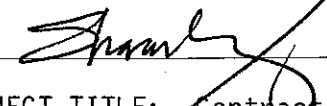




Title Contracting for Procurement: Goods/Equipment/Supplies/ Materials and Nonprofessional Services (excluding janitorial)	Document Code No. CON 7-1-1 (A-P)
Department/Issuing Agency Executive Administration/Purchasing Agency	Effective Date January 1, 1993
Approved 	

1.0 SUBJECT TITLE: Contracting for Procurement: Goods/Equipment/Supplies/
 Materials, and Nonprofessional Services (excluding janitorial).

1.1 EFFECTIVE DATE: January 1, 1993

1.2 TYPE OF ACTION: Supersedes CON 7-1 (A-P)

1.3 KEY WORDS: Contracts; Term Contracts

2.0 PURPOSE:

2.1 To establish uniform procedures for contracting for the procurement
 of goods, supplies, materials, and nonprofessional services.

2.2 To establish a clear and concise statement of contracting procedures
 for those who do business or propose to do business with King County.

3.0 ORGANIZATIONS AFFECTED: All departments, offices, and agencies of King
 County government.

4.0 REFERENCES:

4.1 King County Charter 920.10-40 -- Office of Property and Purchasing

4.2 King County Code Chapter 4.16. -- Bidding Procedures for Public
 Contracts

4.3 Revised Code of Washington, Chapter 36.32.245 and 365.32.253 --
Competitive Bids

5.0 DEFINITIONS:

5.1 "Nonprofessional Service Contracts" means those contracts for main-
 tenance or service where price is the primary determining factor.
 (RCW 36.32.245)

5.2 "Contract" means the agreement between King County and the vendor or
 contractor to provide a defined set of services or goods, materials,
 or supplies within a specified time period.

6.0 POLICIES:

6.1 Vendors and contractors seeking to contract with King County may not
 be legally construed to be employees of King County.

6.2 Contracting is a competitive process, designed to afford equal opportunity to qualified, responsible and responsive, vendors and suppliers.

7.0 PROCEDURES:

Action By: Action:

Requesting
Agency

7.1 Initiates the procurement process by submitting a requisition to the Purchasing Agency which includes a description of the goods, nonprofessional services, materials, and/or equipment to be purchased.

Purchasing
Agency

7.2 For procurement of goods, nonprofessional services, materials, and/or equipment involving less than \$2,500 including tax, the Purchasing Agency may award the bid without advertisement and without competitive bidding by calling a bidder with a record of providing timely services/goods at competitive prices and placing an order.

7.3 For procurement of goods, nonprofessional services, materials and/or equipment involving \$2,500 but less than \$25,000 including tax, buyers are required to post the requisition on the Purchasing Agency's bulletin board for a minimum of three days, contact a minimum of three vendors for price quotations, maintain a record of each quotation and award to the low responsible bidder; or complete written bid specifications and solicit written sealed bids from appropriate vendors to ensure competition.

7.4 For goods, nonprofessional services, materials, and/or equipment involving \$25,000 or more including tax, the Purchasing Agency develops a formal written Invitation to Bid, including but not limited to the following specifications:

7.4.1 Description of the goods, supplies, nonprofessional services, materials, and/or equipment, including quantity.

7.4.2 Description of the type of procurement
- purchase, lease, term, etc.

7.4.3 Date the supplies/services/or equipment
must be delivered or available.

- 8.2 The initiating department is responsible for providing the specifications, scope of work, and any other information necessary for the procurement and contract.
- 8.3 The requesting department is responsible for providing the specifications for the requisition to purchase, but the Purchasing Agency is responsible for defining and overseeing the award process.

9.0 APPENDICES:

- 9.1 King County Code 12.16
- 9.2 King County Code 4.18
- 9.3 Requisition Form.
- 9.4 Purchase Order Form.

OFFENSES AGAINST THE PERSON
Chapter 12.16

DISCRIMINATION AND AFFIRMATIVE ACTION
IN EMPLOYMENT BY CONTRACTORS,
SUBCONTRACTORS AND VENDORS¹

Sections:

- 12.16.010 Definitions.
- 12.16.020 Nondiscrimination - General.
- 12.15.025 Nondiscrimination - The handicapped.
- 12.16.030 Goals and timetables - Affirmative action required.
- 12.16.035 Affirmative Action Plan.
- 12.16.040 Minimum affirmative action measures.
- 12.16.050 Contract requirements.
- 12.16.060 Precontract qualification.
- 12.16.070 Statements from unions.
- 12.16.080 Subcontractors.
- 12.16.090 Compliance monitoring.
- 12.16.100 Reporting requirements.
- 12.16.110 Notice and hearing.
- 12.16.120 Sanctions.
- 12.16.130 Additional sanctions.
- 12.16.140 Administrative rules of practice and procedure.
- 12.16.150 Severability.

12.16.010 Definitions. For the purposes of this chapter, the words set out in this section shall have the following meanings:

- A. "Affidavit" means a sworn statement under oath.

¹. [For statutory provisions regarding the Law Against Discrimination, see RCW 49.60.]

B. "Affirmative action" means policies, procedures and programs designed to increase the representation of and remedy the results of past discrimination against minorities, women, and handicapped persons in employment, applications for employment, and employment-related training programs (of minorities, women and handicapped persons).

C. "Contractor" means any person, firm, business, organization, company, partnership or corporation contracting to do business with King County including, but not limited to, construction contractors, consultant contractors, providers of professional services, service agencies, vendors, and suppliers selling or furnishing materials, equipment, goods or services, but not including governmental agencies.

D. "Discrimination" means differential treatment of or pursuit of policies or practices that have a disproportionate impact upon persons due to their creed, religion, race, color, sex, age, marital status, sexual orientation, national origin or the presence of any sensory, mental or physical handicap, unless such policies or practices are necessary for the performance of the job and no less discriminatory alternatives are possible.

E. "Employment" means any and all terms and conditions and policies and practices of employment including, but not limited to, hiring, firing, upgrading, demotion, recruiting, transfer, lay-off, termination, pay rates and advertisement, hours and conditions of work.

F. "Handicap" means any physical or mental impairment which substantially limits one or more major life activities.

G. "Minority" includes Blacks, Asians, Pacific Islanders, American Indians, Alaska Native, Hispanics and Mexican-Americans.

H. "Qualified handicapped person" means a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question.

I. "Reasonable accommodation" means steps taken to modify facilities used by employees or to modify a particular job component which enables an otherwise qualified handicapped person to perform the essential functions of the job.

J. "Sexual orientation" means male or female heterosexuality, bisexuality, or homosexuality, and includes a person's attitudes, preferences, beliefs and practices pertaining to sex.

K. "Underrepresentation" means presence in a contractor's work force of minorities, women, and handicapped persons in proportionate numbers lower than the goals established for the contractor's business under this chapter. (Ord. 8537 § 1, 1988: Ord. 7788 § 1, 1986: Ord. 4528 § 1, 1979).

12.16.020 Nondiscrimination - General. No contractor, subcontractor, or union doing business with the county, or furnishing workers or services in connection therewith, shall discriminate against any person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation, or the presence of any sensory, mental or physical handicap in an otherwise qualified handicapped person in employment, and no such contractor, subcontractor, or union shall violate any of the terms of RCW Chapter 49.60, Title VII of the Civil Rights Act of 1964, or any other applicable federal, state or local law or regulation regarding nondiscrimination in employment. (Ord. 8537 § 2, 1988: Ord. 7788 § 2, 1986: Ord. 4528 § 2, 1979).

12.16.025 Nondiscrimination - The handicapped. In addition to the general prohibition against discrimination stated in Section 12.16.020 of this

chapter, the following additional nondiscrimination provisions relating to employment of handicapped persons shall apply to contractors, subcontractors, or unions doing business with or furnishing workers or services to King County.

A. Reasonable accommodation. Contractors shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the contractor can demonstrate that the accommodation would impair or cause undue hardship on the operation of the contractor's business.

B. Pre-employment inquiries. A contractor may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap. A contractor may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions. Nothing in this section shall prohibit a contractor from conditioning an offer of employment on the results of a medical examination prior to initiation of the employment, if all entering employees are subjected to such an examination regardless of handicap. (Ord. 7788 § 3, 1986).

12.16.030 Goals and timetables - Affirmative action required. A. GOALS. The executive shall annually set goals and timetables for minority and female employment and the employment of handicapped persons by contractors doing business with King County, based on appropriate work force, demographic or other relevant data. These goals shall be set forth in the county's affirmative action plan. The monitoring and evaluating of a contractor's performance in attempting to meet goals shall be based on total hours of employment and training of minorities, women, and handicapped persons at the contractor's locations and establishments in King County or at the contractor's locations and establishments where work under contract with King County is being performed and contracted for when such occurs outside King County.

B. GOAL SETTING METHODOLOGY FOR MINORITIES AND WOMEN. Employment goals shall be established for two industry categories, construction contractors and vendors/service contractors, using a multi-factor availability analysis. The multi-factor analysis shall be based on four factors with each factor being assigned a specific weight as follows:

FACTORS

1. Representation of women and minorities among those employed in King County in each industry category (weight = 50%);
2. Representation of women and minorities in the King County labor market (weight = 25%);
3. Representation of women and minorities among the unemployed in King County (weight = 15%);
4. Representation of women and minorities in the general population of King County (weight = 10%);

C. GOAL SETTING METHODOLOGY FOR HANDICAPPED PERSONS. Employment goals for handicapped persons shall be established using the methodology deemed most relevant and the statistical data deemed the most current and representative of the availability of handicapped persons by the affirmative action office, and shall, to the extent possible, be consistent with the methodology used to establish employment goals for the handicapped for the county's internal work force.

D. ALTERNATIVE GOAL OPTION. Contractors may establish goals independently if they believe the King County goals are not applicable to their specific situation. Contractors who secure King County's assent in pursuing this option must use a multi-factor analysis with methodology and data sources approved by the county.

E. AFFIRMATIVE ACTION REQUIREMENT. Where a contractor's employment statistics demonstrate that minorities, women and/or handicapped persons are underrepresented in its work force in relationship to the goals established by the executive, contractor, subcontractors, and unions doing business with the county, or providing workers or services in connection therewith, shall take affirmative action measures, as stipulated in this chapter, to increase the representation of minorities, women and handicapped persons at locations and establishments where projects and work are being done under contract with King County. Affirmative action steps shall be based on what is reasonably required to achieve employment goals which will cure underrepresentation. Underrepresentation of minorities, women and handicapped persons will not itself be deemed a violation of this chapter where reasonable affirmative action measures are adopted and are being implemented in good faith.

F. EXEMPTIONS. Contractors who enter into contracts with King County valued at less than five thousand dollars in a given calendar year shall be exempt from the affirmative action requirements of this chapter. This exemption does not affect nondiscrimination requirements which apply to all contractors doing business with King County. (Ord. 7788 § 4, 1986; Ord. 4528 § 3, 1979).

12.16.035 Affirmative Action Plan. A. King County Affirmative Action Plan is hereby approved and adopted.

B. King County departments shall make vigorous and affirmative efforts to meet the proposed goals. Departments shall further comply with the rules and policies contained in the plan governing affirmative action and equal employment.

C. The goals for the three elements of King County's Affirmative Action Program shall be as follows:

1. AFFIRMATIVE ACTION EMPLOYMENT. The 1987 affirmative action employment goals for women, minorities and handicapped persons are established by the 1987 availability percentage rates by EEO job category as indicated on the chart on page 71 of the Affirmative Action Plan attached as Exhibit A.* A weighted average of the overall 1987 availability percentage rates is 42.8% for women and 15.7% for minorities and 7.2% for persons with disabilities. Exhibit B presents the formula used to calculate the 1987 overall availability percentage rates. The executive administration shall develop a specific strategy in the 1988 Affirmative Action Plan to enhance county employment opportunities for the handicapped and of Southeast Asians who have limited English-speaking capacity.

[*Ordinance 8136 and Exhibits are on file and may be inspected in the office of the clerk of the council or the affirmative action office.]

2. MINORITY/WOMEN'S BUSINESS UTILIZATION. The 1987 minority/women's business utilization goals are as follows:

<u>Nature of Contract</u>	<u>Minority Businesses</u>	<u>Women Businesses</u>
1. Architectural & Engineering	15%	7%
2. Concession	10%	5%
3. Construction	18%	10%
4. Consultant	15%	12%
5. Purchase/Service	10%	3%

The above goals are a continuation of the 1986 minority/women's business goal. Exhibit C presents detailed statistics on the county's progress in minority/women's business utilization attainment which will serve as justification for these goals.

3. CONTRACT COMPLIANCE. The 1987 contract compliance goals are as follows:

	<u>Minorities</u>	<u>Women</u>	<u>Handicap</u>
Construction Contractors	15.0%	12.0%	4.0%
Vendors/Service Contractors	12.5%	48.4%	7.0%

In determining the 1988 contract compliance goals, and subsequent annual goals involving construction contracts, the executive administration shall explore and utilize other methodologies than the one used in determining the 1987 contract compliance construction goals, pursuant to K.C.C. 12.16.030B.. The purpose of reviewing and using other methodologies is to identify more realistic goals in 1988 and subsequent years than those recommended in the 1987 Affirmative Action Plan. The 1988 Affirmative Action Plan shall include a description of the methodology used in determining the 1988 contract compliance construction goals.

D. The King County 1987 Affirmative Action Plan and appendices thereto are incorporated as if fully set forth in this section by reference herein. Women and minority business utilization goals shall also apply to the community development float loan program. (Ord. 8136, 1987; Ord. 7787 §§ 1-5, 1986).

12.16.040 Minimum affirmative action measures. The evaluation of a contractor's compliance with this chapter shall be based upon the contractor's effort to achieve maximum results from its affirmative action program. The contractor shall document these efforts and shall implement affirmative action steps at least as extensive as the following:

A. Policy Dissemination. Internal and external dissemination of the contractor's equal employment opportunity policy; posting of nondiscrimination policies and of the requirements of this chapter on bulletin boards clearly visible to all employees; notification to each subcontractor, labor union or representative of workers with which there is a collective bargaining agreement or other contract, subcontract, or understanding, of the contractor's commitments under this chapter; inclusion of the equal opportunity policy in advertising in the news media and elsewhere; discussion of equal employment opportunities and affirmative action policies with new employees during employment orientation; discussions with managers and supervisory personnel regarding the policies and their roles and responsibilities in the implementation of the program under this chapter.

B. RECRUITING. Adoption and implementation of recruitment procedures designed to increase the representation of women, minorities and handicapped persons in the pool of applicants for employment; including, but not limited to, establishing and maintaining a current list of minority, female and handicapped recruitment sources, providing these sources written notification of employment opportunities and advertising vacant positions in newspapers and periodicals which have minority, female and/or handicapped readership.

C. SELF-ASSESSMENT AND TEST VALIDATION. Review of all employment policies and procedures, including review of tests, recruitment, hiring and training practices and policies, performance evaluations, seniority policies and practices, job classifications and job assignments, to assure that they do not discriminate against, or have a discriminatory impact on, minorities, women and handicapped persons and validation of all tests and other selection requirements where there is an obligation to do so under state or federal law.

D. RECORD REFERRALS. Maintain a current file of applications of each minority, female and handicapped persons applicant or referral for employment indicating what action was taken with respect to each such individual and the reasons therefor. Contact these people when an opening exists for which they may be qualified. Names may be removed from the file after twelve months have elapsed from their last application or referral.

E. NOTICE TO UNIONS. Provide notice to labor unions of the contractor's nondiscrimination and affirmative action obligations pursuant to this chapter. Contractors shall also notify the executive if labor unions fail to comply with the nondiscrimination or affirmative provisions.

F. SUPERVISORS. Ensure that all supervisory personnel understand and are directed to adhere to and implement the nondiscrimination and affirmative action obligations of the contractor under this chapter. Such direction shall include, but not be limited to, adherence to, and achievement of, affirmative action policies in performance appraisals of supervisory personnel.

G. EMPLOYEE TRAINING. When reasonable develop on-the-job training opportunities which expressly include minorities, women, and handicapped persons and sponsor and/or utilize, training/educational opportunities for the advancement of women, minorities and handicapped persons employed by the contractor, subject to acceptance by the county affirmative action office.

H. RESPONSIBLE PERSON. Designate an employee who shall have the responsibility for implementation of the contractor's affirmative action program.

I. PROGRESS REPORTING. Prepare as part of the affirmative action plan an analysis and report on the progress made toward eliminating the underrepresentation of women, minorities and handicapped persons in the contractor's workforce on an annual basis.

J. CONTRACTOR TRAINING. In addition, contractors who do not meet employment goals for women, minorities and handicapped persons and who do not have approved affirmative action plans may be required to attend county sponsored training programs on relevant areas of affirmative action and equal employment opportunity. (Ord. 7788 § 5, 1986: Ord. 4528 § 4, 1979).

12.16.050 Contract requirements. The county's policy, as stated in this chapter, requiring nondiscrimination in contractor or subcontractor employment and affirmative action shall be included in all county contracts. Any violation of the specific provisions of this chapter and of any term of the affidavit of compliance required herein, including reporting requirements, shall be deemed a violation of this chapter. Any such violation shall be further deemed a breach of a material provision of the contract between the county and the contractor. Such breach shall be grounds for cancellation, termination, or suspension, in whole or in part, of the contract by the county, or for invoking the enforcement provisions of the contract of this chapter providing for penalties, liquidated damages, or other remedies, and may result in ineligibility for further county contracts; provided, that underrepresentation of minorities, women and handicapped persons and the failure or inability of any contractor to achieve employment goals will not be a violation where that contractor has adopted and pursued a reasonable affirmative action program in compliance with this chapter. The burden is on the contractor to demonstrate its compliance with this chapter. (Ord. 7788 § 6, 1986: Ord. 4528 § 5, 1979).

12.16.060 Precontract qualification. Prior to becoming eligible for all awards of any county contract, contractors must first be certified by the county administrative officer or his designee as having complied with the provisions of this section. The county shall not enter into a contract with nor receive products and services from an ineligible contractor.

A. WORK FORCE DATA. All contractors entering into contracts or agreements with King County valued at five thousand dollars or more shall submit to the county executive a total personnel inventory employment profile providing minority, female and handicapped employment data. This requirement shall also apply to contractors who accumulate contracts which total five thousand or more in a given calendar year. The executive may determine the form in which this data shall be provided.

B. COMPLIANCE AFFIDAVITS AND UNION STATEMENTS. All contractors entering into contracts with King County of more than ten thousand dollars, or which in the aggregate result in yearly sales to King County of more than ten thousand dollars, shall submit an affidavit of compliance, in the form provided by the county, demonstrating their commitment to comply with the provisions of this chapter, and shall further submit a signed statement of compliance from a union or employee referral agency. The affidavit of compliance shall set forth the contractor's specific employment goals, minimum affirmative action requirements, reporting requirements and other such provisions as the executive deems necessary and appropriate for compliance with and enforcement of this chapter; provided, that the affidavit of compliance shall not require actions or goals inconsistent with the standards, guidelines and affirmative action measures set forth in this chapter; provided further, that in lieu of the affidavit the executive may accept a statement pledging adherence to an existing contractor affirmative action plan where the provisions of the plan are found by the executive to substantially fulfill the requirements of this chapter.

C. VENDORS, YEARLY RENEWALS. Vendors who became qualified under subsections A. and B. of this section shall remain so qualified until October 31st of the year in which they were qualified and shall be entitled to bid and be considered for the sale of materials, supplies and equipment at any time during that year without requalification. Further, upon submittal of an updated employment profile, such vendor's qualification shall be extended from year to year.

During such time as a vendor remains continuously qualified under this chapter to do business with King County, the affidavit of compliance initially submitted to gain qualification shall be deemed to be effective and in force without further renewal or resubmission. Should qualification lapse or be terminated at any time due to a failure to submit an annual employment profile or upon a finding of violation of this chapter, the county having previously complied with notice of hearing provisions, a new affidavit of compliance and employment profile shall be required prior to vendor's being requalified. (Ord. 7788 § 7, 1986: Ord. 4528 § 6, 1979).

12.16.070 Statements from unions. Contractors required to submit compliance affidavits to include a union statement from a union or worker referral agency shall do so on forms provided by the executive. The statement shall be in writing, signed by the authorized officers or agents of all labor unions or agencies referring workers or providing or supervising apprenticeship or other training programs from whom the contractor obtains employees. The statement shall affirm that the signer(s)'s organization has no practices and policies which discriminate on the basis of race, color, creed, religion, sex, age, marital status, the presence of any physical, mental or sensory handicap, or national origin, that the signer(s)'s organization will affirmatively cooperate in the implementation of the policies and provisions of this chapter, and that the organization consents and agrees that recruitment, employment, and the terms and conditions of employment under all contracts with the county shall be in accordance with the purposes and provisions of this chapter. (Ord. 7788 § 8, 1986: Ord. 4528 § 7, 1979).

12.16.080 Subcontractors. For projects and contracts over one hundred thousand dollars, the prime contractor shall be required to submit to King County, along with its qualifying documents under this chapter, employment

profiles, affidavits of compliance, reports and union statements from its subcontractors in the same manner as these are required of the prime contractor. Reporting requirements of the prime contractor during the contract period will apply equally to all subcontractors. As a condition of their contract, prime contractors shall be responsible for both the submission of affidavits and reports and for requiring their subcontractors and vendors to employ racial minorities, women and handicapped persons. Any violation of this chapter or the requirements of the affidavit of compliance by the subcontractor will be deemed a violation by the prime contractor and subject to the sanctions and penalties set out in the contract and in this chapter. (Ord. 7788 § 9, 1986: Ord. 4528 § 8, 1979).

12.16.090 Compliance monitoring. The county executive is authorized to contract with an appropriate agency to monitor compliance with this chapter and to conduct such investigations as may be necessary to determine compliance on the part of any firm or organization with the requirements of this chapter. It shall be the duty of each department responsible for and initiating contracts subject to this chapter to assure that contractors are notified of their obligations hereunder. The county administrative officer or his designee shall have the direct responsibility and authority to insure that contractors are properly monitored and that each county department is in full compliance with provisions of this chapter. (Ord. 4528 § 9, 1979).

12.16.100 Reporting requirements. The contractor will, upon request, furnish all information and reports as reasonably required by the executive, and by any appropriate agency authorized under Section 12.16.090, to determine compliance with this chapter, and the affidavit of compliance, and will permit access to its books, records and accounts for purposes of investigation to ascertain compliance with the nondiscrimination and affirmative action requirements of this chapter. Unless otherwise required by law, all information, data or records obtained pursuant to the monitoring and investigation activities authorized under this chapter shall be kept confidential by the county or authorized agency, except that the county may release such information when requested to do so in cooperation with state and federal agencies administering and enforcing state and federal laws against discrimination. (Ord. 4528 § 10, 1979).

12.16.110 Notice and hearing. Upon receipt of an allegation that any contractor or vendor has violated any provision of this chapter, or if a violation is discovered from information gained through compliance monitoring, the county executive or authorized agency will conduct an investigation. If it appears that a violation has occurred, the county executive or his designee will, upon ten days' written notice to the contractor, conduct a hearing to determine whether a violation has occurred. The notice shall contain a brief statement of the allegations and the reasons that a violation is believed to have occurred. The hearing shall be recorded and each party shall have the right to call and examine witnesses, to produce documentary and physical evidence, to cross-examine witnesses and to be represented by anyone of his choice lawfully permitted to do so. The parties shall include the complainant, if any, the contractor or vendor, and a representative of the executive or the agency conducting the investigation. The executive may suspend progress payments on a contract or contracts pending the outcome of the hearing. Unless otherwise agreed to by all parties, the hearing shall be commenced no later than twenty-one days after service of a notice of violation. (Ord. 4528 § 11, 1979).

12.16.120 Sanctions. After the hearing, the executive or hearing examiner shall make written findings and conclusions and shall order one or more of the following:

- A. Dismissal of the complaint when a violation is found not to have occurred;
- B. Suspension or cancellation of the contract in part or in whole;
- C. Disqualification of the contractor;
- D. Exclusion from future contracts or vending until demonstration of compliance;
- E. Liquidated damages of up to ten percent of the full contract amount;
- F. Enforcement of any provision of the contract providing other remedies, such as penalties or liquidated damages for violation of contractual provisions, or enforcement of any other remedy available at law to the county. (Ord. 7788 § 10, 1986: Ord. 4528 § 12, 1979).

12.16.130 Additional sanctions. In addition to any other remedy available under the laws of King County and the State of Washington any person, firm, corporation, business, union, or organization that prevents or interferes with a contractor's efforts to comply with the requirements of this chapter or which submits false or misleading information to any King County department or employee concerning compliance with this chapter shall be subject to a civil penalty of up to five thousand dollars for each occurrence, the county having previously complied with the notice and hearing provisions of this chapter. (Ord. 7788 § 11, 1986: Ord. 4528 § 13, 1979).

12.16.140 Administrative rules of practice and procedure. Administrative practices and procedures required to fully implement the provisions of this chapter shall be promulgated and filed with the clerk of the council in the manner prescribed in Chapter 2.98 of this code. (Ord. 4528 § 14, 1979).

12.16.150 Severability. The provisions of this chapter shall be effective in all cases unless otherwise provided for by State or Federal Law. The provisions of this chapter are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this chapter or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances. (Ord. 7788 § 12, 1986: Ord. 4528 § 15, 1979).

Chapter 4.18
MINORITY AND WOMEN'S BUSINESS ENTERPRISES

Sections:

- 4.18.005 Findings.
- 4.18.010 Definitions.
- 4.18.020 Powers and duties.
- 4.18.030 Utilization goals.
- 4.18.040 Accomplishment of utilization goals.
- 4.18.050 Utilization requirements, general.
- 4.18.060 Utilization requirements, specific.
- 4.18.070 Waivers.
- 4.18.080 Monitoring, reporting, and enforcement.

- 4.18.090 Special report required.
- 4.18.100 Authorization to implement procedures.
- 4.18.110 Effect of ordinance, status of solicitations.
- 4.18.115 Effective date.
- 4.18.120 Severability.
- 4.18.130 Study and report.

4.18.005 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 with King County based on the race and sex of the owners of these businesses.

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

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

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

F. Further study of the nature and extent of the discrimination against minority and women's businesses must be conducted to determine whether additional amendments to the program are necessary. The continuation of the program during the period of this study is necessary to prevent irreparable injury to such businesses. (Ord. 8937 § 1, 1989).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

N. "Corporate Sponsored Dealership," shall mean a bona fide minority/women's business which meets the following standards in lieu of the

fifty-one percent ownership criterion of subsection R.1., and the control criteria of subsection R.2.. The minority/women owners have entered into an agreement, contract, or arrangement with a national or regional corporation and have been granted a license to offer, sell or distribute goods or services at wholesale or retail, leasing or otherwise using the name, service mark, trademark or related characteristic of the sponsoring corporation. Capital investment for the dealership is jointly contributed by the minority/women owners and the sponsoring corporation, with the sponsoring corporation initially contributing the largest percentage. The original investment contributed by the minority/women owners may be less than fifty-one percent, with a specified time limit established with the sponsoring corporation for the minority/women owners to become the sole owner of the dealership. The standards for qualifying a corporate sponsored dealership as a bona fide minority/women's business enterprise shall include, but are not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HH. "Women's Business," means a business certified by the Office of Minority and Women's Businesses of the State of Washington as a women's business enterprise. The director of the department of executive administration is authorized to determine that women as a class have not been discriminated against in their ownership and operation of particular trades or areas of business or in the particular geographical areas in which they operate. The director may exclude such businesses from consideration as "women's businesses" under this chapter, in connection with contracts involving such trades or areas of business, according to the procedure provided for in Section 4.18.080 of this chapter. (Ord. 8937, § 2, 1989; Ord. 8313 § 1, 1987; Ord. 8121, 1987; Ord. 7789 § 1, 1986; Ord. 7512 § 1, 1986; Ord. 5983, § 1, 1982; Ord. 5700 § 1, 1981).

4.18.020 Powers and duties. In addition to the powers and duties given to the King County executive elsewhere in this chapter, the executive shall, through the director, department of executive administration have responsibility for administering, monitoring and enforcing the goals and requirements identified in this chapter:

B. In addition to the powers and duties given the director, department of executive administration elsewhere in this chapter, the director, department of executive administration shall:

1. Establish rules, regulations, and procedures for implementing and administering this chapter;
2. Recommend to the King County executive annual utilization goals for King County;
3. Have the authority to enter into cooperative agreements with other government agencies concerned with increasing the participation of minority/women's businesses in government contracting;
4. With the advice of contract awarding authorities, formulate and periodically update a plan to make minority/women's businesses aware of contracting opportunities with King County;

5. Review all King County solicitation lists and where possible, place minority/women's businesses on such lists. These lists shall be updated periodically. (Ord. 5983 § 2, 1982; Ord. 5700 § 2, 1981).

4.18.030 Utilization goals. A. On or before the first day of March of each year, the director, department of executive administration shall submit to the King County executive for approval proposed utilization goals for King County for that calendar year. Separate utilization goals shall be established for the use of minority businesses and for the use of women's businesses. These utilization goals shall be established separately for each of the following types of contracts: architectural and engineering contracts, concession contracts, construction contracts, consultant contracts, and purchasing and service contracts. The utilization goals shall be made part of the King County Affirmative Action Plan and shall be transmitted with the plan to the King County council for its approval. Existing utilization goals shall remain in effect until newly submitted ones receive final King County council approval.

1. The utilization goals shall be reasonably achievable. To the extent that relevant information is available, the utilization goals shall be based on the numbers of qualified minority businesses and women's businesses operating in King County.

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

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

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

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

B. Each department shall annually formulate a contract forecast estimating the number, probable monetary value, (if known), type of contracts and the estimated solicitation date for the contracts the department expects to award along with any waivers it expects to request in the upcoming year. In addition an implementation plan describing how the particular department will accomplish its utilization goals shall be formulated. On or before January 1st of each year, each department will submit these documents to the director, department of executive administration. (Ord. 8937 § 3, 1989; Ord. 7789 § 2, 1986; Ord. 5983 § 3, 1982; Ord. 5700 § 3, 1981).

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

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

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

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

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

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

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

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

b. its entire expenditure made to a minority/women's business manufacturer; that is, a supplier that produces goods from raw materials or substantially alters them before resale;

c. the amount of the commission paid to minority/women's businesses and resulting from a particular contract with the county; provided that a minority/women's business supplier performs a commercially useful function in the process.

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

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

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

D. The failure of a department or King County to meet the annual dollar utilization goals established from time to time by this chapter shall not constitute grounds for a lawsuit against a department or the county, provided that the department or the county has made affirmative efforts to meet those goals. The failure of a department to meet the requirements of this chapter shall be reviewed by the King County executive and corrective action taken where appropriate. (Ord. 7789 § 3, 1986: Ord. 5983 § 4, 1982: Ord. 5700 § 4, 1982).

4.18.050 Utilization requirements, general. A. In order to meet the utilization goals established in accordance with this chapter, efforts including but not limited to the following shall be made:

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

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

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

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

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

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

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

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

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

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

e. A provision requiring the payment of specific liquidated damages in the event a contractor fails to perform a commercially-useful function and/or operates as a broker, front, conduit or pass-through, with the amount of liquidated damages established in advance by the department of executive administration based on the type of contract involved. The provision should include the following language: The purpose of King County's minority/women's business ordinance is to provide a prompt remedy for the effects of past discrimination. The county in general, and this program in particular, are damaged when a contract, or portion of a contract, to be performed by a minority/women's business is not actually performed by a minority/women's business enterprise in compliance with this chapter. Because the actual amount of such damage is not reasonably calculable, the parties agree and stipulate that liquidated damages of \$_____ fairly estimate the amount required to compensate the county for resulting delays in carrying out the

purpose of the program, the costs of meeting utilization goals through additional contracts, the administrative costs of investigation and enforcement and other damages and costs caused by the violation. (Ord. 8313 § 2, 1987; Ord. 7789 § 4, 1986; Ord. 5983 § 5, 1982; Ord. 5700 § 5, 1981).

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

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

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

First, Minority/women's businesses.

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

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

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

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

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

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

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

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

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

a. Contracts for construction, consultant and architectural/engineering services, the estimated cost of which exceeds ten thousand dollars, shall require responding parties to include in their responses to solicitation both minority and women's business participation in the contract in a percentage which equals or exceeds the percentages determined for the contract by the director of the department of executive administration. The director shall determine the percentages for each contract based on the extent of subcontracting opportunities presented by the contract and the availability of minority and women's business enterprises qualified to perform such subcontracting work. Such percentages may be higher or lower than the annual goals for the type of contract involved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. The requirements of this Section 4.18.060 shall cease to apply to contracts awarded by King County and its departments on December 31, 1992, unless reenacted by the King County council. (Ord. 8937 § 4, 1989: Ord. 8313 § 3, 1987: Ord. 7789 § 5, 1986: Ord. 7512 § 2, 1986: Ord. 5983 § 6, 1982).

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

A. Waivers may be granted by the director, department of executive administration, in any of the following circumstances;

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

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

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

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

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

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

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

PROVIDED THAT upon taking such action, the King County executive shall notify the members of the King County council in writing and FURTHER PROVIDED, upon receipt of the notice, if the King County council determines that the waiver does not meet the standards of this section, the King County council may by motion, within ten working days of the receipt of the notice determine the waiver to be null and void. (Ord. 8937 § 5, 1989: Ord. 5983 § 7, 1982: Ord. 5700 § 6, 1981).

4.18.080 Monitoring, reporting, and enforcement. A. The county executive, through the director, department of executive administration, shall have the responsibility for monitoring implementation of the requirements of this chapter and shall have the power to request from departments, responding parties and/or contractors any relevant records, information and documents.

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

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

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

E. Certification and Recognition Process.

1. Pursuant to chap. 328, Laws of 1987, the Office of Minority and Women's Businesses of the State of Washington shall be solely responsible for certifying and decertifying businesses. King County's minority and women's business enterprise program is only for minorities and minority business and women's businesses and combination businesses as defined in K.C.C. 4.18.010; therefore the director, department of executive administration, shall recognize only those combination minority and women's business enterprises or minority business enterprises certified by the State of Washington which also meet the definitions of K.C.C. 4.18.010, according to minority status information provided to King County by the Office of Minority and Women's Businesses of the State of Washington. Businesses are only eligible for King County's programs so long as they remain certified by the State of Washington.

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

3. No contract requiring or proposing minority/women's business participation may be entered into unless all minority/women's businesses identified to meet the utilization goals by a responding party were, at the time the bid was submitted, certified by the Office of Minority and Women's

Businesses of the State of Washington and recognized by the director, department of executive administration, as eligible to participate in King County's minority/women's business program and the director, department of executive administration, determines all identified minority/women's businesses appear able to perform a commercially useful function on that contract as proposed. Lists of certified and recognized minority/women's businesses shall be provided to all departments and made available to the public.

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

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

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

1. Dismissal of the complaint when a violation is found not to have occurred;
2. Suspension or cancellation of the contract in part or in whole;
3. Disqualification and/or debarment of the violator from participation in county contracts for a period of up to five years;
4. Exclusion of the violator from future contracts or vending until demonstration of compliance;
5. Enforcement of any provision of the contract providing remedies, such as penalties or liquidated damages for violation of contractual provisions, or enforcement of any other remedy available under the laws of King County. Upon finding by the director that a contractor has in fact failed to perform a commercially useful function or has operated as a broker, front, conduit or pass through business, liquidated damages specified in the contract shall be imposed unless the director finds that imposition of such damages would be clearly inequitable, in which case the director may order appropriate relief.

H. Upon receipt of a written and signed allegation that any contract awarding authority has violated any provision of this chapter, or if a violation is discovered from information gained through compliance monitoring, the King County executive shall order an investigation. If there is probable

cause to believe that a violation has occurred, the executive or his/her designee will, upon ten days written notice to the alleged violating party, conduct a hearing to determine whether or not a violation has occurred. The hearing shall be recorded and each party shall have the right to call and examine witnesses, to produce documentary and physical evidence, to cross-examine witnesses, and to be represented by anyone of his/her choice lawfully permitted to do so. The parties shall include the complainant, if any, the alleged violating party, and a representative of the executive or the agency conducting the investigation. Unless otherwise agreed to by all parties, the hearing shall be commenced no later than twenty-one days after service of a written notice of violation.

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

1. Dismissal of the complaint when a violation is found not to have occurred;
2. Corrective personnel action;
3. Disqualification and suspension of authority of all members, any board, commission, or other body constituting the violating contract awarding authority;
4. Enforcement of any other remedy available under the laws of King County.

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

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

K. In addition to any other remedy available under the laws of King County and the State of Washington any person, firm, corporation, business, union, or organization which prevents or interferes with a contractor and/or subcontractor's efforts to comply with the requirements of this chapter or which submits false or misleading information to any King County department or employee concerning compliance with this chapter shall be subject to a civil penalty of up to five thousand dollars for each occurrence, King County having previously complied with the notice and hearing provisions of this ordinance.

Each submission of false or misleading information shall constitute a separate occurrence.

L. When conducting any investigation or preparing for a hearing under this section, the director shall have authority to sign and issue subpoenas requiring the attendance and testimony of witnesses, the production of evidence including but not limited to books, records, correspondence or documents in the possession or under the control of the person subpoenaed, and access to evidence for the purpose of examination and copying as are necessary for the investigation. The director shall consult with the prosecuting attorney before issuing any subpoena under this section. If an individual fails to obey a subpoena, or obeys a subpoena but refuses to testify when requested concerning any matter under investigation, the director may invoke the aid of the King County prosecuting attorney who may petition to the Superior Court for King County for an order or other appropriate action necessary to secure enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify or cooperate in the investigation. (Ord. 8937 § 6, 1989; Ord. 8313 § 4, 1987; Ord. 7789 § 6, 1986; Ord. 5983 § 8, 1982; Ord. 5700 § 7, 1981).

4.18.090 Annual report required. In addition to the executive's proposing minority/women's business contracting goals and programs in the required annual Affirmative Action Plan, the Affirmative Action Plan shall include a report to the council detailing performance of the program. At a minimum, the report shall:

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

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

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

D. As appropriate, recommend amendments to the chapter, substantiated by fact, designed to accomplish overall program goals in a cost-effective manner. (Ord. 7789 § 7, 1986; Ord. 5983 § 9, 1982).

4.18.100 Authorization to implement procedures. The county executive shall implement such forms, administrative processes, and operational procedures as are necessary to comply with the provisions of this chapter by February 1, 1988; provided that such forms, processes and procedures shall be promulgated in compliance with Chapter 2.98; Rules of County agencies, with the exception that administrative rules and regulations related to this chapter shall be submitted for review by the administration and justice committee (or its successor committee) fifteen days prior to filing with the clerk of the council, the provisions of Chapter 2.98 notwithstanding. (Ord. 8318 § 5, 1987; Ord. 7789 § 9, 1986; Ord. 5983 § 10, 1982).

4.18.110 Effect of ordinance, status of solicitations. Each of the

provisions of this chapter shall apply to all contracts for which a solicitation is released after the effective date of that provision of this chapter. (Ord. 8318 § 6, 1987; Ord. 7789 § 9, 1986; Ord. 5983 § 11, 1982).

4.18.115 Effective date. Sections 4.18.010 and 4.18.080 of this chapter shall take effect on January 1, 1988. All other sections of this chapter shall take effect as provided in the King County charter. (Ord. 8313 § 7, 1987).

4.18.120 Severability. The provisions of this chapter shall be effective in all cases unless otherwise provided for by State or Federal Law. The provisions of this chapter are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this chapter or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances. (Ord. 8313 § 8, 1987; Ord. 7789 § 10, 1986; Ord. 5983 § 13, 1982).

4.18.130 Study and report. The county executive is authorized and directed to enter into a contract with a qualified consultant to study the discrimination against minority and women's businesses in the market areas from 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. (Ord. 8937 § 8, 1989).

