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Introduced By: Pullen  
Gossett  
Proposed No.: 94-612

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ORDINANCE NO. 11564

AN ORDINANCE relating to the procurement of goods and services by King County from minority business enterprises and women's business enterprises, and directing the Executive to take further steps to reduce discriminatory practices, establish a stronger basis for King County's affirmative efforts by commissioning an updated predicate study, establish specific goals for protected groups, meet the intent of the United States Supreme Court's 1989 Croson decision, and devise a graduation program as called for in Ordinance 9609; and amending Ordinance 9609, sections 10 and 11, and K.C.C. 4.18.095.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings. The King County council finds that the efforts of King County to combat discriminatory practices against women-owned and minority-owned businesses seeking to do business with the county have been generally successful overall in creating a more equitable competitive climate. King County, including the Department of Metropolitan Services, has made good faith efforts to be responsive to the need of these business interests to compete fairly for public dollars and has taken steps to counteract discriminatory practices that exist in local industries that provide goods and services to the county.

The council further finds that its programs have been flexible and have changed to respond to both a human need and to the legal principles outlined by the United States Supreme Court in its 1989 decision, City of Richmond v Croson.

1           The council further finds that in adherence to the  
2 Supreme Court's decision in Croson, the County's  
3 minority/women's business enterprise program should be  
4 periodically reviewed and updated, as set forth in Ordinance  
5 9609 and in Ordinance 11032, Section 19. The council finds  
6 that sufficient time has elapsed since the original predicate  
7 study which served as the foundation of King County's and the  
8 department of metropolitan services' programs to have a new  
9 study done.

10           Consistent with the requirements in Ordinance 9609, and  
11 with the findings and intent contained in Ordinance 11032,  
12 Section 19, the council finds that any new look at the  
13 County's minority business and women's business enterprise  
14 programs, including those of the department of metropolitan  
15 services, must result in the development by the executive  
16 branch of a mechanism based on objective and defensible  
17 criteria for having successful minority and women's business  
18 enterprises "graduated" from the program.

19           It is in the interests of King County government and the  
20 general public to have minority and women's businesses  
21 compete for contracts for public dollars on a fair and equal  
22 basis. Absent specific goals and availability figures for  
23 each protected group identified in Ordinance 9609, it is not  
24 possible for the King County council to determine if African-  
25 American, Hispanic, Asian, Native American and women-owned  
26 businesses are at least competing on a level playing field  
27 for public dollars.

28           Therefore, the council further finds that a study for  
29 determining the county's utilization of minority and women's  
30 business enterprises in contracting the county's public  
31 dollars must establish specific utilization goals for each of  
32 the protected groups established by Ordinance 9609 if the

1 County's minority and women's business enterprise program is  
2 to fulfill its mission. This approach is consistent with case  
3 law and court decisions which have grown out of the Croson  
4 decision and as such is a desirable and fair policy goal for  
5 King County government to adopt.

6 Additionally, the council finds that a positive step to  
7 enhancing, encouraging and supporting the success of minority  
8 and women's business enterprises requires that King County  
9 make every effort to further refine its remedial program by  
10 actively identifying and supporting ways in which minority  
11 and women's business enterprises may successfully compete for  
12 its public dollars as prime contractors. The county's efforts  
13 to date have focused on insuring that these businesses are  
14 used as subcontractors by majority-owned businesses doing  
15 business with King County. It is the next logical step in  
16 combating unfair and discriminatory practices to have the  
17 county actively foster their participation in county  
18 contracting as prime contractors.

19 The council recognizes that the county should first  
20 attempt to identify racially neutral programs that would help  
21 eliminate barriers to minority and women's business  
22 enterprises becoming prime contractors.

23 The council also finds that, in the furtherance of the  
24 intent of this ordinance, achieving and establishing fair  
25 business practices in its contracting of public dollars  
26 requires that traditional barriers to success faced primarily  
27 by African-American businesses, but by other minority,  
28 women's and disadvantaged businesses as well, be specifically  
29 targeted for remediation in the steps called for in this  
30 ordinance. To that end, the executive is encouraged and  
31 directed to display special sensitivity to African-American  
32 and other minority, women's and disadvantaged businesses .

1 seeking to compete fairly for the County's public dollars;  
2 and that the predicate study and efforts to contract with  
3 these businesses as prime contractors take into account the  
4 special circumstances and traditional barriers encountered by  
5 them.

6       SECTION 2. Predicate study. A. The King County  
7 executive is directed to prepare appropriate specifications  
8 for the conduct of a new predicate study to find out the  
9 extent to which discrimination against minority and women's  
10 business enterprises continues to exist in the local market  
11 from which King County, including the department of  
12 metropolitan services, purchases goods and services. The  
13 executive shall, to the extent feasible, cooperate and  
14 collaborate with other local and regional jurisdictions in  
15 designing the study, reviewing the Perkins Coie study  
16 commissioned by the council in 1990, and in seeking joint  
17 funding among all participating jurisdictions in the new  
18 study on a pro rata and fair basis.

19       B. The executive is directed to transmit to the council  
20 for its consideration the proposed design of a new predicate  
21 study and the criteria to be used in selecting an appropriate  
22 consultant. This instrument shall include, in addition to  
23 cost: a timeframe for the completion of a study, a detailed  
24 work scope and work plan for the implementation of its  
25 findings and results as well as a methodology for determining  
26 an accurate and impartial way of periodically reviewing the  
27 accomplishment of goals.

28       C. As may be necessary, the executive is directed to  
29 prepare and forward to the council for its consideration and  
30 adoption an appropriation ordinance for the county's fair  
31 share of the cost of participating in a new predicate study,  
32 provided that, in any event, King County shall conduct a

1 study to determine continued discrimination against minority  
2 and women's business enterprises.

3 SECTION 3. Utilization goals. The study to be  
4 conducted shall have as one of its results specific  
5 utilization goals for African-American, Hispanic, Asian-  
6 American and American Indian businesses, as identified in  
7 Ordinance 9609.

8 SECTION 4. Prime contractors. The executive shall  
9 identify ways and methods to be used in fostering and  
10 encouraging the use of minority and women's business  
11 enterprises as prime contractors for all types of contracts  
12 let by King County, including those let by the department of  
13 metropolitan services. Said product shall be delivered to  
14 the council consistent with the deadline established herein.

15 SECTION 5. Ordinance No. 9609, Sections 10 and 11, and  
16 K.C.C. 4.18.095 are hereby amended to read as follows:

17 Graduating firms out of programs. A. The office of  
18 civil rights and compliance is directed to (~~study and~~)  
19 prepare a recommendation to the council on (~~whether this~~  
20 ~~chapter should be amended to "graduate out"~~) a methodology  
21 and plan for graduating minority and women's businesses after  
22 a certain number of years of certification and level of  
23 income above that used for state certification. The executive  
24 shall submit such a recommendation by (~~April 30, 1992~~) June  
25 30, 1995.

26 B. The methodology and plan shall include specific  
27 objective criteria and timeframes for reviewing minority and  
28 women's business enterprise participation in King County's  
29 remedial program and determining when and under what  
30 conditions individual firms shall be graduated from King  
31 County's remedial program.

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