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09-21-81

INTRODUCED BY

PROPOSED NO. 81 - 557

ORDINANCE NO. 5686

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

PREAMBLE:

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

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. DEFINITIONS.

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

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

B. "Affirmative Efforts," shall mean the making of vigorous and aggressive attempts to contact and contract with minority business enterprises and women's business enterprises. Where affirmative efforts are required by, or are grounds for waiving

1 provisions of this ordinance, the Affirmative Action
2 Administrator's determination shall be based on procedures to be
3 outlined in accordance with the dictates of this ordinance.

4 C. "Certification" shall mean the process by which a
5 business is determined to meet the definition of "minority
6 business enterprise" and/or "women's business enterprise" as set
7 forth in this ordinance.

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

13 E. "Concession Contracts," shall mean, but shall not be
14 limited to, those contractual arrangements for the sale of food,
15 beverages and/or items of personal property at any facility owned
16 and/or managed by King County.

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

21 G. "Consultant Contracts," shall mean, but shall not be
22 limited to those contractual arrangements made for the procurement
23 of expert personal, professional and/or technical services.

24 H. "Purchasing Contracts," shall mean, but shall not be
25 limited to, those contracts which are awarded by the Purchasing
26 Division as the representative of King County, but which are not
27 requested by any other contract awarding authority.

28 I. "Service Contracts," shall mean, but shall not be limited
29 to those contracts for technical, professional or other work
30 performed by a vendor, such as the making of repairs, servicing,
31 maintenance and/or cleaning, and which does not involve the
32 provision of substantial tangible items such as materials,
33 supplies or equipment. For the purposes of this ordinance, the

1 term "services contracts" shall not include construction, rental
2 or leasing of equipment or the traditional professional services
3 such as consulting, legal services, feasibility studies and design
4 studies.

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

11 K. "Contractor" shall mean any person, partnership,
12 corporation, or other type of business entity which has a contract
13 with King County or serves in a subcontracting capacity with an
14 entity having a contract with King County for the provision of
15 goods and/or services provided that municipal corporations in the
16 provision of, or private non-profit corporations who contract with
17 King County to provide social and health services shall be allowed
18 to request a special waiver of one or more provisions of this
19 ordinance as herein provided.

20 L. "Department," shall refer to any department as defined by
21 King County ordinance or other applicable law. Those county
22 agencies not associated with a department shall similarly
23 discharge those duties this ordinance requires of departments and
24 shall include but not be limited to the Prosecuting Attorney, the
25 Assessor and King County Council.

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

1 partnership or other multi-entity relationship shall be in writing.

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

7 N. "Legitimately Owned and Controlled" shall mean for the
8 purposes of determining whether a business is a "minority business
9 enterprise" and/or a "women's business enterprise" that women,
10 minority or a combination thereof shall possess:

11 1. Ownership of at least fifty-one percent interest in the
12 business; and

13 2. Control over management, interest in capital, and
14 interest in profit or loss commensurate with the percentage of
15 ownership on which the claim of status under this ordinance is
16 based.

17 O. "Minority Business Enterprise," means an incorporated or
18 unincorporated business other than a joint venture organized to
19 engage in commercial transactions, which is legitimately owned and
20 controlled by a minority person or persons if said ownership
21 interests are real and continuing and control over management,
22 interest in capital acquired by the business, and interest in
23 earnings are commensurate with the percentage of ownership upon
24 which the claim of Minority Business Enterprise status is based.

25 P. "Women's Business Enterprise," means an incorporated or
26 unincorporated business other than a joint venture organized to
27 engage in commercial transactions, which is legitimately owned and
28 controlled by a woman or women if said ownership interests are
29 real and continuing and control over management, interest in
30 capital acquired by the business and interest in earnings are
31 commensurate with the percentage of ownership upon which the claim
32 of Women's Business Enterprise status is based.

33 Q. "Minority Person," shall mean any ethnic person who is a

1 citizen of the United States or its territories including Asians/
2 Pacific Islanders, persons of African descent, Hispanics and
3 Native-Americans/Alaskan Natives.

4 R. "Solicitation," shall mean a contract awarding
5 authority's request for the provision of any one or more of the
6 following: goods, services, equipment leases or rentals of space
7 or the purchase thereof. Solicitations shall include requests for
8 proposals, invitations to bid and similar items. "Solicitation
9 specifications," shall mean any documents, literature or other
10 information accompanying a solicitation which provides additional
11 data regarding the contract awarding authority's request.

12 S. "Utilization Goals," shall mean those separately
13 designated annual goals for the utilization of minority business
14 enterprises and women's business enterprises by King County.
15 These goals shall be expressed as a numerical percentage of the
16 total dollar value of all contracts to be awarded by the county.
17 These goals shall be applicable to enterprises organized for
18 profit along with governmental agencies and quasi-governmental
19 agencies unless such agencies are specifically exempted by or in
20 accordance with the provisions of this ordinance.

21 T. "Utilization Requirements," shall mean those efforts
22 which King County and the particular department shall make to meet
23 the county's utilization goals.

24 U. "Violating Party," shall mean a person or entity which
25 has violated a provision or provisions of this ordinance.

26 V. "Waiver Statement," shall mean a written statement
27 directed to the Affirmative Action Administrator containing
28 reasons why any provision or provisions of this ordinance shall
29 not apply to a particular person, partnership, corporation,
30 business entity, contract awarding authority or department. Where
31 a waiver or waivers are granted, the utilization goals shall be
32 applied in a manner so as to reflect the loss of the monetary
33 value of those contracts exempted from the requisites of this

1 ordinance.

2 SECTION 2. POWERS AND DUTIES.

3 A. In addition to the powers and duties given to the County
4 Executive elsewhere in this ordinance, the County Executive shall:

5 1. Through the Affirmative Action Administrator have
6 responsibility for the administration, monitoring and enforcement
7 of the goals identified in this ordinance;

8 2. Establish a Minority and Women's Business Enterprise
9 section within the Affirmative Action Office;

10 3. Appoint a Minority and Women's Business Enterprise
11 Advisory Commission.

12 B. In addition to the powers and duties given the
13 Affirmative Action Administrator elsewhere in this ordinance, the
14 Affirmative Action Administrator shall:

15 1. With the advice and input of the minority and women's
16 business community, establish procedures for implementing and
17 administering this ordinance;

18 2. Establish a Minority and Women's Business Enterprise
19 section within the Affirmative Action office.

20 C. The Affirmative Action Administrator with the assistance
21 of the King County Purchasing Division shall:

22 1. With the advice of contract awarding authorities,
23 formulate a plan to make minority business enterprises and women's
24 business enterprises aware of contracting opportunities with King
25 County. This plan shall be updated regularly.

26 2. Review all King County soliciation lists and where
27 possible, place minority business enterprises and women's business
28 enterprises on such lists.

29 SECTION 3. UTILIZATION GOALS.

30 A. On or before the first day of March of each year, the
31 Affirmative Action Administrator shall submit to the County
32 Executive for approval proposed utilization goals for the county
33 for that year. Separate goals shall be established both for the

1 use of minority business enterprises and the use of women's
2 business enterprises. These goals shall be established separately
3 for each of the following types of contracts: construction
4 contracts; consultant contracts; purchasing and service contracts;
5 concession contracts; and, for other contracts and purchases as
6 specified in the provisions of this ordinance. Said goals shall
7 be made part of King County Affirmative Action plan and shall be
8 transmitted with said plan to the King County Council for its
9 approval. Existing utilization goals shall remain in effect until
10 newly submitted ones receive final King County Council approval.

11 1. The Affirmative Action Administrator shall formulate
12 annual utilization goals for King County. Such goals should be
13 reasonably achievable and the following factors shall be used in
14 establishing such goals:

15 a. Those statistical indicators showing denial of
16 equitable competitive opportunities to minority and women owned
17 business enterprises;

18 b. The information received from departments as required
19 by this ordinance;

20 c. The level of participation of minority business
21 enterprises and women's business enterprises in past contracts
22 awarded by the county;

23 d. The level of participation of minority business
24 enterprises and women's business enterprises in contracts awarded
25 in the King County area;

26 e. The level of participation as recommended by
27 governmental agencies and private agencies whose purpose is to
28 promote the use of minority business enterprises and women's
29 business enterprises;

30 f. The population of minorities and women in King County;

31 g. The number of minority business enterprises and
32 women's business enterprises in and around King County as
33 identified by the Affirmative Action Administrator;

1 h. The recommendation made by the Minority and Women's
2 Business Enterprise Advisory Commission established by this
3 ordinance;

4 i. The concerns which led to the establishment of this
5 ordinance.

6 2. The proposed goals shall be accompanied by a
7 justification statement which shall identify the factors in this
8 subsection and any other factors used in formulation of the
9 proposed utilization goals.

10 B. Each department shall annually formulate a contract
11 forecast estimating the number, probably monetary value, if known,
12 and type of contracts said department expects to award along with
13 any waivers it expects to request in the upcoming year. In
14 addition an implementation plan describing how the particular
15 department will accomplish its utilization goals shall be
16 composed. On or before the fifteenth day of February of every
17 year the departments will submit these documents to the
18 Affirmative Action Administrator.

19 C. The utilization goals for the remainder of 1981 and until
20 such time as new goals are established are as follows:

- 21 1. Consultant contracts - Women 9%, Minorities 12%
- 22 2. Construction contracts - Women 2%, Minorities 10%
- 23 3. Purchasing and service contracts - Women 3%, Minorities
24 5%
- 25 4. Concession contracts - Women 1%, Minorities 1%

26 SECTION 4. ACCOMPLISHMENT OF UTILIZATION GOALS.

27 A. Accomplishment of utilization goals established by this
28 ordinance shall be based on the dollar amount of the contract in
29 question and shall be calculated in the following manner:

30 1. General--The dollar value of any and all contracts
31 awarded by a contract awarding authority to a minority business
32 enterprise and/or women's business enterprise shall be counted
33 towards accomplishment of the applicable utilization goals.

1 a. The total dollar value of the contract awarded to a
2 minority business enterprise and/or a women's business enterprise
3 owned and controlled by both minority males and non-minority
4 females is counted towards the goals for minority and women
5 respectively.

6 b. The total dollar value of a contract with a minority
7 business enterprise and/or a women's business enterprise owned and
8 controlled by minority women is counted toward either the minority
9 goal or the goal for women, not to both. The contract awarding
10 authority shall with the advice and consent of the Affirmative
11 Action Administrator determine this apportionment.

12 2. Subcontracts--If a contractor, as defined in this
13 ordinance, uses subcontractors who are minority business
14 enterprises and/or women's business enterprises, the amount of
15 money which is given to said minority and/or women's business
16 enterprises for their work on such a contract, shall be credited
17 towards meeting the applicable utilization goals.

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

25 4. Supplies/Materials--The County or a contractor may
26 count toward its utilization goals expenditures for materials and
27 supplies obtained from minority business enterprise and/or women's
28 business enterprise suppliers and manufacturers, provided that the
29 minority business enterprise and/or women's business enterprise
30 assume the actual and contractual responsibility for the provision
31 of the materials and supplies.

32 a. The County may count its entire expenditure made to a
33 minority business enterprise and/or women's business enterprise

1 manufacturer (i.e., a supplier that produces goods from raw
2 materials or substantially alters them before resale).

3 b. The County may count the amount of the commission
4 paid to minority business enterprise and/or women's business
5 enterprise suppliers and resulting from a particular contract with
6 the County, provided that a minority business enterprise and/or
7 women's business enterprise supplier performs a commercially
8 useful function in the process.

9 B. The Affirmative Action Administrator shall calculate the
10 accomplishment of utilization goals for the county. In the event
11 of disputes regarding these calculations, a department may request
12 review of the Affirmative Action Administrator's decision in
13 accordance with procedures to be developed by the County
14 Administrative Officer.

15 C. Departments shall continue to make affirmative efforts to
16 do business with minority business enterprises and women's
17 business enterprises after having discharged their annual
18 utilization goals.

19 SECTION 5. UTILIZATION REQUIREMENTS, GENERAL.

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

23 1. Under the auspices of the Affirmative Action Office, a
24 technical assistance and outreach program shall be established.

25 2. Prior to entering into any contract, the contract
26 awarding authority shall:

27 a. Make affirmative efforts to solicit proposals from
28 minority business enterprises and women's business enterprises;

29 b. Examine alternatives for the arrangement of contracts
30 by size and type of work so as to enhance the possibility of
31 participation by minority business enterprises and women's
32 business enterprises.

33 3. The following shall be included in the body of the

1 contract document in any and all contracts signed between a
2 contract awarding authority and a contractor:

3 a. A provision indicating that this ordinance is
4 incorporated by reference into any and all King County contracts
5 and failure to comply with any of the requirements of such by a
6 contractor will be considered a breach of contract.

7 b. A requirement that during the term of the contract
8 the contractor shall:

9 (1.) Comply with as to tasks and dollar amounts
10 throughout the term of the contract with any plans made in their
11 proposal for the use of minority business enterprises and/or
12 women's business enterprises. Affirmative efforts shall be made
13 to replace minority business enterprises and/or women's business
14 enterprises who for any reason no longer remain associated with
15 the contractor's efforts to complete said contract with other
16 minority business enterprises and/or women's business enterprises.

17 (2.) Whenever contract supplements, amendments or
18 change orders are made which affect the total dollar value of the
19 contract, the contractor shall make affirmative efforts to comply
20 with those provisions of this ordinance which applied to the
21 original contract regarding the percentage use of minority
22 business enterprises and/or women's business enterprises.

23 (3.) Not engage in agreements between a responding
24 party and a minority business enterprise and/or a women's business
25 enterprise in which said minority and/or women's business
26 enterprise promises to provide subcontracting quotations to other
27 responding or potential responding parties.

28 B. In order to expedite achievement of the utilization goals
29 established in accordance with this ordinance the following
30 special ranking categories will apply in competitive bid
31 situations for all construction contracts of less than fifty
32 thousand dollars and for all professional and technical contracts
33 of less than twenty thousand dollars from the date of enactment of

1 this ordinance until and through December 31, 1986.

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

6 (First) Minority and/or women's business enterprises.

7 (Second) Non-minority and/or non-women's business
8 enterprises.

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

13 (First) Minority and/or women's business enterprises which
14 use minority and/or women's business enterprises as
15 subcontractors, suppliers or in similar assisting roles;

16 (Second) Minority and/or women's business enterprises
17 which do not use minority and/or women's business enterprises as
18 subcontractors, suppliers or in similar assisting roles;

19 (Third) Non-minority and/or non-women's business
20 enterprises which use minority and/or women's business enterprises
21 as subcontractors, suppliers, or in similar assisting roles;

22 (Fourth) Non-minority and/or non-women's business
23 enterprises which do not use minority and/or women's business
24 enterprises as subcontractors, suppliers or in similar assisting
25 roles.

26 3. Where a contract could require the use of
27 subcontractors, supplier or similar assisting roles and some
28 responding parties make use of such and others do not, responding
29 parties whose bids are within five percent of that made by the
30 lowest and best bidder shall be ranked as outlined within this
31 subsection, except the highest ranking shall go to minority and/or
32 women's business enterprises which do not use subcontractors,
33 suppliers or similar assistance and the lowest ranking to

1 non-minority and/or non-women's business enterprises which do not
2 use minority and/or women's subcontractors, suppliers or similar
3 assistance.

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

12 SECTION 6. EXCEPTIONS AND WAIVERS.

13 A. Contract awarding authorities, along, or on behalf of
14 responding parties and contractors may apply for waiver of one or
15 more requirements of this ordinance as they apply to a particular
16 contract or contracts. Waivers may be granted in any of the
17 following circumstances:

18 1. Sole Source--When the needed goods and services are
19 readily available from only one source, the contracting awarding
20 authority shall, in addition to the requirements contained in
21 Ordinance No. 4551, K.C.C. 4.16.030, submit a written
22 justification of the need for sole source treatment to the
23 Minority and Women's Business Enterprise Officer who shall examine
24 such statement and grant or deny the request for waiver within
25 three business days.

26 2. Emergencies--Emergencies and emergency contracting
27 shall be handled in accordance with the requisites of Ordinance
28 No. 4551, K.C.C. 4.16.040.

29 3. Special Waiver--When neither a minority business
30 enterprise and/or women's business enterprise is readily available
31 to provide needed goods or services, a special waiver may be
32 applied for in accordance with the procedures to be developed by
33 the Affirmative Action Administrator. The Affirmative Action

1 Administrator shall certify that a minority and/or women's
2 business enterprise is in fact not readily available to provide
3 the needed goods and/or services.

4 SECTION 7. MONITORING, REPORTING AND COMPLIANCE

5 A. The County Executive through the Affirmative Action
6 Administrator shall have the responsibility of monitoring the
7 requisites of this ordinance and shall have the power to request
8 from departments responding parties and/or contractors any
9 relevant records, information or documents.

10 B. Contract awarding authorities with the assistance of the
11 Minority and Women's Business Enterprise section shall keep
12 complete and detailed records regarding compliance with this
13 ordinance, said records shall include the dollar value and the
14 subject matter of each contract along with the name of the
15 contractor, the participation levels, in dollars and by type of
16 work, of minority business enterprises and women's business
17 enterprises where the contract award provides for such
18 participation, and such other information as the Affirmative
19 Action Administrator deems necessary.

20 C. The Affirmative Action Administrator or his/her designee
21 shall have responsibility for gathering all information concerning
22 compliance with this ordinance and shall have access to all
23 pertinent King County records.

24 D. With the assistance of the Minority and Women's Business
25 Enterprise section, each department shall submit to the County
26 Executive an annual report on their performance in meeting the
27 utilization goals required by this ordinance. This report shall
28 include the number of contracts awarded, the number which went to
29 minority business enterprises and/or women's business enterprises,
30 the number of contracts which involved the use of subcontractors,
31 suppliers or similar assistance and the number of minority and/or
32 women's business enterprises used in such roles. The report shall
33 also identify problems in meeting the requisites of this

1 ordinance, if any, and suggestions for improvements.

2 E. Upon receipt of an allegation that any contractor and/or
3 subcontractor or vendor has violated any provision of this
4 ordinance, or if a violation is discovered from information gained
5 through compliance monitoring, the County Executive, his designee,
6 or authorized agency, shall conduct an investigation. If it
7 appears that a violation has occurred, the County Executive, or
8 his designee will, upon ten days' written notice to the alleged
9 violating party, conduct a hearing to determine whether a
10 violation has occurred. The notice shall contain a brief
11 statement of the allegations and the reasons that a violation is
12 believed to have occurred. The hearing shall be recorded and each
13 party shall have the right to call and examine witnesses, to
14 produce documentary and physical evidence, to cross-examine
15 witnesses, and to be represented by anyone of his choice lawfully
16 permitted to do so. The parties shall include the complainant, if
17 any, the alleged violating party and a representative of the
18 Executive or the agency conducting the investigation. The
19 Executive may suspend progress payments on a contract pending the
20 outcome of the hearing. Unless otherwise agreed to by all
21 parties, the hearing shall be commenced no later than twenty-one
22 days after service of a written notice of violation.

23 F. After the hearing, the County Executive, or hearing
24 examiner shall make written findings and conclusions and may
25 undertake one of the following:

- 26 1. Dismissal of the complaint when a violation is found
27 not to have occurred;
- 28 2. Suspension or cancellation of the contract in part or
29 in whole;
- 30 3. Disqualification of the contractor and/or subcontractor;
- 31 4. Exclusion from future contracts or vending until
32 demonstration of compliance;
- 33 5. Liquidated damages of up to ten per cent of the

1 contract award;

2 6. Enforcement of any provision of the contract providing
3 remedies, such as penalties or liquidated damages for violation of
4 contractual provisions, or enforcement of any other remedy
5 available by the law of the County.

6 G. Any person, firm, corporation, business, union, or
7 organization which prevents or interferes with a contractor and/or
8 subcontractor's efforts to comply with the requirements of this
9 ordinance shall be subject to a civil penalty of five hundred
10 dollars for each occurrence, the County having previously complied
11 with the notice and hearing provisions of this ordinance.

12 SECTION 8. MINORITY AND WOMEN'S BUSINESS ENTERPRISE ADVISORY
13 COMMISSION

14 A. There is established a King County Minority and Women's
15 Business Enterprise Advisory Commission to be composed of a total
16 of nine persons representing members of the public, the minority
17 business community, the women's business community, and such other
18 persons as the County Executive deems appropriate. Nominees shall
19 be appointed by the County Executive and confirmed by a majority
20 vote of the County Council. Once constituted the commission shall
21 establish terms of appointment per K.C.C. 2.28 by lot.

22 B. The King County Minority and Women's Business Enterprise
23 Advisory Commission shall act in an advisory capacity to the
24 County Executive to further the objectives of this ordinance. The
25 Commission shall recommend county-wide and departmental
26 utilization goals for each category of contract contained in this
27 ordinance, make recommendations for improving the operation of
28 this ordinance, including corrective legislation, and report
29 annually to the County Executive regarding departmental and county
30 progress in meeting utilization goals.

31 C. The King County Minority and Women's Business Enterprise
32 Advisory Commission shall organize, elect appropriate officers,
33 and shall adopt rules and administrative procedures for its own

1 operation. Such rules shall include a definition of conflict of
2 interest issues coming before the board, and appropriate voting
3 restrictions. The Commission shall meet at least four times a
4 year and all meetings shall be open to the public. Records of the
5 proceedings shall be maintained.

6 D. Five members shall constitute a quorum for the purpose of
7 conducting business. Any vacancies occurring in the membership of
8 the commission shall be filled for the remainder of the unexpired
9 term in the same manner as the original appointments. The King
10 County Minority and Women's Business Enterprise Advisory
11 Commission, specified in this section, shall expire December 31,
12 1983, unless reenacted by ordinance.

13 SECTION 9. SEVERABILITY.

14 The provisions of this ordinance shall be effective in all
15 cases unless otherwise provided for by State or Federal Law.

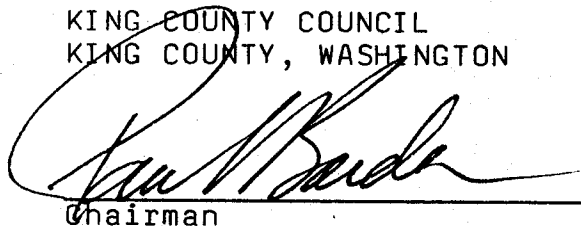
16 The provisions of this ordinance are separate and severable.
17 The invalidity of any clause, sentence, paragraph, subdivision,
18 section or portion of this ordinance or the invalidity of the
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1 application thereof to any person or circumstance shall not affect
2 the validity of the remainder of this ordinance, or the validity
3 of its application to other persons or circumstances.

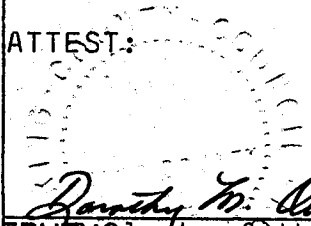
4 INTRODUCED AND READ for the first time this 10th day
5 of August, 1981.

6 PASSED this 21st day of September, 1981.

7 KING COUNTY COUNCIL
8 KING COUNTY, WASHINGTON

9 
10 Chairman


11
12 ATTEST:



13
14 
15 DEPUTY Clerk of the Council

16 ~~APPROVED~~ this 28 day of September, 1981.

17 Vetoed

18 
19 King County Executive

ATTACHMENT "A"

KING COUNTY MINORITY AND WOMEN'S
BUSINESS ENTERPRISE ORDINANCE

BACKGROUND AND FINDINGS

I. HISTORICAL BACKGROUND AND FINDINGS.

A. Purposes.

Minority and women owned business enterprises have been denied equitable competitive opportunities due to societal discrimination and other factors. The experience of governments which have enacted legislation encouraging development and utilization of such enterprises establishes that such legislation has at least two corrective results. First, it increases the utilization of minority and women owned businesses, thus increasing the revenue such businesses generate. Second, minority and women's business enterprise (MWBE) legislation encourages development in the private sector of new minority and women owned businesses, increasing the number and variety of skills and services such enterprises can offer. Government encouragement of such development allows such new firms and businesses to offer services to and compete in private enterprise as well.

A survey of documentation available at the national, state and local levels and the findings of the United States' Congress, the State of Washington, METRO and Seattle overwhelmingly substantiates this finding. Presented below is a brief review of these statistics and other indicators of past and present under utilization of minority and women owned business enterprises. In addition, these statistics establish that the experience of METRO and the City of Seattle, both of which have adopted MWBC ordinances, and of King county in its programs where minority and women participation was required, is that legislation of this nature greatly increases competitive opportunities for such enterprises.

B. Statistical Findings.

The minority population in King County is 12.0%,¹ while women comprise 51.0% of the County population.² Yet a 1977 survey shows that only 6.1% and 12.3% of all firms in King County are minority or women owned, respectively.³ Not only are such businesses under represented in comparison to the population of King County. They also realize insignificant revenues in the greater Seattle area. The 1977 ownership survey of minority and women business enterprises concluded that minority owned firms generated less than 0.5% and women owned firms generated less than 0.8% of the total gross income of all firms in King County.⁴ When gross revenues are juxtaposed to the number of minority and women owned firms, it is evident that the minority and women owned firms that do exist have not gained equal access to business opportunities in proportion to their percentages of ownership. The data collected by METRO and the City of Seattle for their respective minority and women's business enterprise ordinances indicate that these 1977 figures remain accurate approximations of the current situation.

King County has, in its contracts for supplies, consultants and other products and services, contributed to this disparity by historically underutilizing minority and women owned firms. For example, in 1979 only 2.0 and 2.4% of the County's vendor/supplier contracts went to minority and women owned businesses. While this has improved in 1980, such firms are still not receiving an appropriate share of the County's contracting dollars.

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1. Source: 1980 OFM estimate.
 2. Based on national averages; 1980 census data.
 3. Survey conducted by the State of Washington, Dept. of Revenue and the U.S. Dept. of Commerce, Bureau of Census.
 4. Ibid.

The small percentage of gross revenue realized by minority and women owned firms relative to their numerical percentage cannot be attributed to the inability of such firms to perform the sophisticated range of jobs contracted for by King County. Historical data establish that minority and women owned firms are available in King county and have the expertise to perform required work. This is demonstrated by past experience with EDA⁵ funds, with Federal grants where minority and women participation was required, e.g., UMTA and DOT⁶, the experience of other local agencies such as METRO and the City of Seattle, which currently administer minority and women's business enterprise ordinances, and King County's experience with recent affirmative action efforts of the Executive Branch.

For example, King County's experience with procurement contracts demonstrates both that there are available minority and women owned firms with the expertise to provide needed supplies and that affirmative efforts to contract with such firms encourages their utilization and development. In 1978 and 1979, the participation of minority and women owned firms in King County's vendor/supplier contractors totaled 2.0% and 2.4% respectively. However, in 1980, the participation level increased to 6.0%. This increase was due to a concerted effort to locate and inform minority and women owned firms of business opportunities with King County as a result of an Executive Order promulgated in 1979 establishing goals and timetables for all Executive departments in King County.

METRO has had an MWBE ordinance since 1978. Their statistics indicate that the participation of minority and women owned firms now exceeds 21% of total annual dollars spent on construction, and 29% of total annual dollars spent on consultant

5. Economic Development Administration

6. Urban Mass Transportation Administration;
Department of Transportation (Federal Public
Works Programs)

contracts. The City of Seattle has also experienced a marked increase in utilization of minority and women owned firms since the passage of its ordinance. Total annual dollars for construction by minority or women owned firms increased from approximately 7.5% in 1978-79 to almost 16% in 1980, and total annual dollars spent for minority and women consultants increased from 6% to over 15% for that same period.

National data corroborate the experience of King County, METRO, and the City of Seattle. In 1977, when EDA funds required a 10% set aside for minority firms, national statistics for that year indicated 14% had been allocated to minority firms⁷. In King County, 27% of these funds were allocated to minority firms. These statistics and others reviewed by the County establish that minority and women owned firms are available and have the expertise to provide services to King County but that past practices have denied them equal access to the market, thus discouraging rather than promoting the growth and development of competent minority and women owned firms in King County. As a result, gross revenues of minority and women owned firms is far less than would be expected based on their respective populations in King County.

II. BASIS FOR 1981 UTILIZATION GOALS.

A. Factors considered.

1. King County's prior experience, primarily 1980 and first quarter 1981 contracts. Prior years were used where available.
2. Data from other jurisdictions, primarily as a guide to availability of products and services from minority and women owned businesses in various markets.
3. Estimated County contracting expenditures for the remainder of 1981, the area in which the MWBE ordinance will have the greatest immediate impact⁸.

7. This set aside provision was recently upheld by the United States Supreme Court in Fulilove v. Klutznick, U.S. _____, 48 LW 4979 (1980)

8. Does not include dollars to be spent in 1982.

4. Actual expenditures for 1981 to date, as a constraint on the County's ability to achieve goals for the remainder of 1981.
5. Relationship of types of contracts let to availability of minority and women's businesses.⁹

B. Basis for each Category of 1981 Utilization Goals.

1. Consultant contracts.

(a). the large number of minority and women owned consultant firms in King County, and the growth in the number of these firms evidenced over the past year;

(b). 1980 and first quarter of 1981 actual experience which indicates that 10.8% and 7.6% of King County consulting contracts went to minorities and women (respectively) in 1980, 12% and 21% year to date in 1981; and

(c). an estimated \$462,999.08 is available to contract out during the remainder of 1981 for consulting contracts.

2. Construction Contracts.

(a). Past County experience, i.e.,

1978 total for minority and women	4.8%	¹⁰
1979 total for minority and women	1.4%	
1980 total for minority and women	1.3%	

(b) 1980 Seattle participation data, i.e.,

11.7% minority participation
4.2% women's participation

(c) Year-to-date actual expenditures compared to contract dollars available for remainder of 1981, i.e.,

Year-to-date:	\$8,892,385	expended
Minority firms:	\$ 972,067	expended
Women's firms:	\$ 194,413	expended
Remainder available	\$9,720,674	

⁹ For example, goals may be adjusted to reflect a need for a large number of highly technical services where there are few minority or women's businesses available to provide such services.

¹⁰ This figure includes EDA contracts

3. Purchasing and services contract.

(a) Actual County experience in 1980 and 1981,
i.e.,

1980 - 2.7% minority participation
3.3% women's participation

1981¹¹ - 1.2% minority participation
0.9% women's participation

(b) Market availability indicators which suggest low availability of women owned firms compared with minority firms. Utilization growth factors are adjusted to availability and not comparable for both categories.

4. Concession Contracts (parks concessions)¹²(a) Estimated 1980 participation levels,
i.e.,

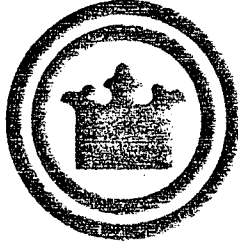
Minority firms - 0%
Women's firms - 1%

(b) Existence of present contracts. All currently under contract of from 1 to 3 years duration. Goals can be met primarily by replacing contractors who choose not to continue their contracts.

(c) Data indicating marginal current availability of both minority and women owned firms in this area.

11. First quarter data.

12. Excludes Statium concessions which are under a 10-year contract which expires in 1985. The Affirmative Action Office is currently negotiating with the prime vendor to increase minority and women's firms participation in existing contract.



Ron Dunlap
County Executive
King County Courthouse
Seattle, Washington 98104
(206) 344-4040

September 28, 1981

5686

MEMBERS OF THE KING COUNTY COUNCIL
402 King County Courthouse
Seattle, Washington 98104

Dear Council Members:

My commitment to minority/women's business enterprise is fundamental -- it makes good economic sense and it assures good government. I believe we share this commitment.

However, King County Ordinance 5686 passed by the Council on September 21, 1981, establishes a course of action towards achieving this goal which is unacceptable to my administration. In calling for the application of a preference factor to construction and consulting contracts, this ordinance:

- interferes with the integrity of the competitive bid process;
- places the County at risk of legal challenge - a challenge which would jeopardize and perhaps enjoin the affirmative efforts which the County has already undertaken;
- increases the cost of administering a minority/women's business enterprise program. The County would be required to establish an extensive certification program and dedicate limited staffing resources to a process which will do little to enhance the competitiveness of minority and women's firms;
- redirects the County's proposed program such that efforts to provide technical assistance to minority and women's firms would be virtually eliminated.

5686

It is my personal conviction that by establishing a preference factor, we are attempting to achieve a noble goal by legislating a discriminatory practice. I believe this is morally wrong and herewith find it necessary to veto King County Ordinance 5686.

I am, however, submitting, as an attachment to this letter, a new minority/women's business enterprise ordinance which would:

- establish King County policy in support of minority/women's business enterprise
- set County-wide goals for participation of these firms in purchasing and contracting processes
- establish a small business development program
- provide for the limited certification of minority and women's firms
- monitor and enforce participation levels

I respectfully request your consideration and approval of this ordinance that there be no further delays in accomplishing the efforts which we all support.

Sincerely,



RON DUNLAP
County Executive

RD/vkg

ATTACHMENTS

Copies to: SHANI N. TAHA
County Administrative Officer
RICHARD C. JAMES
Affirmative Action Administrator
MARY JONES
Council Administrator