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1 March 24, 1989

INTRODUCED BY:

2 PROPOSED NO. 89 - 255

3 ORDINANCE NO. 8937

4 AN ORDINANCE relating to the procurement of
5 goods and services by King County from minority
6 business enterprises and women's business
7 enterprises; amending Ordinance 5700, Sections
8 1, 3, 6 and 7, as amended, Ordinance 5983,
9 Section 6, as amended, and KCC 4.18.010, KCC
10 4.18.030, KCC 4.18.060, KCC 4.18.080, and
11 adding new sections.

12 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

13 NEW SECTION SECTION 1. Findings. The county council

14 hereby finds the following facts:

15 A. In hiring and dealing with contractors and subcontractors
16 of all types, public and private owners, developers, contractors,
17 financial institutions and sureties have discriminated and do
18 discriminate against minority and women's businesses doing
19 business with King County based on the race and sex of the owners
20 of these businesses.

21 B. But for the provisions of its past and present minority
22 and women's business enterprise ordinances, King County would have
23 been, and would continue to be, a passive participant in the
24 discrimination against these businesses.

25 C. The provisions of this ordinance are necessary to remedy
26 the discrimination against minority and women's businesses and to
27 prevent King County from financing and participating in this
28 discrimination with its contracting dollars.

29 D. The market from which King County draws contractors
30 extends throughout the State of Washington.

31 E. King County is prohibited by state law from helping
32 minority and women's businesses overcome the effects of
33 discrimination through financial assistance or reduction of

1 bonding requirements. While the existence of such alternative
2 remedies must continue to be explored, no effective alternatives
3 appear to be presently available.

4 F. Further study of the nature and extent of the
5 discrimination against minority and women's businesses must be
6 conducted to determine whether additional amendments to the
7 program are necessary. The continuation of the program during the
8 period of this study is necessary to prevent irreparable injury to
9 such businesses.

10 SECTION 2. Ordinance 5700, Section 1, as amended, and K.C.C.
11 4.18.010 are hereby amended as follows:

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

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

22 B. "Affirmative Efforts" shall mean making vigorous attempts
23 in good faith to contact and contract with minority/women's
24 businesses. Where affirmative efforts are required by, or are
25 grounds for waiving, provisions of this chapter, the director of
26 the department of executive administration's determination shall
27 be based on procedures to be outlined in accordance with the
28 dictates of this chapter.

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

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

7 E. "Certification" shall mean the process by which the Office
8 of Minority and Women's Businesses of the State of Washington
9 determines a business meets the criteria for a minority-owned
10 business enterprise, a women-owned business enterprise, and/or a
11 combination minority and women's business enterprise as set forth
12 in WAC chap. 326-02 and WAC chap. 326-20.

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

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

- 27
- 28 1. Whether the business has the skill and expertise to
29 perform work for which it is being/has been certified;
 - 30 2. Whether the business actually performs, manages and
31 supervises the work for which it is being/has been certified; and
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1 3. Whether the business purchases goods and/or services
2 from a non-minority/women's business enterprise and simply resells
3 goods to the county, county contractor, or other person doing
4 business with the county for the purpose of allowing those goods
5 to be counted towards fulfillment of minority/women's business
6 enterprise utilization goals.

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

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

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

20 K. "Consultant Contracts" shall mean those contractual
21 arrangements made for the procurement of expert personal,
22 professional and/or technical services. Consultant contracts
23 shall not include architectural and engineering contracts as
24 defined by this chapter.

25 L. "Contract Awarding Authority" shall mean any person with
26 the power to enter into a contractual arrangement binding King
27 County and shall also mean the particular office, agency, or
28 division on whose behalf the contract is entered. In addition,
29 this term shall include, but shall not be limited to heads of
30 county departments, divisions or offices.
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1 M. "Contractor" shall mean any person, partnership,
2 corporation, or other type of business entity which has a contract
3 with King County or serves in a subcontracting capacity with an
4 entity having a contract with King County for the provision of
5 goods and services.

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

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

28 2. The dealership contract must include a binding agreement
29 stating that the buy-out of the corporate sponsor's interest by
30 the minority/women owners will occur within 10 years.
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1 3. If the sponsoring corporation retains majority voting
2 rights and control of the board of directors, then the
3 minority/women owners must annually apply at least fifty percent
4 of the net profit and bonuses toward the buy-out of the corporate
5 sponsor's interest within the buy-out time limit established with
6 the corporation.

7 4. The minority/women owners must show active participation
8 in the decision-making process on the board of directors of the
9 dealership.

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

13 6. The sponsoring corporation must have specifically
14 developed a national or regional corporate sponsored dealership
15 program to address the present-day issue of lack of opportunities
16 for minorities or women in the dealership industry, which includes
17 such features as: capitalization assistance from the sponsoring
18 corporation, on-going business operations training, technical
19 assistance to the dealership owner, and a corporate sponsored
20 minority and women's business program.

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

26 8. The minority/women owners having prior business or
27 management experience relating to the business being entered into
28 as an owner.

29 O. "Department" shall refer to any department as defined by
30 King County ordinance or other applicable law and shall include
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1 all county agencies not associated with a department. These
2 agencies shall similarly discharge those duties this chapter
3 requires of departments and shall include the King County
4 prosecuting attorney, the King County assessor, and the King
5 County council.

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

10 Q. "Joint Venture" shall mean an association of two or more
11 persons, partnerships, corporations or any combination of them,
12 established to carry on a single business activity which is
13 limited in scope or direction. The degree to which a joint
14 venture may satisfy relevant utilization goals cannot exceed the
15 proportionate interest of the minority/women's business held as a
16 member of the joint venture in the work to be performed. The
17 agreement establishing the joint venture, partnership or other
18 multi-entity relationship shall be in writing. Further,
19 minority/women's participation in a joint venture shall be based
20 on the sharing of real economic interest in the venture and shall
21 include proportionate control over management, interest in capital
22 acquired by the joint venture, and interest in earnings.

23 R. "Legitimately Owned and Controlled" shall mean for the
24 purpose of determining whether a business is a "minority business"
25 that minorities shall possess:

26 1. Ownership of at least fifty-one percent interest in the
27 business, unless the minority business qualifies as a corporate
28 sponsored dealership under the provisions of subsection N. The
29 ownership shall be real and continuing, and shall go beyond the
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1 pro forma ownership of the business reflected in the ownership
2 documents. The minority owner(s) shall enjoy the customary
3 incidents of ownership and shall share in the risks and profits
4 commensurate with their ownership interests, as demonstrated by an
5 examination of the substance, rather than the form, of
6 arrangements.

7 2. Control over management, interest in capital, interest
8 in profit or loss and contributions to capital, equipment and
9 expertise on which the claim of minority-owned status under this
10 chapter is based. The minority owners must possess and exercise
11 the legal power to direct the management and policies of the
12 business and to make the day-to-day as well as major decisions on
13 matters of management, policy, and operations. If the owners of
14 the business who are not minorities are disproportionately
15 responsible for the operation of the business, then the business
16 is not controlled by minorities. The business must be owned,
17 controlled, and managed on a day-to-day, full-time basis by the
18 minority owner(s). The requirements of this subsection R.2. shall
19 not apply, if the minority business qualifies as a corporate
20 sponsored dealership under the provisions of subsection N.

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

24 a. Only one spouse participates in the management of the
25 business;

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

28 S. "Minority Business" means a business certified by the
29 Office of Minority and Women's Businesses of the State of
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1 Washington as a minority business enterprise which is legitimately
2 owned and controlled by a minority person or persons as defined in
3 this section. The director of the department of executive
4 administration is authorized to determine that specific racial
5 groups have not been discriminated against in their ownership and
6 operation of particular trades or areas of business or in the
7 particular geographical areas in which they operate. The director
8 may exclude such businesses from consideration as "minority
9 businesses" under this ordinance, in connection with contracts
10 involving such trades or areas of business, as provided in Section
11 6 of this ordinance.

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

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

24 The director of the department of executive administration shall
25 have discretion to make a final decision as to whether an
26 individual is a minority.

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

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

11 W. "Percentage Factor" shall mean the special ranking factors
12 established by this chapter to be applied in certain competitive
13 bid situations where minority/women's businesses respond to
14 solicitation or are included as subcontracts in responding
15 parties' responses to solicitation.

16 X. "Purchasing Contracts" shall mean, but not be limited to,
17 those contracts which are awarded by the department of executive
18 administration as the representative of King County, or any
19 contract awarded by King County for the purchase of tangible
20 goods.

21 Y. "Responding Party" shall mean any person, partnership,
22 corporation or business entity which makes a proposal as defined
23 in this chapter in response to a solicitation as defined in this
24 chapter.

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

5 AA. "Set Aside" shall mean that proportion of each
6 contract-awarding authority's annual expenditure for contract
7 goods and services which equals the contract-awarding authority's
8 annual goals for participation of minority/women's businesses as
9 established by this chapter.

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

13 CC. "Solicitation" shall mean a contract-awarding authority's
14 request for the provision of any one or more of the following:
15 goods and services of any kind, equipment leases, and rentals/
16 purchase of space. Solicitation shall include requests for
17 proposals, invitations to bid and similar items. "Solicitation
18 specifications" shall mean any documents, literature or other
19 information accompanying a solicitation which provides additional
20 data regarding the contract-awarding authority's request.

21 DD. "Utilization Goals" shall mean those separately designated
22 annual goals for the use by King County of minority/women's
23 businesses. The goals shall be expressed as a numerical
24 percentage of the total dollar value of all contracts to be
25 awarded by the county. These goals shall be applicable to
26 businesses organized for profit, along with governmental agencies
27 and quasi-governmental agencies, unless the agencies are
28 specifically excepted by or in accordance with the provisions of
29 this chapter.
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1 EE. "Utilization Requirements" shall mean those efforts which
2 responding parties, King County and the particular department
3 shall make to meet the county's utilization goals, including but
4 not limited to the percentage factors and set aside requirements
5 established by this chapter.

6 FF. "Violating Party" shall mean a person or entity which has
7 violated a provision or provisions of this chapter.

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

17 HH. "Women's Business" means a business certified by the
18 Office of Minority and Women's Businesses of the State of
19 Washington as a women's business enterprise. The director of the
20 department of executive administration is authorized to determine
21 that women as a class have not been discriminated against in their
22 ownership and operation of particular trades or areas of business
23 or in the particular geographical areas in which they operate.
24 The director may exclude such businesses from consideration as
25 "women's businesses" under this ordinance, in connection with
26 contracts involving such trades or areas of business, according to
27 the procedure provided for in Section 6 of this ordinance.

28 SECTION 3. Ordinance 5700, Section 3, as amended and K.C.C.
29 4.18.030 are hereby amended as follows:
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1 Utilization goals. A. On or before the first day of March of
 2 each year, the director, department of executive administration,
 3 shall submit to the King County executive for approval proposed
 4 utilization goals for King County for that calendar year.

5 Separate utilization goals shall be established for the use of
 6 minority businesses and for the use of women's businesses. These
 7 utilization goals shall be established separately for each of the
 8 following types of contracts: architectural and engineering
 9 contracts, construction contracts, consultant contracts, and
 10 purchasing and service contracts. The utilization goals shall be
 11 made part of the King County Affirmative Action Plan and shall be
 12 transmitted with the plan to the King County council for its
 13 approval. Existing utilization goals shall remain in effect until
 14 newly submitted ones receive final King County council approval.

15 1. The utilization goals shall be reasonably achievable. To
 16 the extent that relevant information is available, the (~~following~~
 17 ~~factors shall be used in establishing the utilization goals:~~)
 18 utilization goals shall be based on the numbers of qualified
 19 minority businesses and women's businesses operating in King
 20 County.

21 (~~a:--Statistical indicators showing the denial of equitable~~
 22 ~~competitive opportunities to minority/women's~~
 23 ~~businesses;~~

24 ~~b:--The level of participation of minority/women's~~
 25 ~~businesses in past contracts awarded by the county;~~

26 ~~c:--Other information received from departments as required~~
 27 ~~by this chapter, specifically to include the annual report,~~
 28 ~~contract forecasts and implementation plans;~~

1 d.--The level of minority/women's business participation in
2 contracts awarded in King County;

3 e.--The level of participation recommended to promote
4 the use of minority/women's businesses by governmental agencies
5 and private agencies operating in King County;

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

7 g.--The number of minority/women's businesses in King County
8 as identified by the director, department of executive
9 administration;

10 h.--The number of minority/women's businesses by goal
11 category certified by local King County governments.))

12 2. The purpose of this chapter is to remedy the past effects
13 of discrimination by increasing the opportunities for minority and
14 women's businesses to provide goods and services to King County
15 using reasonably achievable goals.

16 a. Each utilization goal shall represent a minimum
17 percentage of the dollars paid annually by each contract-awarding
18 authority to minority/women's businesses.

19 b. The proposed utilization goals shall be accompanied by a
20 statement which shall identify the factors in this subsection and
21 any other factors used in formulating the proposed utilization
22 goals.

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

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

6 SECTION 4. Ordinance No. 5983, Section 6, as amended, and
7 K.C.C. 4.18.060 are hereby amended as follows:

8 **UTILIZATION REQUIREMENTS, SPECIFIC.**

9 A. In order to expedite achieving of the utilization goals
10 established in accordance with this chapter, the following
11 utilization requirements shall apply to all competitive bids and
12 other responses to solicitation:

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

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

22 First, Minority/women's businesses.

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

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

28 First, minority/women's businesses which use
29 minority/women's businesses as subcontractors, suppliers or in
30 similar assisting roles.

1 Second, minority/women's businesses or joint ventures where
2 minority/women's business participation is at least twenty-five
3 percent of the dollar value of a contract and do not use
4 minority/women's businesses as subcontractors, suppliers, or in
5 similar assisting roles;

6 Third, non-minority/non-women's businesses which use
7 minority/women's businesses as subcontractors, suppliers, or in
8 similar assisting roles.

9 Fourth, non-minority/non-women's businesses which do not use
10 minority/women's businesses subcontractors, suppliers, or in
11 similar assisting roles.

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

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

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5 2. For every construction, architectural and engineering,
6 and consultant contracts the following set-aside requirements
7 shall be met:

8 a. Contract for construction, consultant and
9 architectural/engineering services the estimated cost of which
10 exceeds ten thousand dollars shall require responding parties to
11 include in their responses to solicitation both minority and
12 women's business participation in the contract in a percentage
13 which equals or exceeds the (~~contract-awarding-authority's~~
14 ~~annual-goals-in~~) percentages determined for the contract by the
15 director of the department of executive administration. The
16 director shall determine the percentages for each contract based
17 on the extent of subcontracting opportunities presented by the
18 contract and the availability of minority and women's business
19 enterprises qualified to perform such subcontracting work. Such
20 percentages may be higher or lower than the annual goals for the
21 type of contract involved.

22 b. Where a contract is awarded to a minority or women's
23 business, the set-aside requirements of these subsections shall
24 not apply.

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

6 d. During the term of the contract, any failure to comply
7 with the percentages of minority/women's business
8 participation identified in the bid or proposal shall be consid-
9 ered a material breach of contract. The dollar value of the total
10 contract used for the calculation of the set-aside shall be
11 increased or decreased to reflect executed change orders unless:

- 12 (1) a waiver is obtained in accordance with K.C.C.
13 4.18.070A. after consultation among the contract-
14 awarding authority, the director of the department
15 of executive administration, and the contractor; or
16 (2) the department obtains a reduction in the amount
17 of the set aside according to the procedure in
18 K.C.C. 4.18.060B., except that the reduction re-
19 quest for change orders need not be submitted
20 prior to solicitation of bids or proposals.

21 B. Departments may request a reduction in the amount of the
22 set aside for either or both minority business enterprises or
23 women's business enterprises, by submitting the reasons therefor
24 in writing to the director, department of executive
25 administration, prior to solicitation of bids or proposals.

26 1. The director may grant such a reduction upon
27 determination that:

28 a. The reasonable and necessary requirements of the
29 contract render subcontracting or other participation of
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1 businesses other than the bidder or proposer infeasible at the
2 adopted goal levels; or

3 b. Qualified minority and women's business enterprises
4 capable of providing the goods or services required by the
5 contract are unavailable in the market area of the project,
6 despite every feasible attempt to locate appropriate minority and
7 women's business enterprises to meet adopted goals.

8 c. The available minority and/or women's businesses have
9 given price quotes which are unreasonably high in that they exceed
10 competitive levels beyond amounts which can be attributed to cover
11 costs inflated by the present effects of discrimination.

12 2. Any reductions in set-aside amount granted by the
13 director shall specify the amount to which the set aside has been
14 reduced.

15 C. Where this Section 4.18.060 specifies that a set aside or
16 a percentage factor shall be used for a particular type of
17 contract, the method specified is the preferred method for
18 achieving the utilization goals. A department may use the other
19 method in its solicitation documents for a specific contract if it
20 determines that a method other than the one established by this
21 Section 4.18.060 will be a more feasible method of achieving the
22 annual utilization goal. In the event that a department chooses
23 to use a method other than the one specified in this Section
24 4.18.060, it shall include in its annual report to the executive,
25 as required by Section 4.18.080 D. of this chapter, documents
26 demonstrating that a method other than the one established by this
27 Section 4.18.060 is a more feasible method of achieving the annual
28 utilization goal.

29 D. All solicitation documents shall include the applicable
30 requirements of Sections 4.18.050 and 4.18.060. In addition,
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1 documents shall include a provision prohibiting any agreement
2 between a responding party and a minority/women's business in
3 which the minority/women's business promises not to provide
4 subcontracting quotations to other responding or potential
5 responding parties. Bids, proposals, and other responses which
6 fail to meet the requirements of this Section 4.18.060 shall,
7 within the limitations of federal and state law, be deemed
8 non-responsive unless a waiver has been granted pursuant to
9 Section 4.18.070 of this chapter.
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11 E. The percentage factor and set-aside requirements of this
12 Section 4.18.060 shall not apply to contracts awarded for the
13 remainder of any calendar year in which the contract-awarding
14 authority is determined by the director, department of executive
15 administration, to have met the applicable county utilization
16 goals as established by this chapter. The percentage factor and
17 set-aside provisions of this Section 4.18.060 shall again apply in
18 each succeeding calendar year until the annual utilization goals
19 for that year have been met by the contract-awarding authority.

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

22 G. The requirements of this Section 4.18.060 shall cease to
23 apply to contracts awarded by King County and its departments on
24 December 31, 1992, unless reenacted by the King County council.

25 SECTION 5. Ordinance 5700, Section 6, as amended, and K.C.C.
26 4.18.070 are hereby amended as follows:

27 Waivers. Contract-awarding authorities, along with or on
28 behalf of responding parties and contractors, may apply for waiver
29 of one or more requirements of this ordinance as they apply to a
30 particular contract or contracts.
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2 A. Waivers may be granted by the director, department of
3 executive administration, in any of the following circumstances:

4 1. When the needed goods and services are readily available
5 from only one source, in which case the contracting-awarding
6 authority shall, in addition to the requirements contained in
7 Ordinance No. 4551, K.C.C. 4.16.030, submit a written
8 justification of the need for sole source treatment to the
9 director, department of executive administration, who shall grant
10 or deny the request for waiver within three business days;

11 2. Emergencies, in which case emergency contracting shall
12 be handled in accordance with the requirements of Ordinance No.
13 4551, K.C.C. 4.16.050.

14 3. Contracts for which neither a minority nor a women's
15 business is available to provide needed goods or services, in
16 which case a waiver may be applied for in accordance with
17 procedures to be developed by the director, department of
18 executive administration. Prior to granting a waiver, the
19 director, department of executive administration, shall certify
20 that a minority/women's business is in fact not available to
21 provide the needed goods and/or services.

22 4. Contracts awarded to non-profit organizations,
23 governments and governmental organizations, other than King
24 County, including but not limited to municipal corporations,
25 consortiums and associations of governmental agencies or officials
26 and agencies created by interlocal agreement, per R.C.W. 39.34, or
27 by operation of state or federal law, where because of a
28 responding party's non-profit status, ownership of the corporation
29 or other entity cannot be determined. However, solely with the
30 exception of contracts between King County and cities and towns
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1 where King County is the grantee for federal or state funds passed
2 through to such jurisdictions, the waiver shall not apply to those
3 profit-making contractors which contract with the referenced
4 responding parties.

5 5. When available minority and/or women's businesses have
6 given price quotes which are unreasonably high in that they exceed
7 competitive levels beyond amounts which can be attributed to cover
8 costs inflated by the present effects of discrimination.

9 B. Where the executive determines that the reasonable and
10 necessary requirements of a contract render subcontracting or
11 other participation of businesses other than a responding party
12 unfeasible, he/she may grant a waiver from the set-aside
13 provisions of this chapter; PROVIDED THAT, the waiver shall not be
14 granted after the solicitation request has been publicly released
15 by the contract-awarding authority; PROVIDED FURTHER THAT, the
16 solicitation specifications shall state that the waiver has been
17 authorized and that solicitations received, proposing
18 subcontracting or other participation of business other than the
19 responding party, shall be rejected as non-responsive; PROVIDED
20 FURTHER THAT, following award of the contract, should
21 subcontracting or participation of businesses other than the
22 responding party become necessary, the previously authorized
23 waiver shall be null and void. The contractor (original
24 responding party) shall solicit both minority and women business
25 participation in a percentage which equals the contract-awarding
26 authority's annual goal.

27 C. Where the executive determines that compliance with the
28 requirements of this chapter would impose an unwarranted economic
29 burden on, or risk to, King County as compared with the degree to
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1 which the purposes and policies of this chapter would be furthered
2 by requiring compliance, he/she may reduce or waive the
3 utilization requirements of this ordinance;

4 PROVIDED THAT upon taking such action, the King County
5 executive shall notify the members of the King County council in
6 writing; and FURTHER PROVIDED THAT upon receipt of the notice, if
7 the King County council determines that the waiver does not meet
8 the standards of this section, the King County council may by
9 motion, within ten working days of the receipt of the notice,
10 determine the waiver to be null and void.

11 SECTION 6. Ordinance 5700, Section 7, as amended, and K.C.C.
12 4.18.080, are hereby amended as follows:

13 **MONITORING, REPORTING, AND ENFORCEMENT.**

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

20 B. Contract awarding authorities, with the assistance of the
21 director, department of executive administration, shall keep
22 complete and detailed records regarding compliance with this
23 chapter. The records shall include the dollar value and the
24 subject matter of each contract along with the name of the
25 contractor, the participation levels (in dollars, number of
26 contracts awarded, and type of work) of minority/women's
27 businesses where the contract award provides for participation,
28 and other information as the director, department of executive
29 administration, deems necessary.
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1 C. The director, department of executive administration,
2 shall be responsible for gathering all information concerning
3 compliance with this chapter and shall have access to all
4 pertinent King County records.

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

21 E. Certification and Recognition Process.

22 1. Pursuant to chap. 328, Laws of 1987, the Office of
23 Minority and Women's Businesses of the State of Washington shall
24 be solely responsible for certifying and decertifying businesses.
25 ~~((All-certified-women's-business-enterprises-are-recognized~~
26 ~~as-eligible-for-participation-in-the-county's-women's~~
27 ~~business-enterprise-program.))~~ King County's minority and women's
28 business enterprise program is only for minorities and minority
29 business and women's businesses and combination businesses as
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1 defined in K.C.C. 4.18.010((F-)); therefore the director,
2 department of executive administration, shall recognize only those
3 combination minority and women's business enterprises or minority
4 business enterprises certified by the State of Washington which
5 also meet the definitions in K.C.C. 4.18.010, according to
6 minority status information provided to King County by the Office
7 of Minority and Women's Businesses of the State of Washington.
8 Businesses are only eligible for King County's programs so long as
9 they remain certified by the State of Washington.

10 2. It shall be considered a violation of this chapter to
11 obtain, or attempt to obtain, certification or the benefits of any
12 provision of this chapter, on the basis of false or misleading
13 information, whether provided to King County or to the Office of
14 Minority and Women's Businesses of the State of Washington.

15 3. No contract requiring or proposing minority/women's
16 business participation may be entered into unless all
17 minority/women's businesses identified to meet the utilization
18 goals by a responding party were, at the time the bid was
19 submitted, certified by the Office of Minority and Women's
20 Businesses of the State of Washington and recognized by the
21 director, department of executive administration, as eligible to
22 participate in King County's minority/women's business program and
23 the director, department of executive administration, determines
24 all identified minority/women's businesses appear able to perform
25 a commercially useful function on that contract as proposed.
26 Lists of certified and recognized minority/women's businesses
27 shall be provided to all departments and made available to the
28 public.

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

24 G. After the hearing, the director, department of executive
25 administration, shall make written findings and conclusions and
26 shall order one or more of the following:

- 27 1. Dismissal of the complaint when a violation is found not
28 to have occurred;
- 29 2. Suspension or cancellation of the contract in part or in
30 whole;
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2 3. Disqualification and/or debarment of the violator from
3 participation in county contracts for a period of up to five
4 years;

5 4. Exclusion of the violator from future contracts or
6 vending until demonstration of compliance;

7 5. Enforcement of any provision of the contract providing
8 remedies, such as penalties or liquidated damages for violation of
9 contractual provisions, or enforcement of any other remedy
10 available under the laws of King County. Upon finding by the
11 director that a contractor has in fact failed to perform a
12 commercially useful function or has operated as a broker, front,
13 conduit or pass through business, liquidated damages specified in
14 the contract shall be imposed unless the director finds that
15 imposition of such damages would be clearly inequitable, in which
16 case the director may order appropriate relief.

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

4 I. After the hearing, the King County executive shall make
5 findings and conclusions and shall order one or more of the
6 following:

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

9 2. Corrective personnel action;

10 3. Disqualification and suspension of authority of all
11 members, any board, commission, or other body constituting the
12 violating contract awarding authority;

13 4. Enforcement of any other remedy available under the laws
14 of King County.

15 J. Upon receipt of a written and signed allegation that a
16 business owner is improperly being considered to be, or has
17 improperly been rejected as, a minority business or women's
18 business as defined in this ordinance, or that a waiver or
19 reduction of set-aside requirements has been improperly denied or
20 granted, or if such information is discovered from information
21 gained through compliance monitoring, the King County executive
22 shall order that an investigation be conducted by the director,
23 department of executive administration. The pendency of such
24 allegations or of subsequent hearings on such allegations shall
25 not be grounds to postpone or restrain the award of any contracts
26 then being advertised or for which bids have been received. If
27 there is probable cause to believe that corrective action is
28 warranted, the executive or his/her designee will, upon ten days
29 written notice to all interested parties of whom he/she is aware,
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1 and upon publication of notice of the hearing in the manner
2 provided for the advertising of contracts, conduct a hearing to
3 determine whether or not the allegation is correct. The hearing
4 shall be recorded and each interested party shall have the right
5 to call and examine witnesses, to produce documentary and physical
6 evidence, to cross-examine witnesses, and to be represented by
7 anyone of his/her choice lawfully permitted to do so. The hearing
8 officer shall permit testimony to be given by any parties which
9 would be directly affected by the matter, and a representative of
10 the executive or the agency conducting the investigation.

11 After the hearing, the King County executive shall make
12 findings and conclusions and shall order appropriate corrective
13 action, if any.

14 ((J-))K. In addition to any other remedy available under the
15 laws of King County and the State of Washington any person, firm,
16 corporation, business, union, or organization which prevents or
17 interferes with a contractor and/or subcontractor's efforts to
18 comply with the requirements of this chapter or which submits
19 false or misleading information to any King County department or
20 employee concerning compliance with this chapter shall be subject
21 to a civil penalty of up to five thousand dollars for each
22 occurrence, King County having previously complied with the notice
23 and hearing provisions of this ordinance. Each submission of
24 false or misleading information shall constitute a separate
25 occurrence.

26 ((K-))L. When conducting any investigation or preparing for
27 a hearing under this section, the director shall have authority to
28 sign and issue subpoenas requiring the attendance and testimony of
29 witnesses, the production of evidence including but not limited to
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1 books, records, correspondence or documents in the possession or
2 under the control of the person subpoenaed, and access to evidence
3 for the purpose of examination and copying as are necessary for
4 the investigation. The director shall consult with the
5 prosecuting attorney before issuing any subpoena under this
6 section. If an individual fails to obey a subpoena, or obeys a
7 subpoena but refuses to testify when requested concerning any
8 matter under investigation, the director may invoke the aid of the
9 King County prosecuting attorney who may petition to the Superior
10 Court for King County for an order or other appropriate action
11 necessary to secure enforcement of the subpoena. The petition
12 shall be accompanied by a copy of the subpoena and proof of
13 service, and shall set forth in what specific manner the subpoena
14 has not been complied with, and shall ask an order of the court to
15 compel the witness to appear and testify or cooperate in the
16 investigation.
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18 NEW SECTION. SECTION 7. Severability. The provisions of
19 this ordinance shall be effective in all cases unless otherwise
20 provided for by state or federal law. The provisions of this
21 ordinance are separate and severable. The invalidity of any
22 clause, sentence, paragraph, subdivision, section, or portion of
23 this ordinance or the invalidity of the application thereof to any
24 person or circumstances shall not affect the validity of the
25 remainder of this ordinance, or the validity of its application to
26 other persons or circumstances.

27 NEW SECTION. SECTION 8.

28 The county executive is authorized and directed to enter into
29 a contract with a qualified consultant to study the discrimination
30 against minority and women's businesses in the market areas from
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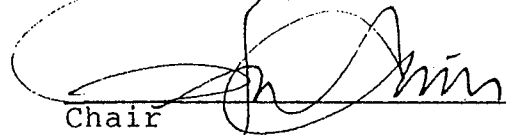
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which King County draws contractors and to recommend any appropriate changes in King County's minority and women's business program or other ordinances. The county executive shall report the results of this study to the county council on or before August 31, 1989.

INTRODUCED AND READ for the first time this 27th day of March, 1989.

PASSED this 1st day of May, 1989.

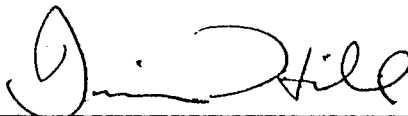
KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Chair

ATTEST:


Clerk of the Council

APPROVED this 11 day of May, 1989.


King County Executive