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INTRODUCED BY: Ron Sims
PROPOSED NO. 90-613

9609

ORDINANCE NO. _____

AN ORDINANCE relating to the procurement of goods and services by King County from minority business enterprises and women's business enterprises; amending Ordinance 5700, Sections 1, 5, 6, and 7, as amended, Ordinance 5983, Section 6 and Section 9 as amended, and Ordinance 8937, Section 1, as amended, and K.C.C. 4.18.005, 4.18.010, 4.18.050, 4.18.060, 4.18.070, 4.18.080, and 4.18.090, repealing Ordinance 5700, Section 3 and K.C.C. 4.18.030 and adding new sections.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance No. 8937, Section 1, and K.C.C. 4.18.005 is hereby amended to read as follows:

Findings. The county council hereby finds the following facts:

A. In hiring and dealing with contractors and subcontractors of all types, public and private owners, developers, contractors, financial institutions and sureties have discriminated and do discriminate against minority and women's businesses doing business or seeking to do business with King County based on the race and sex of the owners of these businesses. This discrimination has been established by public hearings conducted by the county council and other local jurisdictions and by the studies and reports performed for the county by consultants. The factual findings of these reports, specifically the Perkins Coie study dated January 1990 and the Washington Consulting Group study dated July 9, 1990, are incorporated herein by this reference.

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

C. The provisions of this chapter are necessary to remedy the discrimination against minority and women's businesses and to

1 prevent King County from financing and participating in this
2 discrimination with its contracting dollars.

3 D. The market from which King County draws contractors extends
4 throughout the State of Washington, although the businesses which
5 provide the primary market for King County are located in the King,
6 Pierce, and Snohomish County area.

7 E. King County is prohibited by state law from helping
8 minority and women's businesses overcome the effects of
9 discrimination through financial assistance or reduction of bonding
10 requirements. While the existence of such alternative remedies must
11 continue to be explored, no effective alternatives appear to be
12 presently available.

13 F. Although a program to provide technical assistance to
14 minority and women's businesses cannot provide an adequate immediate
15 remedy for past discrimination against such businesses, such a
16 program can assist in a long-term effort to eliminate the need for
17 the remedies provided by this ordinance. ((Further study of the
18 nature and extent of the discrimination against minority and women's
19 businesses must be conducted to determine whether additional
20 amendments to the program are necessary. The continuation of the
21 program during the period of this study is necessary to prevent
22 irreparable injury to such businesses.))

23 G. The above-referenced consultant studies have produced
24 statistical data and recommendations for refinements to the King
25 County minority and women's business program which are reflected in
26 the amendments set forth in this ordinance.

27 **SECTION 2.** Ordinance No. 5700, Section 1, as amended, and
28 K.C.C. 4.18.010 are hereby amended as follows:

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

1 A. "Administrator" shall mean the administrator of the King
2 County Office of Civil Rights and Compliance.

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

8 ~~((B-))~~ C. "Affirmative Efforts" shall mean making vigorous,
9 documented attempts in good faith to contact and contract with
10 minority/women's businesses. Where affirmative efforts are required
11 by, or are grounds for, waiving provisions of this chapter, the
12 director's ~~((of the department of executive administration's))~~
13 determination shall be based on procedures to be outlined in
14 accordance with the dictates of this chapter.

15 ~~((E-))~~ D. "Architectural and Engineering Contracts" shall
16 mean contracts for the performance of architectural and engineering
17 services by licensed and registered firms and persons acting as
18 consultants to King County.

19 ~~((D-))~~ E. "Broker" shall mean a business which purchases
20 goods or services from another business or businesses for the sole
21 purpose of resale to the county or a contractor doing business with
22 the county.

23 ~~((E-))~~ F. "Certification" shall mean the process by which the
24 Office of Minority and Women's Businesses of the State of Washington
25 determines a business meets the criteria for a minority-owned
26 business enterprise, a women-owned business enterprise, and/or a
27 combination minority and women's business enterprise as set forth in
28 WAC chap. 326-02 and WAC chap. 326-20.

29 ~~((F-))~~ G. "Combination Minority and Women's Business" means
30 a business certified as a combination minority and women's business
31 enterprise by the Office of Minority and Women's Businesses of the
32 State of Washington which is 50% legitimately owned and controlled
33

1 by minority males or minority businesses as defined in this chapter.

2
3 ((G-)) H. "Commercially Useful Function" shall mean the
4 performance of real and actual services in the discharge of any
5 contractual endeavor. The contractor must perform a distinct
6 element of work which the business has the skill and expertise as
7 well as the responsibility of actually performing, managing and
8 supervising. In determining whether a business is performing a
9 commercially useful function, factors, including but not limited to
10 the following, will be considered:

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

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

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

21 ((H-)) I. "Concession Contracts" shall mean those contractual
22 arrangements for the sale of food, beverages and/or items of
23 personal property at any facility owned and/or managed by King
24 County.

25 ((I-)) J. "Conduit" shall mean a minority/women's business
26 with which a contractor has agreed to subcontract, when the
27 minority/women's business does not perform the subcontract, and
28 instead the subcontract is performed by a non-minority/women's
29 business.

30 ((J-)) K. "Construction Contracts" shall mean those
31 contractual arrangements made by King County for the construction,
32 repair, rehabilitation, alteration, conversion or extension of
33 buildings, parks, streets or other improvements to real property.

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

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

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

18 ~~((N-)) "Corporate Sponsored Dealership," shall mean a bona fide~~
19 ~~minority/women's business which meets the following standards in~~
20 ~~lieu of the fifty one percent ownership criterion of subsection R.1,~~
21 ~~and the control criteria of subsection R.2. The minority/women~~
22 ~~owners have entered into an agreement, contract, or arrangement with~~
23 ~~a national or regional corporation and been granted a license to~~
24 ~~offer, sell or distribute goods or services at wholesale or retail,~~
25 ~~leasing or otherwise using the name, service mark, trademark or~~
26 ~~related characteristic of the sponsoring corporation. Capital~~
27 ~~investment for the dealership is jointly contributed by the~~
28 ~~minority/women owners and the sponsoring corporation, with the~~
29 ~~sponsoring corporation initially contributing the largest~~
30 ~~percentage. The original investment contributed by the~~
31 ~~minority/women owners may be less than fifty one percent, with a~~
32 ~~specified time limit established with the sponsoring corporation for~~
33 ~~the minority/women owners to become the sole owner of the~~

1 ~~dealership. The standards for qualifying a corporate sponsored~~
2 ~~dealership as a bona fide minority/women's business enterprise shall~~
3 ~~include, but are not limited to:~~

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

7 ~~2. The dealership contract must include a binding agreement~~
8 ~~stating that the buy-out of the corporate sponsor's interest by the~~
9 ~~minority/women owners will occur within 10 years.~~

10 ~~3. If the sponsoring corporation retains majority voting~~
11 ~~rights and control of the board of directors, then the~~
12 ~~minority/women owners must annually apply at least fifty percent of~~
13 ~~the net profit and bonuses toward the buy-out of the corporate~~
14 ~~sponsors' interest within the buy-out time limit established with~~
15 ~~the corporation.~~

16 ~~4. The minority/women owners must show active participation~~
17 ~~in the decision-making process on the board of directors of the~~
18 ~~dealership.~~

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

22 ~~6. The sponsoring corporation must have specifically~~
23 ~~developed a national or regional corporate sponsored dealership~~
24 ~~program to address the present-day issue of lack of opportunities~~
25 ~~for minorities or women in the dealership industry, which includes~~
26 ~~such features as: capitalization assistance from the sponsoring~~
27 ~~corporation, on-going business operations training, technical~~
28 ~~assistance to the dealership owner, and a corporate sponsored~~
29 ~~minority and women's business program.~~

30 ~~7. The minority/women owners must demonstrate that the~~
31 ~~relationship between the corporate sponsor and the minority/women's~~
32 ~~business was not formed for the primary purpose of achieving~~
33

1 ~~certification under this subsection N, or any other similar~~
2 ~~provision of any other ordinance, regulation, rule or law.~~

3 ~~8. The minority/women owners having prior business or~~
4 ~~management experience relating to the business being entered into~~
5 ~~as an owner.)~~

6 O. "Department" shall refer to any department as defined by
7 King County ordinance or other applicable law and shall include
8 all county agencies not associated with a department. These
9 agencies shall similarly discharge those duties this chapter
10 requires of departments and shall include the King County
11 prosecuting attorney, the King County assessor, and the King County
12 council.

13 P. "Director" shall mean the director of the King County
14 department of executive administration.

15 ((P-)) Q. "Front" shall mean a business which purports to be
16 a minority/women's business but which is actually owned and/or
17 controlled in a manner which is inconsistent with the requirements
18 of certification.

19 ((Q-)) R. "Joint venture" shall mean an association of two
20 or more persons, partnerships, corporations or any combination of
21 them, established to carry on a single business activity which is
22 limited in scope or direction. The degree to which a joint venture
23 may satisfy relevant utilization goals cannot exceed the
24 proportionate interest of the minority/women's business held as a
25 member of the joint venture in the work to be performed. The
26 agreement establishing the joint venture, partnership or other
27 multi-entity relationship shall be in writing. Further,
28 minority/women's participation in a joint venture shall be based on
29 the sharing of real economic interest in the venture and shall
30 include proportionate control over management, interest in capital
31 acquired by the joint venture, and interest in earnings.

32 ((R-)) S. "Legitimately Owned and Controlled" shall mean for
33

1 the purpose of determining whether a business is a "minority
2 business" that minorities shall possess:

3 1. Ownership of at least fifty-one percent interest in the
4 business, unless the minority business qualifies as a corporate
5 sponsored dealership under the provisions of WAC 326-02-030
6 (~~subsection-N~~). The ownership shall be real and continuing, and
7 shall go beyond the pro forma ownership of the business reflected
8 in the ownership documents. The minority owner(s) shall enjoy the
9 customary incidents of ownership and shall share in the risks and
10 profits commensurate with their ownership interests, as demonstrated
11 by an examination of the substance, rather than the form, of
12 arrangements.

13 2. Control over management, interest in capital, interest
14 in profit or loss and contributions to capital, equipment and
15 expertise on which the claim of minority-owned status under this
16 chapter is based. The minority owners must possess and exercise the
17 legal power to direct the management and policies of the business
18 and to make day-to-day as well as major decisions on matters of
19 management, policy, and operations. If the owners of the business
20 who are not minorities are disproportionately responsible for the
21 operation of the business, then the business is not controlled by
22 minorities. The business must be owned, controlled, and managed on
23 a day-to-day, full-time basis by the minority owner(s). The
24 requirements of this subsection R §.2 shall not apply, if the
25 minority business qualifies as a corporate sponsored dealership
26 under the provisions of (~~subsection-N~~) WAC 326-02-030.

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

30 a. Only one spouse participates in the management of the
31 business;

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

1 ((S-)) T. "Minority Business" means a business certified by
 2 the Office of Minority and Women's Businesses of the State of
 3 Washington as a minority business enterprise which is legitimately
 4 owned and controlled by a minority person or persons as defined in
 5 this section. The director (~~(of the department of executive~~
 6 ~~administration))~~) is authorized to determine that specific racial
 7 groups have not been discriminated against in their ownership and
 8 operation of particular trades or areas of business or in the
 9 particular geographical areas in which they operate. The director
 10 may exclude such businesses from consideration as "minority
 11 businesses" under this ordinance, in connection with contracts
 12 involving such trades or areas of business, as provided in Section
 13 4.18.080 of this chapter.

14 ((P-)) U. "Minority or Minorities" means a person who is a
 15 citizen of the United States and who is a member of one or more of
 16 the following historically disadvantaged racial groups:

17 1. Black or African American: Having origins in any of the
 18 Black racial groups of Africa;

19 2. Hispanic((s)): Of Mexican, Puerto Rican, Cuban, or
 20 Central or South American culture or origin;

21 3. Asian American: Having origins in any of the original
 22 peoples of the Far East, Southeast Asia, the Indian subcontinent,
 23 or the Pacific Islands;

24 4. American Indian or Alaskan Native: Having origins in any
 25 of the original peoples of North America.

26 The director (~~(of the department of executive administration))~~) shall
 27 have discretion to make a final decision as to whether an individual
 28 is a minority.

29 ((H-)) V. "Nonprofit Corporation" shall mean a corporation
 30 organized pursuant to RCW Ch. 24.03. In the case of nonprofit
 31 corporations organized under the laws of a state other than
 32 Washington, a nonprofit corporation shall mean one organized for one
 33

1 or more of the purposes set forth in RCW 24.03.015 and meeting the
2 definitions in RCW 24.03.005.

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

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

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

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

24 ((Z-)) AA. "Service Contracts" shall mean those contracts for
25 technical, professional or other work performed by a vendor, such as
26 the making of repairs, servicing, maintenance and/or cleaning, and
27 which does not involve the provision of substantial tangible items
28 such as materials, supplies or equipment. For the purposes of this
29 chapter, the term "service contracts" shall include services
30 provided to members of the public, including public defender
31 services, but shall not include construction, rental or leasing of
32 equipment or the traditional professional services such as
33 consulting, legal services, feasibility studies and design studies.

1 ((AA-)) BB. "Set aside" shall mean that proportion of each
2 ((contract-awarding-authority's-annual-expenditure-for)) contract
3 ((goods-and-services)) which is designated for ((equals-the
4 contract-awarding-authority's-annual-goals-for)) participation of
5 minority/womens' businesses as established by this chapter.

6 ((BB-)) CC. "Small Business Concern" means a small business
7 as defined pursuant to Section 3 of the federal Small Business Act
8 and relevant regulations promulgated thereto.

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

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

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

31 ((FF-)) GG. "Violating Party" shall mean a person or entity
32 which has violated a provision or provisions of this chapter.

33

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

10 ((HH-)) II. "Women's Business" means a business certified by
 11 the Office of Minority and Women's Businesses of the State of
 12 Washington as a women's business enterprise. The director (~~(of the~~
 13 ~~department of administration)~~) is authorized to determine that women
 14 as a class have not been discriminated against in their ownership
 15 and operation of particular trades or areas of business or in the
 16 particular geographical areas in which they operate. The director
 17 may exclude such businesses from consideration as "women's
 18 businesses" under this chapter, in connection with contracts
 19 involving such trades or areas of business, according to the
 20 procedure provided for in Section 4.18.080 of this chapter.

21 NEW SECTION SECTION 3. Ordinance No. 5700, Section 3, as
 22 amended and K.C.C. 4.18.030 are hereby repealed and replaced with
 23 the following:

24 Utilization goals. On or before the thirtieth day of April
 25 1992, and every three years following that date, the administrator
 26 shall submit to the King County executive for approval proposed
 27 utilization goals for King County for the following three year
 28 period. Separate utilization goals shall be established for the use
 29 of minority businesses and for the use of women's businesses. These
 30 utilization goals shall be established separately for each of the
 31 following types of contracts: architectural and engineering
 32 contracts, construction contracts, consultant contracts, concession
 33 contracts, and purchasing and service contracts. The utilization

1 goals shall be transmitted with the Office of Civil Rights and
2 Compliance Annual report to the King County council for approval.
3 Existing utilization goals shall remain in effect until newly
4 submitted ones receive final King County council approval.

5 A. The utilization goals shall be reasonably achievable. To
6 the extent that relevant information is available, the utilization
7 goals shall be based on the following factors:

8 1. By contract category, the number of firms certified by
9 the State Office of Minority and Women's Business Enterprises,
10 seeking to do business with King County as either prime or
11 subcontractors;

12 2. By contract category, the total number of firms
13 seeking to do business with King County as either prime or
14 subcontractors;

15 3. By contract category, the geographic area of
16 competition;

17 4. By contract category, the capacity and/or capability of
18 certified minority and women's businesses seeking to do business
19 with King County compared with the capacity and/or capability of
20 non-minority and non-women's businesses seeking to do business with
21 King County;

22 5. By contract category, the number of minorities and women
23 with requisite skills in related occupations;

24 6. By contract category, the affirmative action goals for
25 minorities and women in related occupations;

26 7. By contract category, the rates of new entry by
27 minorities and women into related training, educational fields, and
28 occupations;

29 8. By contract category, what availability would be absent
30 discrimination;

31 9. By contract category, rates of entry of new minority and
32 women's businesses compared to non-minority and non-women's
33 businesses.

1 B. The purpose of this chapter is to remedy the effects of
 2 discrimination by increasing the opportunities for minority and
 3 women's businesses to provide goods and services to King County by
 4 using reasonably achievable goals.

5
 6 NEW SECTION SECTION 4. The following goals shall be the annual
 7 goals for all King County departments until such time as new goals
 8 are approved by the King County council:

<u>Contract Category</u>	<u>MBE%</u>	<u>WBE%</u>
Architecture/Engineering	17%	10%
Concessions	10%	5%
Construction	14%	8%
Consultant	6%	15%
Purchasing/Service	10%	3%

15
 16 SECTION 5. Ordinance No. 5700, section 5, as amended, and
 17 K.C.C. 4.18.050 are hereby amended to read as follows:
 18 Utilization requirements, general.

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

22 1. Under the auspices of the director(~~(, department of~~
 23 ~~executive administration,)~~) the administrator shall begin
 24 immediately to design a technical assistance and outreach program
 25 which shall be established ((-)) by February 1, 1991. This program
 26 shall include the following elements:

27 a. A county-wide, industry-wide, regularly-scheduled
 28 contractor orientation program to promote compliance with and
 29 understanding of the provisions of this chapter and King County
 30 Code, Chapter, 12.16;

31 b. Feasible options for bonding, insurance, and banking
 32 assistance for minority-owned and women-owned businesses;

1 c. A county-wide program, designed to assist departments in
2 enhancing opportunities for minority-owned and women-owned
3 businesses;

4 d. A fully-developed and maintained resource list, to include
5 all available resources state-wide for minority- owned and women-
6 owned businesses;

7 e. Such other program options as would serve to assist
8 minority-owned and women-owned businesses in overcoming the barriers
9 of past and present discrimination.

10 2. Prior to entering into any contract, the contract awarding
11 authority shall:

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

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

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

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

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

29 b. A requirement that during the term of the contract the
30 contractor shall comply with, as to tasks and proportionate dollar
31 amounts throughout the term of the contract, all ((~~plans made in~~
32 ~~their proposal~~)) requirements for the use of minority/women's
33 businesses. In the absence of a waiver, minority/women's businesses

1 which for any reason no longer remain associated with the contract
2 or the contractor shall be replaced with other certified
3 minority/women's businesses in accordance with procedures
4 established by the administrator.

5 c. A provision prohibiting any agreements between a
6 responding party and a minority/women's business in which the
7 minority/women's business promises not to provide subcontracting
8 quotations to other responding or potential responding parties.

9 d. The requirement of maintenance of relevant records, and
10 information necessary to document compliance with this chapter and
11 the contractor's utilization of minority and women's businesses in
12 its overall public and private business activities, and shall
13 include the right of the county to inspect such records.

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

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

3 Utilization Requirements, Specific.

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

8 1. For all purchasing, service, and concession contracts and
9 all architectural and engineering contracts, consultant contracts
10 and construction contracts under ten thousand dollars, the
11 ((following percentage factor)) director, with the advice of the
12 administrator, shall determine a percentage factor appropriate to
13 offset the effects of discrimination in the industry involved, which
14 percentage shall be used in determining which responding party is
15 the lowest responsible bidder or best proposal:

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

21 ~~First, Minority/women's businesses.~~

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

23 ~~b. Where a contract requires the use of subcontractors,~~
24 ~~suppliers or other businesses in similar assisting roles,))~~

25 a. ((r)) Responding parties whose bids are within ((five
26 percent)) the percentage factor of the best proposal or the bid made
27 by the lowest bidder shall be ranked in the following order:

28 First, minority/women's businesses which will perform the
29 entire contract unassisted and those minority/women's businesses
30 which will exclusively use minority/women's businesses as
31 subcontractors, suppliers or in similar assisting roles.

32 Second, minority/women's businesses which alone or as part of
33 joint ventures serve as the prime contractor where minority/women's

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

4 Third, non-minority/non-women's businesses which use
5 minority/women's businesses as subcontractors, suppliers, or in
6 similar assisting roles in an amount equal to at least twenty-five
7 percent of the contract amount;

8 Fourth, non-minority/non-women's businesses which do not use
9 minority/women's businesses subcontractors, suppliers, or in similar
10 assisting roles to the extent set forth above.

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

23 ((d)) b. All responding parties within each particular
24 ranking shall be grouped according to the amount of their bid or the
25 evaluation score of their proposal as determined by the awarding
26 authority, with low bidders and higher scoring proposals receiving
27 the highest priority. The lowest bidder or higher scoring proposal
28 within the highest-ranking category shall be awarded the contract in
29 question. ((In the event two or more responding parties qualify for
30 award of the contract in question, they shall be notified and
31 allowed the opportunity to resubmit their bids. The lowest bidder
32 shall then be awarded the contract.))

33

1 c. In determining the percentage factor to be used for a
2 particular contract, the director shall consider the following
3 factors:

4 (1) Price differentials between M/WBEs and non-MWBEs on
5 previously-submitted bids;

6 (2) Standard industry costs;

7 (3) Standard industry profit margins;

8 (4) Availability of M/WBEs to perform as retailers,
9 distributors, wholesalers and manufacturers, by
10 commodity area; and

11 (5) Other pertinent facts.

12 2. For every construction, architectural and engineering,
13 and consultant contract((s)) the following set-aside requirements
14 shall be met:

15 a. Contracts for construction, consultant and
16 architectural/engineering services, the estimated cost of which
17 exceeds ten thousand dollars, shall require responding parties to
18 include in their responses to solicitation both minority and women's
19 business participation in the contract in a percentage which equals
20 or exceeds the percentages determined for the contract by the
21 director (~~of the department of executive administration~~). The
22 director, with the advice of the administrator, shall determine the
23 percentages for each contract based on the extent of subcontracting
24 opportunities presented by the contract and the availability of
25 minority and women's business enterprises qualified to perform such
26 subcontracting work. Such percentages may be higher or lower than
27 the annual goals for the type of contract involved.

28 b. Where a contract is awarded to a minority or women's
29 business which will perform at least twenty-five percent of the
30 work, the set-aside requirements of these subsections shall not
31 apply.

32 c. As part of the bid or proposal package, all responding
33 parties shall identify the dollar amount and/or percentage value of

1 minority/women's business participation. All responding parties
 2 shall also identify the particular minority/women's businesses to be
 3 used in performing the contract, specifying for each the dollar
 4 and/or percentage value of the participation, the type of work to be
 5 performed, and other information as may reasonably be required to
 6 determine the responsiveness of the bid or proposal(~~(7 provided~~
 7 ~~that, for bids on construction contracts, this information shall be~~
 8 ~~submitted no later than the close of the first King County business~~
 9 ~~day after bid opening))).~~

10 d. During the term of the contract, any failure to comply
 11 with the percentages of minority/women's business participation
 12 ~~((identified in))~~ required for the bid or proposal shall be
 13 considered a material breach of contract. The dollar value of the
 14 total contract used for the calculation of the set-aside shall be
 15 increased or decreased to reflect executed change orders unless:

16 (1) a waiver is obtained in accordance with K.C.C. 4.18.070A.
 17 after consultation among the contract-awarding authority, the
 18 director ~~((of the department of executive administration,))~~ and the
 19 contractor; or

20 (2) the department obtains a reduction in the amount of the
 21 set-aside according to the procedure in K.C.C. 4.18.060B ~~((7 except~~
 22 ~~that the reduction request for change orders need not be submitted~~
 23 ~~prior to solicitation of bids or proposals))~~.

24 B. Departments may request a reduction in the amount of the
 25 set aside for either or both minority business enterprises or
 26 women's business enterprises or in the percentage factor to be
 27 applied under the percentage preference method, by submitting the
 28 reasons therefor in writing to the director ~~((7 department of~~
 29 ~~executive administration, prior to solicitation of bids or~~
 30 ~~proposals))~~.

31 1. The director, with the advice of the administrator, may
 32 grant such a reduction upon determination that:

33

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

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

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

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

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

30 D. All solicitation documents shall include the applicable
31 requirements of Sections 4.18.050 and 4.18.060. In addition,
32 documents shall include a provision prohibiting any agreement
33 between a responding party and a minority/women's business in which

1 the minority/women's business promises not to provide subcontracting
 2 quotations to other responding or potential responding parties.
 3 Bids, proposals, and other responses which fail to meet the
 4 requirements of this Section 4.18.060 shall, within the limitations
 5 of federal and state law, be deemed non-responsive unless a waiver
 6 has been granted pursuant to Section 4.18.070 of this chapter.

7 E. The percentage factor and set-aside requirements of this
 8 Section 4.18.060 shall not apply to contracts awarded for the
 9 remainder of any calendar year in which the contract-awarding
 10 authority is determined by the director(~~(department of executive~~
 11 ~~administration,))~~, with the advice of the administrator, to have met
 12 the applicable county utilization goals as established by this
 13 chapter. The percentage factor and set aside provisions of this
 14 Section 4.18.060 shall again apply in each succeeding calendar year
 15 until the annual utilization goals for that year have been met by
 16 the contract-awarding authority.

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

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

22 **SECTION 7.** Ordinance No. 5700, Section 6, as amended, and
 23 K.C.C. 4.18.070 are hereby amended as follows:

24 **Waivers.** Contract-awarding authorities, along with or on behalf
 25 of responding parties and contractors, may apply for waiver of one
 26 or more requirements of this chapter as they apply to a particular
 27 contract or contracts.

28 A. Waivers may be granted by the director(~~(department of~~
 29 ~~executive administration,))~~, with the advice of the administrator,
 30 in any of the following circumstances:

31 1. When the needed goods and services are readily available
 32 from only one source, in which case the contract awarding authority
 33 shall, in addition to the requirements contained in Ordinance No.

1 4551, K.C.C. 4.16.030, submit a written justification of the need
2 for sole source treatment to the director(~~((department of executive~~
3 ~~administration,))~~) who shall grant or deny the request for waiver
4 within three business days.

5 2. Emergencies, in which case emergency contracting shall
6 be handled in accordance with the requirements of Ordinance No.
7 4551, K.C.C. 4.16.050.

8 3. Contracts for which neither a minority nor a women's
9 business is available to provide needed goods or services, in which
10 case a waiver may be applied for in accordance with procedures to be
11 developed by the ((~~director, department of executive~~
12 ~~administration~~)) administrator. Prior to granting a waiver, the
13 director(~~((department of executive administration,))~~) shall certify
14 that a minority/women's business is in fact not available to provide
15 the needed goods and/or services.

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

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

33

1 As a condition of granting any waiver, the director may require
2 that contractors or the contract-awarding authority make affirmative
3 efforts to utilize minority and/or women's businesses in the
4 contract.

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

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

28 PROVIDED THAT upon taking such action, the King County
29 executive shall notify the members of the King County council in
30 writing; and FURTHER PROVIDED ((THAT)), upon receipt of the notice,
31 if the King County council determines that the waiver does not meet
32 the standards of this section, the King County council may by
33

1 motion, within ten working days of the receipt of the notice,
2 determine the waiver to be null and void.

3 SECTION 8. Ordinance 5700, Section 7, as amended and K.C.C.
4 4.18.080, are hereby amended as follows:

5 Monitoring, Reporting, and Enforcement.

6 A. The county executive, through the ((~~director, department~~
7 ~~of executive administration~~)) administrator shall have the
8 responsibility for monitoring implementation of the requirements of
9 this chapter and shall have the power to request from departments,
10 responding parties and/or contractors any relevant records,
11 information and documents.

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

22 C. The ((~~director, department of executive administration~~))
23 administrator, shall be responsible for gathering all information
24 concerning compliance with this chapter and shall have access to all
25 pertinent King County records.

26 D. With the assistance of the ((~~director, department of~~
27 ~~executive administration,~~)) administrator each department shall
28 submit to the ((~~King County executive~~)) administrator an annual
29 report on its performance in meeting the utilization goals required
30 by this chapter on or before ((~~February~~)) March 15th of each year.
31 This report shall include the number and dollar amount of contracts
32 awarded ((~~,~~)) by contract category and the ((number and)) dollar
33 amount and the percentage of ((contracts with)) minority/women's

1 business participation by contract and contract category and by
 2 number of set-aside contracts, percentage preference contracts,
 3 contracts requiring affirmative efforts, and contracts for which
 4 waivers were granted (~~(; the number of contracts which involved the~~
 5 use of subcontractors, suppliers or similar assisting roles; the
 6 number of minority/women's businesses used in such roles; the
 7 number, type, and dollar amount of contracts awarded pursuant to the
 8 percentage factor and set-aside provisions of this chapter; and the
 9 basis on which the department determined that a method other than
 10 the one specified in Section 4.18.060 of the chapter should be
 11 used)). The report shall also identify problems in meeting the
 12 requirements of this chapter, if any, and suggestions for
 13 improvements.

14 E. Monitoring of Effects. The administrator shall establish
 15 procedures to collect evidence and monitor the effects of the
 16 provisions of this chapter in order to assure, insofar as is
 17 practical, that the remedies set forth herein do not
 18 disproportionately favor one or more racial or ethnic groups and
 19 that the remedies do not remain in effect beyond the point that they
 20 are required to eliminate the effects of discrimination in the local
 21 contracting industries. To the extent further amendments to this
 22 chapter are required to effect these ends, the administrator shall
 23 prepare appropriate ordinances for the council's consideration.

24 F. Certification and Recognition Process.

25 1. Pursuant to chap. 328, Laws of 1987, the Office of
 26 Minority and Women's Businesses of the State of Washington shall
 27 be solely responsible for certifying and decertifying businesses.
 28 King County's minority and women's business enterprise program is
 29 only for minorities and minority business and women's businesses and
 30 combination businesses as defined in K.G.C. 4.18.010; therefore the
 31 director(~~(; department of executive administration,))~~ through the
 32 administrator shall recognize only those combination minority and
 33 women's business enterprises or minority business enterprises

1 certified by the State of Washington which also meet the definitions
2 in K.C.C. 4.18.010, according to minority status information
3 provided to King County by the Office of Minority and Women's
4 Businesses of the State of Washington. Businesses are only eligible
5 for King County's programs so long as they remain certified by the
6 State of Washington.

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

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

26 4. No business shall apply to King County in order to
27 participate in the programs established by this chapter.

28 (~~F. Upon receipt of a written and signed allegation that any~~
29 ~~contractor, subcontractor, or vendor has violated any provision of~~
30 ~~this chapter, or if a violation is discovered from information~~
31 ~~gained through compliance monitoring, or upon reason to believe that~~
32 ~~a violation may be occurring, the director, department of executive~~
33 ~~administration, or his or her designee, shall order an~~

1 ~~investigation. If there is probable cause to believe that a~~
2 ~~violation has occurred, the director, department of executive~~
3 ~~administration, or his/her designee will, upon ten days' written~~
4 ~~notice to the alleged violating party, conduct a hearing to~~
5 ~~determine whether a violation has occurred. The hearing shall be~~
6 ~~recorded and each party shall have the right to call and examine~~
7 ~~witnesses, and to be represented by anyone of his/her choice~~
8 ~~lawfully permitted to do so. The parties shall include the~~
9 ~~complainant, if any, the alleged violating party, and a~~
10 ~~representative of the director, department of executive~~
11 ~~administration, or the agency conducting the investigation. The~~
12 ~~director, department of executive administration, may suspend~~
13 ~~progress payments on a contract pending the outcome of the hearing.~~
14 ~~Unless otherwise agreed to by all parties, the hearing shall be~~
15 ~~commenced no later than twenty-one days after service of a written~~
16 ~~notice of violation.))~~

17 G. Where a complaint is filed within one year of the
18 completion of all work on a contract alleging a violation of this
19 chapter by a contractor, subcontractor or contract-awarding
20 authority, or where, within that time period, evidence of a
21 violation is discovered from information gained through compliance
22 monitoring, the administrator shall cause to be served or mailed,
23 by certified mail, return receipt requested, a copy of the complaint
24 or notice of investigation on the respondent within twenty days
25 after the filing of said charge and shall promptly make an
26 investigation thereof. The investigation shall be directed to
27 ascertain the facts concerning the violation alleged in the
28 complaint and shall be conducted in an objective and impartial
29 manner. During the investigation, the administrator shall consider
30 any statement of position or evidence with respect to the
31 allegations of the complaint which the complainant or the respondent
32 wishes to submit.
33

1 1. The administrator shall have authority to sign and issue
2 subpoenas requiring the attendance and testimony of witnesses, the
3 production of evidence including but not limited to books, records,
4 correspondence or documents in the possession or under the control
5 of the person subpoenaed, and access to evidence for the purpose of
6 examination and copying as is necessary for the investigation. The
7 administrator shall consult with the prosecuting attorney before
8 issuing any subpoena under this section.

9 If an individual fails to obey a subpoena, or obeys a subpoena
10 but refuses to testify when requested concerning any matter under
11 investigation, the administrator may invoke the aid of the King
12 County prosecuting attorney who shall petition to the Superior Court
13 for King County for an order or other appropriate action necessary
14 to secure enforcement of the subpoena. The petition shall be
15 accompanied by a copy of the subpoena and proof of service, and
16 shall set forth in what specific manner the subpoena has not been
17 complied with, and shall ask for an order of the court to compel the
18 witness to appear and testify or cooperate in the investigation of
19 the violation.

20 2. The results of the investigation shall be reduced to
21 written findings of fact and a finding shall be made that there
22 either is or is not reasonable cause for believing that a violation
23 has been or is being committed. If a finding is made that there is
24 no reasonable cause, said finding shall be served on the complainant
25 and respondent. Within thirty days after service of such negative
26 finding, the complainant shall have the right to file a written
27 request with the administrator asking for reconsideration of the
28 finding. The administrator shall respond in writing within a
29 reasonable time by granting or denying the request.

30 H. If the finding is made initially or on request for
31 reconsideration that reasonable cause exists to believe that a
32 violation by a contractor or subcontractor has occurred, the
33 administrator shall endeavor to remedy the violation by conference,

1 conciliation and persuasion, which may include monetary
2 compensation, the creation of additional opportunities for minority
3 or women's utilization on other contracts, or such other
4 requirements as may lawfully be agreed upon by the parties and the
5 administrator. Any settlement agreement shall be reduced to writing
6 and signed by both parties. An order shall then be entered by the
7 administrator setting forth the terms of the agreement. Copies of
8 such order shall be delivered to all affected parties and the
9 original thereof filed with the Division of Records and Elections.

10 If no agreement can be reached, a finding to that effect shall
11 be made by the administrator and incorporated in a preliminary
12 order, with a copy thereof furnished to the complainant and the
13 respondent. The preliminary order shall also include:

14 1. A finding that a violation has occurred;

15 2. The basis for such finding.

16 I. In the case of failure to reach an agreement for the
17 elimination of such a violation, and upon the entry of a preliminary
18 order, the complaint and any and all findings made and remedies
19 ordered shall be certified by the administrator to the office of the
20 King County Hearing examiner for hearing.

21 A hearing shall be conducted by the office of the Hearing
22 examiner for the purpose of affirming, denying, or modifying the
23 preliminary order. The hearing shall be conducted on the record and
24 the hearing examiner shall have such rule making and other powers
25 necessary for conduct of the hearing as are specified by K.C.C.
26 20.24.150. Such hearings shall be conducted within a reasonable
27 time after receipt of the certification. Written notice of the time
28 and place of the hearing shall be given at least ten days prior to
29 the date of the hearing to each affected party and to the
30 administrator.

31 Each party shall have the following rights, among others:

32 1. To call and examine witnesses on any matter relevant to
33 the issues of the complaint;

1 2. To introduce documentary and physical evidence;

2 3. To cross-examine opposing witnesses on any matter
3 relevant to the issues of the complaint;

4 4. To impeach any witness regardless of which party first
5 called him to testify;

6 5. To rebut evidence against him; and

7 6. To represent himself or to be represented by anyone of
8 his choice who is lawfully permitted to do so.

9 ~~((6. After the hearing, the director, department of executive~~
10 ~~administration, shall make written findings and conclusions and~~
11 ~~shall order one or more of the following:))~~

12 J. Following review of the evidence submitted, the hearing
13 examiner presiding at the hearing shall enter written findings and
14 conclusions and shall render a written decision and shall order one
15 or more of the following:

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

18 2. Suspension or cancellation of the contract in part or in
19 whole;

20 3. Disqualification and/or debarment of the violator from
21 participation in county contracts for a period of up to five years;

22 4. Exclusion of the violator from future contracts or
23 vending until demonstration of compliance;

24 5. Enforcement of any provision of the contract providing
25 remedies, such as penalties or liquidated damages for violation of
26 contractual provisions, or enforcement of any other remedy available
27 under the laws of King County. Upon a finding by the ~~((director))~~
28 hearing examiner that a contractor has in fact failed to perform a
29 commercially useful function or has operated as a broker, front,
30 conduit or pass through business, liquidated damages specified in
31 the contract shall be imposed unless the ~~((director))~~ hearing
32 examiner finds that imposition of such damages would be clearly
33

1 inequitable, in which case the ((director)) hearing examiner may
2 order appropriate relief.

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

20 ~~((F.))~~ K. ~~((After the hearing, the King County executive
21 shall make written findings and conclusions))~~ If a finding is made
22 that there is reasonable cause to believe that a contract-awarding
23 authority has committed a violation, the finding shall be forwarded
24 to the county executive, who shall review the evidence and shall
25 order one or more of the following:

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

28 2. Corrective personnel action;

29 3. Disqualification and suspension of authority of all
30 members, any board, commission, or other body constituting the
31 violating contract awarding authority;

32 4. Enforcement of any other remedy available under the laws
33 of King County.

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

27 After the hearing, the ((King County executive)) director shall
28 make findings and conclusions and shall order appropriate corrective
29 action, if any.

30 ((K-)) M. In addition to any other remedy available under the
31 laws of King County and the State of Washington any person, firm,
32 corporation, business, union, or organization which prevents or
33 interferes with or retaliates against a contractor and/or

1 subcontractor's efforts to comply with the requirements of this
2 chapter or which submits false or misleading information to any King
3 County department or employee concerning compliance with this
4 chapter shall be subject to a civil penalty of up to five thousand
5 dollars for each occurrence, King County having previously complied
6 with the notice and hearing provisions of this ordinance. Each
7 submission of false or misleading information shall constitute a
8 separate occurrence.

9 ~~((L. 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 the
16 investigation. The director shall consult with the prosecuting
17 attorney before issuing any subpoena under this section. If an
18 individual fails to obey a subpoena, or obeys a subpoena but refuses
19 to testify when requested concerning any matter under investigation,
20 the director may invoke the aid of the King County prosecuting
21 attorney who may petition to the Superior Court for King County for
22 an order or other appropriate action necessary to secure enforcement
23 of the subpoena. The petition shall be accompanied by a copy of the
24 subpoena and proof of service, and shall set forth in what specific
25 manner the subpoena has not been complied with, and shall ask an
26 order of the court to compel the witness to appear and testify or
27 cooperate in the investigation.))~~

28 SECTION 9. Ordinance No. 5983, section 9 as amended and K.C.C.
29 4.18.090 are hereby amended to read as follows:
30 Annual report required. ~~((In addition to the executive's proposing
31 minority/women's business contracting goals and programs in the
32 required annual Affirmative Action Plan, the Affirmative Action Plan
33 shall include a)) The administrator shall submit an annual report to~~

1 the ((council)) executive detailing performance of the program by
 2 April 15 of each year. This report shall be forwarded to the council
 3 no later than April 30. ((At a minimum, t))The report shall include:

4 ~~((A. Provide statistical evidence, supported by a narrative~~
 5 ~~explanation where appropriate, showing contracts awarded to~~
 6 ~~minority/women's business, by type of contract, dollar value, and~~
 7 ~~contract awarding authority;~~

8 ~~B. If any contractor, contract awarding authority, department,~~
 9 ~~has been granted a waiver from the provisions of this chapter,~~
 10 ~~identifying the specific contract or bid process, parties involved~~
 11 ~~and the reasons for the waiver's approval.~~

12 ~~C. As appropriate, identify actions taken, by individual case,~~
 13 ~~where it has been alleged that a contractor, subcontractor, vendor~~
 14 ~~or contract awarding authority has violated the provisions of this~~
 15 ~~chapter.~~

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

19 A. Statistics, and narrative where appropriate, demonstrating
 20 the utilization of minority and women's businesses by department,
 21 contract category, and the County, overall;

22 B. Statistics, and narrative where appropriate, demonstrating
 23 the number and type of waivers granted;

24 C. Explanations of any investigative actions taken by Office of
 25 Civil Rights and Compliance regarding the implementation, monitoring
 26 and enforcement of this chapter;

27 D. Descriptions of any problems in the implementation reported
 28 by the department, including proposed solutions;

29 E. Recommendations, as appropriate, regarding amendments to
 30 this chapter;

31 F. Proposed utilization goals, as necessary.

32 NEW SECTION. SECTION 10. Graduating Firms Out of Program. The
 33 Office of Civil Rights and Compliance is directed to study and

1 prepare a recommendation to the council on whether this chapter
2 should be amended to "graduate out" minority and women's businesses
3 after a certain number of years of certification or level of income
4 above that used for state certification. The executive shall submit
5 such a recommendation by April 30, 1991.

6 NEW SECTION. SECTION 11. The Office of Civil Rights and
7 Compliance is directed to study and prepare a recommendation to the
8 council on establishment of a joint data base with one or more other
9 local agencies for the collection of availability and utilization
10 data. The executive shall submit such a recommendation by April 30,
11 1991.

12 NEW SECTION. SECTION 12. This ordinance shall be implemented
13 within the current level of resources allocated to the office of
14 civil rights and compliance. No additional staffing shall be
15 considered unless the office of civil rights and compliance
16 implements the county auditor's recommendations to streamline its
17 operations and demonstrates the need for additional staffing through
18 the use of relevant workload indicators and appropriate analysis.

19 NEW SECTION. SECTION 13. Severability. The provisions of
20 this ordinance shall be effective in all cases unless otherwise
21 provided for by state or federal law. The provisions of this
22 ordinance are separate and severable. The invalidity of any clause,
23 sentence, paragraph, subdivision, section, or portion of this
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1 ordinance or the invalidity of the application thereof to any perso
2 or circumstances shall not affect the validity of the remainder o
3 this ordinance, or the validity of its application to other person
4 or circumstances.

5 INTRODUCED AND READ for the first time this 9th day of
6 July, 1990.

7 PASSED this 29th day of August, 1990.

8 KING COUNTY COUNCIL
9 KING COUNTY, WASHINGTON

10 Lois North
11 Chair

12 ATTEST:

13 Gerald A. Peterson
14 Clerk of the Council

15 APPROVED this 4th day of September, 1990.

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17 Tim Hill
18 TIM HILL
19 King County Executive
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