

February 4, 1986  
7853A/CF/ssj

Introduced By: Sims  
Proposed No.: 86-31

ORDINANCE NO. 7512

AN ORDINANCE amending the definitions of "Legitimately Owned and Controlled" and "Minority Person", adding a new section defining a "Combination Minority and Women Business" and adding a new section relating to Kingdome Concessions, amending Ordinance 5983, Sections 1 and 6, and K.C.C. 4.18.010 and 4.18.060.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 5983, Section 1 and K.C.C. 4.18.010, is hereby amended to read as follows:

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, stating 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 chapter, the director, department of executive administration's determination shall be based on procedures to be outlined in accordance with the dictates of this chapter.

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

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

8 E. "Combination Minority and Women Business" means a  
9 business concern which is organized for profit, independent,  
10 performing a commercially useful function, and which is fifty  
11 percent owned and controlled by a minority male and fifty  
12 percent owned and controlled by a non-minority woman. Both  
13 owners must be lawful permanent residents of the United States.

14 ((E)) F. "Commercially Useful Function," shall mean the  
15 performance of real and actual services in the discharge of any  
16 contractual endeavor. Minority/women's businesses must perform  
17 such functions to be eligible for any and all advantages  
18 conferred by this chapter.

19 ((F)) G. "Concession Contracts," shall mean, those  
20 contractual arrangements for the sale of food, beverages and/or  
21 items of personal property at any facility owned and/or managed  
22 by King County.

23 ((G)) H. "Construction Contracts," shall mean, those  
24 contractual arrangements made by King County for the  
25 construction, repair, rehabilitation, alteration, conversion or  
26 extension of buildings, parks, streets or other improvements to  
27 real property.

28 ((H)) I. "Consultant Contracts," shall mean those  
29 contractual arrangements made for the procurement of expert  
30 personal, professional and/or technical services. Consultant  
31 contracts shall not include architectural and engineering  
32  
33

1 contracts as defined by this chapter.

2 ((I)) J. "Contract Awarding Authority," shall mean any  
3 person with the power to enter into a contractual arrangement  
4 binding King County and shall also mean the particular office,  
5 agency or division on whose behalf the contract is entered. In  
6 addition, this term shall include, but shall not be limited to  
7 heads of county departments, divisions or offices.

8 ((J)) K. "Contractor" shall mean any person, partnership,  
9 corporation, or other type of business entity which has a  
10 contract with King County or serves in a subcontracting  
11 capacity with an entity having a contract with King County for  
12 the provision of goods and/or services.

13 ((K)) L. "Department," shall refer to any department as  
14 defined by King County ordinance or other applicable law and  
15 shall include all county agencies not associated with a  
16 department. These agencies shall similarly discharge those  
17 duties this chapter requires of departments and shall include  
18 the King County prosecuting attorney, the King County assessor,  
19 and the King County council.

20 ((L)) M. "Joint Venture," shall mean an association of two  
21 or more persons, partnerships, corporations or any combination  
22 of them, established to carry on a single business activity  
23 which is limited in scope or direction. The degree to which a  
24 joint venture may satisfy relevant utilization goals cannot  
25 exceed the proportionate interest of the minority/women's  
26 business held as a member of the joint venture in the work to  
27 be performed. The agreement establishing the joint venture,  
28 partnership or other multi-entity relationship shall be in  
29 writing. Further minority/women's participation in a joint  
30 venture shall be based on the sharing or real economic interest  
31 in the venture and shall include proportionate control over  
32 management, interest in capital acquired by the joint  
33

1 venture, and interest in earnings.

2 ((M)). N. "Legitimately Owned and Controlled," shall mean  
3 for the purposes of determining whether a business is a  
4 "minority business" and/or a "women's business" that women,  
5 minorities or a combination thereof shall possess:

6 1. Ownership of at least fifty-one percent interest in  
7 the business;

8 2. Control over management, interest in capital,  
9 interest in profit or loss and contributions to capital,  
10 equipment ((or))and expertise ((~~that-are-commensurate-with-the~~  
11 ~~percentage-of-ownership~~)) on which the claim of minority/women  
12 owned status under this chapter is based.

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

16 a. Only one spouse participates in the management of  
17 the business;

18 b. The nonparticipating spouse relinquishes control  
19 over his/her community property interest in the subject  
20 business.

21 ((N)) O. "Minority Business," means an incorporated or  
22 unincorporated business other than a joint venture organized to  
23 engage in commercial transactions, which is legitimately owned  
24 and controlled by a minority person or persons. The ownship  
25 interests shall be real and continuing and control over  
26 management interest in capital acquired by the business, and  
27 interest in earnings shall be commensurate with the percentage  
28 of ownership upon which the claim of Minority Business  
29 Enterprise status is based.

30 ((O)) P. "Minority Person," shall mean any ethnic person  
31 of color who is a resident of the United States or its  
32  
33

1 territories, including Asians/Pacific Islanders, persons of  
2 black African descent, Hispanics and Native-Americans/Alaskan  
3 Natives.

4 ((P)) Q. "Nonprofit Corporation," shall mean a corporation  
5 organized pursuant to R.C.W. Ch. 24.03. In the case of  
6 nonprofit corporations organized under the laws of a state  
7 other than Washington, a nonprofit corporation shall mean one  
8 organized for one or more of the purposes set forth in R.C.W.  
9 24.03.015 and meeting the definitions in R.C.W. 24.03.005.

10 ((Q)) R. "Percentage Factor," shall mean the special  
11 ranking factors established by this ordinance to be applied in  
12 certain competitive bid situations where minority/women's  
13 businesses respond to solicitations or are included as  
14 subcontracts in responding parties' responses to solicitations.

15 ((R)) S. "Purchasing Contracts," shall mean, but not  
16 limited to, those contracts which are awarded by the department  
17 of executive administration as the representative of King  
18 County, or any contract awarded by King County for the purchase  
19 of tangible goods.

20 ((S)) T. "Responding Party," shall mean any person,  
21 partnership, corporation or business entity which makes a  
22 proposal as defined in this chapter in response to a  
23 solicitation as defined in this chapter.

24 ((T)) U. "Service Contracts," shall mean those contracts  
25 for technical, professional or other work performed by a  
26 vendor, such as the making of repairs, servicing, maintenance  
27 and/or cleaning, and which does not involve the provision of  
28 substantial tangible items such as materials, supplies or  
29 equipment. For the purposes of this chapter, the term "service  
30 contracts" shall not include construction, rental or leasing of  
31  
32  
33

1 equipment or the traditional professional services such as  
2 consulting, legal services, feasibility studies and design  
3 studies.

4 ((U)) V. "Set Aside," shall mean the proportion of each  
5 contract awarding authority's annual expenditure for contract  
6 goods and services which equal the contract awarding  
7 authority's annual goals for participation of minority/ women's  
8 businesses as established by this chapter.

9 ((V)) W. "Solicitation," shall mean a contract awarding  
10 authority's request for the provision of any one or more of the  
11 following: goods and services of any kind, equipment leases,  
12 and rentals/purchase of space. Solicitations shall include  
13 requests for proposals, invitations to bid and similar items.  
14 "Solicitation specifications," shall mean any documents,  
15 literature or other information accompanying a solicitation  
16 which provides additional data regarding the contract awarding  
17 authority's request.

18 ((W)) X. "Utilization Goals," shall mean those separately  
19 designated annual goals for the use of King County of  
20 minority/women's businesses. The goals shall be expressed as a  
21 numerical percentage of the total dollar value of all contracts  
22 to be awarded by the county. These goals shall be applicable  
23 to businesses organized for profit, along with governmental  
24 agencies and quasi-governmental agencies, unless the agencies  
25 are specifically excepted by or in accordance with the  
26 provisions of this chapter.

27 ((X)) Y. "Utilization Requirements," shall mean those-  
28 efforts which responding parties, King County and the  
29 particular department shall make to meet the county's  
30 utilization goals, including but not limited to the percentage  
31  
32  
33

1 factors and set aside requirements established by this chapter.

2 ((Y)) Z. "Violating Party," shall mean a person or entity  
3 which has violated a provision or provisions of this chapter.

4 ((Z)) AA. "Waiver Statement," shall mean a written  
5 statement directed to the director, department of executive  
6 administration containing reasons why any provision or  
7 provisions of this ordinance shall not apply to a particular  
8 person, partnership, corporation, business entity, contract  
9 awarding authority, department, or other entity. Where a  
10 waiver or waivers are granted, the utilization goals shall be  
11 applied in a manner so as to reflect the loss of the monetary  
12 value of those contracts exempted from the requisites of this  
13 chapter.

14 ((AA)) BB. "Women's Business," means an incorporated or  
15 unincorporated business other than a joint venture organized to  
16 engage in commercial transactions, which is legitimately owned  
17 and controlled by a woman or women who is (are) residents of  
18 the United States or its territories. The ownership interests  
19 shall be real and continuing, and control over management,  
20 interest in capital acquired by the business, and interest in  
21 earnings shall be commensurate with the percentage of ownership  
22 upon which the claim of women's business status is based.

23 SECTION 2. Ordinance 5983, Section 6 and K.C.C. 4.18.060,  
24 is hereby amended to read as follows:

25 UTILIZATION REQUIREMENTS, SPECIFIC.

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

30 1. For all purchasing, service and concession contracts,  
31 the following percentage factor shall be used in determining  
32 which 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  
9 subcontractors, suppliers or similar assisting roles,  
10 responding parties whose bids are within five percent of the  
11 bid made by the lowest bidder shall be ranked in the following  
12 order:

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

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

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

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

26 c. Where a contract could require the use of  
27 subcontractors, suppliers or similar assisting roles and some  
28 responding parties make use of such and others do not,  
29 responding parties whose bids are within five percent of that  
30 made by the lowest bidder shall be ranked as set forth in  
31 subsection a. and b., of this Section 4.18.060 A. 1., except  
32  
33



1 the highest ranking shall go to the minority/women's businesses  
2 which do not use subcontractors, suppliers, or similar  
3 assisting roles and the lowest ranking to  
4 non/minority/non-women's businesses which do not use  
5 minority/women's subcontractors, suppliers, or similar  
6 assisting roles.

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

15 2. For every construction, architectural and  
16 engineering, and consultant contract((s)) the following set  
17 aside requirements shall be met:

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

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

28 c. As part of the bid package, all responding parties  
29 shall identify the dollar amount of minority/women's business  
30 participation. All responding parties shall also identify the  
31 particular minority/women's businesses to be used in performing  
32

1 the contract, specifying for each the dollar value of the  
2 participation, the type of work to be performed, and other  
3 information as may reasonably be required to determine the  
4 responsiveness of the bid or proposal; provided that, for bids  
5 on construction contracts, this information shall be submitted  
6 no later than the close of the first King County business day  
7 after bid opening.

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

12 B. Where this Section 4.18.060 specifies that a set aside  
13 or a percentage factor shall be used for a particular type of  
14 contract, the method specified is the preferred method for  
15 achieving the utilization goals. A department may use the  
16 other method in its solicitation documents for a specific  
17 contract if it determines that a method other than the one  
18 established by this Section 4.18.060 will be a more feasible  
19 method of achieving the annual utilization goal. In the event  
20 that a department chooses to use a method other than the one  
21 specified in this Section 4.18.060, it shall include in its  
22 annual report to the executive as required by Section 4.18.080  
23 D. of this chapter, documents demonstrating that a method other  
24 than the one established by this Section 4.18.060 is a more  
25 feasible method of achieving the annual utilization goal.

26 C. All solicitation documents shall include the applicable  
27 requirements of this Section 4.18.060. Bids, proposals, and  
28 other responses which fail to meet the requirements of this  
29 Section 4.18.060 shall, within the limitations of federal and  
30 state law, be deemed non-responsive unless a waiver has been  
31 granted pursuant to Section 4.18.070 of this chapter.  
32  
33

1 D. The percentage factor and set aside requirements of  
2 this Section 4.18.060 shall not apply to contracts awarded for  
3 the remainder of any calendar year in which the contract  
4 awarding authority is determined by the director, department of  
5 executive administration, to have met the applicable county  
6 utilization goals as established by this chapter. The  
7 percentage factor and set aside provisions of this Section  
8 4.18.060 shall again apply in each succeeding calendar year  
9 until the annual utilization goals for that year have been met  
10 by the contract awarding authority.

11 E. For the Kingdome food and beverage concession contract,  
12 the set aside method of achieving utilization goals shall apply.

13 ((E)) F. The requirements of this Section 4.18.060 shall  
14 cease to apply to contracts awarded by King County and its  
15 departments on December 31, 1987, unless reenacted by the King  
16 County council.

17 INTRODUCED AND READ for the first time this 21st  
18 day of JANUARY, 1986.

19 PASSED this 24th day of FEBRUARY, 1986.

20 KING COUNTY COUNCIL  
21 KING COUNTY, WASHINGTON

22 Audrey Iyer  
23 Chair

24 ATTEST:

25  
26 Dorothy M. Owens  
27 Clerk of the Council

28 APPROVED this 6<sup>th</sup> day of March, 1986.

29 Jim Hill  
30 King County Executive  
31  
32  
33