



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

April 30, 2012

Ordinance 17314

Proposed No. 2012-0137.1

Sponsors Ferguson

1 AN ORDINANCE authorizing the county executive to
2 enter into an interlocal agreement with Sound Transit to
3 provide small contractor and supplier certification services.

4 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

5 **SECTION 1. Findings:**

6 A. The King County Strategic Plan supports a strong, diverse and sustainable
7 economy.

8 B. The King County Strategic Plan promotes regional economic development
9 through partnerships with regional organizations, other jurisdictions and the private
10 sector.

11 C. The King County Strategic Plan encourages creating contracting opportunities
12 for small and disadvantaged business.

13 D. King County Executive Order CON 7-12 calls for partnerships with other
14 public agencies to develop common application forms and common certification
15 standards to make it easier for small contractors and suppliers to work with public
16 agencies.

17 E. King County certifies small businesses as small contractor and suppliers for
18 participation in its contracting opportunities program.

19 F. King County and Sound Transit have programs whereby each entity and its
20 contractors are encouraged to use certified small businesses in the performance of their
21 contracts.

22 G. Sound Transit and King County certification requirements for small
23 contractors and suppliers are identical.

24 H. It is in the economic interest of King County and Sound Transit to encourage
25 competition within the supply chain and to increase the number of small contractors and
26 suppliers on their procurements.

27 I. King County and Sound Transit desire to enter into an agreement under which
28 the county will provide small contractor and supplier certification services to Sound
29 Transit for its program.

30 J. King County is able and willing to provide small contractor and supplier
31 certification services to Sound Transit, consistent with K.C.C. chapter 4.19, the Strategic
32 Plan priorities, and executive order polices noted in subsections A. through D. of this
33 section.

34 K. Participation in this agreement will benefit the customers of Sound Transit and
35 the residents of King County.

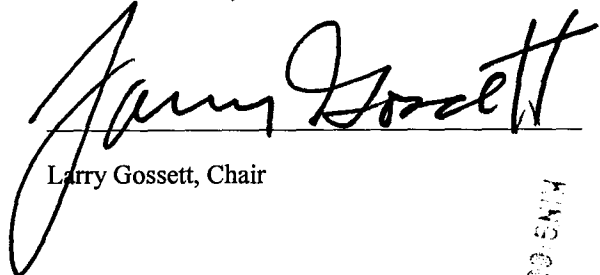
36 SECTION 2. The county executive is authorized to execute an interlocal

37 agreement, substantially in the form of Attachment A to this ordinance, with Sound
38 Transit for the county to provide small contractor and supplier certification services.
39


Ordinance 17314 was introduced on 4/16/2012 and passed by the Metropolitan King
County Council on 4/30/2012, by the following vote:

Yes: 9 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,
Ms. Patterson, Ms. Lambert, Mr. Ferguson, Mr. Dunn and Mr.
McDermott
No: 0
Excused: 0

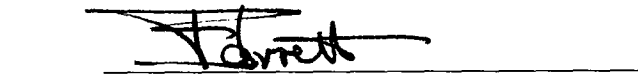
KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Gossett, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 11 day of May, 2012.


Dow Constantine, County Executive

RECEIVED
2012 MAY 11 PM 4:09
KING COUNTY COUNCIL CLERK

Attachments: A. ILA Small Contractor and Supplier Certification Services between King County and
Sound Transit

INTERLOCAL AGREEMENT
FOR PROVISION OF SMALL CONTRACTOR AND SUPPLIER
CERTIFICATION SERVICES
BETWEEN
KING COUNTY AND SOUND TRANSIT

INTERLOCAL AGREEMENT
FOR PROVISION OF SMALL CONTRACTOR AND SUPPLIER
CERTIFICATION SERVICES BETWEEN
KING COUNTY AND SOUND TRANSIT

THIS INTERLOCAL AGREEMENT (“Agreement”) FOR PROVISION OF SMALL CONTRACTOR AND SUPPLIER CERTIFICATION SERVICES BETWEEN KING COUNTY (“County”) AND SOUND TRANSIT is entered on this _ day of _____, 2011. Collectively, the County and Sound Transit are referred to as the “Parties.”

RECITALS

WHEREAS, the County operates the Contracting Opportunities Program to provide contracting opportunities for small businesses on County contracts; and,

WHEREAS, the County and Sound Transit and its contractors are encouraged to use certified small businesses as prime contractors, subcontractors and suppliers; and,

WHEREAS, it is in the economic interest of the County and Sound Transit to encourage competition within the supply chain and to increase the number of small contractors and suppliers in their procurements; and,

WHEREAS, the County certifies small businesses as Small Contractor and Supplier (SCS) firms for participation in its Contracting Opportunities Program; and

WHEREAS, Sound Transit and the County desire to enter into an Agreement under which the County will provide SCS certification services; and,

WHEREAS, County Executive Order Con 7-12 calls for partnerships with other public agencies to develop common application forms and common certification standards to make it easier for SCS firms to work with public agencies; and,

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, the Parties are each authorized to enter into an agreement for cooperative action.

NOW THEREFORE, the Parties hereby agree:

1. PURPOSE

The purpose of the Agreement is to set forth the terms and conditions under which the County will provide certification services for Small Contractors and Suppliers to Sound Transit.

2. RESPONSIBILITIES

2.2 COUNTY RESPONSIBILITIES

2.1.1 SCS CERTIFICATION PROCESS. The County shall be responsible for the certification process for businesses that have demonstrated an interest in participating or continuing to participate as SCS firms in County and/or Sound Transit procurements. This process includes certification, recertification, and removal and/or decertification of business.

The County will apply the standard procedures in the certification process set forth in Exhibit A attached and incorporated into this Agreement.

2.2 **ON-LINE DIRECTORY.** The County will host and maintain an Online Directory of Certified SCS Firms ("SCS Directory").

2.2.1 The SCS Directory will include the following search options:

- a. Contract Category – categories shall include construction, architectural & engineering, professional/technical consulting and goods & services.
- b. NAICS Codes - North American Industry Classification System, searchable the code number and/or using keywords at <http://www.census.gov/eos/www/naics/>.
- c. By Construction Specification Institute Code – Usable for Construction related firms.
- d. Business Name / Description –Searchable using name or keywords.

2.2.2 Excel Download – The entire SCS Directory shall be available for download.

2.2.3 County and Sound Transit Logos – Each party agrees that the application form and webpage for the SCS Directory shall display the logo for the County and Sound Transit.

3. SHARED RESPONSIBILITIES

The Parties mutually agree to the following provisions:

- 3.1 CERTIFICATION APPLICATION.** Each Party agrees to use the same SCS certification application form and CPA affidavit. The County shall provide Sound Transit an application form and CPA affidavit for use and distribution to businesses seeking to obtain certification as a Small Contractor and Supplier. No modifications or revisions to the application or the affidavit shall be made by either Party without the written consent of the other which consent shall be obtained a minimum of thirty (30) days prior to the change, unless otherwise agreed by the Parties. The official logo of each Party will appear on the front page of the certification application and the CPA affidavit.
- 3.2 PROGRAM ADMINISTRATION.** Sound Transit and the County may apply different methods, strategies and outreach efforts in administering their respective small business programs separately and apart from this agreement for the County to provide SCS certification services.
- 3.3 SCS DIRECTORY.** Unless mutually agreed by the Parties, each Party agrees to use the same certification SCS Directory that shall be maintained by the County and located at:
<http://www.kingcounty.gov/exec/BusinessDev.aspx>
- 3.4 INFORMATION SHARING.** The Parties will share copies of any documents that may affect the certification status of a certified SCS Firm. The Parties agree to exchange such documents within two business days of their receipt of the documents.
- 4. ELIGIBILITY AND DIRECTORY STANDARDS.** The Parties agree to the following eligibility and directory standards:

 - 4.1 FINANCIAL CONDITIONS.** The relevant financial condition for eligibility shall be based on: (1) A threshold for standard business classifications set at fifty percent (50%) of the Federal Small Business Administration (SBA) small business size standards using the North American Industrial Classification System (NAICS); (2) Each owner's personal net worth less than \$750,000 and; (3) The business owners' agreement to participate in a minimum of fifteen (15) hours of business development training within twelve months of certification approval.
- 5. CERTIFICATION.** The Parties agree to the following SCS certification process:

 - 5.1 INITIAL CERTIFICATION OF SOUND TRANSIT FIRMS.** Sound Transit will submit to the County an initial list of firms for certification review from Sound Transit's business rosters. For each firm identified on the list, Sound Transit shall provide the County with contact information

that shall include an email address for each firm. The County will complete the certification review no later than three months from receipt of the list for all firms contained in it and for which a fully executed certification application and all required supporting documents from the applicant business are provided, if a consultant is retained by the County to complete the reviews. In the absence of a hired consultant to perform the reviews, the certification review for all firms contained in the initial list shall be completed no later than six months from the receipt date of a fully executed certification application and all required supporting documents from the applicant business.

- 5.2 LENGTH OF CERTIFICATION.** The length of initial certification shall not exceed five (5) years.
- 5.3. ONGOING CERTIFICATION REVIEWS.** After the County has completed the certification review for all firms identified on the initial list provided by Sound Transit, the County shall complete all subsequent certification reviews within thirty (30) days from the date of receipt from Sound Transit a fully executed and completed certification application and all required supporting documentation for each applicant business. The County may extend this period once, per application, for no more than an additional fifteen (15) days, upon written notice to Sound Transit explaining the specific reasons for the extension.
- 5.4 TRANSMITTALS.** Sound Transit will act as the initial point of contact for firms that it refers to the County to conduct a certification review. Sound Transit shall submit to the County all required application materials and supporting documentation received from the applicant at the time of first referral. The County will conduct the certification review and issue a written a determination of the firm's acceptance or denial for SCS certification.
- 6. RECORD KEEPING.** The County shall keep all records pertaining to active certification files as required by the County's applicable retention schedules and the County shall accept any costs incurred for this activity. Where there is a disagreement about the determination of the County regarding the acceptance or denial of a firm for SCS certification based upon the certification standards outlined in this Agreement, the County will provide a copy of its written determination to Sound Transit and the applicant firm upon request.
- 7. REVIEW AGENCY.** The County will perform the certification review for all applicant firms to include initial certification, recertification and decertification. Sound Transit will assist the County in defending appeals, challenges, and investigations of third party allegations concerning SCS firms.

8. **LEGAL COUNSEL.** Each party shall obtain separate legal counsel to address certification matters, as needed. The County shall defend against any challenges to its certification of SCS firms.

9. **ADMINISTRATION**

The following individuals are designated as representatives of the respective Parties. The representatives shall be responsible for administering this Agreement and for coordinating and monitoring performance under it. In the event such representatives are changed, the party making the change shall notify the other party.

The King County Designated representative shall be the Director of the Finance Business and Operations Division of the Department of Executive Services or his/her designee or successor.

The Sound Transit Designated Representative shall be the Director of its Diversity Office or his/her designee.

10. **DURATION AND RENEWAL OF AGREEMENT**

This Agreement shall be effective on February 1, 2012 and shall continue through December 31, 2012. Any renewals of this Agreement shall be upon the mutual written agreement of the Parties.

11. **COMPENSATION**

11.1 **SOUND TRANSIT COMPENSATION TO COUNTY.** Sound Transit shall compensate the County for its certification services as follows:

11.1.1 Sound Transit shall pay the fixed amount of \$4,300.00 as its share of the County's costs for annual maintenance and operation of the SCS database and Directory. If the County enters into a contract with additional parties for maintenance and operation of the SCS database and Directory, the County shall apportion the total annual maintenance and operation costs equally and proportionately among all parties, including Sound Transit.

11.1.2 Sound Transit shall also pay a fixed administrative fee for each SCS certification application that is received by the County for which the County completes a certification review, regardless of whether certification is approved or denied. For the calendar year 2012, Sound Transit agrees to compensate the County a fixed fee of twenty three dollars (\$23.00) for each application up to a total maximum amount of \$1,916.66.

11.1.3. The parties to this Agreement may agree in writing to utilize a different fee methodology for calculation of the payment referenced in subsection (b) above upon mutual written consent by each party.

11.2 INVOICES. The County shall invoice Sound Transit as follows:

11.2.1 Quarterly for the County's annual maintenance and operations costs up to a maximum total of \$4,300 as described in Section 11.1.1, Compensation, of this Agreement.

11.2.2 Quarterly for the recovery cost of the certification fees up to a maximum total of \$1,916.66 as described in Article V, Compensation, (b.) of this Agreement.

11.3 PAYMENT TO THE COUNTY. Sound Transit shall pay the amount invoiced and due within thirty (30) days after receipt of an invoice that shall include the following information items:

11.3.1 The firm name of all applicants for which a certification review was conducted during the invoice period, regardless of the whether certification was approved or denied;

11.3.2 Total number of certification reviews completed during the invoice period;

11.3.3 The determination (approval or denial) for each applicant for which the County conducted a certification review during the invoice period;

11.3.4 The certification number for all applicants approved for certification during the invoice period; and,

11.3.5 The total amount of payment requested by the County and the amount remaining of the maximum total amounts under Article V of this Agreement.

12. PERFORMANCE OF AGREEMENT

12.1 COMPLIANCE WITH ALL LAWS. Each party shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of this Agreement, including without limitation, all those pertaining to confidentiality, disabilities and non-discrimination.

12.2 MAINTENANCE AND AUDIT OF RECORDS. Each party shall maintain books, records, documents, and other materials relevant to its

performance under the Agreement. These records shall be subject to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records, documents, and other materials for the applicable retention period under federal and Washington law.

- 12.3 TREATMENT OF ASSETS AND PROPERTY.** No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.
- 12.4 IMPROPER INFLUENCE.** Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been, or will be, offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.
- 12.5 CONFLICT OF INTEREST.** The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

13. INDEMNIFICATION

To the extent permitted by law, the County shall protect, defend, indemnify and save harmless Sound Transit, and its officers, officials, employees and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property which arise out of, or in any way result from, or are connected to, or are due to any acts or omissions of the County in its performance of this Agreement. The County shall not be required to indemnify, defend, or save harmless Sound Transit if the claim, suit, or action for injuries or damages is caused by the sole negligence of Sound Transit. In the event of any claims, demands, actions and lawsuits, the County upon prompt notice from Sound Transit, shall assume all costs of defense thereof, including legal fees incurred by Sound Transit, and of all resulting judgments that may be obtained against Sound Transit. This indemnification shall survive the termination of this Agreement.

14. DISPUTES

- 14.1 DISPUTE RESOLUTION PROCESS.** The Designated Representatives of the Parties shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. Each Designated Representative shall notify the other in writing of any problem or dispute

the Designated Representative believes needs formal resolution. This written notice shall include: (1) a description of the issue to be resolved; (2) a description of the difference between the Parties on the issue; and (3) a summary of steps taken by Designated Representative to resolve the issue. The Designated Representatives shall meet within three (3) business days of receiving the written notice and attempt to resolve the dispute. In the event the Designated Representatives cannot resolve the dispute, Sound Transit Deputy Chief Executive Officer or his/her designee and the County Executive or his/her designee shall meet within seven (7) business days of receiving notice from a Designated Representative and engage in good faith negotiations to resolve the dispute.

The Parties agree that they shall have no right to seek relief under this Agreement in a court of law until and unless each of these procedural steps is exhausted; provided that this requirement shall not apply if the applicable statute of limitations will run during the time that may be required to exhaust the procedural steps set forth above.

14.2 GOVERNING LAW. This Agreement shall be governed exclusively by the laws of the State of Washington.

14.3 ATTORNEY FEES. If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each party shall pay its own attorney's fees incurred in that action, arbitration or proceeding.

15. TERMINATION

Any party may terminate this Agreement without cause upon thirty (30) calendar days by written notice either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address. If this Agreement is terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

16. GENERAL PROVISIONS

16.1 NO AGENCY. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of any other Party.

16.2 NO EMPLOYEE RELATIONSHIP. In performing work and services hereunder, the County and its employees, agents, consultants and

representatives shall be acting as independent contractors and shall not be deemed or construed to be employees or agents of Sound Transit in any manner whatsoever. No employee of any Party shall hold him/herself out as, or claim to be an officer or employee of the other Party by reason of this Agreement and shall not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the other Party. Each Party shall be solely responsible for any claims for wages or compensation by its employees, agents, and representatives, including consultants, and shall hold the other Party harmless there from.

- 16.3 NOTICES.** All notices or requests required or permitted under this Agreement shall be in writing, shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, or by facsimile transmission and shall be deemed received three (3) business days following the date when mailed or on the date when delivered or faxed (provided the fax machine has issued a printed confirmation of receipt). All notices or requests shall be sent to the King County and SOUND TRANSIT addressed as follows:

To King County:
King County
Attn: Ken Guy, Director Finance and Business Operations Division
CNK-ES-0350
401 Fifth Avenue, Third Floor
Seattle, WA 98104-1818

To Sound Transit:
Sound Transit
Attn: Leslie Jones, Director, Diversity Program
Union Station
401 S. Jackson St.
Seattle, WA 98104-2826

- 16.4 NO THIRD PARTY RIGHTS.** It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto, and nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties.
- 16.5 CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** The Agreement may be changed, modified, amended, or waived only by written agreement signed by the Parties and adopted in accordance with each Party's legislative procedures. Changes herein which are technical in nature, consistent with the intent of the Agreement and fall within the

scope of their respective authorities may be approved on behalf of the County by the County Executive and on behalf of Sound Transit by its Chief Executive Officer. Any waiver of a term or condition of the Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission. Waiver of breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

16.6 ASSIGNMENT. Neither Party may assign its rights or delegate its duties under this Agreement, whether by assignment, further, subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of the Agreement.

16.7 SEVERABILITY. In the event any term or condition of the Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

16.8 ENTIRE AGREEMENT. This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date signed below.

SOUND TRANSIT

Joni M. Earl,
Chief Executive Officer

Date

KING COUNTY

Dow Constantine,
King County Executive

Date

EXHIBIT A

– SCS Certification Process

For purposes of this Agreement the County will follow the Small Contractor and Supplier (SCS) review and certification procedures set out below. The Parties may mutually agree to amend or update these procedures from time to time.

(1) Notification and application receipt

- i. Upon receipt of an application for SCS certification, the County shall send an email notification receipt to the contact person identified in the certification application to inform him/her of the date the application was received by the County. The notification shall be sent within two (2) business days after the County's receipt of the application.
- ii. All applicants for certification must complete and submit an application and the required supporting documentation necessary to conduct the certification review. The County shall process complete applications in the order received.
- iii. All applicants shall be required to prepare and submit the certification application in electronic or typewritten hard copy formats. The County will not accept handwritten applications.

(2) Certification review period

- i. For all complete applications, the County will complete the certification review within thirty (30) business days from the application receipt date unless otherwise provided herein. The County may extend this period once, per application, for no more than an additional fifteen (15) days, upon written notice to Sound Transit explaining the specific reasons for the extension.
- ii. For applicants using the CPA Affidavit method, the County will complete the certification review within ten (10) business days from the application receipt date unless otherwise provided herein.
- iii. For all certification reviews estimated to exceed the standard thirty (30)-business day review period, the County will notify the applicant within two (2) days from the County's receipt of the complete application package, to inform the applicant of the estimated time to complete the review. The County shall notify the applicant by email.

(3) Applicant Missing Information

- i. For all incomplete application packages, the County will identify any deficiencies and send a request via email to the applicant contact person that includes a request to submit the information requested within thirty (30) calendar days.
- ii. Upon receipt of missing items from the applicant, the County will notify the applicant via email with an estimated review completion date that shall not exceed the standard thirty (30) business days.
- iii. Failure of the applicant to submit the missing information requested within thirty (30) calendar days from the notification date by the County will result in removal of the application from certification review.
- iv. If an applicant has sought certification previously as an SCS from the County and failed to comply with a request from the County to submit information, the applicant must complete and submit a new application to initiate the review process. The County shall process complete applications in the order received unless otherwise provided in this Agreement.

(4) Requests to Expedite the Certification Review Process

- i. The County may grant a request to expedite the certification review process if:
 - a) Sound Transit or a contractor submits a written request to expedite the application; or
 - b) The Parties to this agreement determine and agree that expediting the review process is the only action to ensure SCS firms an opportunity to participate in the contracting activity or procurement processes administered by the requesting public entity.
- ii. All requests to expedite the certification review process must be made in writing and received by the County certification reviewers ten (10) business days prior to a bid opening or proposal due date.
- iii. The County may deny requests to expedite the certification review process if any of the following conditions exists:
 - a) The County receives the request less than ten (10) business days prior to the identified bid opening or proposal due date.

- iv. The County will make the final decision on whether or not a request to expedite certification review will be granted.

Exhibit B

Designated Representatives

The County's designated representative shall be the Director of the Finance Business and Operations Division of the Department of Executive Services or his/her designee or successor as follows:

Ken Guy, Director Finance and Business Operations Division
Department of Executive Services
CNK-ES-0300
401 Fifth Avenue
Seattle, WA 98104
Telephone: 206-263-9254
Email: ken.guy@kingcounty.gov

The Sound Transit Designated Representative shall be the Director of its Diversity Office or his/her designee as follows:

Leslie Jones, Director of Diversity Office
401 S. Jackson Street
Seattle, WA 98104
Phone: 206-398-5047
Fax: 206-398-5220
Email: leslie.jones@soundtransit.org