

1 October 29, 1987

INTRODUCED BY: RON SIMS

2 PROPOSED NO. 87-783

3 **8313**

4 ORDINANCE NO. _____

5 AN ORDINANCE relating to the procurement of
6 goods and services by King County from minority
7 business enterprises and women's business
8 enterprises, providing for the continuation of
9 requirements for ensuring full and equitable
10 opportunities for such businesses to provide
11 goods and services to King County; amending
12 Ordinance 5700, Sections 1, 5 and 7, as
13 amended, Ordinance 5983, Sections 6, 10 and 11,
14 as amended, and KCC 4.18.010, KCC 4.18.050, KCC
15 4.18.060, KCC 4.18.080, KCC 4.18.100 and KCC
16 4.18.110; and adding new sections.

11 PREAMBLE:

12 Certain groups of people, identified generally by their
13 non-white skin color, have historically and recently been
14 disadvantaged and subjected to discrimination. The effects of
15 past discrimination linger, resulting in present
16 disadvantages. Businesses owned by such minorities and by
17 women still are in need of special assistance and preferences
18 in order eventually to compete on an equal basis with
19 businesses owned by others, for reasons set forth in
20 Attachment A to this ordinance, which is incorporated herein
21 by this reference. Also, as a result of the enactment of
22 Chapter 328, Laws of 1987, amending Chapter 39.19 RCW, certain
23 functions related to King County's programs for minority and
24 women businesses have been taken over by the Office of
25 Minority and Women's Businesses of the State of Washington,
26 necessitating certain amendments to King County's ordinances.

20 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

21 SECTION 1. Ordinance 5700, Section 1, as amended, and K.C.C.
22 4.18.010, are hereby amended as follows:

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

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

4 B. "Affirmative Efforts," shall mean making vigorous attempts
5 in good faith to contact and contract with minority/women's
6 businesses. Where affirmative efforts are required by, or are
7 grounds for waiving provisions of this chapter, the director,
8 department of executive administration's determination shall be
9 based on procedures to be outlined in accordance with the dictates
10 of this chapter.

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

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

19 E. "Certification" shall mean the process by which ((a
20 ~~business-is-determined-to-meet-the-criteria-for-a-bona-fide~~
21 ~~minority/women's-business-as-set-forth-in-this-chapter.~~)) the
22 Office of Minority and Women's Businesses of the State of Washing-
23 ton determines a business meets the criteria for a minority-owned
24 business enterprise, a women-owned business enterprise, and/or a
25 combination minority and women's business enterprise as set forth
26 in WAC chap. 326-02 and WAC chap. 326-20.

27 F. "Combination Minority and Women Business" means ((an
28 ~~established-and-ongoing-small-business-concern-which-is-organized~~
29 ~~for-profit,-independent,-performing-a-commercially-useful-function-~~

1 ~~and-which-is-fifty-percent-owned-and-controlled-by-a-minority~~
2 ~~male-and-fifty-percent-owned-and-controlled-by-a-non-minority~~
3 ~~woman.--Both-owners-must-be-lawful-permanent-residents-of-the~~
4 ~~United-States.)~~ a business certified as a combination minority
5 and women's business enterprise by the Office of Minority and
6 Women's Businesses of the State of Washington which is 50%
7 legitimately owned and controlled by minority males or minority
8 businesses as defined in this chapter.

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

- 17 1. Whether the business has the skill and expertise to
18 perform work for which it is being/has been certified;
- 19 2. Whether the business actually performs, manages and
20 supervises the work for which it is being/has been certified; and
- 21 3. Whether the business purchases goods and/or services
22 from a non-minority/women's business enterprise and simply resells
23 goods to the county, county contractor, or other person doing
24 business with the county for the purpose of allowing those goods
25 to be counted towards fulfillment of minority/women's business
26 enterprise utilization goals.

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

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

6 J. "Construction Contracts," shall mean those contractual
7 arrangements made by King County for the construction, repair,
8 rehabilitation, alteration, conversion or extension of buildings,
9 parks, streets or other improvements to real property.

10 K. "Consultant Contracts," shall mean those contractual
11 arrangements made for the procurement of expert personal,
12 professional and/or technical services. Consultant contracts
13 shall not include architectural and engineering contracts as
14 defined by this chapter.

15 L. "Contract Awarding Authority," shall mean any person with
16 the power to enter into a contractual arrangement binding King
17 County and shall also mean the particular office, agency, or
18 division on whose behalf the contract is entered. In addition,
19 this term shall include, but shall not be limited to heads of
20 county departments, divisions or offices.

21 M. "Contractor" shall mean any person, partnership,
22 corporation, or other type of business entity which has a contract
23 with King County or serves in a subcontracting capacity with an
24 entity having a contract with King County for the provision of
25 goods and services.

26 N. "Corporate Sponsored Dealership", shall mean a bona fide
27 minority/women's business which meets the following standards in
28 lieu of the fifty one percent ownership criterion of subsection
29 R.1, and the control criteria of subsection R.2.. The
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1 minority/women owners have entered into an agreement, contract, or
2 arrangement with a national or regional corporation and ((has))
3 have been granted a license to offer, sell or distribute goods or
4 services at wholesale or retail, leasing or otherwise using the
5 name, service mark, trademark or related characteristic of the
6 sponsoring corporation. Capital investment for the dealership is
7 jointly contributed by the minority/women owners and the
8 sponsoring corporation, with the sponsoring corporation initially
9 contributing the largest percentage. The original investment
10 contributed by the minority/women owners may be less than fifty
11 one percent, with a specified time limit established with the
12 sponsoring corporation for the minority/women owners to become the
13 sole owner of the dealership. The standards for qualifying a
14 corporate sponsored dealership as a bona fide minority/women's
15 business enterprise, shall include, but are not limited to:

16 1. The minority/women owners must have contributed a
17 minimum of 25% of the capitalization investment (total required
18 equity capital) in the dealership corporation.

19 2. The dealership contract must include a binding agreement
20 stating that the buy-out of the corporate sponsors' interest by
21 the minority/women owners will occur within 10 years.

22 3. If the sponsoring corporation retains majority voting
23 rights and control of the board of directors, then the
24 minority/women owners must annually apply at least fifty percent
25 of the net profit and bonuses toward the buy-out of the corporate
26 sponsors' interest within the buy-out time limit established with
27 the corporation.

28 4. The minority/women owners must show active participation
29 in the decision-making process on the board of directors of the
30 dealership.

1 5. The minority/women owners must have operational control,
2 and as such have day-to-day management control of the dealership,
3 with responsibility for sales, service volume and profits.

4 6. The sponsoring corporation must have specifically
5 developed a national or regional corporate sponsored dealership
6 program to address the present-day issue of lack of opportunities
7 for minorities or women in the dealership industry, which includes
8 such features as: capitalization assistance from the sponsoring
9 corporation, on-going business operations training, technical
10 assistance to the dealership owner, and a corporate sponsored
11 minority and women's business program.

12 7. The minority/women owners must demonstrate that the
13 relationship between the corporate sponsor and the
14 minority/women's business was not formed for the primary purpose
15 of achieving certification under this subsection N, or any other
16 similar provision of any other ordinance, regulation rule or law.

17 8. The minority/women owners having prior business or
18 management experience relating to the business being entered into
19 as an owner.

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

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

1 Q. "Joint Venture," shall mean an association of two or more
2 persons, partnerships, corporations or any combination of them,
3 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 capital
13 acquired by the joint venture, and interest in earnings.

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

18 1. Ownership of at least fifty one percent interest in the
19 business, unless the minority (~~women's~~) business qualifies as
20 a corporate sponsored dealership under the provisions of subsection
21 N. The ownership shall be real and continuing, and shall go beyond
22 the pro forma ownership of the business reflected in the ownership
23 documents. The minority (~~and/or women~~) owner(s) shall enjoy the
24 customary incidents of ownership and shall share in the risks
25 and profits commensurate with their ownership interests, as
26 demonstrated by an examination of the substance, rather than the
27 form, of arrangements.

28 2. Control over management, interest in capital, interest
29 in profit or loss and contributions to capital, equipment and
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1 expertise on which the claim of minority(~~(/women)~~)-owned
 2 status under this chapter is based. The minority(~~(/women)~~)
 3 owners must possess and exercise the legal power to direct the
 4 management and policies of the business and to make the day-to-day
 5 as well as major decisions on matters of management, policy, and
 6 operations. If the owners of the business who are not minorities
 7 (~~(and/or-women)~~) are disproportionately responsible for the opera-
 8 tion of the business, then the business is not controlled by minor-
 9 ties (~~(and/or-women)~~). The business must be owned, controlled,
 10 and managed on a day-to-day, full-time basis by the minority
 11 (~~(and/or-women)~~) owner(s). The requirements of this subsection
 12 R.2. shall not apply, if the minority(~~(/women's)~~) business quali-
 13 fies as a corporate sponsored dealership under the provisions of
 14 subsection N.

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

- 18 a. Only one spouse participates in the management of the
 19 business;
 20 b. The nonparticipating spouse relinquishes control over
 21 his/her community property interest in the subject business.

22 S. "Minority Business," means (~~(an-independent-incorporated~~
 23 ~~or-unincorporated-established-and-ongoing-small-business-concern~~
 24 ~~other-than-a-joint-venture-organized-to-engage-in-commercial~~
 25 ~~transactions)~~) a business certified by the Office of Minority
 26 and Women's Businesses of the State of Washington as a minority
 27 business enterprise which is legitimately owned and controlled by
 28 a minority person or persons as defined in this section.
 29 (~~(The-ownership-interests-shall-be-real-and-continuing-and~~
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1 control-over-management-interest-in-capital-acquired-by-the
 2 business, and interest in earnings shall be commensurate with
 3 the percentage of ownership upon which the claim of Minority
 4 Business Enterprise status is based.)

5 T. "Minority or Minorities" (~~shall mean ethnic persons,~~
 6 ~~including Blacks, Asians, Pacific Islanders, American Indians,~~
 7 ~~Alaska Natives, Hispanics and Mexican Americans who are citizens or~~
 8 ~~lawful permanent residents of the United States.~~) means a person
 9 who is a citizen of the United States and who is a member of one
 10 or more of the following historically disadvantaged racial groups:

- 11 1. Black: Having origins in any of the Black racial groups
 12 of Africa;
- 13 2. Hispanic: Of Mexican, Puerto Rican, Cuban, or Central or
 14 South American culture or origin;
- 15 3. Asian American: Having origins in any of the original
 16 peoples of the Far East, Southeast Asia, the Indian
 17 subcontinent, or the Pacific Islands; or
- 18 4. American Indian or Alaskan Native: Having origins in any
 19 of the original peoples of North America.

20 The director of the department of executive administration shall
 21 have discretion to make a final decision as to whether an
 22 individual is a minority.

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

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

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

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

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

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

29 AA. "Set Aside," shall mean that proportion of each contract
30 awarding authority's annual expenditure for contract goods and
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1 services which equals the contract awarding authority's annual
2 goals for participation of minority/women's businesses as
3 established by this chapter.

4 BB. "Small Business Concern" means a small business as defined
5 pursuant to Section 3 of the federal Small Business Act and
6 relevant regulations promulgated thereto.

7 CC. "Solicitation," shall mean a contract awarding authority's
8 request for the provision of any one or more of the following:
9 goods and services of any kind, equipment leases, and
10 rentals/purchase of space. Solicitation shall include requests
11 for proposals, invitations to bid and similar items.

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

16 DD. "Utilization Goals," shall mean those separately
17 designated annual goals for the use by King County of
18 minority/women's businesses. The goals shall be expressed as a
19 numerical percentage of the total dollar value of all contracts to
20 be awarded by the county. These goals shall be applicable to
21 businesses organized for profit, along with governmental agencies
22 and quasi-governmental agencies, unless the agencies are
23 specifically excepted by or in accordance with the provisions of
24 this chapter.

25 EE. "Utilization Requirements," shall mean those efforts which
26 responding parties, King County and the particular department
27 shall make to meet the county's utilization goals, including but
28 not limited to the percentage factors and set aside requirements
29 established by this chapter.

1 FF. "Violating Party," shall mean a person or entity which has
2 violated a provision or provisions of this chapter.

3 GG. "Waiver Statement," shall mean a written statement
4 directed to the director, department of executive administration
5 containing reasons why any provision or provisions of this chapter
6 shall not apply to a particular person, partnership, corporation,
7 business entity, contract awarding authority, department, or other
8 entity. Where a waiver or waivers are granted, the utilization
9 goals shall be applied in a manner so as to reflect the loss of
10 the monetary value of those contracts exempted from the requisites
11 of this chapter.

12 HH. "Women's Business," means (~~(an-independent-incorporated-or~~
13 ~~unincorporated-established-and-ongoing-small-business-concern~~
14 ~~other-than-a-joint-venture-organized-to-engage-in-commercial~~
15 ~~transactions, which is legitimately owned and controlled by a~~
16 ~~woman-or-women-who-is-(are)-residents-of-the-United-States-or-its~~
17 ~~territories,--The-ownership-interests-shall-be-real-and~~
18 ~~continuing, and control over management, interest in capital~~
19 ~~acquired-by-the-business, and interest in earnings shall be com-~~
20 ~~mensurate-with-the-percentage-of-ownership-upon-which-the-claim~~
21 ~~of-women's-business-status-is-based.)) a business certified by
22 the Office of Minority and Women's Businesses of the State of
23 Washington as a women's business enterprise.~~

24 SECTION 2. Ordinance 5700, Section 5, as amended, and K.C.C.
25 4.18.050 are hereby amended as follows:

26 **UTILIZATION REQUIREMENTS, GENERAL.**

27 A. In order to meet the utilization goals established in
28 accordance with this chapter, efforts including but not limited to
29 the following shall be made:
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1 1. Under the auspices of the director, department of
2 executive administration, a technical assistance and outreach
3 program shall be established.

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

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

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

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

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

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

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

UTILIZATION REQUIREMENTS, SPECIFIC.

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

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

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

15 First, Minority/women's businesses.

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

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

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

24 Second, minority/women's businesses or joint ventures where
25 minority/women's business participation is at least twenty-five
26 percent of the dollar value of a contract and do not use
27 minority/women's businesses as subcontractors, suppliers, or in
28 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 use
5 minority/women's businesses subcontractors, suppliers, or in
6 similar assisting roles.

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

20 d. All responding parties within each particular ranking
21 shall be grouped according to the amount of their bid, with low
22 bidders receiving the highest priority. The lowest bidder within
23 the highest ranking category shall be awarded the contract in
24 question. In the event two or more responding parties qualify for
25 award of the contract in question, they shall be notified and
26 allowed the opportunity to resubmit their bids. The lowest bidder
27 shall then be awarded the contract.

28 2. For every construction, architectural and engineering,
29 and consultant contracts the following set aside requirements
30 shall be met:
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1 a. Contracts for construction, consultant and
2 architectural/engineering services, the estimated cost of which
3 exceeds ten thousand dollars shall require responding parties to
4 include in their responses to solicitations both minority and
5 women's business participation in the contract in a percentage
6 which equals or exceeds the contract awarding authority's annual
7 goals.

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

11 c. As part of the bid package, all responding parties
12 shall identify the dollar amount of minority/women's business
13 participation. All responding parties shall also identify the
14 particular minority/women's businesses to be used in performing
15 the contract, specifying for each the dollar value of the
16 participation, the type of work to be performed, and other
17 information as may reasonably be required to determine the
18 responsiveness of the bid or proposal; provided that, for bids on
19 construction contracts, this information shall be submitted no
20 later than the close of the first King County business day after
21 bid opening.

22 d. During the term of the contract, any failure to comply
23 with the (~~levels~~) percentages of minority/women's business
24 participation identified in the bid or proposal shall be consid-
25 ered a material breach of contract. The dollar value of the
26 total contract used for the calculation of the set-aside shall be
27 increased or decreased to reflect executed change orders unless:

28 (1) a waiver is obtained in accordance with K.C.C.

29 4.18.070A. after consultation among the contract

1 awarding authority, the director of the department
2 of executive administration, and the contractor; or

3 (2) the department obtains a reduction in the amount
4 of the set aside according to the procedure in
5 K.C.C. 4.18.060B., except that the reduction re-
6 quest for change orders need not be submitted
7 prior to solicitation of bids or proposals.

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

13 1. The director may grant such a reduction upon
14 determination that:

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

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

24 2. Any reductions in set aside amount granted by the
25 director shall specify the amount to which the set aside has been
26 reduced.

27 C. Where this Section 4.18.060 specifies that a set aside or
28 a percentage factor shall be used for a particular type of
29 contract, the method specified is the preferred method for
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1 achieving the utilization goals. A department may use the other
2 method in its solicitation documents for a specific contract if it
3 determines that a method other than the one established by this
4 Section 4.18.060 will be a more feasible method of achieving the
5 annual utilization goal. In the event that a department chooses
6 to use a method other than the one specified in this Section
7 4.18.060, it shall include in its annual report to the executive
8 as required by Section 4.18.080 D. of this chapter, documents
9 demonstrating that a method other than the one established by this
10 Section 4.18.060 is a more feasible method of achieving the annual
11 utilization goal.

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

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

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

5 G. The requirements of this Section 4.18.060 shall cease
6 to apply to contracts awarded by King County and its departments
7 on December 31, (~~1987~~) 1992, unless reenacted by the King
8 County council.

9 SECTION 4. Ordinance 5700, Section 7, as amended, and K.C.C.
10 4.18.080, are hereby amended as follows:

11 **MONITORING, REPORTING, AND ENFORCEMENT.**

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

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

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

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

19 E. Certification and Recognition Process.

20 1. ~~((The director, department of executive administration,~~
21 ~~shall certify those businesses which are bona fide minority/~~
22 ~~women's businesses as defined in this chapter. Any application~~
23 ~~for certification shall be upon oath. For purposes of certifi-~~
24 ~~cation, lists and documents compiled by other governmental~~
25 ~~agencies, sworn statements, employment profiles, and other~~
26 ~~information deemed reliable may be used upon approval of the~~
27 ~~director, department of executive administration.)) Pursuant
28 to chap. 328, Laws of 1987, the Office of Minority and Women's
29 Businesses of the State of Washington shall be solely responsible
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1 for certifying and decertifying businesses. All certified
2 women's business enterprises are recognized as eligible for par-
3 ticipation in the county's women's business enterprise program.
4 King County's minority business enterprise program is only for
5 minorities as defined in K.C.C. 4.18.010T.; therefore the
6 director, department of executive administration, shall recognize
7 only those combination minority and women's business enterprises
8 or minority business enterprises certified by the State of Wash-
9 ington which also meet the definitions in K.C.C. 4.18.010,
10 according to minority status information provided to King County
11 by the Office of Minority and Women's Businesses of the State of
12 Washington. Businesses are only eligible for King County's
13 programs so long as they remain certified by the State of
14 Washington.

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

20 3. No contract requiring or proposing minority/women's busi-
21 ness participation may be entered into unless all minority/women's
22 businesses identified to meet the utilization goals by a respond-
23 ing party (~~have-been-certified~~) were, at the time the bid was
24 submitted, certified by the Office of Minority and Women's Busi-
25 nesses of the State of Washington and recognized by the director,
26 department of executive administration, as eligible to participate
27 in King County's minority/women's business program and the
28 director, department of executive administration, determines all
29 identified minority/women's businesses appear able to perform a
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1 commercially useful function on that contract as proposed. Lists
2 of certified and recognized minority/women's businesses shall be
3 provided to all departments and made available to the public.

4 4. (~~The director, department of executive administration,~~
5 ~~shall use his/her best efforts to coordinate King County's cer-~~
6 ~~ification process with the appropriate officers of other govern-~~
7 ~~mental entities in order to reduce duplication of effort and~~
8 ~~shall make available to the public a designation of certification~~
9 ~~lists which will be acceptable to King County.~~) No business
10 shall apply to King County in order to participate in the pro-
11 grams established by this chapter.

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

5 G. After the hearing, the director, department of executive
6 administration, shall make written findings and conclusions and
7 shall order one or more of the following:

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

10 2. Suspension or cancellation of the contract in part or in
11 whole;

12 3. Disqualification and/or debarment of the violator from
13 participation in county contracts for a period of up to ((three))
14 five years;

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

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

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

15 I. After the hearing, the King County executive shall make
16 findings and conclusions and shall order one or more of the
17 following:

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

20 2. Corrective personnel action;

21 3. Disqualification and suspension of authority of all
22 members, any board, commission, or other body constituting the
23 violating contract awarding authority;

24 4. Enforcement of any other remedy available under the laws
25 of King County.

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

9 K. When conducting any investigation or preparing for a
10 hearing under this section, the director shall have authority to
11 sign and issue subpoenas requiring the attendance and testimony of
12 witnesses, the production of evidence including but not limited to
13 books, records, correspondence or documents in the possession or
14 under the control of the person subpoenaed, and access to evidence
15 for the purpose of examination and copying as are necessary for
16 the investigation. The director shall consult with the
17 prosecuting attorney before issuing any subpoena under this
18 section. If an individual fails to obey a subpoena, or obeys a
19 subpoena but refuses to testify when requested concerning any
20 matter under investigation, the director may invoke the aid of the
21 King County prosecuting attorney who may petition to the Superior
22 Court for King County for an order or other appropriate action
23 necessary to secure enforcement of the subpoena. The petition
24 shall be accompanied by a copy of the subpoena and proof of
25 service, and shall set forth in what specific manner the subpoena
26 has not been complied with, and shall ask an order of the court to
27 compel the witness to appear and testify or cooperate in the
28 investigation.

29 SECTION 5. Ordinance 5983, Section 10, as amended, and K.C.C.
30 4.18.100 are hereby amended as follows:

1 **AUTHORIZATION TO IMPLEMENT PROCEDURES.** The county executive
2 shall implement such forms, administrative processes, and
3 operational procedures as are necessary to comply with the
4 provisions of this chapter by (~~December-31,--1986~~) February 1,
5 1988; provided that such forms, processes and procedures shall be
6 promulgated in compliance with Chapter 2.98; Rules of County
7 agencies, with the exception that administrative rules and
8 regulations related to this chapter shall be submitted for review
9 by the (~~operations,--justice-and-human-services~~) administration
10 and justice committee (or its successor committee) (~~15~~) fifteen
11 days prior to filing with the clerk of the council, the provisions
12 of Chapter 2.98 notwithstanding.

13 SECTION 6. Ordinance 5983, Section 11, as amended, and K.C.C
14 4.18.110 are hereby amended as follows:

15 **EFFECT OF ORDINANCE, STATUS OF SOLICITATIONS.** (~~The~~) Each
16 of the provisions of this chapter shall apply to all contracts
17 for which a solicitation is released after the effective date of
18 that provision of this chapter. (~~The-effective-date-of-this~~
19 ~~ordinance-shall-be-December-31,--1986.~~)

20 NEW SECTION. SECTION 7. Effective date. Sections 1 and 4 of
21 this ordinance shall take effect on January 1, 1988. All other
22 sections of this ordinance shall take effect as provided in the
23 King County charter.

24 NEW SECTION. SECTION 8. Severability. The provisions of
25 this ordinance shall be effective in all cases unless otherwise
26 provided for by State or Federal Law. The provisions of this
27 ordinance are separate and severable. The invalidity of any
28 clause, sentence, paragraph, subdivision, section, or portion of
29 this ordinance or the invalidity of the application thereof to any
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1 person or circumstances shall not affect the validity of the
2 remainder of this ordinance, or the validity of its application to
3 other persons or circumstances.

4 INTRODUCED AND READ for the first time this 26th day of
5 October, 1987.

6 PASSED this 16th day of November, 1987.

7 KING COUNTY COUNCIL
8 KING COUNTY, WASHINGTON

9 Jay Grant
10 Chair

11 ATTEST:

12 Jessie M. Owens
13 Clerk of the Council

14 APPROVED this 25th day of November, 1987.

15 J. Hill
16 King County Executive

1
2 PROPOSED ORDINANCE 87-783.

3 STATEMENT OF FINDINGS AND INTENT

4 Testimony and executive reports presented to the King County
5 council have convincingly demonstrated that, while King County's
6 minority and women business contracting programs have improved
7 markedly the opportunity for minority and women-owned businesses,
8 full equality of opportunity has not yet been achieved. It is
9 only because of the existence of such programs that the present
10 utilization of these businesses by King County has been
11 accomplished. The King County council finds that the gains
12 already made would be lost without the continuance of these
13 preference programs for at least the span of a generation. This
14 is necessary to allow maturation and stabilization of existing
15 minority and women businesses, to increase new businesses, to
16 firmly establish an awareness of minority and women-owned
17 businesses in the minds of the public and public employees, and to
18 raise a generation of young women and young minority persons who
19 will perceive these opportunities as incentives to establish their
20 own businesses.

21 Therefore, while the ultimate goal of King County is to phase
22 out all race or gender considerations from government contracting,
23 the council finds that the percentage factor and set aside program
24 must be in place for a span of at least ten years, after which
25 time it shall again be reviewed.