

RESOLUTION R- 3925

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING AND DIRECTING THE CITY MANAGER TO SIGN ON BEHALF OF THE CITY OF KIRKLAND AN INTERLOCAL AGREEMENT WITH KING COUNTY FOR FUNDING OF SPECIAL RECYCLING EVENTS.

Whereas, both Kirkland and King County are authorized by state law to enter into cooperative agreements; and

Whereas, King County and the City of Kirkland have adopted the Comprehensive Solid Waste Management Plan under which the King County Solid Waste Division has established a program to fund projects for collection of recyclable materials not included in curbside collection programs; and


Whereas, participation in such program is desirable for the City of Kirkland, now, therefore,

Be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager for the City of Kirkland is hereby authorized and directed to sign an Interlocal Agreement between King County and the City of Kirkland to enable the City of Kirkland to receive funding for the operation of special recycling events.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 7th day of March, 1995.

Signed in authentication thereof this 7th day of March, 1995.



MAYOR

Attest:



DEPUTY City Clerk

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Contract # D20822D

INTERLOCAL AGREEMENT

Between

KING COUNTY and the CITY OF KIRKLAND

This agreement is executed between King County, a political subdivision of the State of Washington, and the City of Kirkland, a municipal corporation of the State of Washington, hereinafter referred to as "County" and "City" respectively.

This agreement has been authorized by the legislative body of each party as designated below:

King County Motion No. 8857

City _____

PREAMBLE

King County and the City of Kirkland have adopted the Comprehensive Solid Waste Management Plan which includes a 50 percent waste stream reduction goal by the year 1995. In order to help meet this goal, the King County Solid Waste Division has established the City Optional Program. The program funds projects that enable citizens to recycle materials not included in curbside collection programs. Cities applying for city optional funds must agree to organize a minimum of one special recycling event where at least four items from the following list of eleven must be collected:

- Polycoated Paperboard
- #3-7 Plastics
- Clean Wood (untreated)
- Ferrous Metals
- Textiles
- Tires
- PET & HDPE Plastic Containers
- Bulky Wood Waste (>3" diameter)
- Appliances
- Non-ferrous metals
- Reusable Household Goods

I. PURPOSE

The purpose of this agreement is to define the terms and conditions for funding to be provided to the City of Kirkland from the County for the operation of two special recycling events.

II. RESPONSIBILITIES OF THE PARTIES

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The responsibilities of the parties to this agreement shall be as follows:

A. The City

1. Funds provided to the City by the County pursuant to this agreement shall be used to sponsor two special events for the collection from City residents of recyclable materials not included in household collection programs and consistent with the scope of work and budget attached hereto as Exhibit A.
2. The City will submit to the County reimbursement requests for the costs of the collection event within thirty days of each event in a format specified by the County. The report shall include information on the amount of material collected, the number of vehicles attending, the total cost for each budget item and the amount of that cost for which reimbursement is requested. The report shall be accompanied by receipts for verification of expenses. The City shall be required to maintain records of where collected materials are sold or processed to guarantee that all the collected materials are either reused or recycled and to verify the amounts collected.
3. If the City requests reimbursement by the County for activities performed by a subcontractor, the City shall require that the subcontractor comply with the minority and women's business utilization provisions of King County Code Chapter 4.18, attached hereto as Exhibit B.
4. During the performance of this interlocal agreement, neither the City nor any party subcontracting under the authority of this interlocal agreement shall discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or presence of any sensory, mental, or physical handicap in the employment or application for employment or in the administration or delivery of or access to services or any other benefits under this interlocal agreement as defined by King County Code, Chapter 12.16.
5. During the performance of this interlocal agreement, neither the City nor any party subcontracting under the authority of this interlocal agreement shall engage in unfair employment practices as defined by King County Code, Chapter 12.18.
6. The City will provide the King County recycling information line and the King County Project Manager with the date, location and copies of any printed material used to publicize the event as soon as they are available, but no later than 14 days prior to the event. In the event there is any change in the date or the location of the recycling event, the City will notify the County a minimum of thirty days prior to the event. The City agrees that the event will be open to all King County residents and the County has the right to publicize the event for the benefit of all County residents.

7. This project shall be administered by Andy Barton, Assistant to the City Manager for the City of Kirkland, or designee.
8. The City shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this agreement. The City shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical.
9. The City shall maintain accounts of the direct and indirect costs of these events and of the data used for evaluation of the events pursuant to Section II.A.2 of this agreement for a period of at least six years. These accounts shall be subject to inspection, review or audit by the County and/or by federal or state officials so authorized by law.

B. County: The responsibilities of the County pursuant to this agreement are as follows:

1. Within 30 days of receiving a request for reimbursement from the City, the County shall either notify the City of any exceptions to the request which have been identified or shall process the request for payment. If any exceptions to the request are made, this shall be done by written notification to the City providing the reason for such exception.
2. This project shall be administered by Bill Smith, Project Manager or designee specified by the King County Solid Waste Division.
3. The County will not provide special recycling events within the corporate limits of the City. The County will coordinate the timing and locations of its special recycling events with those of the City to avoid overlap whenever possible.
4. Funding is based on the total amount of King County funds budgeted for special recycling events and is allocated on the basis of a \$4,000 base amount plus a per capita distribution. The level of funding is determined annually through the King County Budget, as determined by the King County Council. The City of Kirkland's budgeted allocation for 1995 is \$11,084. In the event that the amount of funds budgeted for Special Recycling Events is reduced or not approved, the allocation will be reduced or eliminated.

III. TERM OF AGREEMENT

1. This agreement shall become effective on January 1, 1995 and shall terminate on December 31, 1995.
2. This contract may be terminated by the County without cause, in whole or in part, prior to the date specified in Paragraph 1, upon providing the City ten (10) days advance written notice of the termination.

3. If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth above in Paragraph 1 or in any amendment hereto, the County may, upon written notice to the City, terminate this contract in whole or in part.

If the contract is terminated as provided in this subsection: (1) the County will be liable only for payment in accordance with the terms of this contract for services rendered prior to the effective date of termination; and (2) the City shall be released from any obligation to provide further services pursuant to this contract.

4. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this contract or law that either party may have in the event that the obligations, terms and conditions set forth in this contract are breached by the other party.

IV. AMENDMENTS

This agreement may be amended only by written agreement of both parties. Funds may be moved between tasks upon written request and approval by King County.

V. HOLD HARMLESS AND INDEMNIFICATION

1. The City shall protect, indemnify, and hold harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or issues whatsoever occurring from actions by the City and/or its subcontractors pursuant to this agreement. The City shall defend at its own expense any and all claims, demands, suits, penalties, losses, damages, or costs of any kind whatsoever (hereinafter "claims") brought against the County arising out of or incident to its execution of, performance of or failure to perform this agreement. Claims shall include but not be limited to assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material or any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.
2. The City, at its own cost, shall procure by the date of execution of this agreement and maintain for the duration of the agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with performance of work pursuant to this agreement by the City, its agents, representatives, employees, and/or subcontractors. The minimum limits of this insurance shall be \$1,000,000 general liability insurance combined single limit per occurrence for bodily injury, personal injury, and property damage. Any deductible or self-insured retention shall be the sole responsibility of the City. ~~Self insurance~~ shall cover the County, its officers, officials, employees, and agents as additional insures against liability arising out of activities performed by or on behalf of the City pursuant to this agreement. *JFE*

VII. NOTICE

IN WITNESS WHEREOF this agreement has been executed by each party on the date set forth below:

City

King County

(Title)

King County Executive

Date

Date

Pursuant to _____

Pursuant to Motion No. 8857

Clerk - Attest

Director Department of Public Works - Attest

Approved as to form and legality

Approved as to form



City Attorney

King County Prosecuting Attorney

3-7-95

Date

Date

City of Kirkland
1995 Special Collection Event
Scope of Work and Budget

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I. Project Title

Kirkland Special Collection Event

II. Project Schedule

Event Date: Spring and Fall, 1995
Hours: 9 a.m. to 3 p.m.
Event Location: Metro Park and Ride

The City will notify King County immediately of changes in event schedule or location.

III. Project Managers

The City of Kirkland Assistant City Manager will provide event management for two **Special Collection Events** in addition to the professional management staff the City will hire. Andy Barton, the Assistant to the City Manager for the City of Kirkland will be the Project Administrator.

Andy Barton
Assistant to the City Manager
City of Kirkland
123 5th Avenue
Kirkland, WA 98033-6189
Telephone: (206) 828-1249
Fax: (206) 828-1290

IV. Project Activities

- A. The City of Kirkland will organize two City-wide **Special Collection Events** in 1995. At these events, the following materials will be collected and recycled. Included also is the anticipated volume of materials:

<u>Type of Material</u>	<u>Anticipated Volumes</u>
• Bulky Yard Waste	25 - 40 tons
• Clean Scrap Wood	20 - 30 tons
• Appliances	15 - 20 tons
• Ferrous metals	25 - 35 tons
• Nonferrous metals	5 tons
• Reusable or Recyclable Household Goods	15 - 20 tons

- B. The event will be staffed by City staff, material collectors, consultant staff, and volunteers. No flatbeds or dump trucks will be allowed. The City reserves the right to refuse oversized, commercial, or contaminated loads.
- C. When requested by event participants, the following educational materials will be distributed:

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1. Information on City Recycling Programs;
2. "Hazards on the Homefront" produced by METRO;
3. Other educational materials.

D. Event promotion will be accomplished in the following ways:

1. Developing and distributing a promotional flyer to all City residents. It will be sent bulk mail to "postal patron" or addressed to "current resident." The flyer will be printed on recycled paper, using soy based inks, if available. A copy of the flyer will be provided to the King County Solid Waste Division as soon as it is available.
2. Posting notices at City Hall and other public locations.
3. Publicizing the event in the City newsletter, if scheduling and space permits, by press releases to local papers, and by King County Solid Waste Division Promotional Activities.
4. Expected attendance:: 1,500 carloads.

E. Key personnel will include the City Public Works Staff, the consultant staff, independent contractors, and available volunteers. The event greeter, education personnel, and traffic control personnel positions will be filled by experienced qualified individuals.

V. Project Costs

A. Total cost - \$11,084

B. Budget Estimate

COST	BUDGET ESTIMATE
Consultant Costs	\$4,330.00
Temporary Helpers	\$750.00
Collection/Disposal Fees	\$3,100.00
Scrap Metal and Appliances	\$1,000.00
Bulky Yard Waste and Scrap Wood	\$1,900.00
Garbage*	\$200.00
Operating Supplies	\$2,900.00
TOTAL BUDGET	\$11,080.00
ESTIMATED TOTAL BUDGET+	\$23,000.00

+Includes estimated Health Department grant funds. The Health Department funds will cover the collection of used tires, used lead acid batteries, used anti-freeze, used petroleum-based products, used oil filters, and used motor oil. Items marked with an * are also funded by a King County Health Department Local Hazardous Waste Management Program 1995 Local Grant. The Health Department will provide 50% of the funding for these items. City Optional funds will be used as 50% matching funds for these items.

The City will provide the following information to the County within thirty days of the event:

- A. Tallying the number of participating vehicles at the entrance to the events;
- B. Measuring the volume of each material collected and diverted from the waste stream in the appropriate unit;
- C. Actual event cost by budget category; and,
- D. Event comments.

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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.

- 4.18.007 Purpose.
- 4.18.090 Annual report required.
- 4.18.095 Studies and recommendations graduating firms out of program.
- 4.18.100 Authorization to implement procedures.
- 4.18.105 Implementation resources.
- 4.18.110 Effect of ordinance, status of solicitations.
- 4.18.115 Effective date.
- 4.18.120 Severability.
- 4.18.130 Study and report.

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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 or seeking to do business with King County based on the race and sex of the owners of these businesses. This discrimination has been established by public hearings conducted by the county council and other local jurisdictions and by the studies and reports performed for the county by consultants. The factual findings of these reports, specifically the Perkins Coie study dated January 1990 and the Washington Consulting Group study dated July 9, 1990, are incorporated herein by this reference.

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

C. The provisions of this chapter are necessary to remedy the discrimination against minority and women's businesses and to 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, although the businesses which provide the primary market for King County are located in the King, Pierce, and Snohomish County area.

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. Although a program to provide technical assistance to minority and women's businesses cannot provide an adequate immediate remedy for past discrimination against such businesses, such a program can assist in a long-term effort to eliminate the need for the remedies provided by this chapter.

G. The above-referenced consultant studies have produced statistical data and recommendations for refinements to the King County minority and women's business program which are reflected in the amendments set forth in this chapter. (Ord. 9609 § 1, 1990; Ord. 8937 § 1, 1989).

4.18.007 Purpose. The purpose of this chapter is to remedy the effects of discrimination by increasing the opportunities for minority and women's businesses to provide goods and services to King County by using reasonably achievable goals. (Ord. 9609 § 3 B, 1990)

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. "Administrator" shall mean the administrator of the King County office of civil rights and compliance.

B. "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.

C. "Affirmative Efforts" shall mean making vigorous, documented 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's determination shall be based on procedures to be outlined in accordance with the dictates of this chapter.

D. "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.

E. "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.

F. "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.

G. "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.

H. "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.

I. "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.

J. "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.

K. "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.

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

M. "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.

N. "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.

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

Q. "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.

R. "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.

S. "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 WAC 326-02-030. 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 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,

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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 S.2. shall not apply, if the minority business qualifies as a corporate sponsored dealership under the provisions of WAC 326-02-030.

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.

T. "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 and which has previously sought to do business in King County. The director is authorized to determine that specific racial groups have not been discriminated against in their ownership and/or operation of particular trades or areas of business in King County. 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.

U. "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 or African American: Having origins in any of the Black racial groups of Africa;
2. Hispanic: 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 shall have discretion to make a final decision as to whether an individual is a minority.

V. "Nonprofit Corporation" shall mean a corporation organized pursuant to R.C.W. Ch. 24.03. In the case of nonprofit corporations organized under the law 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.

W. "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.

X. "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.

Y. "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.

Z. "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.

AA. "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 include services provided to members of the public, including public defender services, but shall not include construction, rental or leasing of equipment or the traditional professional services such as consulting, legal services, feasibility studies and design studies.

BB. "Set Aside" shall mean that proportion of each contract which is designated for participation of minority/women's businesses as established by this chapter.

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

DD. "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.

EE. "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.

FF. "Utilization Requirements," shall mean those efforts which the 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.

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

HH. "Waiver Statement," shall mean a written statement directed to the director 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.

II. "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 and which has previously sought to do business in King County. The director 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 in King County. 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. 10205 § 1, 1991: Ord. 9609 § 2, 1990: Ord. 8937 § 2, 1999: Ord. 8313 § 1, 1987: Ord. 8121, 1987: Ord. 7789 § 1, 1986: Ord. 7512 § 1, 1986: Ord. 5983 § 1, 1982).

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4.18.020 Powers and duties. A. 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).

4.18.030 Utilization goals. On or before the thirtieth day of April 1992, and every three years following that date, the administrator shall submit to the King County executive for approval proposed utilization goals for King County for the following three year period. 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, construction contracts, consultant contracts, concession contracts, and purchasing and service contracts. The utilization goals shall be transmitted with the office of civil rights and compliance annual report to the King County council for approval. Existing utilization goals shall remain in effect until newly submitted ones receive final King County council approval.

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

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

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

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

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

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

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

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

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

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

B. The following goals shall be the annual goals for all King County departments until such time as new goals are approved by the King County council:

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

(Ord. 9609 §§ 3(part) and 4, 1990).

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.

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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).

4.18.050 Utilization requirements, general. 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, the administrator shall begin immediately to design a technical assistance and outreach program which shall be established by April 1, 1992. This program shall include the following elements:

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

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

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

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

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

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 requirements 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 in accordance with procedures established by the administrator.

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 the contractor's utilization of minority and women's businesses in its overall public and private business activities, and shall include the right of the county to inspect such records. This shall be implemented no later than April 1, 1992.

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. 10049 § 1, 1991: Ord. 9609 § 5, 1990: Ord. 8313 § 2, 1987: Ord. 7789 § 4, 1986: Ord. 5983 § 5, 1982).

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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 all architectural and engineering contracts, consultant contracts and construction contracts under ten thousand dollars, the director, with the advice of the administrator, shall determine a percentage factor appropriate to offset the effects of discrimination in the industry involved, which percentage shall be used in determining which responding party is the lowest responsible bidder or best proposal:

a. Responding parties whose bids are within the percentage factor of the best proposal or the bid made by the lowest bidder shall be ranked in the following order:

First, minority/~~women~~^{women} businesses which will perform the entire contract unassisted and those minority/women's businesses which will exclusively use minority/women's businesses as subcontractors, suppliers or in similar assisting roles to the extent set forth above.

Second, minority/women's businesses which alone or as part of joint ventures serve as the prime contractor where minority/women's business participation is at least twenty-five percent of the dollar value of a contract;

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

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

b. All responding parties within each particular ranking shall be grouped according to the amount of their bid or the evaluation score of their proposal as determined by the awarding authority, with low bidders and higher scoring proposals receiving the highest priority. The lowest bidder or higher scoring proposal within the highest ranking category shall be awarded the contract in question.

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

- (1) Price differentials between M/WBES and non-MWBES on previously-submitted bids;
- (2) Standard industry costs;
- (3) Standard industry profit margins;
- (4) Availability of M/WBES to perform as retailers, distributors, wholesalers and manufacturers, by commodity area; and
- (5) Other pertinent facts.

d. Generally applied percentages shall be determined by commodity area, and these percentages shall be implemented by April 1, 1992.

2. For every construction, architectural and engineering, and consultant contract 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. The director, with the advice of the administrator, 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 which will perform at least twenty-five percent of the work, the set aside requirements of these subsections shall not apply.

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

d. During the term of the contract, any failure to comply with the percentages of minority/women's business participation required for 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 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.

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 or in the percentage factor to be applied under the percentage preference method, by submitting the reasons therefor in writing to the director.

1. The director, with the advice of the administrator, 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.

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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, with the advice of the administrator, 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, 1997, unless reenacted by the King County council. (Ord. 10679 § 1, 1992: Ord. 10049 § 2, 1991: Ord. 9609 § 6, 1990: 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, with the advice of the administrator, 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 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 administrator. Prior to granting a waiver, the director 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 including but not limited to municipal corporations, consortiums and associations 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 extend 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.

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

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 chapter;

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. 9609 § 7, 1990: Ord. 8937 § 5, 1989: Ord. 5983 § 7, 1982).

4.18.080 Monitoring, reporting, and enforcement. A. The county executive, through the administrator 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 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 deems necessary.

C. The administrator 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 administrator each department shall submit to the administrator an annual report on its performance in meeting the utilization goals required by this chapter on or before March 15th of each year. This report shall include the number and dollar amount of contracts awarded, by contract category and the dollar amount and the percentage of minority/women's business participation by contract and contract category and by number of set-aside contracts, percentage preference contracts, contracts requiring affirmative efforts, and contracts for which waivers were granted. The report shall also identify problems in meeting the requirements of this chapter, if any, and suggestions for improvements.

E. Monitoring of Effects. The administrator shall establish procedures no later than April 1, 1992 to collect evidence and monitor the effects of the provisions of this chapter in order to assure, insofar as is practical, that the remedies set forth herein do not disproportionately favor one or more racial or ethnic groups and that the remedies do not remain in effect beyond the point that they are required to eliminate the effects of discrimination in the local contracting industries. To the extent further amendments to this chapter are required to effect these ends, the administrator shall prepare appropriate ordinances for the council's consideration.

F. 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 through the administrator 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 through the administrator as eligible to participate in King County's minority/women's business program and the director through the administrator 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.

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

1. The administrator 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 possession or under the control of the person subpoenaed, and access to evidence for the purpose of examination and copying as is necessary for the investigation. The administrator shall consult with the prosecuting attorney before issuing subpoenas 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 administrator may invoke the aid of the King County prosecuting attorney. The attorney shall petition 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 for an order of the court to compel the witness to appear and testify or cooperate in the investigation of the violation.

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

H. If the finding is made initially or on request for reconsideration and reasonable cause exists to believe that a violation by a contractor or subcontractor has occurred, the administrator shall endeavor to remedy the violation by conference, conciliation and persuasion, which may include monetary compensation, the creation of additional opportunities for minority or women's utilization on other contracts, or such other requirements as may lawfully be agreed upon by the parties and the administrator. Any settlement agreement shall be reduced to writing and signed by both parties. An order shall then be entered by the administrator setting forth the terms of the agreement. Copies of the order shall be delivered to all affected parties and the original thereof filed with the division of records and elections.

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

1. A finding that a violation has occurred;
2. The basis for such finding.

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

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

Each party shall have the following rights, among others:

1. To call and examine witnesses on any matter relevant to the issues of the complaint;
2. To introduce documentary and physical evidence;
3. To cross-examine opposing witnesses on any matter relevant to the issues of the complaint;
4. To impeach any witness regardless of which party first called him to testify;
5. To rebut evidence against him; and
6. To represent himself or to be represented by anyone of his choice who is lawfully permitted to do so.

J. Following review of the evidence submitted, the hearing examiner presiding at the hearing shall enter written findings and conclusions and shall render a written decision 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 a finding by the hearing examiner 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 hearing examiner finds that imposition of such damages would be clearly inequitable, in which case the hearing examiner may order appropriate relief.

K. If a finding is made that there is reasonable cause to believe that a contract-awarding authority has committed a violation, the finding shall be forwarded to the county executive, who shall review the evidence 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.

L. 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 director shall order that an investigation be conducted by the administrator. 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 reasonable cause to believe that corrective action is warranted, the director 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 designated by the director 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 director shall make findings and conclusions and shall order appropriate corrective action, if any.

M. 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 or retaliates against 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 chapter. Each submission of false or misleading information shall constitute a separate occurrence. (Ord. 10049 § 3, 1991: Ord. 9609 § 8, 1990: Ord. 8937 § 6, 1989: Ord. 8313 § 4, 1987: Ord. 7789 § 6, 1986: Ord. 5983 § 8, 1982).

4.18.090 Annual report required. The administrator shall submit an annual report to the executive detailing performance of the program by April 15 of each year. This report shall be forwarded to the council no later than April 30. The report shall include:

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

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

C. Explanations of any investigative actions taken by office of civil rights and compliance regarding the implementation, monitoring and enforcement of this chapter;

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

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

F. Proposed utilization goals, as necessary. (Ord. 9609 § 9, 1990: Ord. 7789 § 7, 1986: Ord. 5983 § 9, 1982).

4.18.095 Studies and recommendations graduating firms out of program. A. The office of civil rights and compliance is directed to study and prepare a recommendation to the council on whether this chapter should be amended to

"graduate out" minority and women's businesses after a certain number of years of certification or level of income above that used for state certification. The executive shall submit such a recommendation by April 15, 1992.

B. Joint data base. The office of civil rights and compliance is directed to study and prepare a recommendation to the council on establishment of a joint data base with one or more other local agencies for the collection of availability and utilization data. The executive shall submit such a recommendation by April 15, 1992. (Ord. 10049 § 4, 1991: Ord. 9609 §§ 10-11, 1990).

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).

4.18.105 Implementation resources. This chapter shall be implemented within the current level of resources allocated to the office of civil rights and compliance. No additional staffing shall be considered unless the office of civil rights and compliance implements the county auditor's recommendations to streamline its operations and demonstrates the need for additional staffing through the use of relevant workload indicators and appropriate analysis. (Ord. 9609 § 12, 1990).

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).