



Signature Report

March 13, 2007

Ordinance 15703

Proposed No. 2007-0146.1

Sponsors Gossett, Phillips, Ferguson,
Constantine and Patterson

1 AN ORDINANCE creating a program to promote the use
2 of small contractors and suppliers in competing for county
3 contracting opportunities; and amending Ordinance 13983,
4 Section 1, and K.C.C. 4.19.010, Ordinance 13983, Section
5 2, and K.C.C. 4.19.020, Ordinance 13983, Section 3, as
6 amended, and K.C.C. 4.19.030, Ordinance 13983, Section
7 4, and K.C.C. 4.19.040, Ordinance 13983, Section 5, and
8 K.C.C. 4.19.050, Ordinance 13983, Section 6, and K.C.C.
9 4.19.060, Ordinance 13983, Section 7, and K.C.C.
10 4.19.070, Ordinance 13983, Section 8, and K.C.C.
11 4.19.080, Ordinance 13983, Section 9, and K.C.C. 4.19.090
12 and Ordinance 13983, Section 10 and K.C.C. 4.19.100 and
13 adding a new section to K.C.C. chapter 4.19.

14
15

16 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

17 SECTION 1. Ordinance 13983, Section 1, and K.C.C. 4.19.010 are each hereby

18 amended to read as follows:

19 The executive shall implement ~~((a-b))~~ the King County contracting
20 opportunities program under which the county and its contractors have an incentive to
21 make use of small ~~((economically disadvantaged businesses))~~ contractors and suppliers as
22 prime contractors, subcontractors and suppliers on county contracts.

23 SECTION 2. Ordinance 13983, Section 2, and K.C.C. 4.19.020 are each hereby
24 amended to read as follows:

25 The ~~((b))~~ King County contracting opportunities program shall apply to
26 county public works, consulting and procurement contracts.

27 SECTION 3. Ordinance 13983, Section 3, as amended, and K.C.C. 4.19.030 are
28 each hereby amended to read as follows:

29 The definitions in this section apply throughout this chapter unless the context
30 clearly requires otherwise.

31 A. "Administrator" means the manager of the ~~((contract compliance and~~
32 ~~minority/women and disadvantaged business division in the department of finance~~
33 ~~office))~~ office of business relations and economic development.

34 B. ~~((Economically distressed area" means a geographic area determined by the~~
35 ~~county council to require the use of incentives in order to stimulate economic activity and~~
36 ~~revitalize declining neighborhoods.~~

37 C. ~~"Located within" the county or an economically distressed area means that a~~
38 ~~business that at least:~~

39 ~~1. Has its primary offices or distribution points, other than residential or post~~
40 ~~office box, physically within the relevant boundaries;~~

41 ~~2. Lists the address on a valid business permit as being within the relevant~~
42 ~~boundaries;~~

43 ~~3. Has been doing business within the relevant boundaries for at least twelve~~
44 ~~months; and~~

45 ~~4. Submits other proof of compliance with subsection C. 1. through 3. of this~~
46 ~~section as required by the administrator.~~

47 ~~D.))~~ "Small contractor and supplier" means that a business and the person or
48 persons who own and control it are in a financial condition which puts the business at a
49 substantial disadvantage in attempting to compete for public contracts. In assessing these
50 financial conditions, the administrator shall substantially adopt the approach used by the
51 federal Small Business Administration, but the administrator shall adjust the Small
52 Business Administration's ~~((dollar ceilings))~~ maximum revenue standards for various
53 standard business classifications and levels for owners' personal net worth to account for
54 local market conditions. ~~((Initially, the dollar ceiling))~~ However, the maximum revenue
55 standard for standard business classifications shall may not be more than ~~be~~ fifty percent
56 of the ~~((1999))~~ Small Business Administration's thresholds, as now existing or hereafter
57 amended.

58 SECTION 4. Ordinance 13983, Section 4, and K.C.C. 4.19.040 are each hereby
59 amended to read as follows:

60 To be certified for the ~~((boost))~~ King County contracting opportunities program, a
61 business must be a small ~~((economically disadvantaged business))~~ contractor or supplier,
62 have a valid business license, and ((serving)) must serve a commercially useful function,
63 as defined in K.C.C. chapter 4.18 ~~((, and must be a business involved with business~~

64 development)). ~~((A))~~ To maintain its certification, within one year of its certification a
65 ~~small ((economically disadvantaged business can meet and maintain this criterion by~~
66 ~~having))~~ contractor or supplier must have the person or persons who own and control the
67 business ~~((annually))~~ complete at least fifteen hours of business-related training in a
68 program approved by the administrator. Based on the administrator's assessment of the
69 small contractor or supplier's need for additional training, the administrator may require a
70 small contractor or supplier to complete up to fifteen additional hours annually of
71 business-related training. ~~((In establishing regulations for approval of such a training~~
72 ~~program, t))~~ The administrator shall evaluate and approve training programs based on
73 ~~((look for))~~ one or more of the following indications of the program's value: the relevant
74 industry's historical use of ((support from within the relevant industry)) the program;
75 affiliation the program has with established schools, if any~~((s));~~; and accreditation by an
76 established association.

77 SECTION 5. Ordinance 13983, Section 5, and K.C.C. 4.19.050 are each hereby
78 amended to read as follows:

79 The administrator may develop a process for certifying businesses for
80 participation in the ~~((boost))~~ King County contracting opportunities program. If feasible,
81 the administrator shall arrange or contract for a coordinated certification agency in
82 cooperation with other agencies that may adopt compatible programs.

83 SECTION 6. Ordinance 13983, Section 6, and K.C.C. 4.19.060 are each hereby
84 amended to read as follows:

85 To provide significant opportunities and incentives for ~~((boost program))~~ small
86 contractors and suppliers to prove themselves competitive within the market, the

87 certification of the businesses is limited to five years or a specified contract and dollar
88 volume of participation.

89 SECTION 7. Ordinance 13983, Section 7, and K.C.C. 4.19.070 are each hereby
90 amended to read as follows:

91 A. The ~~((boost))~~ King County contracting opportunities program shall use one or
92 more methods to create an incentive to promote the use of ~~((boost program))~~ small
93 contractors and suppliers. This incentive shall be produced either through a bonus system
94 in which the increased participation of ~~((boost program businesses))~~ small contractors
95 and suppliers is a factor in the award of contracts ~~((; through a factor in compensation to~~
96 ~~the contractor))~~; or through a set-aside system under which contractors are required to
97 achieve a specified level of participation by ~~((boost))~~ King County contracting
98 opportunities program businesses. If the bonus system is used, the contract shall state the
99 maximum incentive available for ~~((boost program))~~ the participation of small contractors
100 and suppliers and the possible methods for making use of the incentive. If a set-aside
101 system is used, the contract shall state a required minimum utilization.

102 B. As a matter of policy, opportunities for small ~~((economically disadvantaged~~
103 ~~businesses))~~ contractors and suppliers to act as prime contractors will be identified on an
104 ~~((on-going))~~ ongoing basis.

105 C. The specific methods to be used to provide incentives to ~~((boost program~~
106 ~~participating))~~ small ~~((economically disadvantaged businesses))~~ contractors and suppliers
107 and for them to be prime contractors, as opportunities arise, shall be fully addressed in
108 the rule-making process.

109 D. Beginning in 2008, the administrator shall by May 1 of every year, file twelve

110 copies with the clerk of the council, for distribution to all councilmembers and the lead
111 staff of the general government and labor relations committee or its successor, a report to
112 council on the progress of the King County contracting opportunities program during the
113 previous year, January through December. The report shall include:

114 1. The total amounts awarded by contract category;

115 2. The total amount awarded by contract category for which an incentive was
116 available;

117 3. The total amounts awarded to small contractors and suppliers reported by
118 contract category and by race and gender, to the extent businesses voluntarily provide this
119 race and gender information;

120 4. For goods and services contracts, the total amount awarded to small
121 contractors and suppliers by race and gender to the extent businesses voluntarily provide
122 this race and gender information, for those contractors for which the small contractor or
123 supplier was not the low bidder;

124 5. For goods and services, the total amount paid by the county.

125 6. A listing of all participating small contractors and suppliers by contract
126 category, race and gender to the extent businesses voluntarily provide this race and
127 gender information, their location by city and zip code, and the specific contracts
128 including dollar amounts awarded;

129 7. A listing of the number of small contractors and suppliers by race and gender
130 ,to the extent businesses voluntarily provide this race and gender information, in each of
131 the following revenue categories that was certified in the program:

132 a. for goods and services:

- 133 (1) zero to five hundred thousand dollars;
134 (2) five hundred thousand to one million dollars;
135 (3) one million to two million dollars; and
136 (4) two million dollars to the maximum revenue amount allowed by the
137 program rules;

138 b. for consulting:

- 139 (1) zero to two hundred fifty thousand dollars;
140 (2) two hundred fifty to five hundred thousand dollars;
141 (3) five hundred thousand to one million dollars; and
142 (4) one million dollars to the maximum revenue amount allowed under the
143 program rules;

144 c. for construction:

- 145 (1) zero to five hundred thousand dollars;
146 (2) five hundred thousand to three million dollars;
147 (3) three million to eight million dollars; and
148 (4) eight million to the maximum revenue amount allowed under the program
149 rules.

150 8. A listing of the number of small contractors and suppliers by race and gender,

151 to the extent businesses voluntarily provide this race and gender information, in each of
152 the following revenue categories that was awarded a contract:

153 a. for goods and services:

- 154 (1) zero to five hundred thousand dollars;
155 (2) five hundred thousand to one million dollars;

156 (3) one million to two million dollars; and
157 (4) two million dollars to the maximum revenue amount allowed by the
158 program rules;

159 b. for consulting:

160 (1) zero to two hundred fifty thousand dollars;
161 (2) two hundred fifty thousand to five hundred thousand dollars;
162 (3) five hundred thousand to one million dollars;
163 (4) one million dollars to the maximum revenue amount allowed under the
164 program rules;

165 c. for construction:

166 (1) zero to five hundred thousand dollars;
167 (2) five hundred thousand to three million dollars;
168 (3) three million to eight million dollars; and
169 (4) eight million to the maximum revenue amount allowed under the program
170 rules.

171 SECTION 8. The administrator shall by September 2, 2007, file twelve copies of
172 a report with the clerk of the council, for distribution to all councilmembers and the lead
173 staff of the general government and labor relations committee or its successor, regarding
174 options for increasing the participation of small contractors and suppliers in goods and
175 services contracts. The report shall include an analysis of the feasibility of offering:

176 A. A bonus system such that the increased participation of small contractors and
177 suppliers is a factor in the award of goods and services contracts; and

178 B. Other options as appropriate.

179 SECTION 9. Ordinance 13983, Section 8, and K.C.C. 4.19.080 are each hereby
180 amended to read as follows:

181 A person who violates this chapter or the rules adopted under this chapter or who
182 fails to comply with representations or commitments made to receive a benefit or qualify
183 for an incentive under the ~~((boost))~~ King County contracting opportunities program is
184 subject to sanctions including but not limited to: liquidated damages; withholding of
185 funds~~((s))~~; a civil fine or penalty; and disqualification from eligibility for bidding on or
186 entering into or participating, as a subcontractor or in any other manner, in a contract
187 with the county for a period not to exceed five years. If imposing sanctions, ~~((F))~~the
188 administrator shall: set forth ~~((either))~~ the sanctions ~~((or liquidated damages, or both,))~~ to
189 be imposed and the reasons for the imposition in a written order; promptly furnish a copy
190 of the order to the contract awarding authority or contract administering authority; and
191 mail a copy of the order by certified mail, return receipt requested, to the person being
192 sanctioned.

193 SECTION 10. Ordinance 13983, Section 9, and K.C.C. 4.19.090 are each hereby
194 amended to read as follows:

195 A person against whom ~~((sanctions are imposed by))~~ the administrator under this
196 chapter imposes sanctions may appeal within fifteen days from the date the
197 administrator's decision ~~((was))~~ is mailed to the person being sanctioned, by filing a
198 notice of appeal with the office of the hearing examiner. Within forty-five days after
199 receiving the notice of appeal, the hearing examiner shall convene the appeal hearing.
200 The hearing examiner shall provide ~~((W))~~written notice of the hearing date ~~((shall be~~
201 given)) to the appellant and to the department of ~~((finance))~~ executive services, finance

202 and business operations division at least thirty days before the hearing. Within thirty
203 days after conclusion of the appeal hearing, the hearing examiner presiding at the hearing
204 shall prepare a written decision and order. The final decision shall be filed by the hearing
205 examiner as a public record with the county recorder's office, and copies of the final
206 decision mailed to each party of record and to the administrator.

207 SECTION 11. Ordinance 13983, Section 10, and K.C.C. 4.19.100 are each
208 hereby amended to read as follows:

209 The executive shall adopt rules to implement this chapter, the council must
210 approve them before they become effective. (~~Where appropriate, the executive may~~
211 ~~employ a factor in favor of businesses located in economically disadvantaged areas of~~
212 ~~King County.))~~

213 NEW SECTION. 12. There is hereby added to K.C.C chapter 4.19 a new section
214 to read as follows:

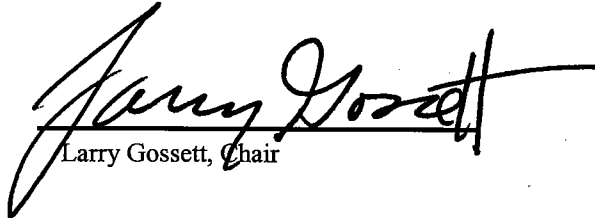
215 The rules in Attachment A to this ordinance are the rules to administer the King
216 County contracting opportunities program created under this chapter.

217

Ordinance 15703 was introduced on 2/26/2007 and passed by the Metropolitan King
County Council on 3/12/2007, by the following vote:

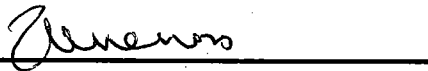
Yes: 8 - Mr. Gossett, Ms. Patterson, Ms. Lambert, Mr. von Reichbauer, Mr.
Ferguson, Mr. Phillips, Ms. Hague and Mr. Constantine
No: 0
Excused: 1 - Mr. Dunn

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



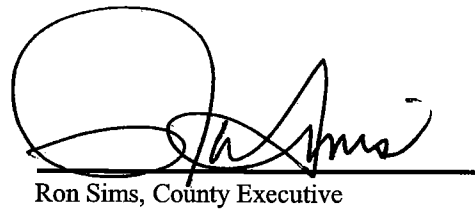
Larry Gossett, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 3 day of 21, 2007.
21 *March*
Jameson *Jameson*
Chair *Chair*



Ron Sims, County Executive

Attachments A. King County Administrative Rules

RECEIVED
2007 MAR 22 AM 10:22
CLERK
KING COUNTY COUNCIL



King County
Administrative Rules

<p>Title</p> <p>Rules Implementing King County Contracting Opportunities Program K.C.C. Chapter 4.19 (Formerly known as the Boost Program)</p>	<p>Document Code No.</p>
<p>Department/Issuing Agency</p> <p>King County Executive, Office of Business Relations & Economic Development</p>	<p>Effective Date</p>

Approved

1.0 **SUBJECT TITLE:** Rules Implementing King County Contracting Opportunities Program K.C.C. Chapter 4.19 (Formerly known as the Boost Program)

1.1 **EFFECTIVE DATE:** 10 Days After Approval

1.2 **TYPES OF ACTION:** New

2.0 **PURPOSE:** To establish uniform rules to implement the provisions of King County K.C.C. Chapter 4.19 and King County Contracting Opportunities Program (formerly known as the Boost Program) under which the County and its Contractors have an incentive to make use of Small Contractors and Suppliers as prime contractors, subcontractors and suppliers on County Contracts.

3.0 **ORGANIZATIONS AFFECTED:**

3.1 Applicable to all King County departments, offices and agencies authorized to enter into or to administer negotiated agreements or sealed bid Contracts on behalf of the County for tangible personal property, public works, professional and technical services, and architectural and engineering services (A&E).

4.0 **REFERENCES:**

- 4.1 K.C.C. 4.19
- 4.2 K.C.C. 12.16, As Amended
- 4.3 K.C.C. 4.18, As Amended

5.0 DEFINITIONS:

- 5.1 "Administrator" shall mean the Director of the Office of Business Relations and Economic Development.
- 5.2 "Business" means a sole proprietorship, corporation, partnership, joint venture, or limited liability partnership that holds both a business license and a State Unified Business Identification number.
- 5.3 "Business Development and Contract Compliance Section" or "BDCC" means the work section in the Office of Business Relations and Economic Development.
- 5.4 "Certifying Agency," means the entity authorized by the Administrator to receive, evaluate, and make recommendations about or final determinations on applications submitted by Businesses for certification in the Contracting Opportunities Program.
- 5.5 "Commercially Useful Function" means the performance of the Contract scope of work for which the Small Contractor or Supplier is responsible and carries out its responsibilities by actually performing, managing and supervising the work involved. To perform a commercially useful function, the Small Contractor or Supplier must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (if applicable) and paying for the material itself.
- 5.6 "Contract" means a mutually binding legal relationship between a Contractor and the County under which the Contractor agrees to furnish and the County agrees to pay for a Public Work as defined in 5.13 below, or professional or technical services (including A&E services), tangible personal property (including supplies, materials, goods, equipment) or other services, as defined in King County Code 4.16.010(F), (H) and (I)
- 5.7 "Contractor" means any person or person, firm, partnership, corporation, or combination thereof, including a "vendor" or a "consultant", who submits a bid, proposal, and enters into a Contract with an Implementing Agency.
- 5.8 "Directory" means the official list of Businesses certified in the King County Contracting Opportunities Program.
- 5.9 "Implementing Agency," means the department, division, or agency responsible for management of the Contract.
- 5.10 "Percentage Utilization Method" means a method of incentive in which a percentage is established and used as a factor in the selection and award of the lowest responsive responsible bidder for the purchase of goods and services, to maximize the participation of Small Contractors and Suppliers.
- 5.11 "Points Utilization Method" means a method of incentive in which the maximum allowable points for the participation of Small Contractors and Suppliers shall be a factor in the award of the Contract.

- 5.12 "Procurement and Contract Services Section" or "PCSS" means the section in the Finance and Business Operations Division of the Department of Executive Services.
- 5.13 "Public Work" includes all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein.
- 5.14 "Small Contractors and Suppliers" or "SCSCS" means that a business and the person or persons who own and control it are in a financial condition which puts the business at a substantial disadvantage in attempting to compete for public contracts. In assessing these financial conditions, the Administrator shall:
- 5.14.1 Substantially adopt the approach used by the Federal Small Business Administration (SBA) to determine the maximum revenue standard for standard business classifications for eligibility in the program provided that the SBA dollar ceilings for various Standard Industrial Classifications (SIC) or North American Industry Classification System (NAICS) levels for owners' net worth are adjusted to account for local market conditions.
- 5.14.2 Set the maximum revenue standard for small business classifications at no more than fifty percent (50%) of the Small Business Administration thresholds based on the North American Industrial Classification System (NAICS), and personal net worth set at the current federal SBA threshold in effect at the time the procurement is advertised.
- 5.15 "Set-aside Method" means a method under which Contractors are required to achieve a specified level of participation by eligible SCSs. This method establishes a required minimum percentage of the total hours or total dollar amount of the Contract to be performed by eligible SCSs.

6.0 OBJECTIVES:

- 6.1 These rules are intended to provide the County with guidelines for implementing the Contracting Opportunities Program for the award of county contracts in which the County has identified opportunities to use SCSs as prime contractors, sub-contractors, consultants, sub-consultants, vendors and suppliers. The County may include this Program on federally funded projects if the federal funding agency approves such inclusion.
- 6.2 The objective of the Contracting Opportunities Program is to promote the utilization of SCS in the overall economy of the region, by maximizing opportunities in a manner consistent with current law and the overall intent of these policies and procedures. King County has established the following methods to promote the participation of SCS on King County Contracts:

Percentage Utilization Method. The Percentage Utilization Method shall apply to the following Contract types:

- a. Contracts for Sealed Bid Procurements over \$25K
Tangible personal property and services procured by sealed bid in which

the increased participation of SCS is a factor in the selection and award of the Contract.

Every Invitation to Bid (ITB) using the Percentage Utilization Method shall state the percentage that the County will use as a factor in awarding the Contract. The County shall award the Contract to the lowest responsible bidder; provided however, that if the bid of a responsible SCS is within the established percentage of the bid submitted by the lowest responsible bidder, and the lowest responsible bidder is not an SCS, then the Contract shall be awarded to the low SCS firm.

b. Contracts under \$25K

The Percentage Utilization Method may be applied to Contracts for tangible personal property or services that have a value between two thousand five hundred dollars and twenty-five thousand dollars; and, Contracts for the purchase of professional or technical services where the value of the contract to the consultant will not exceed twenty-five thousand dollars.

6.2.1 Points Utilization Method. The Points Utilization Method may apply to Architectural and Engineering (A&E), Professional and Technical Consulting Services and other negotiated contracts, in which the increased participation of SCSs is a factor in the selection and award of the Contract. The County may apply this method of incentive where the size of the Contract, complexity of the Contract, and other considerations would make it likely that the award of points to proposers would encourage the participation of SCSs on the Contract. If the Points Utilization Method is used, the Request For Proposals (RFP) shall:

6.2.1.1 State the number of available points (as a percentage of the total points) available for the written proposal) the County will award to proposers that commit to (a) use eligible SCSs to perform work on A&E or other negotiated contracts and/or (b) for the proposer's outreach efforts.

6.2.1.1.1 For work order contracts, the County will award points to proposers that (a) commit to use at least one or more SCS firms to perform the work, and/or (b) conduct outreach efforts to identify and solicit SCSs as subconsultants.

6.2.2 Set-aside Method. The Set-aside Method shall apply to Public Work contracts, in which a required specified level of participation by SCS is a factor in the selection and award of the Contract. If the Set-aside Method is used, the Invitation to Bid (ITB) shall:

6.2.2.1 State a required minimum percentage or dollar amount of the Contract to be performed by SCS.

6.2.2.2 For work order contracts, the bid solicitation document shall state the minimum percentage or number of SCS to perform the work on the Contract.

7.0 PROCEDURES:

Action By: The Administrator in consultation with PCSS and the Implementing Agency.
Action:

- 7.1 Determine the appropriate utilization method on a project by project basis; provided however, the Percentage Utilization Method shall be automatically applied on every procurement for tangible personal property and services procured through a sealed bid, except procurements for Public Works.
- 7.2 Identify projects appropriate for the use of utilization methods, review scope of work/specifications, including elements of work, which are potentially sub-contractable according to common industry practices and provide PCSS with a written assessment. The assessment shall be provided to PCSS in the form of a "Subcontracting Opportunities Analysis Worksheet" after review and approval by BDCC.
 - 7.2.1 Review funding and dollar value.
 - 7.2.2 Ensure that bidders or proposers comply with the bidding requirements relating to the Contracting Opportunities Program.

Action By: PCSS.
Action:

- 7.3 Include the utilization method in bid/proposal solicitations and contract documents for projects selected for participation in the Contracting Opportunities Program, as identified on the Subcontracting Opportunities Analysis Worksheet approved by BDCC.
- 7.4 For all negotiated procurements and Public Works projects selected for participation in the Contracting Opportunities Program, as soon as possible and prior to contract award, provide to BDCC a copy of the lowest responsive bidder's bid or all proposals received.
- 7.5 Ensure the Administrator's written determination is reviewed and included in the contract award decision for all contracts selected for participation in the Contracting Opportunities Program.
- 7.6 Include the following requirements in Contracts that include the utilization methods described in section 6.2, except the Percentage Utilization Method. The requirements of this section shall not apply to the Percentage Utilization Method.
 - 7.6.1 A Subcontractor Utilization Form that identifies for each SCS the work to be performed for the Contract.
 - 7.6.2 Affidavits of Amounts Paid to SCS with the Contractor's progress payment requests and a Final Affidavit of Amounts Paid for all SCS who perform work on a Contract, to include all subcontractors and suppliers.
 - 7.6.3 Language that identifies the percentage or amount of work to be performed by SCS and the roles and responsibilities with respect to increases and decreases in scope of work.

7.6.4 Sanctions for violations of King County Contracting Opportunities Program
K.C.C. Chapter 4.19 rules.

Action By: The Administrator.

Action:

- 7.7 For all projects selected for participation in the Contracting Opportunities Program, evaluate and provide to PCSS, as soon as possible, a written determination of each bidder's/proposer's compliance with the terms and application of the utilization method for the use of SCS.

Action By: The Administrator and the Implementing Agency.

Action:

- 7.8 As part of the contract close-out process and prior to Final Payment on a Contract, the Administrator and the Implementing Agency shall review the Contractor's use of eligible SCS on the Contract to determine:

7.8.1 The Contractor's compliance with the Contract terms for the use of SCS, and applicable provisions of these policies and procedures; and,

7.8.2 Whether the SCS requirements established for the Contract have been met.

8.0 RESPONSIBILITIES:

8.1 The Administrator is responsible for:

8.1.1 Setting forth the sanctions to be imposed on Contractors who fail to comply with the SCS utilization requirements established in the Contract. Before imposing any sanction, the Administrator shall first provide written notice of a potential violation to the Contractor. The Contractor shall have an opportunity to submit a written reply within fifteen days from the date the Administrator's notice of a potential violation is mailed to the Contractor.

8.1.2 Working in a partnership with other local jurisdictions to develop a process for certifying businesses that meets the criteria established in these procedures and the eligibility requirements for certification as a SCS in the Contracting Opportunities Program. If feasible, the Administrator shall:

8.1.2.1 Arrange or contract for a Certifying Agency to maintain a Directory of SCSs in cooperation with other agencies that may adopt compatible programs. The Certifying Agency may be a private company, a non-County government agency, a partnership of government agencies, a County agency, or a combination thereof;

8.1.2.2 Change, at her or his discretion, the Certifying Agency to meet the needs of the Contracting Opportunities Program;

- 8.1.2.3 In his or her discretion adopt all or portions of the certifications of other agencies as meeting some or all of the requirements for participation in the Contracting Opportunities Program; and
- 8.1.2.4 Appoint the Certifying Agency to accept certifications in whole or in part from other agencies, perform certification reviews, and/or make final determinations regarding the certification of any Business, including the following:
 - 8.1.2.4.1 Implement the Eligibility criteria for certification established by these Rules;
 - 8.1.2.4.2 Enforce the requirements for Contractors to provide information and evidence necessary to carry out the purpose of the Contracting Opportunities Program; and
 - 8.1.2.4.3 Approval a list of educational institutions and programs on an annual basis that a Business may use to fulfill technical assistance and business development needs.
- 8.1.3 Providing other government agencies with information regarding the certification status of Businesses, including:
 - 8.1.3.1 Information on Businesses that have been disqualified from doing business with the County due to non-compliance with the provisions of these policies and procedures.
- 8.1.4 Preparing an analysis of local market conditions, and issuing a finding as to any adjustments necessary to the SBA size standards for various business classifications and levels for owners' personal net worth, as required by law, provided that:
 - 8.1.4.1 At the time of any necessary adjustments to the SBA size standards, the SCS qualification requirements for all advertised procurements shall remain unchanged. The SCS requirements for these procurements shall be the qualifications used in the evaluation phase.
- 8.1.5 Working with the Prosecuting Attorney Office (PAO) and PCSS to prepare language for inclusion in bid/proposal solicitation documents and contracts, including but not limited to provisions specifying requirements and/or incentives for individual contracts.
- 8.1.6 Making final determinations on compliance with the Contracting Opportunities Program and contractual requirements.
- 8.1.7 Conducting utilization reviews for the participation of SCSs throughout the term of the Contract.
- 8.1.8 Performing other activities necessary or proper for accomplishing the purposes of these policies, procedures, requirements and criteria, including the following:

- 8.1.8.1 Monitoring and enforcing the rules and requirements identified herein; and,
- 8.1.8.2 Amending these Rules as necessary to meet the objectives of the Contracting Opportunities Program.

8.2 PCSS is responsible for:

- 8.2.1 Including the utilization method in bid/proposal solicitations and contract documents for all projects selected for participation in the Contracting Opportunities Program.
- 8.2.2 Including the appropriate reporting requirements outlined in these Rules in Contracts that include the utilization methods.
- 8.2.3 Ensuring the Administrator's written determination concerning compliance with the SCS requirements is reviewed and included in the Contract award decision.

8.3 The Implementing Agency is responsible for:

- 8.3.1 Assisting the Administrator to ensure that Contractors performing work for King County comply with the SCS requirements in the Contract and these Rules.
- 8.3.2 Ensuring Contractor compliance with the Contract terms for the use of SCSs, and applicable provisions of these procedures prior to final payment on a Contract, as part of the contract closeout process, to ensure that the SCS requirements established for the Contract have been met.
- 8.3.3 Include the Administrator in the routing for approval of all procurement waivers that deviate from the standard competitive procurement procedures.

9.0 VIOLATIONS AND SANCTIONS:

The County shall determine and impose appropriate sanctions for a Contractor's breach of a Contract subject to the requirements of K.C.C. Chapter 4.19 and these rules, and for a Contractor's submittal of false or misleading information concerning compliance with these rules. Appropriate sanctions, include but are not limited to:

9.1 Liquidated damages.

- 9.1.1 The unexcused failure of a Contractor or any subcontractor to comply with the requirements of these rules shall be a breach of contract. The purpose of King County's Contracting Opportunities Program is to utilize SCSs to the maximum extent possible in the award of King County contracts. The County including the Contracting Opportunities Program is damaged when a contract or portion of a contract to be performed by an SCS is not actually performed by an SCS in compliance with these rules. Because the actual monetary amount of such damage is not reasonably calculable, liquidated damages equal to the dollar value of the participation by certified SCSs lost to the county due to the violation, not to exceed 10 percent of the dollar value of the Contract, may be

imposed as provided in the Contract.

9.2 Civil penalty or disqualification.

9.2.1 A Contractor or subcontractor, who submits false or misleading information to the County concerning compliance with these rules, may be subject to a civil penalty of up to five thousand dollars for each occurrence and/or may be disqualified from eligibility for bidding on, entering into, or participating, as a Contractor, subcontractor or in any other manner, in a contract with the County for a period not to exceed five years. Each submission of false or misleading information shall constitute a separate occurrence.

9.2.2 The Administrator shall set forth either imposition of a civil penalty or disqualification to be imposed under section 2.2.1 and the reasons for the imposition in a written order; promptly furnish a copy of the order to PCSS and the Implementing Agency; and mail a copy by certified mail, return receipt requested, to the Contractor being sanctioned. If no appeal is taken from the Administrator's decision, the decision shall become final fifteen days from the date the decision is mailed to the Contractor.

10.0 APPEALS:

10.1 A Contractor against whom the Administrator imposes sanctions may appeal within fifteen days from the date the administrator's decision is mailed to the person being sanctioned, by filing a notice of appeal with the office of the hearing examiner as provided by K.C.C. 4.19.090 Appeals.

10.2 Written notice of the hearing date shall be given to the person being sanctioned at least thirty days before the hearing.

10.3 Within forty-five days after receiving the notice of appeal, the hearing examiner shall convene the appeal hearing.

10.4 The final decision shall be mailed to the Contractor and/or the subcontractor and to the Administrator.

11.0 CRITERIA FOR BUSINESS PARTICIPATION:

11.1 The following shall be the criteria for Participation in King County's Contracting Opportunities Program on all Contracts:

11.1.1 Certification Eligibility: To be eligible to participate in the Contracting Opportunities Program, a Business must be certified by King County as a Small Contractor or Supplier serving a Commercially Useful Function and must be a business involved with business development.

11.1.2 Documentation of records shall include, but not be limited to, the following:

11.1.2.1 Personal financial information for the County to determine that the business and the personal net worth of the person(s) who owns and/or controls the business, is below the fifty percent of the Small Business Administration's maximum revenue standards for standard

business classifications in effect at the time of the application for certification; and,

- 11.1.3 Business status (Threshold). Determination of an applicant's status as a Small Contractor or Supplier shall be based upon:
- 11.1.3.1 Fifty percent (50%) of the SBA maximum revenue standard for standard business classifications, as now existing or hereafter amended, based on the North American Industry Classification System (NAICS). The size standards may be adjusted from time to time by the Administrator to account for local market conditions and program requirements through amendments to these policies, procedures, and criteria. However, the maximum revenue standard for standard business classifications may not be more than fifty percent of the Small Business Administration's thresholds, as now existing or hereafter amended.
 - 11.1.3.2 The owners' personal net worth and the fair market value of all assets. Personal net worth shall be:
 - 11.1.3.2.1 Set at the current federal SBA ceiling. This rule may be adjusted, from time to time by the Administrator to account for local market conditions and program requirements.
 - 11.1.3.2.2 The owners' financial condition compared to the financial profiles of small businesses in the same primary NAICS codes or, if not available, in similar lines of business, which are controlled by economically disadvantaged individuals.
- 11.1.4 In evaluating whether an eligible business performs a "Commercially Useful Function" on a Contract, the Administrator shall consider whether the eligible business:
- 11.1.4.1 Performed or managed a distinct element of the work. Performing or managing the work includes scheduling work operations; ordering equipment and materials (if part of the Contract); preparing and submitting payrolls and other required reports and forms; and hiring and firing employees, including supervisory employees;
 - 11.1.4.2 Role is limited to that of an extra participant in a transaction, Contract or project through which funds are passed in order to obtain the appearance of SCS participation;
 - 11.1.4.3 Exercised responsibility with its own work force for a majority percentage of the total cost of its Contract;
 - 11.1.4.4 Subcontracted a greater portion of work on a Contract than would be expected based on normal industry practice for the type of work involved;
 - 11.1.4.5 Supervised its own work force and performed the work of the Contract with workers on its own payroll. Except as noted below, the

supervision of work by personnel normally employed by another Contractor or subcontractor on the same project and not under the control of the eligible business shall constitute a failure to perform a Commercially Useful Function.

- 11.2 The following are conditions under which an eligible business may utilize personnel from another business or subcontract portions of work:
- 11.2.1 If the Contract requires specialized knowledge or expertise, an eligible business may augment its work force with personnel normally employed by the prime contractor.
 - 11.2.2 An eligible business subcontractor may further sub-contract a portion of the work if such an arrangement is consistent with standard industry practice for that body of work.
 - 11.2.3 To evaluate if utilization of other employees or subcontracted work constitutes a violation of the Commercially Useful Function rule, the Administrator shall review:
 - 11.2.3.1 Whether the arrangement is designed to provide the eligible business with the basic labor requirements of the contract;
 - 11.2.3.2 Whether the arrangement is on a limited basis and not long-term, repetitive, or continuing;
 - 11.2.3.3 Whether, exclusive of the arrangement, the majority of the eligible business' work force and its supervisors are regular employees of the eligible business; and,
 - 11.2.3.4 Whether the arrangement does not represent a significantly greater portion of the work than would be expected based on standard industry practice.
 - 11.2.3.5 Performed work with owned or leased equipment consistent with standard industry practice. An eligible business may lease equipment from the Contractor provided that:
 - 11.2.3.5.1 The operation of the equipment is subject to the full control of the eligible business; and,
 - 11.2.3.5.2 Payment for the lease of the equipment is not made by a deduction from the Contractor's payment to the eligible business subcontractor.
 - 11.2.3.5.3 Negotiated the cost of, arranged for the delivery of, and paid for the materials and supplies required for the work of the subcontract. Materials should be invoiced to the eligible business subcontractor and not to the Contractor. The Contractor may pay a supplier directly for materials used by a eligible business subcontractor only if:

11.2.3.5.3.1 Such payment arrangement is available to all subcontractors;

11.2.3.5.3.2 The eligible business participates in scheduling delivery of the materials;

11.2.3.5.3.3 The eligible business is fully responsible for ensuring that the materials meet specifications; and,

11.2.3.5.3.4 Payments made by the Contractor are made jointly to the eligible business and the supplier. Payments for materials by the Contractor will not count toward the eligible business.