

September 12, 1986  
8880A:KN:clt

INTRODUCED BY: Laing, North,  
Sims, Sullivan

PROPOSED NO.: 86 - 424

ORDINANCE NO. 7789

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 businesses to provide goods and services to King County and amending Ordinance 5983, Sections 1, 3, 4, 5, 6, 8, 9, 10 and 11, and KCC 4.18.010, KCC 4.18.030, KCC 4.18.040, KCC 4.18.050, KCC 4.18.060, KCC 4.18.080, KCC 4.18.090, KCC 4.18.100 and KCC 4.18.110.

PREAMBLE:

The King County Council finds and the County Executive recognizes that minority and women's businesses have been denied equitable competitive opportunities. These findings are set forth in Attachment "A" and incorporated as if fully set forth in this ordinance.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 5983, Section 1, and KCC 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. "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.

1 distinct element of work which the business has the skill and  
2 expertise as well as the responsibility of actually performing,  
3 managing and supervising. In determining whether a business is  
4 performing a commercially useful function, factors, including but  
5 not limited to the following, will be considered:

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

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

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

16 ((G-)) H. "Concession Contracts," shall mean, those  
17 contractual arrangements for the sale of food, beverages and/or  
18 items of personal property at any facility owned and/or managed  
19 by King County.

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

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

1 ((I-)) K. "Consultant Contracts," shall mean those  
2 contractual arrangements made for the procurement of expert  
3 personal, professional and/or technical services. Consultant  
4 contracts shall not include architectural and engineering  
5 contracts as defined by this chapter.

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

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

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

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

1 ((M+)) P. "Joint Venture," shall mean an association of two  
2 or more persons, partnerships, corporations or any combination of  
3 them, established to carry on a single business activity which is  
4 limited in scope or direction. The degree to which a joint  
5 venture may satisfy relevant utilization goals cannot exceed the  
6 proportionate interest of the minority/women's business held as a  
7 member of the joint venture in the work to be performed. The  
8 agreement establishing the joint venture, partnership or other  
9 multi-entity relationship shall be in writing. Further,  
10 minority/women's participation in a joint venture shall be based  
11 on the sharing of real economic interest in the venture and shall  
12 include proportionate control over management, interest in  
13 capital acquired by the joint venture, and interest in earnings.

14 ((N+)) Q. "Legitimately Owned and Controlled," shall mean  
15 for the purposes of determining whether a business is a "minority  
16 business" and/or a "women's business" that women, minorities or a  
17 combination thereof shall possess:

18 1. Ownership of at least fifty one percent interest in the  
19 business. The ownership shall be real and continuing, and shall  
20 go beyond the pro forma ownership of the business reflected in  
21 the ownership documents. The minority and/or women owner(s)  
22 shall enjoy the customary incidents of ownership and shall share  
23 in the risks and profits commensurate with their ownership  
24 interests, as demonstrated by an examination of the substance,  
25 rather than the form, of arrangements.  
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1           2. Control over management, interest in capital, interest  
2 in profit or loss and contributions to capital, equipment and  
3 expertise on which the claim of minority/women-owned status under  
4 this chapter is based. The minority/women owners must possess  
5 and exercise the legal power to direct the management and  
6 policies of the business and to make the day-to-day as well as  
7 major decisions on matters of management, policy, and  
8 operations. If the owners of the business who are not minorities  
9 and/or women are disproportionately responsible for the operation  
10 of the business, then the business is not controlled by  
11 minorities and/or women. The business must be owned, controlled,  
12 and managed on a day-to-day, full-time basis by the minority  
13 and/or women owner(s).

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

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

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

21           ((0-)) R. "Minority Business," means an independent  
22 incorporated or unincorporated established and ongoing small  
23 business concern other than a joint venture organized to engage  
24 in commercial transactions, which is legitimately owned and  
25 controlled by a minority person or persons. The ownership  
26 interests shall be real and continuing and control over  
27 management interest in capital acquired by the business, and  
28 interest in earnings shall be commensurate with the percentage of  
29 ownership upon which the claim of Minority Business Enterprise  
30 status is based.

1 ((P-)) S. ("Minority-Person," shall mean any ethnic person  
2 of color who is a resident of the United States or its  
3 territories, including Asians/Pacific Islanders, persons of black  
4 African descent, Hispanics and Native Americans/Alaskan Natives)).  
5 "Minority or Minorities" shall mean ethnic persons, including  
6 Blacks, Asians, Pacific Islanders, American Indians, Alaska  
7 Natives, Hispanics and Mexican-Americans who are citizens or  
8 lawful permanent residents of the United States.

9 ((Q-)) T. "Nonprofit Corporation" shall mean a corporation  
10 organized pursuant to R.C.W. Ch. 24.03. In the case of nonprofit  
11 corporations organized under the laws of a state other than  
12 Washington, a nonprofit corporation shall mean one organized for  
13 one or more of the purposes set forth in R.C.W. 24.03.015 and  
14 meeting the definitions in R.C.W. 24.03.005.

15 U. "Pass-Through" means buying or obtaining goods from a  
16 non-women's business, non-minority business or non-combination  
17 women/minority business, and reselling or transferring those  
18 goods to the county, county contractors or other persons doing  
19 business with the county for the purpose of obtaining any  
20 advantage or benefit conferred under this chapter, without  
21 performing a commercially useful function.

22 ((R-)) V. "Percentage Factor" shall mean the special  
23 ranking factors established by this chapter to be applied in  
24 certain competitive bid situations where minority/women's  
25 businesses respond to solicitations or are included as  
26 subcontracts in responding parties' responses to solicitations.

27 ((S-)) W. "Purchasing Contracts," shall mean, but not  
28 limited to, those contracts which are awarded by the department  
29 of executive administration as the representative of King County,  
30 or any contract awarded by King County for the purchase of  
31 tangible goods.  
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1 ((F-)) X. "Responding Party," shall mean, any person,  
2 partnership, corporation or business entity which makes a  
3 proposal as defined in this chapter in response to a solicitation  
4 as defined in this chapter.

5 ((H-)) Y. "Service Contracts," shall mean, those contracts  
6 for technical, professional or other work performed by a vendor,  
7 such as the making of repairs, servicing, maintenance and/or  
8 cleaning, and which does not involve the provision of substantial  
9 tangible items such as materials, supplies or equipment. For the  
10 purposes of this chapter, the term "service contracts" shall not  
11 include construction, rental or leasing of equipment or the  
12 traditional professional services such as consulting, legal  
13 services, feasibility studies and design studies.

14 ((V-)) Z. "Set Aside," shall mean that proportion of each  
15 contract awarding authority's annual expenditure for contract  
16 goods and services which equals the contract awarding authority's  
17 annual goals for participation of minority/women's businesses as  
18 established by this chapter.

19 AA. "Small Business Concern" means a small business as  
20 defined pursuant to Section 3 of the federal Small Business Act  
21 and relevant regulations promulgated pursuant thereto.

22 ((W-)) BB. "Solicitation," shall mean a contract awarding  
23 authority's request for the provision of any one or more of the  
24 following: goods and services of any kind, equipment leases, and  
25 rentals/purchase of space. Solicitation shall include requests  
26 for proposals, invitations to bid and similar items.

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

1           ((X+)) CC. "Utilization Goals," shall mean those separately  
2 designated annual goals for the use by King County of  
3 minority/women's businesses. The goals shall be expressed as a  
4 numerical percentage of the total dollar value of all contracts  
5 to be awarded by the county. These goals shall be applicable to  
6 businesses organized for profit, along with governmental agencies  
7 and quasi-governmental agencies, unless the agencies are  
8 specifically excepted by or in accordance with the provisions of  
9 this chapter.

10           ((Y+)) DD. "Utilization Requirements," shall mean those  
11 efforts which responding parties, King County and the particular  
12 department shall make to meet the county's utilization goals,  
13 including but not limited to the percentage factors and set aside  
14 requirements established by this chapter.

15           ((Z+)) EE. "Violating Party," shall mean a person or entity  
16 which has violated a provision or provisions of this chapter.

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

26           ((BB+)) GG. "Women's Business," means an independent  
27 incorporated or unincorporated established and ongoing small  
28 business concern other than a joint venture organized to engage  
29 in commercial transactions, which is legitimately owned and  
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1 controlled by a woman or women who is (are) residents of the  
2 United States or its territories. The ownership interests shall  
3 be real and continuing, and control over management, interest in  
4 capital acquired by the business, and interest in earnings shall  
5 be commensurate with the percentage of ownership upon which the  
6 claim of women's business status is based.

7 SECTION 2. Ordinance 5983, Section 3, and K.C.C. 4.18.030  
8 are hereby amended to read as follows:

9 Utilization Goals.

10 A. On or before the first day of (~~January~~) March of each  
11 year, the director, department of executive administration shall  
12 submit to the King County executive for approval proposed  
13 utilization goals for King County for that calendar year.  
14 Separate utilization goals shall be established for the use of  
15 minority businesses and for the use of women's businesses. These  
16 utilization goals shall be established separately for each of the  
17 following types of contracts: architectural and engineering  
18 contracts, concession contracts, construction contracts,  
19 consultant contracts, and purchasing and service contracts. The  
20 utilization goals shall be made part of King County Affirmative  
21 Action Plan and shall be transmitted with the plan to the King  
22 County council for its approval. Existing utilization goals  
23 shall remain in effect until newly submitted ones receive final  
24 King County council approval.

1           1. The utilization goals shall be reasonably achievable.  
 2 To the extent that relevant information is available, the  
 3 following factors shall be used in establishing the utilization  
 4 goals:

5           a. Statistical indicators showing the denial of  
 6 equitable competitive opportunities to minority/women's  
 7 businesses;

8           b. The level of participation of minority/women's  
 9 businesses in past contracts awarded by the county;

10           c. Other information received from departments as  
 11 required by this chapter, specifically to include the annual  
 12 report, contract forecasts and implementation plans;

13           d. The level of minority/women's business participation  
 14 in contracts awarded in ~~((the-Seattle-Metropolitan-Statistieal~~  
 15 ~~Area))~~ King County;

16           e. The level of participation recommended to promote the  
 17 use of minority/women's businesses by governmental agencies and  
 18 private agencies operating in ~~((the-Seattle-Metropolitan~~  
 19 ~~Statistieal-Area))~~ King County; ~~((whose-purpose-is-to-promote-the~~  
 20 ~~use-of-minority/women's-businesses;))~~

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

22           g. The number of minority/women's businesses in  
 23 ~~((the-Seattle-Metropolitan-Statistieal-Area))~~ King County as  
 24 identified by the director, department of executive  
 25 administration;

1           h. The number of minority/women's businesses by goal  
2 category certified by local King County governments.

3           2. ~~((The proposed utilization goals shall be accompanied~~  
4 ~~by a statement which shall identify the factors in this~~  
5 ~~subsection and any other factors used in formulating the~~  
6 ~~proposed utilization goals.))~~ The purpose of this chapter is to  
7 remedy the past effects of discrimination by increasing the  
8 opportunities for minority and women's businesses to provide  
9 goods and services to King County using reasonably achievable  
10 goals.

11           a. Each utilization goal shall represent a minimum  
12 percentage of the dollars paid annually by each contract awarding  
13 authority to minority/women's businesses.

14           b. The proposed utilization goals shall be accompanied  
15 by a statement which shall identify the factors in this  
16 subsection and any other factors used in formulating the proposed  
17 utilization goals.

18           c. Any proposed reduction in utilization goals shall be  
19 accompanied by a statement which documents that reducing  
20 utilization levels is consistent with this purpose.

21           B. Each department shall annually formulate a contract  
22 forecast estimating the number, probable monetary value, (if  
23 known), type of contracts and the estimated solicitation date for  
24 the contracts the department expects to award along with any  
25 waivers it expects to request in the upcoming year. In addition  
26 an implementation plan describing how the particular department  
27 will accomplish its utilization goals shall be formulated. On or  
28 before ~~((December 15th))~~ January 1st of each year, each  
29 department will submit these documents to the director, department  
30 of executive administration.

1 ((6--The-utilization-goals-for-the-remainder-of-1982-and  
2 until-such-time-as-new-goals-are-established-are-as-follows:))

3 ((1--Architecture-and-engineering-contracts--Minorities  
4 12%, Women-3%))

5 ((2--Concession-contracts--Minorities-1%, Women-1%))

6 ((3--Construction-contracts--Minorities-11%, Women-4%))

7 ((4--Consultant-contracts--Minorities-15%, Women-9%))

8 ((5--Purchasing-and-service-contracts--Minorities-5%,  
9 Women-3%))

10 ((Each-utilization-goal-represents-a-minimum-percentage-of  
11 the-dollars-paid-annually-by-each-contract-awarding-authority-to  
12 minority/women's-businesses.))

13 SECTION 3. Ordinance 5983, Section 4 and K.C.C. 4.18.040 are  
14 hereby amended to read as follows:

15 Accomplishment of Utilization Goals.

16 A. For all contracts, accomplishment of utilization goals  
17 established by this chapter shall be based on the dollar amount  
18 of the contract in question. Accomplishment of the goals shall  
19 be calculated in the following manner:

20 1. General--The dollar value of any and all contracts  
21 awarded by a contract awarding authority to a minority/women's  
22 business shall be counted towards accomplishment of the  
23 applicable utilization goals.

24 a. The total dollar value of each contract awarded to  
25 business owned and controlled by both minority males and  
26 non-minority females shall be apportioned on the basis of the  
27 percentage of ownership to the utilization goals for minorities  
28 and women respectively.

1           b. The total dollar value of a contract with a  
2 minority/women's business owned and controlled by minority women  
3 shall be either counted toward the minority utilization goal or  
4 the goal for women, or apportioned on the basis of ownership  
5 between minorities and women, not to both.

6           2. Subcontracts--If a contractor, uses subcontractors who  
7 are minority/women's businesses, the amount of which is given to  
8 the minority/women's business for their work on the contract  
9 shall be credited towards meeting the applicable utilization  
10 goals.

11           3. Joint Ventures--Where one or more minority/women's  
12 businesses are participants in a joint venture with one or more  
13 non-minority or non-women's businesses, the amount of money  
14 received by the minority/women's business enterprise shall be  
15 calculated in proportion to their participation in the joint  
16 venture in accomplishing the applicable utilization goals.

17           4. Supplies/Materials--The contract awarding authority or  
18 a prime contractor may count toward its utilization goals:

19           a. expenditures for materials and supplies obtained from  
20 minority/women's business suppliers and manufacturers; provided  
21 that, the minority/women's business assume the actual and  
22 contractual responsibility for the provision of the materials and  
23 supplies(( ));

24           ((a )) b. ((King-County-may-count)) its entire  
25 expenditure made to a minority/women's business manufacturer;  
26 that is, a supplier that produces goods from raw materials or  
27 substantially alters them before resale(( ));

28           ((b )) c. ((King-County-may-count)) the amount of the  
29 commission paid to minority/women's businesses ((suppliers)) and  
30 resulting from a particular contract with the county(( ));

1 provided that a minority/women's business supplier performs a  
2 commercially useful function in the process.

3 5. Brokers - Fronts - or Similar Pass-Through

4 Arrangements. Businesses acting as brokers fronts, conduits or  
5 similar pass-through arrangements shall not be certified as  
6 minority/women's business enterprises, unless the brokering  
7 service reflects normal industry practice and the broker performs  
8 a commercially useful function. Such businesses determined to be  
9 acting under these arrangements or persons who create such  
10 arrangements shall be subject to the penalties enumerated in this  
11 chapter.

12 B. The director, department of executive administration  
13 shall calculate the accomplishment of utilization goals for King  
14 County. In the event of disputes regarding these calculations, a  
15 department may request review of the director's decision by the  
16 King County executive.

17 C. After having met their annual utilization goals,  
18 departments shall continue to make affirmative efforts to do  
19 business with minority/women's businesses.

20 D. The failure of a department or King County to meet the  
21 annual dollar utilization goals established from time to time by  
22 this chapter shall not constitute grounds for a lawsuit against a  
23 department or the county, provided that the department or the  
24 county has made affirmative efforts to meet those goals. The  
25 failure of a department to meet the requirements of this chapter  
26 shall be reviewed by the King County executive and corrective  
27 action taken where appropriate.

28 SECTION 4. Ordinance 5983, Section 5, and K.C.C. 4.18.050  
29 are hereby amended to read as follows:

30 Utilization Requirements, General.  
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1           A. In order to meet the utilization goals established in  
2 accordance with this chapter, efforts including but not limited  
3 to the following shall be made:

4           1. Under the auspices of the director, department of  
5 executive administration, a technical assistance and outreach  
6 program shall be established.

7           2. Prior to entering into any contract, the contract  
8 awarding authority shall:

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

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

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

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

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

26           b. A requirement that during the term of the contract  
27 the contractor shall comply with, as to tasks and dollar amounts  
28 throughout the term of the contract, all plans made in their  
29 proposal for the use of minority/women's businesses. In the  
30 absence of a waiver, minority/women's businesses which for any  
31 reason no longer remain associated with the contract or the  
32 contractor shall be replaced with other certified  
33 minority/women's businesses.

1 c. A provision prohibiting any agreements between a  
2 responding party and a minority/women's business in which the  
3 minority/women's business promises not to provide subcontracting  
4 quotations to other responding or potential responding parties.

5 d. The requirement of maintenance of relevant records, and  
6 information necessary to document compliance with this chapter  
7 and shall include the right of the county to inspect such records.

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



1        SECTION 5. Ordinance 5983, Section 6, and K.C.C. 4.18.060  
2 are hereby amended to read as follows:

3        Utilization Requirements, Specific.

4        A. In order to expedite achieving of the utilization goals  
5 established in accordance with this chapter, the following  
6 utilization requirements shall apply to all competitive bids and  
7 other responses to solicitation:

8            1. For all purchasing, service, and concession contracts  
9 and construction contracts under ten thousand dollars, the  
10 following percentage factor shall be used in determining which  
11 responding party is the ((responsive)) lowest responsible bidder:

12            a. Where a contract does not require and/or responding  
13 parties do not plan to use subcontractors, suppliers or other  
14 businesses in similar assisting roles, responding parties whose  
15 bids are within five percent of the bid made by the lowest  
16 responsive bidder shall be ranked as follows:

17                    First, Minority/women's businesses.

18                    Second, Non-minority/non-women's businesses.

19            b. Where a contract requires the use of subcontractors,  
20 suppliers or other businesses in similar assisting roles,  
21 responding parties whose bids are within five percent of the bid  
22 made by the lowest bidder shall be ranked in the following order:

23                    First, minority/women's businesses which use  
24 minority/women's businesses as subcontractors, suppliers or in  
25 similar assisting roles.

26                    Second, minority/women's businesses ((which-perform)) or  
27 joint ventures where minority/women's business participation is  
28 at least ((fifteen)) twenty-five percent of the dollar value of a  
29 contract and do not use minority/women's businesses as  
30 subcontractors, suppliers, or in similar assisting roles.

1 Third, non-minority/non-women's businesses which use  
2 minority/women's businesses as subcontractors, suppliers, or in  
3 similar assisting roles.

4 Fourth, non-minority/non-women's businesses which do not  
5 use minority/women's businesses as subcontractors, suppliers, or  
6 in similar assisting roles.

7 c. Where a contract could require the use of  
8 subcontractors, suppliers or other businesses in similar  
9 assisting roles and some responding parties make use of such and  
10 others do not, responding parties whose bids are within five  
11 percent of that made by the lowest bidder shall be ranked as set  
12 forth in subsection ((a-and)) b., of this Section 4.18.060 A.1.,  
13 ~~((except-the-highest-ranking-shall-go-to-the-minority/women's~~  
14 ~~businesses-which-do-not-use-subcontractors,-suppliers,-or-similar~~  
15 ~~assisting-roles-and-the-lowest-ranking-to-non/minority/~~  
16 ~~non-women's-businesses-which-do-not-use-minority/women's~~  
17 ~~subcontractors,-suppliers,-or-similar-assisting-roles-))~~ except  
18 that the highest ranking shall be given equally to minority/  
19 women's businesses without sub-contractors and such businesses  
20 which use only minority/women's businesses as sub-contractors,  
21 suppliers or in similar assisting roles. The lowest ranking  
22 shall be given to non-minority/non-women's businesses that do not  
23 use minority/women's businesses as sub-contractors, suppliers or  
24 in similar assisting roles.

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

9           2. For every construction, architectural and engineering,  
10 and consultant contracts the following set aside requirements  
11 shall be met:

12           a. Contracts for construction, consultant and  
13 architectural/engineering services, the estimated cost of which  
14 exceeds ten thousand dollars shall require responding parties to  
15 include in their responses to solicitations both minority and  
16 women's business participation in the contract in a percentage  
17 which equals or exceeds the contract awarding authority's annual  
18 goals.

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

22           c. As part of the bid package, all responding parties  
23 shall identify the dollar amount of minority/women's business  
24 participation. All responding parties shall also identify the  
25 particular minority/women's businesses to be used in performing  
26 the contract, specifying for each the dollar value of the  
27 participation, the type of work to be performed, and other  
28 information as may reasonably be required to determine the  
29 responsiveness of the bid or proposal; provided that, for bids on  
30 construction contracts, this information shall be submitted no  
31 later than the close of the first King County business day after  
32 bid opening.  
33

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

5 B. Departments may request a reduction in the amount of the  
6 set aside for either or both minority business enterprises or  
7 women's business enterprises, by submitting the reasons therefor  
8 in writing to the director, department of executive  
9 administration, prior to solicitation of bids or proposals.

10 1. The director may grant such a reduction upon  
11 determination that;

12 a. The reasonable and necessary requirements of the  
13 contract render subcontracting or other participation of  
14 businesses other than the bidder or proposer infeasible at the  
15 adopted goal levels; or

16 b. Qualified minority and women's business enterprises  
17 capable of providing the goods or services required by the  
18 contract, are unavailable in the market area of the project,  
19 despite every feasible attempt to locate appropriate minority and  
20 women's business enterprises to meet adopted goals.

21 2. Any reductions in set aside amount granted by the  
22 director shall specify the amount to which the set aside has been  
23 reduced.

24 ((B+)) C. Where this Section 4.18.060 specifies that a set  
25 aside or a percentage factor shall be used for a particular type  
26 of contract, the method specified is the preferred method for  
27 achieving the utilization goals. A department may use the other  
28 method in its solicitation documents for a specific contract if  
29 it determines that a method other than the one established by  
30 this Section 4.18.060 will be a more feasible method of achieving  
31  
32  
33

1 the annual utilization goal. In the event that a department  
2 chooses to use a method other than the one specified in this  
3 Section 4.18.060, it shall include in its annual report to the  
4 executive as required by Section 4.18.080 D. of this chapter,  
5 documents demonstrating that a method other than the one  
6 established by this Section 4.18.060 is a more feasible method of  
7 achieving the annual utilization goal.

8 ((G-)) D. All solicitation documents shall include the  
9 applicable requirements of ((~~the~~s)) Sections 4.18.050 and  
10 4.18.060. In addition, documents shall include a provision  
11 prohibiting any agreement between a responding party and a  
12 minority/women's business in which the minority/women's business  
13 promises not to provide subcontracting quotations to other  
14 responding or potential responding parties. Bids, proposals, and  
15 other responses which fail to meet the requirements of this  
16 Section 4.18.060 shall, within the limitations of federal and  
17 state law, be deemed non-responsive unless a waiver has been  
18 granted pursuant to Section 4.18.070 of this chapter.

19 ((B-)) E. The percentage factor and set aside requirements  
20 of this Section 4.18.060 shall not apply to contracts awarded for  
21 the remainder of any calendar year in which the contract awarding  
22 authority is determined by the director, department of executive  
23 administration, to have met the applicable county utilization  
24 goals as established by this chapter. The percentage factor and  
25 set aside provisions of this Section 4.18.060 shall again apply  
26 in each succeeding calendar year until the annual utilization  
27 goals for that year have been met by the contract awarding  
28 authority.

1 ((E+)) F. For the Kingdom food and beverage concession  
2 contract, the set aside method of achieving utilization goals  
3 shall apply.

4 ((F+)) G. The requirements of this Section 4.18.060 shall  
5 cease to apply to contracts awarded by King County and its  
6 departments on December 31, 1987, unless reenacted by the King  
7 County council.

8 SECTION 6. Ordinance 5983, Section 8, and KCC 4.18.080 are  
9 hereby amended to read as follows:

10 Monitoring, Reporting, and Enforcement.

11 A. The county executive, through the director, department of  
12 executive administration, shall have the responsibility for  
13 monitoring implementation of the requirements of this chapter and  
14 shall have the power to request from departments, responding  
15 parties and/or contractors any relevant records, information and  
16 documents.

17 B. Contract awarding authorities, with the assistance of the  
18 director, department of executive administration, shall keep  
19 complete and detailed records regarding compliance with this  
20 chapter. The records shall include the dollar value and the  
21 subject matter of each contract along with the name of the  
22 contractor, the participation levels; (in dollars, number of  
23 contracts awarded, and type of work), of minority/business  
24 women's businesses where the contract award provides for  
25 participation, and other information as the director, department  
26 of executive administration deems necessary.

27 C. The director, department of executive administration,  
28 shall be responsible for gathering all information concerning  
29 compliance with this chapter and shall have access to all  
30 pertinent King County records.

1 D. With the assistance of the director, department of  
2 executive administration, each department shall submit to the  
3 King County executive an annual report on its performance in  
4 meeting the utilization goals required by this ordinance on or  
5 before February 15th of each year. This report shall include the  
6 number and dollar amount of contracts awarded; the number and  
7 dollar amount of contracts with minority/women's business  
8 participation; the number of contracts which involved the use of  
9 subcontractors, suppliers or similar assisting roles; the number  
10 of minority/women's businesses used in such roles; the number,  
11 type, and dollar amount of contracts awarded pursuant to the  
12 percentage factor and set aside provisions of this chapter; and  
13 the basis on which the department determined that a method other  
14 than the one specified in Section 4.18.060 of the chapter should  
15 be used. The report shall also identify problems in meeting the  
16 requirements of this chapter, if any, and suggestions for  
17 improvements.

18 E. Certification Process.

19 1. The director, department of executive administration,  
20 shall certify those businesses which are bona fide  
21 minority/women's businesses as defined in this chapter. Any  
22 application for certification shall be upon oath. For purposes  
23 of certification, lists and documents compiled by other  
24 governmental agencies, sworn statements, employment profiles, and  
25 other information deemed reliable may be used upon approval of  
26 the director, department of executive administration.

27 2. It shall be considered a violation of this chapter to  
28 obtain, or attempt to obtain, certification or the benefits of  
29 any provision of this chapter, on the basis of false or  
30 misleading information.

1           ((2-)) 3. No contract requiring or proposing  
2 minority/women's business participation may be entered into  
3 unless all minority/women's businesses identified to meet the  
4 utilization goals by a responding party have been certified.  
5 Lists of certified minority/women's businesses shall be provided  
6 to all departments and made available to the public.

7           ((3-)) 4. The director, department of executive  
8 administration, shall use his/her best efforts to coordinate King  
9 County's certification process with the appropriate officers of  
10 other governmental entities in order to reduce duplication of  
11 effort and shall make available to the public a designation of  
12 certification lists which will be acceptable to King County.

13         F. Upon receipt of a written and signed allegation that any  
14 contractor, subcontractor, or vendor has violated any provision  
15 of this chapter, or if a violation is discovered from information  
16 gained through compliance monitoring, the director, department of  
17 executive administration, shall order an investigation. If there  
18 is probable cause to believe that a violation has occurred, the  
19 director, department of executive administration, or his/her  
20 designee will, upon ten days' written notice to the alleged  
21 violating party, conduct a hearing to determine whether a  
22 violation has occurred. The hearing shall be recorded and each  
23 party shall have the right to call and examine witnesses, and to  
24 be represented by anyone of his/her choice lawfully permitted to  
25 do so. The parties shall include the complainant, if any, the  
26 alleged violating party, and a representative of the director,  
27 department of executive administration, or the agency conducting  
28 the investigation. The director, department of executive  
29 administration, may suspend progress payments on a contract  
30 pending the outcome of the hearing. Unless otherwise agreed to  
31 by all parties, the hearing shall be commenced no later than  
32 twenty-one days after service of a written notice of violation.  
33



1           G. After the hearing, the director, department of executive  
2 administration, shall make written findings and conclusions and  
3 shall order one or more of the following:

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

6           2. Suspension or cancellation of the contract in part or  
7 in whole;

8           3. Disqualification and/or debarment of the violator from  
9 participation in county contracts for a period of up to three  
10 years;

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

13           (~~5. -- Liquidated damages of up to ten percent of the full~~  
14 ~~contract award;~~)

15           (~~6. --~~) 5. Enforcement of any provision of the contract  
16 providing remedies, such as penalties or liquidated damages for  
17 violation of contractual provisions, or enforcement of any other  
18 remedy available under the laws of King County. Upon finding by  
19 the director that a contractor has in fact failed to perform a  
20 commercially useful function or has operated as a broker, front,  
21 conduit or pass through business, liquidated damages specified in  
22 the contract shall be imposed unless the director finds that  
23 imposition of such damages would be clearly inequitable, in which  
24 case the director may order appropriate relief.

1           H. Upon receipt of a written and signed allegation that any  
2 contract awarding authority has violated any provision of this  
3 chapter, or if a violation is discovered from information gained  
4 through compliance monitoring, the King County executive shall  
5 order an investigation. If there is probable cause to believe  
6 that a violation has occurred, the executive or his/her designee  
7 will, upon ten days written notice to the alleged violating party,  
8 conduct a hearing to determine whether or not a violation has  
9 occurred. The hearing shall be recorded and each party shall  
10 have the right to call and examine witnesses, to produce  
11 documentary and physical evidence, to cross-examine witnesses,  
12 and to be represented by anyone of his/her choice lawfully  
13 permitted to do so. The parties shall include the complainant,  
14 if any, the alleged violating party, and a representative of the  
15 executive or the agency conducting the investigation. Unless  
16 otherwise agreed to by all parties, the hearing shall be  
17 commenced no later than twenty-one days after service of a  
18 written notice of violation.

19           I. After the hearing, the King County executive shall make  
20 written findings and conclusions and shall order one or more of  
21 the following:

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

24           2. Corrective personnel action;

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

28           4. Enforcement of any other remedy available under the  
29 laws of King County.  
30  
31  
32  
33

1        J. In addition to any other remedy available under the laws  
 2 of King County and the State of Washington ((A-)) any person,  
 3 firm, corporation, business, union, or organization which  
 4 prevents or interferes with a contractor and/or subcontractor's  
 5 efforts to comply with the requirements of this chapter or which  
 6 submits false or ((fraudulent)) misleading information to any  
 7 King County department or employee concerning compliance with  
 8 this chapter shall be subject to a civil penalty of up to five  
 9 thousand dollars for each occurrence, King County having  
 10 previously complied with the notice and hearing provisions of  
 11 this ordinance. Each submission of false or misleading  
 12 information shall constitute a separate occurrence.

13        SECTION 7. Ordinance 5983, Section 9, and KCC 4.18.090 are  
 14 hereby amended to read as follows:

15        ((Special)) Annual Report Required. In addition to the  
 16 executive's proposing minority/women's business contracting goals  
 17 and programs in the required annual Affirmative Action Plan,  
 18 ((six-months-from-the-effective-date-of-this-chapter;)) the  
 19 Affirmative Action Plan shall include a report ((shall-be  
 20 submitted)) to the council detailing performance of the program.

21        ((a)) At a minimum, the report shall:

22        A. Provide statistical evidence, supported by a narrative  
 23 explanation where appropriate, showing contracts awarded to  
 24 minority/women's business, by type of contract, dollar value, and  
 25 contract awarding authority;

26        B. If any contractor, contract awarding authority,  
 27 department, has been granted a waiver from the provisions of this  
 28 chapter, identifying the specific contract or bid process,  
 29 parties involved and the reasons for the waiver's approval.

1 C. As appropriate, identify actions taken, by individual  
 2 case, where it has been alleged that a contractor, subcontractor,  
 3 vendor or contract awarding authority has violated the provisions  
 4 of this chapter.

5 ~~((D.--Recommend, with amendments to the chapter and findings  
 6 of fact as appropriate, whether or not the handicapped should be  
 7 added to the chapter as a category of owned and operated  
 8 business.--Further, recommend whether the chapter should be  
 9 amended so as to apply to the economically disadvantaged;))~~

10 ~~((E.--Recommend whether utilization goals for each year shall  
 11 be included in the County Affirmative Action Plan for submission  
 12 to the Council for approval subsequent to the first day of  
 13 January of that year, and not later than the first day of March  
 14 of that year as provided in Section 4.18.030 of this chapter; or  
 15 proposed utilization goals should be developed in conjunction  
 16 with the preparation of the budget for the forthcoming year and  
 17 be submitted with the proposed budget for council approval.))~~

18 ~~((F.))~~ D. As appropriate, recommend amendments to the  
 19 chapter, substantiated by fact, designed to accomplish overall  
 20 program goals in a cost-effective manner.

21 SECTION 8. Ordinance 5983, Section 10, and KCC 4.18.100 are  
 22 hereby amended to read as follows:

23 Authorization to Implement Procedures. The county executive  
 24 ~~((is authorized to))~~ shall implement such forms, administrative  
 25 processes, and operational procedures as are necessary to comply  
 26 with the provisions of this chapter by December 31, 1986;  
 27 provided that such forms, processes and procedures shall be  
 28 promulgated in compliance with Chapter 2.98; Rules of County  
 29 agencies, with the exception that administrative rules and  
 30 regulations related to this chapter shall be submitted for review  
 31  
 32  
 33

1 by the Operations, Justice, and Human Services Committee (or its  
2 successor committee) 15 days prior to filing with the clerk of  
3 the council, the provisions of chapter 2.98 notwithstanding.

4 SECTION 9. Ordinance 5983, Section 11, and KCC 4.18.110 are  
5 hereby amended to read as follows:

6 Effect of Ordinance, Status of Solicitations. The provisions  
7 of this chapter shall apply to all contracts for which a  
8 solicitation is released after the effective date of this  
9 chapter. The effective date of this ordinance shall be December  
10 31, 1986.

11 NEW SECTION. SECTION 10. Severability. The provisions of  
12 this ordinance shall be effective in all cases unless otherwise  
13 provided for by State or Federal Law. The provisions of this  
14 ordinance are separate and severable. The invalidity of any  
15 clause, sentence, paragraph, subdivision, section, or portion of  
16 this ordinance or the invalidity of the application thereof to  
17 any person or circumstances shall not affect the validity of the  
18 remainder of this ordinance, or the validity of its application  
19 to other persons or circumstances.

20 INTRODUCED AND READ for the first time this 21st day  
21 of July, 1986.

22 PASSED this 22nd day of September, 1986.

23 KING COUNTY COUNCIL  
24 KING COUNTY, WASHINGTON

25 Audrey L. Meyer  
26 Chairman

27 ATTEST:

28 Jessie M. Owens  
29 Clerk of the Council

30 APPROVED this 1<sup>st</sup> day of October, 1986.

31 Jim Hill  
32 King County Executive

ATTACHMENT A

Proposed Ordinance 86-424, relating to the procurement of goals and services by King County from minority and women's business enterprises...and amending ordinance 5983 and K.C.C. 4.18.

STATEMENT OF FINDINGS AND INTENT

King County established the present minority/women's business enterprise program in 1982 with the adoption of Ordinance 5983. Attachment A to the Ordinance set forth a justification statement which contained historical findings and supportive data for 1982 utilization goals.\* In adopting Ordinance 5983, the County recognized that minority and women's businesses had been denied effective participation in public contracting opportunities by practices that perpetuated the effects of prior discrimination. At the time of adoption, there was a long history of marked disparity in the percentages of public contracts awarded to minority business enterprises. King County like many other local, state and federal levels of government concluded that remedial action was necessary.

In 1985, the Council adopted Ordinance 7312, establishing the annual goals for the County's affirmative action, contract compliance and minority/women's business enterprise programs. Incorporated into the ordinance were provisos regarding the minority/women's business enterprise program which recognized that after several years of experience Ordinance 5983 should be reviewed to determine if modifications should be made to ensure its remedial nature and to enhance the effectiveness and efficiency of the minority/women's business program and its compatibility with the programs of other local jurisdictions.

Consistent with the provisions of Ordinance 7312, the revisions in this ordinance (Proposed Ordinance 86-424) are intended to enhance the implementation of the Minority/Women's Business program based on past operating experience of the County. New provisions allow County departments greater flexibility in meeting annual utilization goals. Other provisions limit benefits conferred under the minority/women's business program to small businesses so that very large and well established enterprises which have either overcome the effects of discrimination or did not experience such discrimination and do not need such remedial benefits will not receive them. Other provisions provide for stronger prohibitions against businesses who are not legitimate minority and women's business enterprises to prohibit them from obtaining County benefits, and to ensure that the County's efforts are directed to those enterprises which suffer from the effects of past discrimination.

In a related legislative action, the King County Council adopted Motion 6601 on August 11, 1986 setting forth policy direction for implementing the changes in the minority/women's business program resulting from this ordinance.

Attachment A  
Page Two

An additional feature of the motion was a request to the Executive branch that a substantial and comprehensive effort be undertaken to develop statistical data upon which to determine whether set aside and percentage factor utilization techniques employed in the existing minority/women's business program per Ordinance 5983 should continue beyond or cease to apply on December 31, 1987. The County recognizes the need for a thorough review of available information to determine the appropriate tailoring of its remedial ordinances. It also recognizes goal setting must be done in a fashion to sensitively reflect present conditions in order to remedy the effects of past discrimination.

It will be necessary for the Council to review the data and analysis required by Motion 6601 and the Executive recommendation in order to make the determination required by the December 31, 1987, sunset provision in the minority and women's business enterprise ordinance. Until that time, the King County Council is aware of its duty to respect the rights of all citizens. Acting on the basis of the information available to it, the Council concludes that the changes in the attached ordinance are the appropriate scope of revisions at present for its remedial action to counter the effects of past discrimination in public contracting.

This ordinance was developed during a series of public meetings with the assistance of the County Affirmative Action Advisory Committee and other interested and affected individuals.

9688A:KN:clt

- \* The Department of Executive Administration annually prepares a Minority/Women's Business Annual Report which contains information regarding the performance of the minority/women's business program and updates information contained in the May 5, 1982 Attachment A to Ordinance 5983.