



Legislation Text

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Clerk 06/19/2013

AN ORDINANCE relating to contracting with King County; amending Ordinance 13983, Section 1, as amended, and K.C.C. 4.19.010, Ordinance 13983, Section 2, as amended, and K.C.C. 4.19.020, Ordinance 13983, Section 3, as amended, and K.C.C. 4.19.030, Ordinance 13983, Section 5, as amended, and K.C.C. 4.19.050, Ordinance 13983, Section 4, as amended, and K.C.C. 4.19.040, Ordinance 13983, Section 6, as amended, and K.C.C. 4.19.060, Ordinance 13983, Section 7, as amended, and K.C.C. 4.19.070, Ordinance 13983, Section 8, as amended, and K.C.C. 4.19.080, Ordinance 13983, Section 9, as amended, and K.C.C. 4.19.090, Ordinance 12026, Section 13, and K.C.C. 4.18.170, and Ordinance 13983, Section 10, as amended, and K.C.C. 4.19.100, adding a new chapter to K.C.C. Title 2, recodifying K.C.C. 4.19.010, K.C.C. 4.19.020, K.C.C. 4.19.030, K.C.C. 4.19.050, K.C.C. 4.19.040, K.C.C. 4.19.060, K.C.C. 4.19.070, K.C.C. 4.19.080, K.C.C. 4.19.090, K.C.C. 4.18.170 and K.C.C. 4.19.100 and repealing Ordinance 15703, Section 3, and K.C.C. 4.19.110, Ordinance 9609, Section 3B, and K.C.C. 4.18.007, Ordinance 12026, Section 2, and K.C.C. 4.18.010, Ordinance 12026, Section 3, and K.C.C. 4.18.020, Ordinance 12026, Section 4, and K.C.C. 4.18.030, Ordinance 12026, Section 5, and K.C.C. 4.18.040, Ordinance 12026, Section 6, and K.C.C. 4.18.050, Ordinance 12026, Section 7, as amended, and K.C.C. 4.18.060, Ordinance 12026, Section 8, and

K.C.C. 4.18.070, Ordinance 12026, Section 9, as amended, and K.C.C. 4.18.080, Ordinance 12026, Section 10, and K.C.C. 4.18.090, Ordinance 12026, Section 11, and K.C.C. 4.18.095, Ordinance 12026, Section 12, and K.C.C. 4.18.100, Ordinance 5983, Section 11, as amended, and K.C.C. 4.18.110, Ordinance 5983, Section 13, as amended, and K.C.C. 4.18.120, Ordinance 12026, Section 13, and K.C.C. 4.18.150 and Ordinance 12026, Section 14, and K.C.C. 4.18.160.

PREAMBLE:

The existing code on revenue and fiscal regulation, K.C.C. Title 4, was created for the most part in the 1970s and 1980s, though some provisions date back to at least the 1940s. Since the creation of K.C.C. Title 4, the title has been subject to many amendments each year. The cumulative effect of these amendments has been to create ambiguities and conflicts within the title, which make it difficult to apply the code effectively and predictably. The council determines that a new title on revenue and fiscal regulation, K.C.C. Title 4A, should be created, and material related to revenue and fiscal matters be codified in that title, and all other material in K.C.C. Title 4 that is not appropriate to be codified K.C.C. Title 4A should be codified in the appropriate titles. In this case, the material in K.C.C. chapters 4.18 and 4.19 should be codified in K.C.C. Title 2.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. K.C.C. 4.19.010, as recodified by this ordinance, K.C.C. 4.19.020, as recodified by this ordinance, K.C.C. 4.19.030, as recodified by this ordinance, K.C.C. 4.19.050, as recodified by this ordinance, K.C.C. 4.19.040, as recodified by this ordinance, K.C.C. 4.19.060, as recodified by this ordinance, K.C.C. 4.19.070, as recodified by this ordinance, section 16 of this ordinance, section 17 of this ordinance, K.C.C. 4.19.080, as recodified by this ordinance, K.C.C. 4.19.090, as recodified by this ordinance, K.C.C. 4.18.170, as recodified by this ordinance, and K.C.C. 4.19.100, as recodified by this ordinance, should constitute a new

chapter in K.C.C. Title 2.

SECTION 2. K.C.C. 4.19.010, as amended by this ordinance, is hereby recodified as a new section in the new chapter created under section 1 of this ordinance.

SECTION 3. Ordinance 13983, Section 1, as amended, and K.C.C. 4.19.010 are each hereby amended to read as follows:

The executive shall implement the ((King County)) contracting opportunities program ((under which the county and its contractors have an incentive to make)) to promote the use of small contractors and suppliers as prime contractors, subcontractors and suppliers on county contracts.

SECTION 4. K.C.C. 4.19.020, as amended by this ordinance, is hereby recodified as a new section in the new chapter created under section 1 of this ordinance.

SECTION 5. Ordinance 13983, Section 2, as amended, and K.C.C. 4.19.020 are each hereby amended to read as follows:

The ((King County contracting opportunities)) program shall apply to ((county public works, consulting and procurement)) contracts subject to K.C.C. chapter 2.93.

SECTION 6. K.C.C. 4.19.030, as amended by this ordinance, is hereby recodified as a new section in the new chapter created under section 1 of this ordinance.

SECTION 7. Ordinance 13983, Section 3, as amended, and K.C.C. 4.19.030 are each hereby amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

A. "Commercially useful function" means the performance of real and actual services in the discharge of any contractual endeavor, rather than being an uninvolved participant in a transaction, contract or project through which funds are passed to obtain the appearance of small contractor and supplier participation. The small contractor and supplier must be responsible for the execution of the work of the contract or subcontract,

as applicable, and carry out its responsibilities by actually performing, managing and supervising the work. To perform a "commercially useful function," the small contractor and supplier must also be responsible for materials and supplies used on the contract or subcontract, as applicable, for negotiating price, determining quality and quantity, ordering the material, installing, if applicable, and paying for the material.

B. "Manager" means manager of the finance and business operations division in the department of executive services.

~~((B-))~~ C. "The program" means the King County contracting opportunities program.

D. "Small business accelerator" means a competitive procurement program that allows certified small contractors and suppliers to ~~((only))~~ compete solely against other certified small contractors and suppliers on selected county contracts.

~~((C-))~~ E. "Small contractor and supplier" means ~~((that))~~ a business ~~((and the person or persons who own and control it are))~~ certified by the county that is in a financial condition that puts the business at a substantial disadvantage in attempting to compete for public contracts. In assessing ~~((these))~~ the financial condition~~((s))~~ of the business, including the net worth of the person or persons who own and control it, the ~~((administrator))~~ manager shall substantially adopt the approach used by the federal Small Business Administration, but the ~~((administrator))~~ manager shall adjust the Small Business Administration's maximum revenue standards for various standard business classifications and levels for owners' personal net worth to account for local market conditions. However, the maximum revenue standard for standard business classifications may not be more than fifty percent of the Small Business Administration's thresholds, as now existing or hereafter amended.

SECTION 8. K.C.C. 4.19.050, as amended by this ordinance, is hereby recodified as a new section in the new chapter created under section 1 of this ordinance.

SECTION 9. Ordinance 13983, Section 5, as amended, and K.C.C. 4.19.050 are each hereby amended to read as follows:

The ~~((administrator may))~~ manager shall develop a process for certifying businesses for participation in

the ~~((King County contracting opportunities))~~ program as small contractors and suppliers. If feasible, the ~~((administrator))~~ manager shall arrange or contract for a coordinated certification agency in cooperation with other agencies that may adopt compatible programs.

SECTION 10. K.C.C. 4.19.040, as amended by this ordinance, is hereby recodified as a new section in the new chapter created under section 1 of this ordinance.

SECTION 11. Ordinance 13983, Section 4, as amended, and K.C.C. 4.19.040 are each hereby amended to read as follows:

To be certified for the ~~((King County contracting opportunities))~~ program, a business must be a small contractor or supplier, have a valid business license~~((;))~~ and must serve a commercially useful function~~((, as defined in K.C.C. chapter 4.18))~~. To maintain its certification, within one year of its certification a small contractor or supplier must have the person or persons who own and control the business complete at least fifteen hours of business-related training in a program approved by the ~~((administrator))~~ manager. Based on the ~~((administrator's))~~ manager's assessment of the small contractor or supplier's need for additional training, the ~~((administrator))~~ manager may require a small contractor or supplier to complete up to fifteen additional hours annually of business-related training. The ~~((administrator))~~ manager shall evaluate and approve training programs based on one or more of the following ~~((indications))~~ indicators of the training program's value: the ~~((program's relevant))~~ industry's historical use of the training program; ~~((affiliation))~~ the training program's ~~((has))~~ affiliation with established schools, if any~~((;))~~; and accreditation by an established association.

SECTION 12. K.C.C. 4.19.060, as amended by this ordinance, is hereby recodified as a new section in the new chapter created under section 1 of this ordinance.

SECTION 13. Ordinance 13983, Section 6, as amended, and K.C.C. 4.19.060 are each hereby amended to read as follows:

~~((To provide significant opportunities and incentives for businesses owned by small contractors and suppliers to prove themselves competitive within the market, t))~~The certification ~~((the businesses))~~ of a small

~~contractor or supplier is ((limited)) effective for to ((five)) three years ((or a specified contract and dollar volume of participation)) if it meets the requirements under this chapter.. A business whose certification has expired may reapply for certification. A business that has been denied certification must wait one year from the application denial date before reapplying for certification.~~

SECTION 14. K.C.C. 4.19.070, as amended by this ordinance, is hereby recodified as a new section in the new chapter created under section 1 of this ordinance.

SECTION 15. Ordinance 13983, Section 7, as amended, and K.C.C. 4.19.070 are each hereby amended to read as follows:

A. ~~The ((King County contracting opportunities))~~ program shall use one or more methods to create incentives to ~~((promote the)) use ((of businesses owned by certified))~~ small contractors and suppliers. These incentives shall be produced either through a bonus system in which the increased participation of certified small contractors and suppliers is a factor in the award of contracts~~((;))₂~~ or through a set-aside system under which prime contractors are required to achieve a specified level of participation by ~~((King County contracting opportunities program businesses))~~ small contractors and suppliers in the performance of the contract. If the bonus system is used, the solicitation document shall state the maximum incentive available for the participation of certified small contractors and suppliers and the possible methods for making use of the incentive. If a set-aside system is used, the solicitation document shall state a required minimum utilization.

B. ~~((As a matter of policy,))~~ The manager shall identify opportunities for small contractors and suppliers to act as prime contractors ~~((will be identified))~~ on an ongoing basis.

~~((C. The specific methods used to provide incentives to small contractors and suppliers and for them to be prime contractors, as opportunities arise, shall be fully addressed in the rule-making process.~~

D.1. ~~The contracting opportunities program is authorized to use a small business accelerator to solicit and award contracts for all county departments and offices in the following areas, as defined in K.C.C. 4.16.010: services, professional services and technical services, except contracts for architecture and~~

~~engineering services, as well as tangible personal property acquired in furtherance of metropolitan functions. The small business accelerator shall be available for contracts having an estimated value ((of twenty-five thousand dollars or more, where sufficient certified small contractors and suppliers are available, and allow businesses certified as small contractors or suppliers under K.C.C. 4.19.040 to compete against other certified small contractors and suppliers for those county contracts.~~

~~2. The manager shall ensure the following actions are taken:~~

~~a. development of specifications or a project description in the form of a request for proposals or invitation to bid in concert with the requesting department or office;~~

~~b. the conduct by the business development and contract compliance section of an analysis to determine the availability of at least three or more certified small contractors and/or suppliers to provide the goods or services requested; and~~

~~c. if at least three or more certified small contractors or suppliers, or both are determined to be available, and the manager determines it in the best interest of the those county contracts.~~

~~2. The manager shall ensure the following actions are taken:~~

~~a. development of specifications or a project description in the form of a request for proposals or invitation to bid in concert with the requesting department or office;~~

~~b. the conduct by the business development and contract compliance section of an analysis to determine the availability of at least three or more certified small contractors and/or suppliers to provide the goods or services requested; and~~

~~county, the solicitation may be conducted under the small business accelerator among the certified small contractors and suppliers;~~

~~3. The manager shall develop written criteria for use in determining which written proposals or bids the county shall accept as the basis for recommending contract award in consultation with the requesting department or office.~~

~~4. The manager shall advertise publicly at least once, the purpose, scheduled date, location and time of a preconference, if applicable, or the name of a contact person from whom the specifications or project description shall be available. The purposes of the notification are to distribute and discuss the specifications in the form of a request for proposal or invitation to bid to certified small contractors and suppliers, and to inform of the time and due date for the submission of proposal or bid.~~

~~5. If the county does not receive any responsive and responsible proposals or bids from small contractors and suppliers, the manager may cancel the procurement and conduct the solicitation again in accordance with the procedures for tangible personal property, services, professional or technical services, as described in K.C.C. chapter 4.16.~~

~~6. The manager may reject any or all bids for good cause or request for proposal if it is in the best interest of the county.~~

~~E. The administrator shall by June 30 of every year, file, [in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers and the lead staff for the government accountability and oversight committee or its successor,] a report to council on the progress of the King County contracting opportunities program during the previous year, January through December. The report shall include:~~

- ~~1. The total amounts awarded by contract category;~~
- ~~2. The total amount awarded by contract category for which an incentive was available;~~
- ~~3. The total amounts awarded to small contractors and suppliers reported by contract category and by race and gender, to the extent businesses voluntarily provide this race and gender information;~~
- ~~4. For goods and services contracts, the total amount awarded to small contractors and suppliers by race and gender to the extent businesses voluntarily provide this race and gender information, for those contractors for which the small contractor or supplier was not the low bidder;~~
- ~~5. For goods and services, the total amount paid by the county;~~

~~6. A listing of all participating small contractors and suppliers by contract category, race and gender to the extent businesses voluntarily provide this race and gender information, their location by city and ZIP code, and the specific contracts including dollar amounts awarded;~~

~~7. A listing of the number of small contractors and suppliers by race and gender, to the extent businesses voluntarily provide this race and gender information, in each of the following revenue categories that was certified in the program:~~

~~a. for goods and services:~~

~~(1) zero to five hundred thousand dollars;~~

~~(2) five hundred thousand to one million dollars;~~

~~(3) one million to two million dollars; and~~

~~(4) two million dollars to the maximum revenue amount allowed by the program rules;~~

~~b. for consulting:~~

~~(1) zero to two hundred fifty thousand dollars;~~

~~(2) two hundred fifty to five hundred thousand dollars;~~

~~(3) five hundred thousand to one million dollars; and~~

~~(4) one million dollars to the maximum revenue amount allowed under the program rules;~~

~~c. for construction;~~

~~(1) zero to five hundred thousand dollars;~~

~~(2) five hundred thousand to three million dollars;~~

~~(3) three million to eight million dollars; and~~

~~(4) eight million to the maximum revenue amount allowed under the program rules;~~

~~8. A listing of the number of small contractors and suppliers by race and gender, to the extent businesses voluntarily provide this race and gender information, in each of the following revenue categories that was awarded a contract:~~

~~a. for goods and services:~~

- ~~(1) zero to five hundred thousand dollars;~~
- ~~(2) five hundred thousand to one million dollars;~~
- ~~(3) one million to two million dollars; and~~
- ~~(4) two million dollars to the maximum revenue amount allowed by the program rules;~~

~~b. for consulting:~~

- ~~(1) zero to two hundred fifty thousand dollars;~~
- ~~(2) two hundred fifty thousand to five hundred thousand dollars;~~
- ~~(3) five hundred thousand to one million dollars;~~
- ~~(4) one million dollars to the maximum revenue amount allowed under the program rules;~~

~~c. for construction:~~

- ~~(1) zero to five hundred thousand dollars;~~
- ~~(2) five hundred thousand to three million dollars;~~
- ~~(3) three million to eight million dollars; and~~
- ~~(4) eight million to the maximum revenue amount allowed under the program rules; and~~

~~9. A listing of the number and firm name of certified small contractors and suppliers by race and gender, to the extent businesses voluntarily provide this race and gender information, awarded contracts through the small business accelerator program under subsection D. of this section, by contract category, their location by city and ZIP code and the specific contracts including dollar amounts awarded.))~~

NEW SECTION. SECTION 16. There is hereby added to the new chapter created under section 1 of this ordinance a new section to read as follows:

A. The program is authorized to use a small business accelerator to solicit and award contracts for all county departments and offices in the following areas, as defined in K.C.C. 2.93.030: services, professional services and technical services, except contracts for architecture and engineering services, as well as tangible

personal property acquired in furtherance of metropolitan functions. The small business accelerator may only be used for contracts having an estimated value above the formal purchasing threshold as described in RCW 36.32.245, where sufficient certified small contractors and suppliers are available.

B. The manager may use the small business accelerator for a contract, but only if the following actions are taken:

1. Development of specifications or a project description in the form of a request for proposals or invitation to bid in concert with the requesting department or office;
2. An analysis by the business development and contract compliance section determines the availability of at least three small contractors or suppliers to provide the goods or services requested; and
3. The manager determines that it is in the best interest of the county to conduct the solicitation under the small business accelerator.

C. With the exception that only small contractors and suppliers may apply under this section, the procedures for tangible personal property, services, professional services or technical services, as described in K.C.C. chapter 2.93, apply. However, if the county does not receive any responsive and responsible proposals or bids from small contractors and suppliers, the manager may cancel the procurement and conduct the solicitation again in accordance with the procedures for tangible personal property, services, professional or technical services, as described in K.C.C. chapter 2.93.

NEW SECTION. SECTION 17. There is hereby added to the new chapter created in section 1 of this ordinance a new section to read as follows:

The manager shall by June 30 of every year, file, in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers and the lead staff for the government accountability and oversight committee or its successor, a report to council on the progress of the program during the previous year, January through December. The report shall include:

- A. The total amounts awarded by contract category;
- B. The total amount awarded by contract category for which an incentive was available;
- C. The total amounts awarded to small contractors and suppliers reported by contract category and by race and gender, to the extent businesses voluntarily provide this race and gender information;
- D. For goods and services contracts, the total amount awarded to small contractors and suppliers by race and gender to the extent businesses voluntarily provide this race and gender information, for those contractors for which the small contractor or supplier was not the low bidder;
- E. For goods and services, the total amount paid by the county;
- F. A listing of all participating small contractors and suppliers by contract category, race and gender to the extent businesses voluntarily provide this race and gender information, their location by city and ZIP code, and the specific contracts including dollar amounts awarded;
- G. A listing of the number of small contractors and suppliers by race and gender, to the extent businesses voluntarily provide this race and gender information, in each of the following revenue categories that was certified in the program and, separately, that was awarded a contract:
 - 1. For goods and services:
 - a. zero to five hundred thousand dollars;
 - b. five hundred thousand to one million dollars;
 - c. one million to two million dollars; and
 - d. two million dollars to the maximum revenue amount allowed by the program rules;
 - 2. For consulting:
 - a. zero to two hundred fifty thousand dollars;
 - b. two hundred fifty thousand to five hundred thousand dollars;
 - c. five hundred thousand to one million dollars; and
 - d. one million dollars to the maximum revenue amount allowed under the program rules;

3. For construction:

- a. zero to five hundred thousand dollars;
- b. five hundred thousand to three million dollars;
- c. three million to eight million dollars; and
- d. eight million dollars to the maximum revenue amount allowed under the program rules; and

H. A listing of the number and firm name of certified small contractors and suppliers by race and gender, to the extent businesses voluntarily provide this race and gender information, awarded contracts through the small business accelerator program under K.C.C. 4.19.070.C., as recodified by this ordinance, by contract category, their location by city and ZIP code and the specific contracts including dollar amounts awarded.

SECTION 18. K.C.C. 4.19.080, as amended by this ordinance, is hereby recodified as a new section in the new chapter created under section 1 of this ordinance.

SECTION 19. Ordinance 13983, Section 8, as amended, and K.C.C. 4.19.080 are each hereby amended to read as follows:

A person who violates this chapter or the rules adopted under this chapter or who fails to comply with representations or commitments made to receive a benefit or qualify for an incentive under the King County contracting opportunities program is subject to sanctions including but not limited to: liquidated damages; withholding of funds; a civil fine or penalty; and disqualification from eligibility for bidding on or entering into or participating, as a subcontractor or in any other manner, in a contract with the county for a period not to exceed five years. If imposing sanctions, the ~~((administrator))~~ manager shall: set forth the sanctions to be imposed and the reasons for the imposition in a written order; promptly furnish a copy of the order to the contract awarding authority or contract administering authority; and mail a copy of the order by certified mail, return receipt requested, to the person being sanctioned.

SECTION 20. K.C.C. 4.19.090, as amended by this ordinance, is hereby recodified as a new section in

the new chapter created under section 1 of this ordinance.

SECTION 21. Ordinance 13983, Section 9, as amended, and K.C.C. 4.19.090 are each hereby amended to read as follows:

A person against whom the ((~~administrator~~)) manager under this chapter imposes sanctions may appeal within fifteen days from the date the ((~~administrator's~~)) manager's decision is mailed to the person being sanctioned, by filing a notice of appeal with the office of the hearing examiner. Within forty-five days after receiving the notice of appeal, the hearing examiner shall convene the appeal hearing. The hearing examiner shall provide written notice of the hearing date ((~~given~~)), location and time to the appellant and to the department of executive services, finance and business operations division, at least thirty days before the hearing. Within thirty days after conclusion of the appeal hearing, the hearing examiner presiding at the hearing shall prepare a written decision and order. The final decision shall be filed by the hearing examiner as a public record with the county clerk, recorder's office, and copies of the final decision mailed to each party of record and to the ((~~administrator~~)) manager.

SECTION 22. K.C.C. 4.18.170, as amended by this ordinance, is hereby recodified as a new section in the new chapter created under section 1 of this ordinance.

SECTION 23. Ordinance 12026, Section 13, and K.C.C. 4.18.170 are each hereby amended to read as follows:

In order to secure financial assistance from federal and state agencies, the ((~~administrator~~)) manager shall provide for the participation of minority, women and disadvantaged businesses ((~~pursuant to~~)) in accordance with regulations and requirements imposed by ((~~such~~)) the federal and state agencies. The ((~~administrator~~)) manager may ((~~issue~~)) adopt rules and procedures and take steps necessary to implement and comply with applicable federal and state laws and regulations, including the establishment of annual goals and contract goals for minority, women and disadvantaged businesses.

SECTION 24. K.C.C. 4.19.100, as amended by this ordinance, is hereby recodified as a new section in

the new chapter created under section 1 of this ordinance.

SECTION 25. Ordinance 13983, Section 10, as amended, and K.C.C. 4.19.100 are each hereby amended to read as follows:

The executive shall adopt rules to implement this chapter, (~~the council must approve them before they become effective~~) in accordance with K.C.C. chapter 2.98.

SECTION 26. Section 27 of this ordinance takes effect one hundred eighty days after the enactment date of this ordinance.

SECTION 27. Ordinance 15703, Section 3, and K.C.C. 4.19.110 are each hereby repealed.

SECTION 28. The following are each hereby repealed:

- A. Ordinance 9609, Section 3B, and K.C.C. 4.18.007;
- B. Ordinance 12026, Section 2, and K.C.C. 4.18.010;
- C. Ordinance 12026, Section 3, and K.C.C. 4.18.020;
- D. Ordinance 12026, Section 4, and K.C.C. 4.18.030;
- E. Ordinance 12026, Section 5, and K.C.C. 4.18.040;
- F. Ordinance 12026, Section 6, and K.C.C. 4.18.050;
- G. Ordinance 12026, Section 7, as amended, and K.C.C. 4.18.060;
- H. Ordinance 12026, Section 8, and K.C.C. 4.18.070;
- I. Ordinance 12026, Section 9, as amended, and K.C.C. 4.18.080;
- J. Ordinance 12026, Section 10, and K.C.C. 4.18.090;
- K. Ordinance 12026, Section 11, and K.C.C. 4.18.095;
- L. Ordinance 12026, Section 12, and K.C.C. 4.18.100;
- M. Ordinance 5983, Section 11, as amended, and K.C.C. 4.18.110;
- N. Ordinance 5983, Section 13, as amended, and K.C.C. 4.18.120;
- O. Ordinance 12026, Section 13, and K.C.C. 4.18.150; and

P. Ordinance 12026, Section 14, and K.C.C. 4.18.160.