

August 7, 1990
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INTRODUCED BY: Ron Sims

Proposed No.: 91-612

ORDINANCE NO. **10049**

AN ORDINANCE relating to the procurement of goods and services by King County from minority business enterprises and women's business enterprises; establishing new deadlines, and amending Ordinance 5700, Sections 5 and 6 as amended; Ordinance 5983, Section 6 as amended; Ordinance 9609, Sections 10 and 11 as amended; and K.C.C. 4.18.050, 4.18.060, 4.18.080 and 4.18.095.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance No. 5700, Section 5, as amended, and K.C.C. 4.18.050 are hereby amended to read as follows:

Utilization requirements, general.

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

1. Under the auspices of the director, the administrator shall begin immediately to design a technical assistance and outreach program which shall be established by (~~February 1, 1991~~) April 1, 1992. This program shall include the following elements:

a. A county-wide, industry-wide, regularly-scheduled contractor orientation program to promote compliance with and understanding of the provisions of this chapter and King County Code, Chapter, 12.16;

b. Feasible options for bonding, insurance, and banking assistance for minority-owned and women-owned businesses;

c. A county-wide program, designed to assist departments in enhancing opportunities for minority-owned and women-owned businesses;

d. A fully-developed and maintained resource list, to include all available resources state-wide for minority-owned and women-owned businesses;

1 e. Such other program options as would serve to assist
2 minority-owned and women-owned businesses in overcoming the
3 barriers of past and present discrimination.

4 2. Prior to entering into any contract, the contract
5 awarding authority shall:

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

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

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

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

19 a. A provision indicating that this chapter is
20 incorporated by reference into any and all King County
21 contracts and failure to comply with any of the requirements of
22 the chapter by a contractor will be considered a breach of
23 contract.

24 b. A requirement that during the term of the
25 contract the contractor shall comply with, as to tasks and
26 proportionate dollar amounts throughout the term of the
27 contract, all requirements for the use of minority/women's
28 businesses. In the absence of a waiver, minority/women's
29 businesses which for any reason no longer remain associated
30 with the contract or the contractor shall be replaced with
31 other certified minority/women's businesses in accordance with
32 procedures established by the administrator.

33 c. A provision prohibiting any agreements between a
34 responding party and a minority/women's business in which the
35 minority/women's business promises not to provide

1 subcontracting quotations to other responding or potential
2 responding parties.

3 d. The requirement of maintenance of relevant records,
4 and information necessary to document compliance with this
5 chapter and the contractor's utilization of minority and
6 women's businesses in its overall public and private business
7 activities, and shall include the right of the county to
8 inspect such records. This shall be implemented no later than
9 April 1, 1992.

10 e. A provision requiring the payment of specific
11 liquidated damages in the event a contractor fails to perform a
12 commercially-useful function and/or operates as a broker,
13 front, conduit or pass-through, with the amount of liquidated
14 damages established in advance by the department of executive
15 administration based on the type of contract involved. The
16 provision should include the following language: The purpose of
17 King County's minority/women's business ordinance is to provide
18 a prompt remedy for the effects of past discrimination. The
19 county in general, and this program in particular, are damaged
20 when a contract, or portion of a contract, to be performed by a
21 minority/women's business is not actually performed by a
22 minority/women's business enterprise in compliance with this
23 chapter. Because the actual amount of such damage is not
24 reasonably calculable, the parties agree and stipulate that
25 liquidated damages of \$_____ fairly estimate the amount required
26 to compensate the county for resulting delays in carrying out
27 the purpose of the program, the costs of meeting utilization
28 goals through additional contracts, the administrative costs of
29 investigation and enforcement and other damages and costs
30 caused by the violation.

31 SECTION 2. Ordinance No. 5983, Section 6, as amended, and
32 K.C.C. 4.18.060 are hereby amended as follows:

33 Utilization Requirements, Specific.

34 A. In order to expedite achieving of the utilization goals
35 established in accordance with this chapter, the following

1 utilization requirements shall apply to all competitive bids
2 and other responses to solicitation:

3 1. For all purchasing, service, and concession
4 contracts and all architectural and engineering contracts,
5 consultant contracts and construction contracts under ten
6 thousand dollars, the director, with the advice of the
7 administrator, shall determine a percentage factor appropriate
8 to offset the effects of discrimination in the industry
9 involved, which percentage shall be used in determining which
10 responding party is the lowest responsible bidder or best
11 proposal:

12 a. Responding parties whose bids are within the
13 percentage factor of the best proposal or the bid made by the
14 lowest bidder shall be ranked in the following order:

15 First, minority/women's businesses which will perform the
16 entire contract unassisted and those minority/women's
17 businesses which will exclusively use minority/women's
18 businesses as subcontractors, suppliers or in similar assisting
19 roles to the extent set forth above.

20 Second, minority/women's businesses which alone or as part
21 of joint ventures serve as the prime contractor where
22 minority/women's business participation is at least twenty-five
23 percent of the dollar value of a contract;

24 Third, non-minority/non-women's businesses which use
25 minority/women's businesses as subcontractors, suppliers, or in
26 similar assisting roles in an amount equal to at least twenty-
27 five percent of the contract amount;

28 Fourth, non-minority/non-women's businesses which do not
29 use minority/women's businesses subcontractors, suppliers, or
30 in similar assisting roles to the extent set forth above.

31 b. All responding parties within each particular
32 ranking shall be grouped according to the amount of their bid
33 or the evaluation score of their proposal as determined by the
34 awarding authority, with low bidders and higher scoring
35 proposals receiving the highest priority. The lowest bidder or

1 higher scoring proposal within the highest-ranking category
2 shall be awarded the contract in question.

3 c. In determining the percentage factor to be used for
4 a particular contract, the director shall consider the
5 following factors:

6 (1) Price differentials between M/WBES and non-
7 MWBES on previously-submitted bids;

8 (2) Standard industry costs;

9 (3) Standard industry profit margins;

10 (4) Availability of M/WBES to perform as
11 retailers, distributors, wholesalers and manufacturers, by
12 commodity area; and

13 (5) Other pertinent facts.

14 d. Generally applied percentages shall be determined
15 by commodity area, and these percentages shall be implemented
16 by April 1, 1992.

17 2. For every construction, architectural and
18 engineering, and consultant contract the following set-aside
19 requirements shall be met:

20 a. Contracts for construction, consultant and
21 architectural/engineering services, the estimated cost of which
22 exceeds ten thousand dollars, shall require responding parties
23 to include in their responses to solicitation both minority and
24 women's business participation in the contract in a percentage
25 which equals or exceeds the percentages determined for the
26 contract by the director. The director, with the advice of the
27 administrator, shall determine the percentages for each
28 contract based on the extent of subcontracting opportunities
29 presented by the contract and the availability of minority and
30 women's business enterprises qualified to perform such
31 subcontracting work. Such percentages may be higher or lower
32 than the annual goals for the type of contract involved.

33 b. Where a contract is awarded to a minority or
34 women's business which will perform at least twenty-five

1 percent of the work, the set-aside requirements of these
2 subsections shall not apply.

3 c. As part of the bid or proposal package, all
4 responding parties shall identify the dollar amount and/or
5 percentage value of minority/women's business participation.
6 All responding parties shall also identify the particular
7 minority/women's businesses to be used in performing the
8 contract, specifying for each the dollar and/or percentage
9 value of the participation, the type of work to be performed,
10 and other information as may reasonably be required to
11 determine the responsiveness of the bid or proposal.

12 d. During the term of the contract, any failure to
13 comply with the percentages of minority/women's business
14 participation required for the bid or proposal shall be
15 considered a material breach of contract. The dollar value of
16 the total contract used for the calculation of the set-aside
17 shall be increased or decreased to reflect executed change
18 orders unless:

19 (1) a waiver is obtained in accordance with K.C.C.
20 4.18.070A. after consultation among the contract-awarding
21 authority, the director and the contractor; or

22 (2) the department obtains a reduction in the amount of
23 the set-aside according to the procedure in K.C.C. 4.18.060B.

24 B. Departments may request a reduction in the amount of
25 the set aside for either or both minority business enterprises
26 or women's business enterprises or in the percentage factor to
27 be applied under the percentage preference method, by
28 submitting the reasons therefor in writing to the director.

29 1. The director, with the advice of the administrator,
30 may grant such a reduction upon determination that:

31 a. The reasonable and necessary requirements of the
32 contract render subcontracting or other participation of
33 businesses other than the bidder or proposer infeasible at the
34 adopted goal levels; or

1 b. Qualified minority and women's business
2 enterprises capable of providing the goods or services required
3 by the contract, are unavailable in the market area, despite
4 every feasible attempt to locate appropriate minority and
5 women's business enterprises to meet the adopted goals.

6 c. The available minority and/or women's businesses
7 have given price quotes which are unreasonably high in that
8 they exceed competitive levels beyond amounts which can be
9 attributed to cover costs inflated by the present effects of
10 discrimination.

11 2. Any reductions in set aside amount granted by the
12 director shall specify the amount to which the set aside has
13 been reduced.

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

28 D. All solicitation documents shall include the applicable
29 requirements of Sections 4.18.050 and 4.18.060. In addition,
30 documents shall include a provision prohibiting any agreement
31 between a responding party and a minority/women's business in
32 which the minority/women's business promises not to provide
33 subcontracting quotations to other responding or potential
34 responding parties. Bids, proposals, and other responses which
35 fail to meet the requirements of this Section 4.18.060 shall,

1 within the limitations of federal and state law, be deemed non-
2 responsive unless a waiver has been granted pursuant to Section
3 4.18.070 of this chapter.

4 E. The percentage factor and set-aside requirements of
5 this Section 4.18.060 shall not apply to contracts awarded for
6 the remainder of any calendar year in which the contract-
7 awarding authority is determined by the director, with the
8 advice of the administrator, to have met the applicable county
9 utilization goals as established by this chapter. The
10 percentage factor and set aside provisions of this Section
11 4.18.060 shall again apply in each succeeding calendar year
12 until the annual utilization goals for that year have been met
13 by the contract-awarding authority.

14 F. For the Kingdome food and beverage concession contract,
15 the set aside method of achieving utilization goals shall
16 apply.

17 G. The requirements of this Section 4.18.060 shall cease
18 to apply to contracts awarded by King County and its
19 departments on December 31, 1992, unless reenacted by the King
20 County council.

21 SECTION 3. Ordinance 5700, Section 7, as amended and
22 K.C.C. 4.18.080, are hereby amended as follows:

23 Monitoring, Reporting, and Enforcement.

24 A. The county executive, through the administrator shall
25 have the responsibility for monitoring implementation of the
26 requirements of this chapter and shall have the power to
27 request from departments, responding parties and/or contractors
28 any relevant records, information and documents.

29 B. Contract awarding authorities, with the assistance of
30 the director shall keep complete and detailed records regarding
31 compliance with this chapter. The records shall include the
32 dollar value and the subject matter of each contract along with
33 the name of the contractor, the participation levels (in
34 dollars, number of contracts awarded, and type of work) of
35 minority/women's businesses where the contract award provides

1 for participation, and other information as the director deems
2 necessary.

3 C. The administrator shall be responsible for gathering
4 all information concerning compliance with this chapter and
5 shall have access to all pertinent King County records.

6 D. With the assistance of the administrator each
7 department shall submit to the administrator an annual report
8 on its performance in meeting the utilization goals required by
9 this chapter on or before March 15th of each year. This report
10 shall include the number and dollar amount of contracts
11 awarded, by contract category and the dollar amount and the
12 percentage of minority/women's business participation by
13 contract and contract category and by number of set-aside
14 contracts, percentage preference contracts, contracts requiring
15 affirmative efforts, and contracts for which waivers were
16 granted. The report shall also identify problems in meeting
17 the requirements of this chapter, if any, and suggestions for
18 improvements.

19 E. Monitoring of Effects. The administrator shall
20 establish procedures no later than April 1, 1992 to collect
21 evidence and monitor the effects of the provisions of this
22 chapter in order to assure, insofar as is practical, that the
23 remedies set forth herein do not disproportionately favor one
24 or more racial or ethnic groups and that the remedies do not
25 remain in effect beyond the point that they are required to
26 eliminate the effects of discrimination in the local
27 contracting industries. To the extent further amendments to
28 this chapter are required to effect these ends, the
29 administrator shall prepare appropriate ordinances for the
30 council's consideration.

31 F. Certification and Recognition Process.

32 1. Pursuant to chap. 328, Laws of 1987, the Office of
33 Minority and Women's Businesses of the State of Washington
34 shall be solely responsible for certifying and decertifying
35 businesses. King County's minority and women's business

1 enterprise program is only for minorities and minority business
2 and women's businesses and combination businesses as defined in
3 K.C.C. 4.18.010; therefore the director through the
4 administrator shall recognize only those combination minority
5 and women's business enterprises or minority business
6 enterprises certified by the State of Washington which also
7 meet the definitions in K.C.C. 4.18.010, according to minority
8 status information provided to King County by the Office of
9 Minority and Women's Businesses of the State of Washington.
10 Businesses are only eligible for King County's programs so long
11 as they remain certified by the State of Washington.

12 2. It shall be considered a violation of this chapter
13 to obtain, or attempt to obtain, certification or the benefits
14 of any provision of this chapter, on the basis of false or
15 misleading information, whether provided to King County or to
16 the Office of Minority and Women's Businesses of the State of
17 Washington.

18 3. No contract requiring or proposing minority/women's
19 business participation may be entered into unless all
20 minority/women's businesses identified to meet the utilization
21 goals by a responding party were, at the time the bid was
22 submitted, certified by the Officer of Minority and Women's
23 Businesses of the State of Washington and recognized by the
24 director through the administrator as eligible to participate
25 in King County's minority/women's business program and the
26 director through the administrator determines all identified
27 minority/women's businesses appear able to perform a
28 commercially useful function on that contract as proposed.
29 Lists of certified and recognized minority/women's businesses
30 shall be provided to all department and made available to the
31 public.

32 4. No business shall apply to King County in order to
33 participate in the programs established by this chapter.

34 G. Where a complaint is filed within one year of the
35 completion of all work on a contract alleging a violation of

1 this chapter by a contractor, subcontractor or contract-
2 awarding authority, or where, within that time period, evidence
3 of a violation is discovered from information gained through
4 compliance monitoring, the administrator shall cause to be
5 served or mailed, by certified mail, return receipt requested,
6 a copy of the complaint or notice of investigation on the
7 respondent within twenty days after the filing of said charge
8 and shall promptly make an investigation thereof. The
9 investigation shall be directed to ascertain the facts
10 concerning the violation alleged in the complaint and shall be
11 conducted in an objective and impartial manner. During the
12 investigation, the administrator shall consider any statement
13 of position or evidence with respect to the allegations of the
14 complaint which the complainant or the respondent wishes to
15 submit.

16 1. The administrator shall have authority to sign and
17 issue subpoenas requiring the attendance and testimony of
18 witnesses, the production of evidence including but not limited
19 to books, records, correspondence or documents in the
20 possession or under the control of the person subpoenaed, and
21 access to evidence for the purpose of examination and copying
22 as is necessary for the investigation. The administrator shall
23 consult with the prosecuting attorney before issuing any
24 subpoena under this section.

25 If an individual fails to obey a subpoena, or obeys a
26 subpoena but refuses to testify when requested concerning any
27 matter under investigation, the administrator may invoke the
28 aid of the King County prosecuting attorney who shall petition
29 to the Superior Court for King County for an order or other
30 appropriate action necessary to secure enforcement of the
31 subpoena. The petition shall be accompanied by a copy of the
32 subpoena and proof of service, and shall set forth in what
33 specific manner the subpoena has not been complied with, and
34 shall ask for an order of the court to compel the witness to

1 appear and testify or cooperate in the investigation of the
2 violation.

3 2. The results of the investigation shall be reduced to
4 written findings of fact and a finding shall be made that there
5 either is or is not reasonable cause for believing that a
6 violation has been or is being committed. If a finding is made
7 that there is no reasonable cause, said finding shall be served
8 on the complainant and respondent. Within thirty days after
9 service of such negative finding, the complainant shall have
10 the right to file a written request with the administrator
11 asking for reconsideration of the finding. The administrator
12 shall respond in writing within a reasonable time by granting
13 or denying the request.

14 H. If the finding is made initially or on request for
15 reconsideration that reasonable cause exists to believe that a
16 violation by a contractor or subcontractor has occurred, the
17 administrator shall endeavor to remedy the violation by
18 conference, conciliation and persuasion, which may include
19 monetary compensation, the creation of additional opportunities
20 for minority or women's utilization on other contracts, or such
21 other requirements as may lawfully be agreed upon by the
22 parties and the administrator. Any settlement agreement shall
23 be reduced to writing and signed by both parties. An order
24 shall then be entered by the administrator setting forth the
25 terms of the agreement. Copies of such order shall be
26 delivered to all affected parties and the original thereof
27 filed with the division of records and elections.

28 If no agreement can be reached, a finding to that effect
29 shall be made by the administrator and incorporated in a
30 preliminary order, with a copy thereof furnished to the
31 complainant and the respondent. The preliminary order shall
32 also include:

- 33 1. A finding that a violation has occurred;
- 34 2. The basis for such finding.

1 I. In the case of failure to reach an agreement for the
2 elimination of such a violation, and upon the entry of a
3 preliminary order, the complaint and any and all findings made
4 and remedies ordered shall be certified by the administrator to
5 the office of the King County hearing examiner for hearing.

6 A hearing shall be conducted by the office of the hearing
7 examiner for the purpose of affirming, denying, or modifying
8 the preliminary order. The hearing shall be conducted on the
9 record and the hearing examiner shall have such rule making and
10 other powers necessary for conduct of the hearing as are
11 specified by K.C.C. 20.24.150. Such hearings shall be
12 conducted within a reasonable time after receipt of the
13 certification. Written notice of the time and place of the
14 hearing shall be given at least ten days prior to the date of
15 the hearing to each affected party and to the administrator.

16 Each party shall have the following rights, among others:

- 17 1. To call and examine witnesses on any matter relevant
18 to the issues of the complaint;
- 19 2. To introduce documentary and physical evidence;
- 20 3. To cross-examine opposing witnesses on any matter
21 relevant to the issues of the complaint;
- 22 4. To impeach any witness regardless of which party
23 first called him to testify;
- 24 5. To rebut evidence against him; and
- 25 6. To represent himself or to be represented by anyone
26 of his choice who is lawfully permitted to do so.

27 J. Following review of the evidence submitted, the hearing
28 examiner presiding at the hearing shall enter written findings
29 and conclusions and shall render a written decision and shall
30 order one or more of the following:

- 31 1. Dismissal of the complaint when a violation is found
32 not to have occurred;
- 33 2. Suspension or cancellation of the contract in part
34 or in whole;

1 3. Disqualification and/or debarment of the violator
2 from participation in county contracts for a period of up to
3 five years;

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

6 5. Enforcement of any provision of the contract
7 providing remedies, such as penalties or liquidated damages for
8 violation of contractual provisions, or enforcement of any
9 other remedy available under the laws of King County. Upon a
10 finding by the hearing examiner that a contractor has in fact
11 failed to perform a commercially useful function or has
12 operated as a broker, front, conduit or pass through business,
13 liquidated damages specified in the contract shall be imposed
14 unless the hearing examiner finds that imposition of such
15 damages would be clearly inequitable, in which case the hearing
16 examiner may order appropriate relief.

17 K. If a finding is made that there is reasonable cause to
18 believe that a contract-awarding authority has committed a
19 violation, the finding shall be forwarded to the county
20 executive, who shall review the evidence and shall order one or
21 more of the following:

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

24 2. Corrective personnel action;

25 3. Disqualification and suspension of authority of all
26 members, any board, commission, or other body constituting the
27 violating contract awarding authority;

28 4. Enforcement of any other remedy available under the
29 laws of King County.

30 L. Upon receipt of a written and signed allegation that a
31 business owner is improperly being considered to be, or has
32 improperly been rejected as, a minority business or women's
33 business as defined in this ordinance, or that a waiver or
34 reduction of set-aside requirements has been improperly denied
35 or granted, or if such information is discovered from

1 information gained through compliance monitoring, the director
2 shall order that an investigation be conducted by the
3 administrator. The pendency of such allegations or of
4 subsequent hearings on such allegations shall not be grounds to
5 postpone or restrain the award of any contracts then being
6 advertised or for which bids have been received. If there is
7 reasonable cause to believe that corrective action is
8 warranted, the director will, upon ten days written notice to
9 all interested parties of whom he/she is aware, and upon
10 publication of notice of the hearing in the manner provided for
11 the advertising of contracts, conduct a hearing to determine
12 whether or not the allegation is correct. The hearing shall be
13 recorded and each interested party shall have the right to call
14 and examine witnesses, to produce documentary and physical
15 evidence, to cross-examine witnesses, and to be represented by
16 anyone of his/her choice lawfully permitted to do so. The
17 hearing officer designated by the director shall permit
18 testimony to be given by any parties which would be directly
19 affected by the matter, and a representative of the executive
20 or the agency conducting the investigation.

21 After the hearing, the director shall make findings and
22 conclusions and shall order appropriate corrective action, if
23 any.

24 M. In addition to any other remedy available under the
25 laws of King County and the State of Washington any person,
26 firm, corporation, business, union, or organization which
27 prevents or interferes with or retaliates against a contractor
28 and/or subcontractor's efforts to comply with the requirements
29 of this chapter or which submits false or misleading
30 information to any King County department or employee
31 concerning compliance with this chapter shall be subject to a
32 civil penalty of up to five thousand dollars for each
33 occurrence, King County having previously complied with the
34 notice and hearing provisions of this chapter. Each submission

1 of false or misleading information shall constitute a separate
2 occurrence.

3 SECTION 4. Ordinance No. 9609, Sections 10 and 11, and
4 K.C.C. 4.18.095 are hereby amended to read as follows: Studies
5 and recommendation graduating firms out of program. A. The
6 office of civil rights and compliance is directed to study and
7 prepare a recommendation to the council on whether this chapter
8 should be amended to "graduate out" minority and women's
9 businesses after a certain number of years of certification or
10 level of income above that used for state certification. The
11 executive shall submit such a recommendation by (~~April 30,~~
12 ~~1991~~) April 15, 1992.

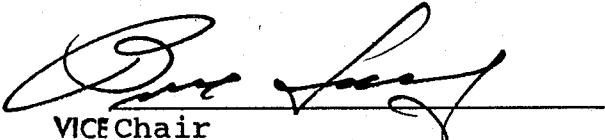
13 Joint data base.

14 B. The office of civil rights and compliance is directed
15 to study and prepare a recommendation to the council on
16 establishment of a joint data base with one or more other local
17 agencies for the collection of availability and utilization
18 data. The executive shall submit such a recommendation by
19 (~~April 30, 1991~~) April 15, 1992.

20 INTRODUCED AND READ for the first time this 29th day
21 of July, 1991.

22 PASSED this 12th day of August, 1991.


23 KING COUNTY COUNCIL
24 KING COUNTY, WASHINGTON

25 
26 VICE Chair

27 ATTEST:

28 
29 DEPUTY Clerk of the Council

30 APPROVED this 23rd day of August, 1991.

31 
32 King County Executive