compelling interest.<sup>3</sup> A disparity study is a tool intended to evaluate whether a strong basis in evidence exists to support the use of race-based (or gender-based) remedial efforts.

Notably, the U.S. Court of Appeals for the First Circuit, which covers Massachusetts, has primarily relied on the Supreme Court’s guidance in *Croson* in the contexts of school choice litigation and

public employment/promotion cases.<sup>4</sup> There are no significant decisions of the First Circuit specific to government purchasing or procurement. In these school choice and public employment cases, however, the First Circuit expressly adopted the *Croson* court’s application of the strict scrutiny standard to such policies/programs.<sup>5</sup>

Of legal significance to the present Study, Massachusetts General Law, Part I, Title III, Chapter 30B, the “Uniform Procurement Act,” governs purchasing at the City of Cambridge. Included in Ch. 30B is a provision permitting a governmental body to introduce a Sheltered Market Program intended to address disparities affecting “disadvantaged” vendors.<sup>6</sup> Such a program is defined as one “under which certain contracts are designated by the chief procurement officer for procurement from one or more classes of disadvantaged vendors.”<sup>7</sup>

The sheltered market statute (§ 18) sets forth detailed requirements for creating and implementing a sheltered market program and stipulates that the program may be applied to one or more contracts and may cover one or more “disadvantaged vendors” (e.g., minority business, women-owned business, veteran-owned business). The statute establishes that the predicate necessary for developing a sheltered market program is to remedy the present effects of past discrimination.

# SUMMARY OF FINDINGS

## 1. LEGAL

The City of Cambridge implements primarily race and gender-neutral measures to try to increase utilization of M/WBE firms in City purchasing, but it has a race and gender-conscious policy limited to certain Construction contracts. The present Study shows, however, that those efforts have not resolved the identified disparities, and accordingly, it is recommended that Cambridge expand its use of race and gender-conscious policies toward that goal and introduce more robust race and gender-neutral remedial measures. Moreover, the regression analysis and consideration of the contracting environment in the private sector included as part of this Study showed that M/WBE status continues to have an adverse impact on a firm's ability to secure contracting opportunities with the City, further supporting the recommendation for more aggressive remedial efforts.

## 2. POLICY

Other than issues with prompt payment, no procurement barriers were reported by City staff. The City has a Diversity Directory, but it is used for firms to self-identify and is not often used for procurement outreach for Services and Supplies. The City does not currently track or report MWBE utilization in Supplies and Services.

## 3. QUANTITATIVE

### RELEVANT GEOGRAPHIC AND PRODUCT MARKETS

The Study compares the availability and utilization of firms in a common area, the Relevant Geographic Market, where at least 75% of Cambridge spending with vendors takes place. The Geographic Relevant Market for supplies and services for the City is the Boston Metropolitan Statistical Area (MSA), composed of Suffolk, MA, Essex, MA, Norfolk, MA, Middlesex, MA, and

Plymouth, MA counties.

- In Professional Services<sup>4</sup>, 82.58%
- In Other Services, 84.01%
- In Supplies, 68.64%

About 77.97% of all the City spending in these three categories was with firms located in Relevant Geographic Market.<sup>8</sup>

### AVAILABILITY

The measures of availability utilized in this Study incorporate all the criteria of availability required by *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

- The firm does business within an Industry Category from which Cambridge makes certain purchases.
- The firm's owner has taken steps to demonstrate interest in doing business with the government e.g. registering, certifying, bidding, or actually doing business with an agency.
- The firm is located within a relevant geographical area such that it can do business with Cambridge.

The firms used to calculate Availability came from the Master Vendor File<sup>9</sup> of firms that meet the above criteria in the Relevant Market Area. GSPC found that firms were available to provide supplies and services to Cambridge as reflected in the following percentages by each race, ethnicity, and gender group (Table 1).

**Table 1** below shows that 1.27% of all Professional Services firms were certified MBEs and 5.06% were Nonminority Women. In Other Services, 3.52% were certified MBEs and 4.00% were Nonminority Women. In Supplies, .37 % were certified MBEs and 2.72% were Nonminority Women. <sup>10</sup>

**Table 1: Summary of Availability by  
Work Category  
In the Relevant Market  
Using Master Vendor File  
Cambridge Disparity Study**

Business Ownership Classification	Professional Services	Other Services	Supplies
African American	0.42%	0.80%	0.09%
Asian American	0.42%	1.92%	0.09%
Hispanic American	0.42%	0.56%	0.19%
Native American	0.00%	0.24%	0.00%
Portuguese American	0.00%	0.00%	0.00%
<b>TOTAL MBE</b>	<b>1.27%</b>	<b>3.52%</b>	<b>0.37%</b>
Nonminority Woman	5.06%	4.00%	2.72%
<b>TOTAL MWBE</b>	<b>6.33%</b>	<b>7.52%</b>	<b>3.09%</b>
NON-M/WDBE	93.67%	92.48%	96.91%
<b>TOTAL FIRMS</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

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## MWBE PRIME UTILIZATION

As Table 2 below shows, the City paid a total of \$19.5 million to prime Professional Services firms in the Relevant Market during the Study Period and \$582,992 of this amount, or 3.03% was paid to certified MWBE firms as prime contractors. The City spent 1.35% of Other Services, and 0.46% of Supplies with certified MWBEs. Overall, \$3.06 million (1.18%) in spending was with certified MWBEs. The only spending with Veteran Owned Businesses (VBE) was with one VBE for \$12,900 in Other Services.

**Table 2: Summary of Prime Utilization  
by Work Category  
In the Relevant Market  
(Based upon Payments FY2017-FY2021)  
Cambridge Disparity Study**

Business Ownership Classification	Professional Services	Other Services	Supplies	TOTAL
	(\$)	(\$)	(\$)	(\$)
Black American	\$ 45,550	\$ 14,003	\$ -	\$ 59,553
Asian American	\$ -	\$ 985,433	\$ -	\$ 985,433
Hispanic American	\$ 282,324	\$ -	\$ 24,757	\$ 307,082
Native American	\$ -	\$ 6,626	\$ -	\$ 6,626
Portuguese American	\$ -	\$ -	\$ -	\$ -
<b>TOTAL MINORITY</b>	<b>\$ 327,874</b>	<b>\$ 1,006,063</b>	<b>\$ 24,757</b>	<b>\$ 1,358,694</b>
Nonminority Woman	\$ 255,118	\$ 1,069,629	\$ 379,869	\$ 1,704,615
<b>TOTAL M/WBE</b>	<b>\$ 582,992</b>	<b>\$ 2,075,691</b>	<b>\$ 404,626</b>	<b>\$ 3,063,309</b>
NON-M/WBE	\$ 18,667,401	\$ 151,284,162	\$ 86,952,238	\$ 256,903,801
<b>TOTAL FIRMS</b>	<b>\$ 19,250,393</b>	<b>\$ 153,359,853</b>	<b>\$ 87,356,864</b>	<b>\$ 259,967,111</b>
Business Ownership Classification	Professional Services	Other Services	Supplies	TOTAL
	(%)	(%)	(%)	(%)
Black American	0.24%	0.01%	0.00%	0.02%
Asian American	0.00%	0.64%	0.00%	0.38%
Hispanic American	1.47%	0.00%	0.03%	0.12%
Native American	0.00%	0.00%	0.00%	0.00%
Portuguese American	0.00%	0.00%	0.00%	0.00%
<b>TOTAL MINORITY</b>	<b>1.70%</b>	<b>0.66%</b>	<b>0.03%</b>	<b>0.52%</b>
Nonminority Woman	1.33%	0.70%	0.43%	0.66%
<b>TOTAL M/WBE</b>	<b>3.03%</b>	<b>1.35%</b>	<b>0.46%</b>	<b>1.18%</b>
NON-M/WBE	96.97%	98.65%	99.54%	98.82%
<b>TOTAL FIRMS</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

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## ***SUMMARY OF DISPARITY ANALYSIS FOR FY2017-FY2021***

Table 3 below indicates those MWBE groups where a statistically significant disparity (X) was found in Prime Utilization for Professional Services, Other Services, and Supplies. There was underutilization in prime contracts for all MWBEs groups, except Hispanic American owned firms in Professional Services. There was no measurable availability for a MWBE group in boxes with a “NA”.

There was disparity for all MWBE groups for prime payments less than \$500,000 and less than \$1 million for all procurement categories, except that Asian American owned firms were overutilized in Other Services for projects less than \$500,000 and less than \$1,000,000.

***Table 3: Summary of Statistically Significant Underutilization of MWBEs in Prime Contracting  
Cambridge Disparity Study***

<b>Business Owner Classification</b>	<b>Professional Services</b>	<b>Other Services</b>	<b>Supplies</b>
<b>African American</b>	X	X	X
<b>Asian American</b>	X	X	X
<b>Hispanic American</b>		X	X
<b>Native American</b>	NA	X	NA
<b>Portuguese American</b>	NA	NA	NA
<b>Non-Minority Women</b>	X	X	X

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#### 4. MARKETPLACE AND CONTRACTING DISPARITIES

*For purposes of the Marketplace Disparities Analysis, the City of Cambridge Market Area includes the Boston-Cambridge-Newton, MA-NH Statistical Area (“MSA”) from the US Census Bureau.<sup>11</sup>*

The regression-based analysis of disparities considers market entry, private sector, public contracting and subcontracting outcomes, and other relevant market experiences of Minority and Women owned firms relative to Non-MWBE firms in the City of Cambridge Market Area.

The analysis utilizes data from businesses that are willing, able, or have actually contracted/subcontracted in the City of Cambridge Market Area, with the aim of determining if the likelihood of successful contracting/subcontracting opportunities — actual and perceived — in the City of Cambridge Market Area is conditioned, in a statistically significant manner, on the race, ethnicity, or gender status of firm owners.

Such an analysis is a useful and important compliment to estimating simple disparity indices, which assume all things important for success and failure are equal among businesses competing for public contracts. This analysis is based on unconditional moments, that is, statistics that do not necessarily point to causality or the source of differences.

A descriptive and inferential private sector analysis of the City of Cambridge Market Area revealed that in general, being an MWBE in the City of Cambridge Market Area is associated with lower firm revenue relative to non-MWBE firms. For firms owned by the Native Americans, Pacific Islanders, and persons with disabilities, self-employment likelihoods are lower, which lends some support to the “but-for” justification for

affirmative action in public procurement—a policy intervention which can increase the self-employment outcomes of MWBEs.

Lower revenues for MWBEs in the City of Cambridge Market Area are suggestive of private sector discrimination that undermines their capacity to enter the market and compete with non-MWBEs firms for public contracting and subcontracting opportunities. Firms certified as Veteran-owned, and those owned by Bi/multiracial Americans, Hispanic Americans and Native Americans, have relatively higher commercial bank loan denials. This suggests that these type of MWBEs may face credit market barriers in the City of Cambridge Market Area that undermines their capacity to compete for public procurement opportunities relative to non- MWBEs.

The regression results reported specific detail on how MWBEs in the City of Cambridge Market Area are potentially constrained by barriers that could translate into lower likelihoods of winning prime contracts. Firms certified as Minority- owned are particularly harmed by perceived discrimination against them by City of Cambridge. Certified Veteran and Minority-owned firms are relatively more likely to have never secured a City of Cambridge subcontract. GSPC also found that among MWBEs, firms certified as Minority- owned, and those owned by Hispanic Americans are relatively more likely to have their capacity to compete in the market for public procurement constrained as a result of being excluded from informal contracting networks that may enhance success in winning public contracts with the City of Cambridge.

## 5. ANECDOTAL

The anecdotal findings of the Disparity Study provides readers with the voices of individual firm owners and other community members. It is a forum for the participants to tell their experiences in order to inform GSPC's recommendations and provide the City with information about how its procurement processes are perceived.

One of the key perceptions by anecdotal participants is that there is an informal network of businesses that have relationships with the City and represent a closed circle of businesses that have access to contracting opportunities within the City.

Further, the Survey of Business Owners results showed that competition with larger firms discourages Minority, Woman, and Veteran owned firms from engaging within the City's procurement process.

Prompt pay was also noted as an issue that limited contracting ability for MWBE firms with the City.

Though it may not pertain to contracts under the regulations of Massachusetts General Law, Part I, Title III, Chapter 30B, the "Uniform Procurement Act", MWBE and Veteran firms have a perception that non-Minority/Women owned Business Enterprise prime contractors take advantage of the absence of MWBE policies within the City to not use MWBE or Veterans as subcontractors.

Firms commended the City on their educational opportunities, recourses, and language accommodations for small businesses.

## **KEY RECOMMENDATIONS**

The Study findings support the City expanding its use of race and gender-conscious policies in order to remediate active and passive discrimination based upon race and gender. It also has a rational basis to provide programs that benefit veteran owned firms.

To that end, GSPC recommends that the City set Annual Aspirational purchasing goals as an internal measure of how well the City has reached the Availability benchmarks established by the Disparity Study. Annual Aspirational goals are the aggregated annual measure attainment of certified MBE, WBE, and Veteran owned firm attainment using all of the “tools” for promoting MBE and WBE participation.

In addition, although there is no provision for MWBE goals or SBE set-asides in 30B, it is recommended that contract-by-contract aspirational goals should be communicated to prime vendors in solicitations requesting that they assist the City in meeting those goals. Contract-by-contract goals evaluate each scope of work on a contract to calculate a goal rather than using one across-the-board goal on every contract. Once the prime vendor has submitted its proposed utilization of MWBEs and Veteran owned firms in the bid submission, that achievement should become part of the prime vendor’s contract commitment. The City should track this commitment to make sure that the prime vendor adheres to it.

Having an MWBE and Veteran subcontracting program will provide a benefit and incentive to MWBEs and Veterans to get certified by the State and to join the City’s Diversity Directory. Certification assures that a firm is truly owned

and controlled by MWBEs and Veterans and allows for more precise tracking of utilization.

In order to get more participation of MWBEs and Veteran owned firms, the City should forecast upcoming solicitation opportunities as far ahead of the bid as possible, preferably at least a year ahead of time. This gives all firms an equal opportunity to prepare for opportunities and gives time to plan for teaming or joint ventures.

This will also allow the City to provide supportive services such as technical assistance (estimating and business formation), seminars (how to bid, how to register, how to certify), well in advance of the bid issuance, if needed. The other benefit of forecasting is that the City can take a more active role in targeting its outreach to MWBE and Veteran owned firms in the marketplace, notify firms that may be capable of doing the work and encourage them to certify and participate.

To effectively administer effective remedial programs, the City should first make several changes to its data maintenance processes because, if the data cannot be accessed or tracked properly, the City will not be able to ascertain the effectiveness of its efforts. Specifically, GSPC recommends that the City start consistently tracking awards and payments to MWBEs and Veterans both as prime and subcontractors. Additional recommendations include consistent and accurate use of commodity codes and vendor IDs, keeping track of bidders, and connecting payment data to contracts.

Finally, the City should comply with the five (5) steps of Contract Compliance:

- **Assessment** – An initial assessment of individual firm availability and capacity for specific scopes of work.
- **Outreach** – An ongoing campaign to let the MWBE and Veteran business communities know that the City wants to do business with them, and that the City is willing to work with firms to create opportunities and assist, particularly local firms in building capacity.
- **Certification/Verification** –the City should continue to encourage and assist firms in getting certified and should accept bona fide third-party certifications but should have audit rights with any non-governmental agencies, including the right to reject the City’s acceptance of a certification that it deems not sufficiently supported.
- **Procurement** – All applicable solicitation packages and awarded contracts should include the MWBE commitments as contract terms and City participation requirements, such as all firms performing commercially useful functions.
- **Tracking & Monitoring** – It is essential that there is close tracking and monitoring of vendor performance and the efficient closeout of projects to verify that MWBE and Veteran firms are performing the work that they contracted to perform and that they are compensated in a timely manner and in the amounts committed. Monitoring vendor performance should also assure equal and fair treatment on contracts.

In implementing any race or gender conscious programs or program elements, it is important for the City to consider the following:

- **Severability Clause**- GSPC recommends the inclusion of a severability clause in any race or gender program plan or ordinance so that if any provision is deemed unconstitutional it will not cause the whole plan or ordinance to be dismantled.
- **Sunset Provision**- If any race or gender program plan or ordinance is implemented, it should have a defined end date or sunset provision. The program or ordinance would only be able to continue beyond the sunset date if a new factual predicate establishes a fresh need for race and gender remedies. GSPC recommends that a new factual predicate be established every 5-7 years.
- **Data Reform**- Data reforms should be considered as a priority to assure complete and reliable data to track and monitor the effectiveness of any remedial program elements.
- **Ethnic Classification**- Along with collecting minority status, requesting national or ethnic identities as part of any certification or diversity directory will allow the City to see if there are any particularized shared experiences.

## END NOTES

1. 488 U.S. 469; 109 S. Ct. 706; 102 L. Ed. 2d 854 (1989).
2. See, for example, *Adarand Constructors, Inc. v. Slater (Adarand VII)*, 228 F.3d 1147, 1172-73 (10th Cir. 2000) (“Following the Supreme Court’s decision in *Croson*, numerous state and local governments have undertaken statistical studies to assess the disparity, if any, between availability and utilization of minority-owned businesses in government contracting.”).
3. *Croson*, at 485-86
4. See e.g., *Boston’s Children First v. City of Boston*, 395 F.3d 10 (1st Cir. 2005) (school choice/access); *Stuart v. Roache*, 951 F.2d 446 (1st Cir. 1991) (police promotion).
5. *Stuart v. Roache*, 951 F.2d at 449 (citing *Croson* and the strict scrutiny standard).
6. G.L., Ch. 30B, § 18.
7. *Id.*, at § 18(b)..
8. Excludes construction-related professional services.
9. The sources for the Master Vendor File were the City of Cambridge Prime Payments, City of Cambridge Awards, City of Cambridge Vendor Lists, City of Cambridge Bid Tabulations, COMMBUY Index, the Federal System for Award Management, and the Rhode Island Veterans Certified Business Directory.
10. For purposes of GSPC’s analysis, only certified firms were counted as MWBEs.
11. Using Integrated Public Use Microdata Series (“IPUMS”), International, the world’s largest collection of publicly available individual-level census data.



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