

December 2, 1991

INTRODUCED BY: RON SIMS

PROPOSED NO. 92-11

ORDINANCE NO. **10205**

AN ORDINANCE relating to the procurement of goods and services by King County from minority business enterprises and women's business enterprises; amending Ordinance 5700, Section 1, as amended, and K.C.C. 4.18.010.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance No. 5700, Section 1, as amended, and K.C.C.

4.18.010 are 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. "Administrator" shall mean the administrator of the King County office of civil rights and compliance.

B. "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.

C. "Affirmative Efforts" shall mean making vigorous, documented 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's determination shall be based on procedures to be outlined in accordance with the dictates of this chapter.

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

E. "Broker" shall mean a business which purchases goods or services from another business or businesses for the sole purpose of resale to the county or a contractor doing business with the county.

F. "Certification" shall mean the process by which the Office of Minority and Women's Businesses of the State of Washington determines a business meets the criteria for a minority-owned business enterprise, a

women-owned business enterprise, and/or a combination minority and women's business enterprise as set forth in WAC chap. 326-02 and WAC chap. 326-20.

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G. "Combination Minority and Women Business" means a business certified as a combination minority and women's business enterprise by the Office of Minority and Women's Businesses of the State of Washington which is 50% legitimately owned and controlled by minority males or minority businesses as defined in this chapter.

H. "Commercially Useful Function" shall mean the performance of real and actual services in the discharge of any contractual endeavor. The contractor must perform a distinct element of work which the business has the skill and expertise as well as the responsibility of actually performing, managing and supervising. In determining whether a business is performing a commercially useful function, factors, including but not limited to the following, will be considered:

1. Whether the business has the skill and expertise to perform work for which it is being/has been certified;

2. Whether the business actually performs, manages and supervises the work for which it is being/has been certified; and

3. Whether the business purchases goods and/or services from a non-minority/women's business enterprise and simply resells goods to the county, county contractor, or other person doing business with the county for the purpose of allowing those goods to be counted towards fulfillment of minority/women's business enterprise utilization goals.

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

J. "Conduit" shall mean a minority/women's business with which a contractor has agreed to subcontract, when the minority/women's business does not perform the subcontract, and instead the subcontract is performed by a non-minority/women's business.

K. "Construction Contracts" shall mean, those contractual arrangements made by King County for the construction, repair, rehabilitation,

alteration, conversion or extension of buildings, parks, streets or other improvements to real property.

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2 L. "Consultant Contracts" shall mean those contractual arrangements made  
3 for the procurement of expert personal, professional and/or technical services.  
4 Consultant contracts shall include legal services provided to King County  
5 government, but shall not include architectural and engineering contracts as  
6 defined by this chapter.

7 M. "Contract Awarding Authority" shall mean any person with the power  
8 to enter into a contractual arrangement binding King County and shall also mean  
9 the particular office, agency or division on whose behalf the contract is  
10 entered. In addition, this term shall include, but shall not be limited to  
11 heads of county departments, divisions or offices.

12 N. "Contractor" shall mean any person, partnership, corporation, or  
13 other type of business entity which has a contract with King County or serves  
14 in a subcontracting capacity with an entity having a contract with King County  
15 for the provision of goods and/or services.

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

22 P. "Director" shall mean the director of the King County department  
23 of executive administration.

24 Q. "Front" shall mean a business which purports to be a  
25 minority/women's business but which is actually owned and/or controlled in a  
26 manner which is inconsistent with the requirements of certification.

27 R. "Joint venture" shall mean an association of two or more persons,  
28 partnerships, corporations or any combination of them, established to carry on  
29 a single business activity which is limited in scope or direction. The degree  
30 to which a joint venture may satisfy relevant utilization goals cannot exceed  
31 the proportionate interest of the minority/women's business held as a member of  
32 the joint venture in the work to be performed. The agreement establishing the

1 joint venture, partnership or other multi-entity relationship shall be in  
2 writing. Further, minority/women's participation in a joint venture shall be  
3 based on the sharing of real economic interest in the venture and shall include  
4 proportionate control over management, interest in capital acquired by the  
5 joint venture, and interest in earnings.

6 S. "Legitimately Owned and Controlled" shall mean for the purpose of  
7 determining whether a business is a "minority business" that minorities shall  
8 possess:

9 1. Ownership of at least fifty-one percent interest in the  
10 business, unless the minority business qualifies as a corporate sponsored  
11 dealership under the provisions of WAC 326-02-030. The ownership shall be real  
12 and continuing, and shall go beyond the pro forma ownership of the business  
13 reflected in the ownership documents. The minority owner(s) shall enjoy the  
14 customary incidents of ownership and shall share in the risks and profits  
15 commensurate with their ownership interests, as demonstrated by an examination  
16 of the substance, rather than the form, of arrangements.

17 2. Control over management, interest in capital, interest in profit  
18 or loss and contributions to capital, equipment and expertise on which the  
19 claim of minority-owned status under this chapter is based. The minority  
20 owners must possess and exercise the legal power to direct the management and  
21 policies of the business and to make day-to-day as well as major decisions on  
22 matters of management, policy, and operations. If the owners of the business  
23 who are not minorities are disproportionately responsible for the operation of  
24 the business, then the business is not controlled by minorities. The business  
25 must be owned, controlled, and managed on a day-to-day, full-time basis by the  
26 minority owner(s). The requirements of this subsection S.2. shall not apply,  
27 if the minority business qualifies as a corporate sponsored dealership under  
28 the provisions of WAC 326-02-030.

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

31 a. Only one spouse participates in the management of the  
32 business;

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

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T. "Minority Business" means a business certified by the Office of Minority and Women's Businesses of the State of Washington as a minority business enterprise which is legitimately owned and controlled by a minority person or persons as defined in this section and which has previously sought to do business in King County. The director is authorized to determine that specific racial groups have not been discriminated against in their ownership and/or operation of particular trades or areas of business in King County (~~or in the particular geographical areas in which they operate~~). The director may exclude such businesses from consideration as "minority businesses" under this ordinance, in connection with contracts involving such trades or areas of business, as provided in Section 4.18.080 of this ordinance.

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U. "Minority or Minorities" means a person who is a citizen of the United States and who is a member of one or more of the following historically disadvantaged racial groups:

1. Black or African American: Having origins in any of the Black racial groups of Africa;

2. Hispanic: Of Mexican, Puerto Rican, Cuban, or Central or South American culture or origin;

3. Asian American: Having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or

4. American Indian or Alaskan Native: Having origins in any of the original peoples of North America.

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The director shall have discretion to make a final decision as to whether an individual is a minority.

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

1 W. "Pass-Through" means buying or obtaining goods from a non-women's  
2 business, non-minority business or non-combination women/minority business, and  
3 reselling or transferring those goods to the county, county contractors or  
4 other persons doing business with the county for the purpose of obtaining any  
5 advantage or benefit conferred under this chapter, without performing a  
6 commercially useful function.

7 X. "Percentage Factor" shall mean the special ranking factors  
8 established by this chapter to be applied in certain competitive bid situations  
9 where minority/women's businesses respond to solicitation or are included as  
10 subcontracts in responding parties' responses to solicitation.

11 Y. "Purchasing Contracts" shall mean, but not be limited to, those  
12 contracts which are awarded by the department of executive administration as  
13 the representative of King County, or any contract awarded by King County for  
14 the purchase of tangible goods.

15 Z. "Responding Party" shall mean any person, partnership, corporation  
16 or business entity which makes a proposal as defined in this chapter in  
17 response to a solicitation as defined in this chapter.

18 AA. "Service Contracts" shall mean those contracts for technical,  
19 professional or other work performed by a vendor, such as the making of  
20 repairs, servicing, maintenance and/or cleaning, and which does not involve the  
21 provision of substantial tangible items such as materials, supplies or  
22 equipment. For the purposes of this chapter, the term "service contracts"  
23 shall include services provided to members of the public, including public  
24 defender services, but shall not include construction, rental or leasing of  
25 equipment or the traditional professional services such as consulting, legal  
26 services, feasibility studies and design studies.

27 BB. "Set Aside" shall mean that proportion of each contract which is  
28 designated for participation of minority/women's businesses as established by  
29 this chapter.

30 CC. "Small Business Concern" means a small business as defined  
31 pursuant to Section 3 of the federal Small Business Act and relevant  
32 regulations promulgated thereto.  
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1 DD. "Solicitation" shall mean a contract awarding authority's request  
2 for the provision of any one or more of the following: goods and services of  
3 any kind, equipment leases, and rentals/purchase of space. Solicitation shall  
4 include requests for proposals, invitations to bid and similar items.

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

8 EE. "Utilization Goals" shall mean those separately designated annual  
9 goals for the use by King County of minority/women's businesses. The goals  
10 shall be expressed as a numerical percentage of the total dollar value of all  
11 contracts to be awarded by the county. These goals shall be applicable to  
12 businesses organized for profit, along with governmental agencies and  
13 quasi-governmental agencies, unless the agencies are specifically excepted by  
14 or in accordance with the provisions of this chapter.

15 FF. "Utilization Requirements," shall mean those efforts which the  
16 responding parties, King County and the particular department shall make to  
17 meet the county's utilization goals, including but not limited to the  
18 percentage factors and set aside requirements established by this chapter.

19 GG. "Violating Party," shall mean a person or entity which has  
20 violated a provision or provisions of this chapter.

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

28 II. "Women's Business," means a business certified by the Office of  
29 Minority and Women's Businesses of the State of Washington as a women's  
30 business enterprise and which has previously sought to do business in King  
31 County. The director is authorized to determine that women as a class have not  
32 been discriminated against in their ownership and operation of particular  
33 trades or areas of business in King County (~~or in the particular geographical~~

1 ~~areas in which they operate~~). The director may exclude such  
2 businesses from consideration as "women's businesses" under  
3 this chapter, in connection with contracts involving such  
4 trades or areas of business, according to the procedure  
5 provided for in Section 4.18.080 of this chapter.

6 INTRODUCED AND READ for the first time this 16<sup>th</sup> day  
7 of December, 1991.

8 PASSED this 23<sup>rd</sup> day of December, 1991.

9 KING COUNTY COUNCIL  
10 KING COUNTY, WASHINGTON

11 Lois North  
12 Chair

13 ATTEST:

14 Gerald G. Peterson  
15 Clerk of the Council

16 APPROVED this 16<sup>th</sup> day of January, 1992

17 Pat Steel for Tim Hill  
18 King County Executive