

ORDINANCE No. 115239

COUNCIL BILL No. 108042

Law Department

The City

AN ORDINANCE amending the Women's and Minority Business Utilization ("WMBE") Ordinance, S.M.C. Ch. 20.46, by referring to the bases for findings of discrimination against Women's and Minority Business Enterprises, by making additional findings regarding discrimination against Women's Business Enterprises, and by requiring that the City's WMBE program be reviewed every five years to determine if it should continue.

Honorable President:

Your Committee on FIN

to which was referred the within C report that we have considered the

PAS

COMPTROLLER FILE No. _____

Introduced: JUL 1 1990	By: BIBONGA
Referred: JUL 1 1990	To: Finance, Budget and Management
Referred:	To:
Referred:	To:
Reported: AUG 4 1990	Second Reading: AUG 6 1990
Third Reading: AUG 6 1990	Signed: AUG 6 1990
Presented to Mayor: AUG 7 1990	Approved: 8/10/90
Returned to City Clerk: 8/10/90	Published:
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

OK

Department

The City of Seattle--Legislative Department

Date Reported
and Adopted

REPORT OF COMMITTEE

Chairman/President:

Committee on

Finance, Budget & Management

which was referred the within Council Bill No. 108042

that we have considered the same and respectfully recommend that the same

PASS 2-C 8/1/90

Committee Chair

ORDINANCE 115239

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AN ORDINANCE amending the Women's and Minority Business Utilization ("WMBE") Ordinance, S.M.C. Ch. 20.46, by referring to the bases for findings of discrimination against Women's and Minority Business Enterprises, by making additional findings regarding discrimination against Women's Business Enterprises, and by requiring that the City's WMBE program be reviewed every five years to determine if it should continue.

WHEREAS, the United States Supreme Court's decision in the case of City of Richmond v. J.A. Croson Company, 109 S.Ct. 706, (1989) establishes new standards by which the constitutionality of local governments' minority business enterprise ("MBE") programs will be judged; and

WHEREAS, the case of Michigan Road Builders Association, Inc. v. Milliken, 834 F.2d 583 (6th Cir. 1987), affirmed without opinion, 109 S.Ct. 1333, (1989) suggests that new standards may be applied to gauge the constitutionality of local governments' women's business enterprise ("WBE") programs; and

WHEREAS, Ordinance 114339 authorized the Human Rights Department to enter into a contract with a consultant to study discrimination against MBEs; and

WHEREAS, Human Rights Department and nine other government agencies in the Puget Sound area entered into a contract with the Perkins Coie law firm and two subconsultant firms to study discrimination against WBEs and MBEs and to recommend changes to the jurisdictions' WMBE programs; and

WHEREAS, the Perkins Coie consultant team has completed its study and has issued a report regarding discrimination against WBEs and MBEs which includes recommendations that Seattle's WMBE program be changed; and

WHEREAS, the Director of the Human Rights Department has recommended that certain changes suggested by the Perkins Coie consultant team be implemented immediately while other recommendations of the consultant team be studied for possible future implementation; Now, Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Subsections E through H of Section 20.46.020 of the Seattle Municipal Code (Ordinance 109113, Section 2) are amended as follows:

E. As described in the materials contained in Comptroller File 296945 and as described in the January, 1990 report prepared by the Perkins Coie consultant team, nonminority developers, contractors and consultants have

1 systematically excluded minority business enterprises and
2 women's business enterprises from contracting and
3 subcontracting opportunities in the private sector in Seattle
4 and in the surrounding cities and communities;

5 F. Race-neutral and sex-neutral measures employed by
6 the City in the past did not prevent the City from being a
7 passive participant in the systematic discrimination against
8 minority business enterprises and against women's business
9 enterprises;

10 G. Unless the City takes affirmative steps to prevent
11 the pervasive discrimination against minority business
12 enterprises and against women's business enterprises in the
13 private sector from affecting its contracting processes, the
14 City will become a passive participant in the system of racial
15 and sex-based exclusion practiced in the private sector; and

16 H. The City's women's and minority business enterprise
17 program must be continued to prevent the City from once again
18 becoming a passive participant in the systematic exclusion of
19 women's and minority business enterprises from contracting and
20 subcontracting opportunities.

21 Section 2. Subsection B of Seattle Municipal Code
22 20.46.090 (Ordinance 109113, Section 9) is amended as follows:

23 B. Contracts for public works, the estimated cost of
24 which equals or exceeds Ten Thousand Dollars (\$10,000.00), and
25 contracts for consultant or other services, the estimated cost
26 of which equals or exceeds Fifteen Thousand Dollars
27 (\$15,000.00), shall be awarded and administered in accordance
28 with the following standards and procedures:

1. In addition to the requirements set forth in
subsection B of Section 20.46.080 and elsewhere, bid
conditions and requests for proposals shall require bidders
and proposers to include in their bid or proposal women's

1 business enterprise participation (~~(in the contract in a~~
2 ~~percentage which equals or exceeds the awarding authority's~~
3 ~~annual goals)) and minority business enterprise participation~~
4 in the contract in a percentage to be determined by the
5 Director for the contract. The Director shall determine the
6 women's business enterprise and minority business enterprise
7 percentage for each contract based on the extent of
8 subcontracting opportunities presented by the contract and the
9 availability of women's and minority business enterprises to
10 perform such subcontracting work. Except as provided in
11 subsection B2 of this section, bids or proposals not including
12 both minority business enterprise and women's business
13 enterprise participation in an amount which equals or exceeds
14 that required by the bid conditions or request for proposals
15 shall be declared nonresponsive.

16 a. Bids and proposals shall identify the
17 particular minority business enterprises and women's business
18 enterprises to be utilized in performing the contract,
19 specifying for each the dollar value of the participation, the
20 type of work to be performed and such information as may
21 reasonably be required to determine the responsiveness of the
22 bid or proposal.

23 b. During the term of the contract any failure
24 to comply with the levels of minority business enterprise or
25 women's business enterprise participation identified in the
26 bid or proposal shall be considered a material breach of
27 contract.

28 2. A contract awarding authority or a department
may request the Director to waive the set aside requirements
of this subsection, or to reduce the amount of the set aside,
for either or both minority business enterprises or women's
business enterprises, by submitting the reasons therefor in
writing to the Director prior to solicitation of bids or

1 proposals or prior to the award of a contract supplement or
2 amendment, or the issuance of a change order.

3 a. The Director may grant such a waiver or
4 reduction upon determination that:

5 i. The reasonable and necessary
6 requirements of the contract, contract supplement, amendment
7 or change order render subcontracting or other participation
8 of businesses other than the bidder, proposer or contractor
9 infeasible; or

10 ii. Sufficient qualified minority and
11 women's business enterprises capable of providing the goods or
12 services required by the contract, are unavailable in the
13 market area of the project, despite every feasible attempt to
14 locate appropriate minority and women's business enterprises;
15 or

16 iii. The contract, contract supplement,
17 amendment or change order for which a waiver or reduction is
18 sought is part of a planned series of related contracts,
19 contract supplements, amendments or change orders which, when
20 considered together, shall include women's and minority
21 business utilization sufficient to meet the applicable
22 utilization goals.

23 iv. The subcontractors or subconsultants
24 likely to submit sub-bids or subproposals to the prime
25 contractor or prime consultant are primarily located in other
26 than the King County-Pierce County, Washington area.

27 b. Only the requirements of subsection B1 of
28 this section are waived by a waiver under this paragraph.

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

d. Whenever the Director denies a request to
waive or reduce a set aside, the contract awarding authority

1 may appeal that denial to the Mayor, whose decision on the
2 request shall be final.

3 Section 3. Seattle Municipal Code Ch. 20.46 is amended
4 by adding the following new Section 20.46.140:

5 20.46.140 Review of Program

6 The Legislative Authority of the City shall review the
7 implementation of this chapter and whether pervasive
8 discrimination against WBEs and MBEs continues in the relevant
9 private sector markets every five years to determine whether
10 the requirements of this chapter shall remain in effect. The
11 first such review shall occur during 1995. If the Legislative
12 Authority determines that the requirements of this chapter are
13 no longer necessary to prevent pervasive discrimination
14 against WBEs and MBEs in the private sector from affecting the
15 City's contracting processes, this chapter shall be repealed.
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(To be used for all Ordinances except Emergency.)

Section 4.... This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 6th day of August, 1990,
and signed by me in open session in authentication of its passage this 6th day of August, 1990.
[Signature]
President of the City Council.

Approved by me this 10th day of August, 1990.
[Signature]
Mayor.

Filed by me this 10th day of August, 1990.
[Signature]
Attest: Norman J. Brooks
City Comptroller and City Clerk.

(SEAL)

Published.....

By Margaret Carter
Deputy Clerk.

Your
Seattle
Human Rights Department

Bill W. Hilliard, Director
Norman B. Rice, Mayor

RECEIVED OMB

APR 09 1990



April 9, 1990

To: Paul Kraabel, President
Seattle City Council

Via: Mayor Norman B. Rice

Attention: Andrew Lofton, Director
Office of Management and Budget

From: *CWA* Bill W. Hilliard, Director
Human Rights Department

Re: Amendments to WMBE Ordinance

84 5383

This is a request for amendments to Ordinance 114339. The amendments are designed as a follow-up to the Supreme Court's decision in the case of The City of Richmond v. J.A. Croson Company, as well as to the Perkins Coie Report.

The proposed ordinance accomplishes the following:

1. Incorporates the findings of the Perkins Coie Study into the WMBE Ordinance, which will strengthen the City's justifications for our WMBE program. (Section 1, pg. 1)
2. The Supreme Court case involved only minority business enterprises, however, the WMBE Perkins Coie Study provided information such that WBEs and MBEs will be treated the same within the Human Rights Department. Women's business enterprises will now have their participation determined by the Director based on the elements of each City contract. (Section 2, pgs. 2-3)
3. The Study also determined that availability should be limited to a geographical area, therefore, one provision allows the Director to grant a waiver or reduction of the set-aside requirements if the subcontractors or consultants likely to submit bids are primarily located outside King County and Pierce County. (Section 2, pg. 4)

4. In the City of Richmond v. J.A. Croson Company a parallel was drawn between contracting set-asides and affirmative action employment programs. This resulted in the clear message that such programs are temporary in nature and should be employed only during the duration of meeting the specified goals of such a program. Therefore, a five-year review provision has been added to determine whether the WMBE requirements should remain in effect after that time. The first review is to occur in 1995. (Section 3)

These changes are basically straightforward as described above, however, should you or other members of the Council have questions please do not hesitate to contact me.

BWH:vr

Enclosures

City of Seattle

Executive Department-Office of Management and Budget

Andrew J. Lofton, Director
Norman B. Rice, Mayor



April 2, 1990

The Honorable Mark Sidran
City Attorney
City of Seattle

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING
DEPARTMENT: Human Rights Department

SUBJECT: AN ORDINANCE amending the Women's and Minority Business Utilization ("WMBE") Ordinance, S.M.C. Ch. 20.46, by referring to the bases for findings of discrimination against Women's and Minority Business Enterprises, by making additional findings regarding discrimination against Women's Business Enterprises, and by requiring that the City's WMBE program be reviewed every five years to determine if it should continue.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMB. Any specific questions regarding the legislation can be directed to Hazel Bhang, 4-8080 .

Sincerely,

Norman B. Rice
Mayor

by

A handwritten signature in cursive script, appearing to read "Andrew J. Lofton".

ANDREW J. LOFTON
Budget Director

AL/hb/js

Enclosure

cc: Bill Hilliard

Your
Seattle
Human Rights Department

Bill W. Hilliard, Director
Norman B. Rice, Mayor



March 22, 1990

To: Andrew Lofton, Director
Office of Management and Budget

From: *BWA* Bill W. Hilliard, Director
Human Rights Department

Re: Women and Minority Business Enterprise Ordinance

Enclosed for submission to the City Council is a proposed ordinance amending our WMBE Ordinance, together with a memorandum summarizing the amendments. The Law Department (Randy Gainer) drafted the proposed ordinance, and Anne Levinson has been involved in the process throughout.

BWH:vr

Enclosures



84 7200
MAR 23 1990

TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY
THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

Delores Sibonga

_____	_____
_____	_____
_____	_____
_____	_____

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

PRESIDENT'S SIGNATURE

STATE OF WASHINGTON - KING COUNTY

29540
City of Seattle

—SS.

No.

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the Seattle City Council on August 6, 1990, and published here by title only, will be mailed, at no cost, upon request for two months after this publication. For further information, contact the Seattle City Clerk at 834-8354.

ORDINANCE 115234

AN ORDINANCE relating to a request for proposals for a cultural diversity training program for Seattle Police Department officers, increasing expenditure allowances in the Police Department and making a reimbursable appropriation from the General Fund.

ORDINANCE 115235

AN ORDINANCE authorizing a collective bargaining agreement between The City of Seattle and the International Association of Machinists and Aerospace Workers, Local 269, effective through August 31, 1991; authorizing a one-time, lump-sum payment; and providing payment therefor.

ORDINANCE 115236

AN ORDINANCE authorizing a collective bargaining agreement between The City of Seattle and the Seattle Police Dispatchers Guild, effective through August 31, 1991; authorizing a one-time, lump-sum payment; and providing payment therefor.

ORDINANCE 115238

AN ORDINANCE accepting funds from the Manville Property Damage Settlement Trust; specifying distribution of said funds to various City Funds.

ORDINANCE 115239

AN ORDINANCE amending the Women's and Minority Business Utilization ("WMBE") Ordinance, S. M. C. Ch. 20.46, by referring to the bases for findings of discrimination against Women's and Minority Business Enterprises, by making additional findings regarding discrimination against Women's Business Enterprises, and by requiring that the City's WMBE program be reviewed every five years to determine if it should continue.

Publication ordered by NORWARD J. BROOKS, Comptroller and City Clerk.

Date of official publication in Daily Journal of Commerce, Seattle, August 17, 1990. 8/17(29540)

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

T/O 115234, 35, 36, 38, &

was published on

08/17/90

The amount of the fee charged for the foregoing publication is the sum of \$ _____, which amount has been paid in full.

M. J. [Signature]
Subscribed and sworn to before me on
AUG 17 1990
[Signature]

Notary Public for the State of Washington, residing in Seattle