

ORDINANCE NO. 5983

AN ORDINANCE relating to the procurement of goods and services by King County from minority business enterprises and women's business enterprises, establishing requirements for ensuring full and equitable opportunities for such business to provide goods and services to King County and repealing Ordinance Number 5700.

PREAMBLE:

The King County Council finds and the County Executive recognizes minority business enterprises and women's business enterprises have been denied equitable competitive opportunities due to societal discrimination and other factors. These findings of fact are set forth in attachment "A" and incorporated as if fully set forth in this ordinance. Having determined that the interest and general welfare of the county would be served by making vigorous efforts to extend business opportunities to minority business enterprises and women's business enterprises, the King County Council and the King County Executive declare that vigorous and affirmative steps are both required and shall be put forth by all levels of King County government to assure equal opportunity in the letting of King County contracts.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. DEFINITIONS.

All words shall have their ordinary and usual meanings except those defined in this section which shall have in addition the meaning set forth below. In the event of conflict, the specific definition spelled out below shall presumptively, but not conclusively prevail.

A. "Affirmative Action Plan," shall mean the written, formal King County policy adopted annually, which includes the goals and programs of County government to be performed in the areas of contract compliance, equal employment opportunity and minority/women's business contracting.

B. "Affirmative Efforts," shall mean making vigorous attempts in good faith to contact and contract with minority/women's businesses. Where affirmative efforts are required by, or are grounds for waiving provisions of this ordinance, the County Administrative Officer's determination shall be based on procedures to be outlined in accordance with the dictates of this

1 ordinance.

2 C. "Architectural and Engineering Contracts" shall mean
3 contracts for the performance of architectural and engineering
4 services by licensed and registered firms and persons acting as
5 consultants to King County.

6 D. "Certification" shall mean the process by which a
7 business is determined to meet the criteria for a bona fide
8 minority/women's business as set forth in this ordinance.

9 E. "Commercially Useful Function," shall mean the
10 performance of real and actual services in the discharge of any
11 contractual endeavor. Minority/women's businesses must perform
12 such functions to be eligible for any and all advantages conferred
13 by this ordinance.

14 F. "Concession Contracts," shall mean those contractual
15 arrangements for the sale of food, beverages and/or items of
16 personal property at any facility owned and/or managed by King
17 County.

18 G. "Construction Contracts," shall mean, those contractual
19 arrangements made by King County for the construction, repair,
20 rehabilitation, alteration, conversion or extension of buildings,
21 parks, streets or other improvements to real property.

22 H. "Consultant Contracts," shall mean those contractual
23 arrangements made for the procurement of expert personal,
24 professional and/or technical services. Consultant contracts
25 shall not include architectural and engineering contracts as
26 defined by this ordinance.

27 I. "Contract Awarding Authority," shall mean any person with
28 the power to enter into a contractual arrangement binding King
29 County and shall also mean the particular office, agency or
30 division on whose behalf the contract is entered. In addition,
31 this term shall include, but shall not be limited to heads of
32 county departments, divisions or offices.

33 J. "Contractor" shall mean any person, partnership,
corporation, or other type of business entity which has a contract

1 with King County or serves in a subcontracting capacity with an
2 entity having a contract with King County for the provision of
3 goods and/or services.

4 K. "Department," shall refer to any department as defined by
5 King County ordinance or other applicable law and shall include
6 all county agencies not associated with a department. These
7 agencies shall similarly discharge those duties this ordinance
8 requires of departments and shall include the King County
9 Prosecuting Attorney, the King County Assessor, and the King
10 County Council.

11 L. "Joint Venture," shall mean an association of two or more
12 persons, partnerships, corporations or any combination of them,
13 established to carry on a single business activity which is
14 limited in scope or direction. The degree to which a joint
15 venture may satisfy relevant utilization goals cannot exceed the
16 proportionate interest of the minority/women's business held as a
17 member of the joint venture in the work to be performed. The
18 agreement establishing the joint venture, partnership or other
19 multi-entity relationship shall be in writing. Further,
20 minority/women's participation in a joint venture shall be based
21 on the sharing of real economic interest in the venture and shall
22 include proportionate control over management, interest in capital
23 acquired by the joint venture, and interest in earnings.

24 M. "Legitimately Owned and Controlled," shall mean for the
25 purposes of determining whether a business is a "minority
26 business" and/or a "women's business" that women, minorities or a
27 combination thereof shall possess:

28 1. Ownership of at least fifty one percent interest in the
29 business;

30 2. Control over management, interest in capital, interest
31 in profit or loss and contributions to capital, equipment or
32 expertise that are commensurate with the percentage of ownership
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1 on which the claim of minority/women-owned status under this
2 ordinance is based.

3 3. Ownership and control shall be measured as though not
4 subject to the community property interest of a spouse if both
5 spouses certify that:

6 a. Only one spouse participates in the management of the
7 business; and

8 b. The nonparticipating spouse relinquishes control over
9 his/her community property interest in the subject business.

10 N. "Minority Business," means an incorporated or
11 unincorporated business other than a joint venture organized to
12 engage in commercial transactions, which is legitimately owned and
13 controlled by a minority person or persons. The ownership
14 interests shall be real and continuing and control over management
15 interest in capital acquired by the business, and interest in
16 earnings shall be commensurate with the percentage of ownership
17 upon which the claim of Minority Business Enterprise status is
18 based.

19 O. "Minority Person," shall mean any ethnic person who is a
20 resident of the United States or its territories, including
21 Asians/ Pacific Islanders, persons of African descent, Hispanics
22 and Native-Americans/Alaskan Natives.

23 P. "Nonprofit Corporation" shall mean a corporation
24 organized pursuant to R.C.W. Ch. 24.03. In the case of nonprofit
25 corporations organized under the laws of a state other than
26 Washington, a nonprofit corporation shall mean one organized for
27 one or more of the purposes set forth in R.C.W. 24.03.015 and
28 meeting the definitions in R.C.W. 24.03.005.

29 Q. "Percentage Factor" shall mean the special ranking
30 factors established by this ordinance to be applied in certain
31 competitive bid situations where minority/women's businesses
32 respond to solicitations or are included as subcontracts in
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1 responding parties' responses to solicitations.

2 R. "Purchasing Contracts," shall mean, but not limited to,
3 those contracts which are awarded by the Purchasing Division as
4 the representative of King County, or any contract awarded by Kin
5 County for the purchase of tangible goods.

6 S. "Responding Party," shall mean, any person, partnership,
7 corporation or business entity which makes a proposal as defined
8 in this ordinance in response to a solicitation as defined in thi
9 ordinance.

10 T. "Service Contracts," shall mean, those contracts for
11 technical, professional or other work performed by a vendor, such
12 as the making of repairs, servicing, maintenance and/or cleaning,
13 and which does not involve the provision of substantial tangible
14 items such as materials, supplies or equipment. For the purposes
15 of this ordinance, the term "service contracts" shall not include
16 construction, rental or leasing of equipment or the traditional
17 professional services such as consulting, legal services,
18 feasibility studies and design studies.

19 U. "Set Aside," shall mean that proportion of each contract
20 awarding authority's annual expenditure for contract goods and
21 services which equals the contract awarding authority's annual
22 goals for participation of minority/women's businesses as
23 established by this ordinance.

24 V. "Solicitation," shall mean a contract awarding
25 authority's request for the provision of any one or more of the
26 following: goods and services of any kind, equipment leases, and
27 rentals/purchase of space. Solicitations shall include requests
28 for proposals, invitations to bid and similar items.

29 "Solicitation specifications," shall mean any documents,
30 literature or other information accompanying a solicitation which
31 provides additional data regarding the contract awarding
32 authority's request.

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1 W. "Utilization Goals," shall mean those separately
2 designated annual goals for the use by King County of minority/
3 women's businesses. The goals shall be expressed as a numerical
4 percentage of the total dollar value of all contracts to be
5 awarded by the county. These goals shall be applicable to
6 businesses organized for profit, along with governmental agencies
7 and quasi-governmental agencies, unless the agencies are
8 specifically excepted by or in accordance with the provisions of
9 this ordinance.

10 X. "Utilization Requirements," shall mean those efforts
11 which responding parties, King County and the particular
12 department shall make to meet the county's utilization goals,
13 including but not limited to the percentage factors and set aside
14 requirements established by this ordinance.

15 Y. "Violating Party," shall mean a person or entity which
16 has violated a provision or provisions of this ordinance.

17 Z. "Waiver Statement," shall mean a written statement
18 directed to the County Administrative Officer containing reasons
19 why any provision or provisions of this ordinance shall not apply
20 to a particular person, partnership, corporation, business entity,
21 contract awarding authority, department, or other entity. Where a
22 waiver or waivers are granted, the utilization goals shall be
23 applied in a manner so as to reflect the loss of the monetary
24 value of those contracts exempted from the requisites of this
25 ordinance.

26 AA. "Women's Business," means an incorporated or
27 unincorporated business other than a joint venture organized to
28 engage in commercial transactions, which is legitimately owned and
29 controlled by a woman or women who is (are) residents of the
30 United States or its territories. The ownership interests shall
31 be real and continuing, and control over management, interest in
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1 capital acquired by the business, and interest in earnings shall
2 be commensurate with the percentage of ownership upon which the
3 claim of women's business status is based.

4 SECTION 2. POWERS AND DUTIES.

5 A. In addition to the powers and duties given to the King
6 County Executive elsewhere in this Ordinance, the Executive shall
7 through the County Administrative Officer have responsibility for
8 administering, monitoring and enforcing the goals and requirement
9 identified in this ordinance:

10 B. In addition to the powers and duties given the County
11 Administrative Officer elsewhere in this ordinance, the County
12 Administrative Officer shall:

13 1. Establish rules, regulations, and procedures for
14 implementing and administering this ordinance;

15 2. Recommend to the King County Executive annual
16 utilization goals for King County;

17 3. Have the authority to enter into cooperative agreements
18 with other government agencies concerned with increasing the
19 participation of minority/women's businesses in government
20 contracting;

21 4. With the advice of contract awarding authorities,
22 formulate and periodically update a plan to make minority/women's
23 businesses aware of contracting opportunities with King County; and

24 5. Review all King County solicitation lists and where
25 possible, place minority/women's businesses on such lists. These
26 lists shall be updated periodically.

27 SECTION 3. UTILIZATION GOALS.

28 A. On or before the first day of January of each year, the
29 County Administrative Officer shall submit to the King County
30 Executive for approval proposed utilization goals for King County
31 for that calendar year. Separate utilization goals shall be
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1 established for the use of minority businesses and for the use of
2 women's businesses. These utilization goals shall be established
3 separately for each of the following types of contracts:
4 architectural and engineering contracts, concession contracts,
5 construction contracts, consultant contracts, and purchasing and
6 service contracts. The utilization goals shall be made part of
7 King County Affirmative Action Plan and shall be transmitted with
8 the plan to the King County Council for its approval. Existing
9 utilization goals shall remain in effect until newly submitted
10 ones receive final King County Council approval.

11 1. The utilization goals shall be reasonably achievable.
12 To the extent that relevant information is available, the
13 following factors shall be used in establishing the utilization
14 goals:

15 a. Statistical indicators showing the denial of
16 equitable competitive opportunities to minority/women's businesses

17 b. The level of participation of minority/women's
18 businesses in past contracts awarded by the county;

19 c. Other information received from departments as
20 required by this ordinance;

21 d. The level of minority/women's business participation
22 in contracts awarded in the Seattle Metropolitan Statistical Area;

23 e. The level of participation recommended by govern-
24 mental agencies and private agencies operating in the Seattle
25 Metropolitan Statistical Area whose purpose is to promote the use
26 of minority/women's businesses;

27 f. The population of minorities and women in King County

28 g. The number of minority/women's businesses in the
29 Seattle Metropolitan Statistical Area as identified by the County
30 Administrative Officer;

31 2. The proposed utilization goals shall be accompanied by
32 a statement which shall identify the factors in this subsection
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1 and any other factors used in formulating the proposed utilization
2 goals.

3 B. Each department shall annually formulate a contract
4 forecast estimating the number, probable monetary value, (if
5 known), type of contracts and the estimated solicitation date for
6 the contracts the department expects to award along with any
7 waivers it expects to request in the upcoming year. In addition
8 an implementation plan describing how the particular department
9 will accomplish its utilization goals shall be formulated. On or
10 before December 15th of each year, each department will submit
11 these documents to the County Administrative Officer.

12 C. The utilization goals for the remainder of 1982 and until
13 such time as new goals are established are as follows:

- 14 1. Architecture and engineering contracts - Minorities 12%
15 Women 3%
- 16 2. Concession contracts - Minorities 1%, Women 1%
- 17 3. Construction contracts - Minorities 11%, Women 4%
- 18 4. Consultant contracts - Minorities 15%, Women 9%
- 19 5. Purchasing and service contracts - Minorities 5% Women
20 3%

21 Each utilization goal represents a minimum percentage of the
22 dollars paid annually by each contract awarding authority to
23 minority/women's businesses.

24 SECTION 4. ACCOMPLISHMENT OF UTILIZATION GOALS.

25 A. For all contracts, accomplishment of utilization goals
26 established by this ordinance shall be based on the dollar amount
27 of the contract in question. Accomplishment of the goals shall
28 be calculated in the following manner:

29 1. General--The dollar value of any and all contracts
30 awarded by a contract awarding authority to a minority/women's
31 business shall be counted towards accomplishment of the applicable
32 utilization goals.
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1 a. The total dollar value of each contract awarded to a
2 business owned and controlled by both minority males and
3 non-minority females shall be apportioned on the basis of the
4 percentage of ownership to the utilization goals for minorities
5 and women respectively.

6 b. The total dollar value of a contract with a minority,
7 women's business owned and controlled by minority women shall be
8 either counted toward the minority utilization goal or the goal
9 for women, or apportioned on the basis of ownership between
10 minorities and women, not to both.

11 2. Subcontracts--If a contractor, uses subcontractors who
12 are minority/women's businesses, the amount of money which is
13 given to the minority/women's business for their work on the
14 contract shall be credited towards meeting the applicable
15 utilization goals.

16 3. Joint Ventures--Where one or more minority/women's
17 businesses are participants in a joint venture with one or more
18 non-minority or non-women's businesses, the amount of money
19 received by the minority/women's business enterprise shall be
20 calculated in proportion to their participation in the joint
21 venture in accomplishing the applicable utilization goals.

22 4. Supplies/Materials--The contract awarding authority or
23 a prime contractor may count toward its utilization goals
24 expenditures for materials and supplies obtained from minority/
25 women's business suppliers and manufacturers; provided that, the
26 minority/women's business assume the actual and contractual
27 responsibility for the provision of the materials and supplies.

28 a. King County may count its entire expenditure made to
29 a minority/women's business manufacturer; that is, a supplier that
30 produces goods from raw materials or substantially alters them
31 before resale.

32 b. King County may count the amount of the commission
33 paid to minority/women's business suppliers and resulting from a

1 particular contract with the county, provided that a minority/
2 women's business supplier performs a commercially useful function
3 in the process.

4 B. The County Administrative Officer shall calculate the
5 accomplishment of utilization goals for King County. In the event
6 of disputes regarding these calculations, a department may request
7 review of the County Administrative Officer's decision by the King
8 County Executive.

9 C. After having met their annual utilization goals depart-
10 ments shall continue to make affirmative efforts to do business
11 with minority/women's businesses.

12 D. The failure of a department or King County to meet the
13 annual dollar utilization goals established from time to time by
14 this ordinance shall not constitute grounds for a lawsuit against
15 a department or the County, provided that the department or the
16 County has made affirmative efforts to meet those goals. The
17 failure of a department to meet the requirements of this ordinance
18 shall be reviewed by the King County Executive and corrective
19 action taken where appropriate.

20 SECTION 5. UTILIZATION REQUIREMENTS, GENERAL.

21 A. In order to meet the utilization goals established in
22 accordance with this ordinance, efforts including but not limited
23 to the following shall be made:

24 1. Under the auspices of the King County Administrative
25 Officer, a technical assistance and outreach program shall be
26 established.

27 2. Prior to entering into any contract, the contract
28 awarding authority shall:

29 a. Make affirmative efforts to solicit proposals from
30 minority/women's businesses;

31 b. Examine alternatives for arranging contracts by size
32 and type of work so as to enhance the possibility of participation
33 by minority/women's businesses.

1 3. Prior to submitting any bid, proposal, or other
2 response to a solicitation for which subcontractors may be used,
3 responding parties shall make good faith affirmative efforts to
4 contact, solicit bids and proposals from, and use minority/
5 women's businesses.

6 4. The following shall be included in the body of the
7 contract document in any and all contracts signed between a
8 contract awarding authority and a contractor:

9 a. A provision indicating that this ordinance is
10 incorporated by reference into any and all King County contracts
11 and failure to comply with any of the requirements of the
12 ordinance by a contractor will be considered a breach of contract.

13 b. A requirement that during the term of the contract
14 the contractor shall comply with, as to tasks and dollar amounts
15 throughout the term of the contract, all plans made in their
16 proposal for the use of minority/women's businesses. In the
17 absence of a waiver, minority/women's businesses which for any
18 reason no longer remain associated with the contract or the
19 contractor shall be replaced with other certified minority/women's
20 businesses.

21 c. A provision prohibiting any agreements between a
22 responding party and a minority/women's business in which the
23 minority/women's business promises not to provide subcontracting
24 quotations to other responding or potential responding parties.

25 SECTION 6. UTILIZATION REQUIREMENTS, SPECIFIC

26 A. In order to expedite achieving of the utilization goals
27 established in accordance with this ordinance, the following
28 utilization requirements shall apply to all competitive bids and
29 other responses to solicitation:

30 1. For all purchasing, service, and concession contracts,
31 the following percentage factor shall be used in determining which
32 responding party is the responsive bidder:
33

1 a. Where a contract does not require and/or responding
2 parties do not plan to use subcontractors, suppliers or similar
3 assisting roles, responding parties whose bids are within five
4 percent of the bid made by the lowest bidder shall be ranked as
5 follows:

6 First, Minority/women's businesses.

7 Second, Non-minority/non-women's businesses.

8 b. Where a contract requires the use of subcontractors,
9 suppliers or similar assisting roles, responding parties whose
10 bids are within five percent of the bid made by the lowest bidder
11 shall be ranked in the following order:

12 First, minority/women's businesses which use minority/
13 women's businesses as subcontractors, suppliers or in similar
14 assisting roles.

15 Second, minority/women's businesses which perform at least
16 fifteen percent of the dollar value of a contract and do not use
17 minority/women's businesses as subcontractors, suppliers, or in
18 similar assisting roles;

19 Third, non-minority/non-women's businesses which use
20 minority/women's businesses as subcontractors, suppliers, or in
21 similar assisting roles.

22 Fourth, non-minority/non-women's businesses which do not
23 use minority/women's businesses as subcontractors, suppliers, or
24 in similar assisting roles.

25 c. Where a contract could require the use of
26 subcontractors, suppliers or similar assisting roles and some
27 responding parties make use of such and others do not, responding
28 parties whose bids are within five percent of that made by the
29 lowest bidder shall be ranked as set forth in subsection a. and b,
30 of this Section 6 A. 1., except the highest ranking shall go to
31 the minority/women's businesses which do not use subcontractors,
32 suppliers, or similar assisting roles and the lowest ranking to
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1 non-minority/non-women's businesses which do not use minority/
2 women's subcontractors, suppliers, or similar assisting roles.

3 d. All responding parties within each particular ranking
4 shall be grouped according to the amount of their bid, with low
5 bidders receiving the highest priority. The lowest bidder within
6 the highest ranking category shall be awarded the contract in
7 question. In the event two or more responding parties qualify for
8 award of the contract in question, they shall be notified and
9 allowed the opportunity to resubmit their bids. The lowest bidder
10 shall then be awarded the contract.

11 2. For every construction, architectural and engineering,
12 and consultant contracts the following set aside requirements
13 shall be met:

14 a. Contracts for construction, consultant, and
15 architectural/engineering services, the estimated cost of which
16 exceeds ten thousand dollars shall require responding parties to
17 include in their responses to solicitations both minority and
18 women's business participation in the contract in a percentage
19 which equals the contract awarding authority's annual goals.

20 b. Where a contract is awarded to a minority or women's
21 business, the set aside requirements of these subsections shall
22 not apply.

23 c. As part of the bid package, all responding parties
24 shall identify the dollar amount of minority/women's business
25 participation. All responding parties shall also identify the
26 particular minority/women's businesses to be used in performing
27 the contract, specifying for each the dollar value of the
28 participation, the type of work to be performed, and other
29 information as may reasonably be required to determine the
30 responsiveness of the bid or proposal; provided that, for bids on
31 construction contracts, this information shall be submitted no
32 later than the close of the first King County business day after
33 bid opening.

1 d. During the term of the contract, any failure to
2 comply with the levels of minority/women's business participation
3 identified in the bid or proposal shall be considered a material
4 breach of contract.

5 B. Where this Section 6 specifies that a set aside or a
6 percentage factor shall be used for a particular type of contract
7 the method specified is the preferred method for achieving the
8 utilization goals. A department may use the other method in its
9 solicitation documents for a specific contract if it determines
10 that a method other than the one established by this Section 6
11 will be a more feasible method of achieving the annual utilization
12 goal. In the event that a department chooses to use a method
13 other than the one specified in this Section 6, it shall include
14 in its annual report to the Executive as required by Section 8.D
15 of this ordinance, documents demonstrating that a method other
16 than the one established by this Section 6 is a more feasible
17 method of achieving the annual utilization goal.

18 C. All solicitation documents shall include the applicable
19 requirements of this Section 6. Bids, proposals, and other
20 responses which fail to meet the requirements of this Section 6
21 shall, within the limitations of federal and state law, be deemed
22 non-responsive unless a waiver has been granted pursuant to
23 Section 7 of this ordinance.

24 D. The percentage factor and set aside requirements of this
25 Section 6 shall not apply to contracts awarded for the remainder
26 of any calendar year in which the contract awarding authority is
27 determined by the County Administrative Officer to Have met the
28 applicable County utilization goals as established by this
29 ordinance. The percentage factor and set aside provisions of this
30 Section 6 shall again apply in each succeeding calendar year until
31 the annual utilization goals for that year have been met by the
32 contract awarding authority.
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1 E. The requirements of this Section 6 shall cease to apply
2 to contracts awarded by King County and its departments on
3 December 31, 1987, unless reenacted by the King County Council.

4 SECTION 7. WAIVERS.

5 Contract awarding authorities, along with or on behalf of
6 responding parties and contractors, may apply for waiver of one or
7 more requirements of this ordinance as they apply to a particular
8 contract or contracts.

9 A. Waivers may be granted by the County Administrative
10 Officer in any of the following circumstances:

11 1. When the needed goods and services are readily
12 available from only one source, in which case the contracting
13 awarding authority shall, in addition to the requirements
14 contained in Ordinance No. 4551, K.C.C. 4.16.030, submit a written
15 justification of the need for sole source treatment to the County
16 Administrative Officer who shall grant or deny the request for
17 waiver within three business days;

18 2. Emergencies, in which case emergency contracting shall
19 be handled in accordance with the requirements of Ordinance No.
20 4551, K.C.C. 4.16.040.

21 3. Contracts for which neither a minority nor a women's
22 business is available to provide needed goods or services, in
23 which case a waiver may be applied for in accordance with
24 procedures to be developed by the County Administrative Officer.
25 Prior to granting a waiver, the County Administrative Officer
26 shall certify that a minority/women's business is in fact not
27 available to provide the needed goods and/or services.

28 4. Contracts awarded to non-profit organizations,
29 governments and governmental organizations other than King County,
30 including but not limited to municipal corporations, consortiums
31 and association of governmental agencies or officials and agencies
32 created by interlocal agreement, per R.C.W. 39.34, or by operation
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1 of state or federal law; where because of a responding party's
2 non-profit status, ownership of the corporation or other entity
3 cannot be determined. However, solely with the exception of
4 contracts between King County and cities and towns where King
5 County is the grantee for federal or state funds passed through
6 such jurisdictions, the waiver shall not apply to those profit-
7 making contractors which contract with the referenced responding
8 parties.

9 B. Where the Executive determines that the reasonable and
10 necessary requirements of a contract render subcontracting or
11 other participation of businesses other than a responding party
12 unfeasible, he/she may grant a waiver from the set aside
13 provisions of this ordinance; PROVIDED THAT, the waiver shall not
14 be granted after the solicitation request has been publicly
15 released by the contract awarding authority; PROVIDED FURTHER
16 THAT, the solicitation specifications shall state that the waiver
17 has been authorized and that solicitations received, proposing
18 subcontracting or other participation of business other than the
19 responding party, shall be rejected as non-responsive; PROVIDED
20 FURTHER THAT, following award of the contract, should subcon-
21 tracting or participation of businesses other than the responding
22 party become necessary, the previously authorized waiver shall be
23 null and void. The contractor (original responding party) shall
24 solicit both minority and women business participation in a
25 percentage which equals the contract awarding authority's annual
26 goal.

27 C. Where the Executive determines that compliance with the
28 requirements of this ordinance would impose an unwarranted
29 economic burden on, or risk to, King County as compared with the
30 degree to which the purposes and policies of this ordinance would
31 be furthered by requiring compliance; he/she may reduce or waive
32 the utilization requirements of this ordinance;

33 PROVIDED THAT upon taking such action, the King County

1 Executive shall notify the members of the King County Council in
2 writing and FURTHER PROVIDED, upon receipt of the notice, if the
3 King County Council determines that the waiver does not meet the
4 standards of this section, the King County Council may by motion,
5 within ten working days of the receipt of the notice determine th
6 waiver to be null and void.

7 SECTION 8. MONITORING, REPORTING, AND ENFORCEMENT

8 A. The County Executive, through the County Administrative
9 Officer, shall have the responsibility for monitoring
10 implementation of the requirments of this ordinance and shall have
11 the power to request from departments, responding parties and/or
12 contractors any relevant records, information and documents.

13 B. Contract awarding authorities, with the assistance of the
14 County Administrative Officer, shall keep complete and detailed
15 records regarding compliance with this ordinance. The records
16 shall include the dollar value and the subject matter of each
17 contract along with the name of the contractor, the participation
18 levels; (in dollars, number of contracts awarded, and type of
19 work), of minority/business women's businesses where the contract
20 award provides for participation, and other information as the
21 County Administrative Officer deems necessary.

22 C. The County Administrative Officer shall be responsible
23 for gathering all information concerning compliance with this
24 ordinance and shall have access to all pertinent King County
25 records.

26 D. With the assistance of the County Administrative Officer,
27 each department shall submit to the King County Executive an
28 annual report on its performance in meeting the utilization goals
29 required by this ordinance. This report shall include the number
30 and dollar amount of contracts awarded; the number and dollar
31 amount of contracts with minority/women's business participation;
32 the number of contracts which involved the use of subcontractors,
33 suppliers or similar assisting roles; the number of minority/

1 women's businesses used in such roles; the number, type, and
2 dollar amount of contracts awarded pursuant to the percentage
3 factor and set aside provisions of this ordinance; and the basis
4 on which the department determined that a method other than the
5 one specified in Section 6 of the ordinance should be used. The
6 report shall also identify problems in meeting the requirements
7 this ordinance, if any, and suggestions for improvements.

8 E. Certification Process.

9 1. The County Administrative Officer shall certify those
10 businesses which are bona fide minority/women's businesses as
11 defined in this ordinance. For purposes of certification, lists
12 and documents compiled by other governmental agencies, sworn
13 statements, employment profiles, and other information deemed
14 reliable may be used upon approval of the County Administrative
15 Officer.

16 2. No contract requiring or proposing minority/women's
17 business participation may be entered into unless all
18 minority/women's businesses identified to meet the utilization
19 goals by a responding party have been certified. Lists of
20 certified minority/women's businesses shall be provided to all
21 departments and made available to the public.

22 3. The County Administrative Officer shall use his/her
23 best efforts to coordinate King County's certification process
24 with the appropriate officers of other governmental entities in
25 order to reduce duplication of effort and shall make available to
26 the public a designation of certification lists which will be
27 acceptable to King County.

28 F. Upon receipt of a written and signed allegation that an
29 contractor, subcontractor, or vendor has violated any provision
30 this ordinance, or if a violation is discovered from information
31 gained through compliance monitoring, the County Administrative
32 Officer, shall order an investigation. If there is probable cau-
33 to believe that a violation has occurred, the County Administra-

1 tive Officer or his/her designee will, upon ten days' written
2 notice to the alleged violating party, conduct a hearing to
3 determine whether a violation has occurred. The hearing shall be
4 recorded and each party shall have the right to call and examine
5 witnesses, to produce documentary and physical evidence, to
6 cross-examine witnesses, and to be represented by anyone of
7 his/her choice lawfully permitted to do so. The parties shall
8 include the complainant, if any, the alleged violating party, and
9 a representative of the County Administrative Officer or the
10 agency conducting the investigation. The County Administrative
11 Officer may suspend progress payments on a contract pending the
12 outcome of the hearing. Unless otherwise agreed to by all
13 parties, the hearing shall be commenced no later than twenty-one
14 days after service of a written notice of violation.

15 G. After the hearing, the County Administrative Officer,
16 shall make written findings and conclusions and shall order one or
17 more of the following:

18 1. Dismissal of the complaint when a violation is found
19 not to have occurred;

20 2. Suspension or cancellation of the contract in part or
21 in whole;

22 3. Disqualification of the violator

23 4. Exclusion of the violator from future contracts or
24 vending until demonstration of compliance;

25 5. Liquidated damages of up to ten per cent of the
26 contract award;

27 6. Enforcement of any provision of the contract providing
28 remedies, such as penalties or liquidated damages for violation of
29 contractual provisions, or enforcement of any other remedy
30 available under the laws of King County.

31 H. Upon receipt of a written and signed allegation that any
32 contract awarding authority has violated any provision of this
33 ordinance, or if a violation is discovered from information gained

1 through compliance monitoring, the King County Executive shall
2 order an investigation. If there is probable cause to believe
3 that a violation has occurred, the Executive or his/her designee
4 will, upon ten days written notice to the alleged violating party,
5 conduct a hearing to determine whether or not a violation has
6 occurred. The hearing shall be recorded and each party shall have
7 the right to call and examine witnesses, to produce documentary
8 and physical evidence, to cross-examine witnesses, and to be
9 represented by anyone of his/her choice lawfully permitted to do
10 so. The parties shall include the complainant, if any, the
11 alleged violating party, and a representative of the Executive or
12 the agency conducting the investigation. Unless otherwise agreed
13 to by all parties, the hearing shall be commenced no later than
14 twenty-one days after service of a written notice of violation.

15 I. After the hearing, the King County Executive shall make
16 written findings and conclusions and shall order one or more of
17 the following:

18 1. Dismissal of the complaint when a violation is found
19 not to have occurred;

20 2. Corrective personnel action;

21 3. Disqualification and suspension of authority of all
22 members, any board, commission, or other body constituting the
23 violating contract awarding authority;

24 4. Enforcement of any other remedy available under the
25 laws of King County.

26 J. Any person, firm, corporation, business, union, or
27 organization which prevents or interferes with a contractor and/o
28 subcontractor's efforts to comply with the requirements of this
29 ordinance or which submits false or fraudulent information to any
30 King County department or employee concerning compliance with this
31 ordinance shall be subject to a civil penalty of up to five
32 thousand dollars for each occurrence, King County having
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1 previously complied with the notice and hearing provisions of th
2 ordinance.

3 SECTION 9. SPECIAL REPORT REQUIRED In addition to the
4 Executive's proposing minority/women's business contracting goal
5 and programs in the required annual Affirmative Action Plan, six
6 months from the effective date of this ordinance, a report shall
7 be submitted to the Council detailing performance of the program
8 at a minimum, the report shall:

9 A. Provide statistical evidence, supported by a narrative
10 explanation where appropriate, showing contracts awarded to
11 minority/women's business, by type of contract, dollar value, and
12 contract awarding authority;

13 B. If any contractor, contract awarding authority,
14 department, has been granted a waiver from the provisions of this
15 ordinance, identifying the specific contract or bid process,
16 parties involved and the reasons for the waiver's approval.

17 C. As appropriate, identify actions taken, by individual
18 case, where it has been alleged that a contractor, subcontractor,
19 vendor or contract awarding authority has violated the provisions
20 of this ordinance.

21 D. Recommend, with amendments to the ordinance and findings
22 of fact as appropriate, whether or not the handicapped should be
23 added to the ordinance as a category of owned and operated
24 business. Further, recommend whether the ordinance should be
25 amended so as to apply to the economically disadvantaged;

26 E. Recommend whether utilization goals for each year shall
27 be included in the County Affirmative Action Plan for submission
28 to the Council for approval subsequent to the first day of January
29 of that year, and not later than the first day of March of that
30 year as provided in Section 3 of this ordinance; or proposed
31 utilization goals should be developed in conjunction with the
32 preparation of the budget for the forthcoming year and be
33 submitted with the proposed budget for Council approval.

1 F. As appropriate, recommend amendments to the ordinance,
2 substantiated by fact, designed to accomplish overall program
3 goals in a cost-effective manner.

4 SECTION 10. AUTHORIZATION TO IMPLEMENT PROCEDURES. The
5 County Executive is authorized to implement such forms,
6 administrative processes, and operational procedures as are
7 necessary to comply with the provisions of this chapter; provided
8 that such forms, processes and procedures shall be promulgated in
9 compliance with Chapter 2.98; Rules of County Agencies.

10 SECTION 11. EFFECT OF ORDINANCE, STATUS OF SOLICITATIONS.
11 The provisions of this ordinance shall apply to all contracts for
12 which a solicitation is released after the effective date of this
13 ordinance.

14 SECTION 12. REPEALER. King County Ordinance 5700 is hereby
15 repealed.

16 SECTION 13. SEVERABILITY.

17 The provisions of this ordinance shall be effective in all
18 cases unless otherwise provided for by State or Federal Law. The
19 provisions of this ordinance are separate and severable. The
20 invalidity of any clause, sentence, paragraph, subdivision,
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1 section, or portion of this ordinance or the invalidity of the
2 application thereof to any person or circumstances shall not
3 affect the validity of the remainder of this ordinance, or the
4 validity of its application to other persons or circumstances.

5 INTRODUCED AND READ for the first time this 25th day
6 of January, 1982.

7 PASSED this 10th day of May, 1982.

8 KING COUNTY COUNCIL
9 KING COUNTY, WASHINGTON

10
11 Lois North
12 Chairman

13
14 ATTEST:

15
16 Donna M. Owens

17 DEPUTY Clerk of the Council

18 approved this 20th day of May, 1982.

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20 Randy Revell
21 King County Executive
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ATTACHMENT A TO ORDINANCE 5983

KING COUNTY MINORITY/WOMEN'S BUSINESS ORDINANCE

Justification Statement

I. HISTORICAL FINDINGS

Minority and women-owned businesses are underrepresented in King County. King County's population is 12.0% minority and 51% female. A 1977 ownership survey indicated, however, that only 6.1% of the businesses in King County were owned by minorities and 12.3% were owned by women. Minority businesses generated only 0.5% of the total gross revenues in King County. Women-owned businesses generated 0.8% of total gross revenues.

The experiences of the City of Seattle and the Municipality of Metropolitan Seattle (METRO) demonstrate that minority and women-owned firms are available in King County and have the expertise to perform work needed by King County in a variety of contract categories. Since passage of their minority and women's business enterprise ordinances, the experiences of the City of Seattle and METRO offer persuasive evidence of the need for mandatory (as opposed to "good faith") procedures. Both jurisdictions have experienced marked increases in the participation of minority and women-owned firms subsequent to the passage of those ordinances. The attached Table I documents these increases.

METRO uses a percentage factor to achieve its utilization goals. The City of Seattle uses a set-aside. Both procedures have proven to be effective tools for achieving greater levels of participation by minority and women-owned businesses. The percentage factor, however, is best applied to those contracts -- purchasing/service and concession contracts -- where cost is the primary consideration in a bid process. The set-aside is more appropriate for subcontracting situations -- construction, architectural/engineering, and consultant contracts. Since King County offers a variety of contracts, it is reasonable to employ both procedures, as appropriate, to increase minority/women's business participation.

II. UTILIZATION GOALS

- A. The attached Table I provides data on the actual participation of minority/women's businesses experienced by the City of Seattle, METRO, and King County, for the period 1979 through 1981 on consultant, construction, and purchasing/service contracts. Table I also includes data documenting King County's participation levels for architectural and engineering contracts.
- B. Ordinance 5983 specifies that, to the extent relevant information is available, the following factors shall be used in establishing the utilization goals:
- (1) Statistical indicators showing the denial of equitable competitive opportunities to minority/women's businesses;
 - (2) The level of participation of minority/women's businesses in past contracts awarded by King County;
 - (3) Other information received from departments as required by this ordinance;
 - (4) The level of minority/women's business participation in contracts awarded in the Seattle Metropolitan Statistical Area;
 - (5) The level of participation recommended by governmental agencies and private agencies operating in the Seattle Metropolitan Statistical Area whose purpose is to promote the use of minority/women's businesses;
 - (6) The population of minorities and women in King County; and
 - (7) The number of minority/women's businesses in the Seattle Metropolitan Statistical Area as identified by the County Administrative Officer.

C. The utilization goals in this Subsection C are presented by contract categories consistent with Ordinance 5983.

1. Architectural and Engineering (A&E) Contracts

- a. Recommended Goals: minority businesses 12%
women's businesses 3%

b. Supportive Data:

Ordinance 5983 establishes separate A&E utilization goals because A&E consulting services constitute a distinct technical/professional area in which there has been consistent underrepresentation of minority and women-owned businesses.

Because other units of government have not separated A&E contracts from other consultant contracts, data on A&E contracts are readily available only for King County. Nevertheless, data from other jurisdictions provide evidence of increasing participation of minority and women's businesses in all consultant contracts:

- (1) The City of Seattle documents increased participation levels for consultant contracts of 6% (1979) to 13.3% (1981) for minority businesses and 3.9% (1980) to 5.3% (1981) for women's businesses;
- (2) METRO documents increased participation levels for consultant contracts of 29% (1979) to 37.9% (1980-81) for minority businesses, and a 4% participation level for women's businesses for the same period; and
- (3) King County documents participation levels for A&E contracts of 32.8% for minority businesses and 4.6% for women's businesses during 1981.

The foregoing percentages for consultant contracts appear to warrant higher utilization goals than those proposed for A&E contracts. In considering past underrepresentation of minority and women-owned businesses within the A&E area of consultant services, however, these goals are realistic. King County's higher participation levels during 1981 are a direct result of Executive Order 2083 which mandates affirmative action in consultant contracts with specified minimum quarterly participation levels.

2. Concession Contracts

- a. Recommended Goals: minority businesses 1%
women's businesses 1%

b. Supportive Data:

These utilization goals are the same as those established in Ordinance 5700. They represent possible participation levels for parks concession contracts. Preliminary surveys indicate marginal availability of minority/women's businesses in this area. Kingdome Stadium concessions are not reflected in the above utilization goals. These concession contracts do not expire until 1985.

3. Construction Contracts

- a. Recommended Goals: minority businesses 11%
women's businesses 4%

b. Supportive Data:

Ordinance 5700 establishes utilization goals for construction contracts at 10% for minority businesses and 2% for women's businesses.

Recent empirical evidence indicates that both utilization goals should be raised to 11% for minority businesses and 4% for women's businesses. This recommendation is based upon the following data:

- (1) The City of Seattle documents increased participation levels of 7.6% (1979) to 14% (1981) for minority businesses and 4.2% (1980) to 4.6% (1981) for women's businesses;
- (2) METRO documents increased participation levels of 20.8% (1979) to 34% (1981) for minority businesses and a 5.7% participation level for women's businesses in 1981; and
- (3) Under only a "good faith effort" program, King County documents participation levels of 5% for minority businesses and 1.2% for women's businesses in 1981.

4. Consultant Contracts

- a. Recommended Goals:
- | | |
|---------------------|-----|
| minority businesses | 15% |
| women's businesses | 9% |

b. Supportive Data:

The recommendation to raise the utilization goal for minority businesses from the 12% established in Ordinance 5700 to 15% for consultant contracts is based on the following data:

- (1) The City of Seattle documents increased participation levels for consultant contracts of 6% (1979) to 13.3% (1981) for minority businesses and 3.9% (1980) to 5.3% (1981) for women's businesses;
- (2) METRO documents increased participation levels for consultant contracts of 29% (1979) to 37.9% (1980-81) for minority businesses, and a 4% participation level for women's businesses for the same period; and
- (3) King County documents participation levels for consultant contracts of 15% for minority businesses and 16.2% for women's businesses during 1981.

Although King County's 1981 experience with women's business participation has been high, all data taken in the aggregate do not justify raising the utilization goals for women-owned businesses.

5. Purchasing/Service Contracts

- a. Recommended Goals:
- | | |
|---------------------|----|
| minority businesses | 5% |
| women's businesses | 3% |

b. Supportive Data:

The recommended utilization goals for purchasing/service contracts are the same as those established in Ordinance 5700. The following data currently available do not justify raising these utilization goals for purchasing/service contracts:

- (1) The City of Seattle documents increased participation levels of 1.0% (1979) to 1.4% (1981) for minority businesses and 0.2% (1980) to 0.8% (1981) for women's businesses;
- (2) METRO documents increased participation levels of 2.9% (1979) to 4.2% (1981) for minority businesses and a 0.4% participation level for women's businesses in 1981; and
- (3) King County documents participation levels of 1.8% for minority businesses and 1.4% for women's businesses in 1981.

TABLE I

MINORITY/WOMEN'S BUSINESS PARTICIPATION BY CONTRACT CATEGORY
(City of Seattle, METRO, and King County)

	PERCENTAGE OF MINORITY BUSINESS PARTICIPATION			PERCENTAGE OF WOMEN'S BUSINESS PARTICIPATION		
	City of Seattle	METRO	King County	City of Seattle	METRO	King County
<u>A&E Contracts</u>						
1981	--	--	32.8	--	--	4.6
<u>Construction Contracts</u>						
1981(a)	14.0	34.0	5.0	4.6	5.7	1.2
1980	11.7	20.5	--	4.2	--	--
1979	7.6	20.8	--	--	--	--
<u>Consultant Contracts(b)</u>						
1981(a)	13.3	37.9(d)	15.0	5.3	4.0(d)	16.2
1980(c)	15.3		--	3.9		--
1979	6.0	29.0	--	--	--	--
<u>Purchasing Contracts</u>						
1981(a)	1.4	4.2	1.8	0.8	0.4	1.4
1980(c)	1.1	4.9	--	0.2	--	--
1979	1.0	2.9	--	--	--	--
<u>All Contracts</u>						
1981	11.0	6.5	2.1	3.7	0.7	3.7

- (a) The 1981 City of Seattle minority/women's business data are for the period July 1980-June 1981.
- (b) The consultant contracts category includes architectural and engineering (A&E) consultants.
- (c) The 1980 City of Seattle women's business data are only obtainable for the period July-December 1980 on consultant and purchasing contracts.
- (d) METRO data on consultant contracts are only obtainable for the 1980-1981 period.