

Ordinance No. 119602

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The City of Seattle Council Bill/Ordinance

Council Bill No. 112128

AN ORDINANCE creating a program to promote the use of small economically disadvantaged businesses in competing for City contracting opportunities.

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passed 4-0
Matthew C.

CF No. _____

Date Introduced:	
Date 1st Referred: <u>AUG 02 1993</u>	To: (committee) Finance & Budget Committee
Date Re - Referred: <u>AUG 02 1993</u>	To: (committee)
Date Re - Referred:	To: (committee)
Date of Final Passage: <u>8/9/93</u>	Full Council Vote: <u>6-0 Excused: Conlin, Padiadouski, Steinbrueck</u>
Date Presented to Mayor: <u>AUG 10 1993</u>	Date Approved: <u>AUG 10 1993</u>
Date Returned to City Clerk: <u>AUG 10 1993</u>	Date Published: T.O. <input checked="" type="checkbox"/> <u>Spayes</u> P.T. <input type="checkbox"/>
Date Vetted by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

This file is complete and ready

Law Department

Law Dept. Review

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: _____

CHOE
Councilmember

Committee Action:

passed 4-0

Martha Chen

This file is complete and ready for presentation to Full Council. Committee: _____

Stembruck

(initial/date)

Law Department

Law Dept. Review

OMP
Review

[Signature]

City Clerk
Review

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ORDINANCE 119602

1
2 AN ORDINANCE creating a program to promote the use of small economically disadvantaged
3 businesses in competing for City contracting opportunities.

4 NOW THEREFORE,

5 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

6 Section 1. Findings. The City Council finds the following:

7 1. The success of small economically disadvantaged businesses is important to the region's
8 overall economy, including the development of job opportunities and social mobility in the City.

9 2. Businesses located within the City that seek contracting opportunities operate under a
10 competitive disadvantage with businesses located elsewhere because of higher taxes and higher
operating and administrative costs.

11 3. Economic justice is served by enhancing opportunities for small economically disadvantaged
12 business owners who pursue relevant technical and entrepreneurial training to become more skilled
competitors.

13 4. Businesses who locate and remain in economically distressed areas help to strengthen those
areas by stimulating economic activity and revitalizing neighborhoods.

14 5. Through its contracting activities, the City is in a position to create important economic
15 incentives to use small economically disadvantaged businesses.

16 6. It is in the City's economic interest to provide incentives to encourage small economically
disadvantaged businesses to locate and remain within the City.

17 Section 2. Boost for Small Economically Disadvantaged Businesses. The Executive Services
18 Department ("ESD") shall implement a "Boost" Program under which the City and its contractors have
19 an incentive to make use of small economically disadvantaged businesses as prime contractors,
20 subcontractors, and suppliers on City contracts.

21 Section 3. Scope. The Boost Program shall apply to City public works, consulting, and
22 procurement contracts.
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1 Section 4. Definitions.

2 "Director" means the Director of the Executive Services Department.

3 "Economically distressed area" means a geographic area determined by the City Council to
4 require the use of incentives in order to stimulate economic activity and revitalize declining
5 neighborhoods.

6 "Located within" the City or an economically distressed area means that a business at least:

7 (a) has its primary offices or distribution points (other than residential or post office box)
8 physically within the relevant boundaries; and

9 (b) lists the address on a valid business permit as being within the relevant boundaries;
10 and

11 (c) has been doing business within the relevant boundaries for at least 12 months; and

12 (d) submits other proof as required by the Director.

13 "Small Economically Disadvantaged Business" means that a business and the person or persons
14 who own and control it are in a financial condition which puts the business at a substantial disadvantage
15 in attempting to compete for public contracts. In assessing these financial conditions, ESD shall
16 substantially adopt the approach used by the Federal Small Business Administration ("SBA"), provided
17 that the SBA dollar ceilings for various standard business classifications and levels for owners' personal
18 net worth shall be adjusted by the Director to account for local market conditions.

19 Section 5. Criteria for Participation. To be certified for the Boost Program, a business must be a
20 Small Economically Disadvantaged Business serving a commercially useful function and must meet at
21 least one of the following additional criteria:
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1 (a) Located within the City of Seattle. A business located within the City, as defined above, may
2 meet this criterion as a means to offset the competitive disadvantages experienced by Small
3 Economically Disadvantaged Businesses and to encourage other such businesses to locate and remain
4 within the City.

5 (b) Business Development. A Small Economically Disadvantaged Businesses can meet and
6 maintain this criterion by having the person(s) who owns and controls the business annually complete at
7 least 15 hours of business-related training in a program approved by the Director. In establishing
8 regulations for approval of any such training program, the Director shall look for one or more of the
9 following indications of the program's value: (1) the program's historical use or support from within the
10 relevant industry, (2) any affiliation the program has with established schools, if any, (3) accreditation
11 by an established association.

12 (c) Located within Economically Distressed Area. A Small Economically Disadvantaged
13 Business may meet this criterion by being located within an economically distressed area as defined by
14 the City Council.

15 Section 6. Certification Process. ESD is authorized to develop a process for certifying
16 businesses for participation in the Boost Program. If feasible, ESD shall arrange, or contract for, a
17 coordinated certification agency in cooperation with other agencies that may adopt compatible programs.

18 Section 7. Limitation of Certification. In order to provide significant opportunities and
19 incentives for Boost businesses to prove themselves competitive within the market, the certification of
20 such businesses shall be limited to five (5) years or a specified contract and dollar volume of
21 participation.

1 Section 8. Methods of Providing Incentive. The Boost Program shall use one or more methods
2 to create an incentive to promote the use of Boost businesses. This incentive shall be produced either
3 through a bonus system in which the increased participation of Boost businesses is a factor in the award
4 of contracts or through a set-aside system under which contractors are required to achieve a specified
5 level of participation by Boost businesses. Where the bonus system is used, the contract shall state the
6 maximum incentive available for Boost participation and the possible methods for making use of the
7 incentive. Where a set-aside system is used, the contract shall state a required minimum utilization.

8 The program may provide additional incentives for Boost businesses meeting two or more of the
9 additional criteria for certification.

10 Section 9. Violations and Sanctions A person who violates any provision of this ordinance or the
11 rules promulgated under its authority or who fails to comply with representations or commitments made
12 to receive a benefit or qualify for an incentive under the Boost program shall be subject to sanctions
13 including but not limited to: (a) liquidated damages, (b) withholding of funds, (c) a civil fine or penalty,
14 (d) disqualification from eligibility for bidding on or entering into or participating, as a subcontractor or
15 in any other manner, in a contract with the City for a period not to exceed five (5) years. The Director
16 shall set forth the sanctions and/or liquidated damages to be imposed and the reasons therefor in a
17 written order and shall promptly furnish a copy of the order to the contract awarding authority or
18 contract administering authority, and shall mail a copy by certified mail, return receipt requested, to the
19 person being sanctioned.

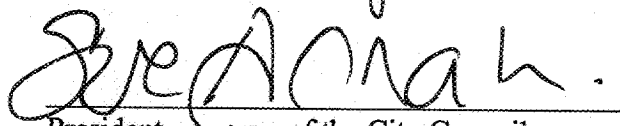
20 Section 10. Appeals. Any person against whom sanctions have been imposed by the Director
21 may appeal within fifteen (15) days from the date the Director's decision was mailed to the person being
22 sanctioned, by filing a Notice of Appeal with the Office of the Hearing Examiner. Within forty-five (45)
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1 days after receiving the Notice of Appeal, the Hearing Examiner shall convene the appeal hearing.
2 Written notice of the hearing date shall be given to the appellant and to the Department at least thirty
3 (30) days prior to the hearing. Within thirty (30) days after conclusion of the appeal hearing, the Hearing
4 Examiner presiding at the hearing shall prepare a written decision and order. The final decision shall be
5 filed as a public record with the City Clerk, and copies thereof mailed to each party of record and to the
6 Director.

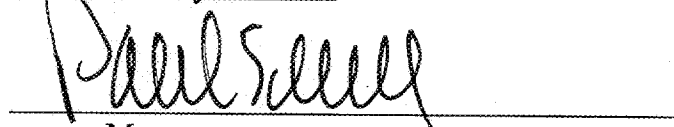
7 Section 11. Rule-Making. ESD is authorized and directed to promulgate rules to implement this
8 Ordinance and to present these rules to the Council before they become effective.

9 Section 12. This ordinance shall take effect and be in force thirty (30) days from and after its
10 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
11 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.


12 Passed by the City Council the 9th day of August, 1999, and signed by me in open
13 session in authentication of its passage this 9th day of August, 1999.

14 
15 President _____ of the City Council

16 Approved by me this 16th day of August, 1999.

17 
18 Mayor

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20 Filed by me this 16th day of August, 1999.

21 
22 City Clerk

1 (Seal)

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City of Seattle

Paul Schell, Mayor

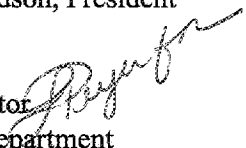
Executive Services Department

Dwight D. Dively, Director

MEMORANDUM

DATE: July 28, 1999

TO: Honorable Sue Donaldson, President
Seattle City Council

FROM: Dwight Dively, Director 
Executive Services Department

SUBJECT: ORDINANCE to Implement The "Boost" Program

I am pleased to submit the attached ordinance for consideration by the Seattle City Council. The "Boost" ordinance directs the Executive Services Department (ESD) to create a new program to promote the use of small, economically disadvantaged businesses in City contracting.

Overview

As one element of our four-part Contracting Equity Framework, *Boost* is intended to create incentives for the use and development of businesses most in need. The new program would designate selected small businesses to be given a short-term competitive advantage in seeking public projects. Criteria for participation in the *Boost* program would include:

Small Economically Disadvantaged Businesses that are defined as such based on annual revenues and the financial resources of the owner. In developing standards, ESD would model the approach used by the federal Small Business Administration (SBA), which sets annual dollar ceilings for various standard business classifications, and would also set limits for the financial resources of the owners so that businesses with very wealthy owners or numerous affiliate businesses would not be considered eligible to participate.

Location Within the City of Seattle as a way of recognizing and offsetting the competitive disadvantages experienced by small businesses with fixed offices or distribution points physically within the City limits, and as an incentive to encourage other small businesses to locate and remain within the City.

Location Within Economically Distressed Areas, which are designated based on federal or local criteria, such as empowerment zones, enterprise communities, "HUBZones," or other recognized areas of concentrated poverty.

Participation in Business Development Program, based on completion or enrollment in programs geared to developing competitive and technical business skills.

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The regional planning group anticipates creating a collaborative process for determining the eligibility of businesses, and is considering a certification process similar to that administered by the State of Washington's Office of Minority and Women Business Enterprises (OMWBE). Businesses identified as eligible *Boost* participants could receive up to 10% as a competitive discount on selected projects, whether they are performing as prime contractors, or when they are used as subcontractors or suppliers.

Cost-Benefit Analysis of the *Boost* Program

We see two potential cost impacts of the *Boost* program. First, there is an administrative investment needed to establish and run the program, including both the City's contribution to the cost of determining eligibility of several hundred businesses, as well as the costs of contract administration. At this time, we have decided to design the *Boost* program at a level that can be implemented using funds budgeted for administration of the WMBE program, at least through the year 2000.

The second set of costs represents potential increases to the costs for contracting as a result of the financial bonuses awarded to *Boost* firms, or to prime contractors utilizing *Boost* firms for subcontracted work. At this time, we do not feel it is realistic to attempt to do a detailed fiscal impact analysis, as there is no basis for comparison. We do not know the cost impacts of the old WMBE program on the City's Capital Improvement Plan (CIP). Even though it is generally believed there was some impact, we lack the information necessary to measure it.

Second, we do not know how successful *Boost* will be. The program utilizes new criteria, which makes it impossible to guess participation by the small business community. The utilization of *Boost* firms by prime contractors is also impossible to predict, as is the potential success of *Boost* bids in the competitive public works contracting process.

Taken together, these issues suggest that a fiscal impact analysis is unrealistic at this time, so ESD has proposed to (a) design the program to remain within available expenditure authority through the year 2000, as explained earlier, (b) commit to a project-by-project assessment of whether to apply the *Boost* incentive to specific public works projects, and (c) compile and submit quarterly reports to the City Council regarding the *Boost* program, how it is operating, and what the experience of the incentive bonuses awarded to bidders has been.

A quarterly reporting cycle would also be consistent with guidance from a recent planning session including some members of the City Council, the executive staff, and others. As the *Boost* program proceeds to more detailed design, ESD will incorporate a system of regular review of the program to see whether it is producing the intended results, to test our preliminary performance measures, and to assess whether modifications in program operation are needed

We plan to collect this kind of quantifiable information on a regular basis to build our understanding of the cost-benefit impacts of the program. I am also very interested in ongoing assessments of the program directly from the perspective of the owners of the small businesses we are trying to help. Therefore, ESD will incorporate a customer service component in the reporting cycle, including both the ease, or difficulty, of participating in *Boost*, as well as the amount and dollar level of contracts obtained.

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In developing the Contracting Equity Framework, we looked at various programs across the country. We believe we have a strong package but, if in two years our performance measures indicate the *Boost* program is not effective, we intend to come back to the City Council with that information and our recommendation on actions to take at that point.

Integration with Other Elements of the Contracting Equity Framework

Our discussions within the City, and with our regional partners, have brought us to the realization that simply providing public contracts to small, economically disadvantaged businesses is not the best strategy for helping them to survive, let alone become viable. This is the underlying rationale for establishing participation in business development programs as a *Boost* criteria, and it is a theme we are pursuing with the companion strategies of the Contracting Equity Framework:

The City's *Consultant Roster Program*, which authorizes City departments to select groups of qualified consultants for specific categories of services and to contract with those consultants as work is identified, is being retooled through the *Copernicus* project. Part of this work involves coordination with the development of the *Boost* program, so that the *Boost* themes of providing substantial consultant contracts to small businesses are reflected in the Roster Program as well.

With the leadership of King County, the regional partners hope to implement a program to provide *Bonding Assistance* to small businesses. The lack of bonding capability has constantly been cited as a major barrier to small firms in competing for public works projects. Therefore, we believe that a program of bonding assistance is a necessary companion strategy to the *Boost* program.

Finally, we are thinking carefully about the City's role in the development of small businesses. We feel it is critical to balance the provision of contracting opportunities (as *Boost* is designed to do) with the technical assistance those businesses need if they are to have the best chance of succeeding after their term of participation in *Boost* concludes and they move on to the open competitive contracting environment. The Contracting Equity Framework recognizes this balance, and we have reflected it by continuing to be a funding partner in support of agencies providing direct services to small businesses, such as the Contractors' Resource Center of the Central Area Motivation Program.

We have come a long way since November 3, 1998, and I am pleased that our regional partners have joined the City in launching new strategies to achieve equity in contracting. I hope you will support the *Boost* legislation. If you have questions, or would like an individual briefing on this matter, please contact Rod Brandon, Director of ESD's Contracting Services Division, at 684-0324. Thank you.

cc: Rod Brandon
Germaine Covington

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:

Masha Chae

_____	_____
_____	_____
_____	_____
_____	_____

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

PRESIDENT'S SIGNATURE

STATE OF WASHINGTON - KING COUNTY

109350

City of Seattle, City Clerk

—ss.

No. 02, 03, 05/ORD

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

CTOT: 119592, 94, 601,

was published on

08/25/99

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

R. Patterson

Subscribed and sworn to before me on

08/25/99

McElvanez

Notary Public for the State of Washington, residing in Seattle

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on August 9, 1999, 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 684-8344.

ORDINANCE NO. 119592

AN ORDINANCE relating to the Seattle Center; authorizing the Seattle Center Director to execute a construction agreement with the Seattle Children's Theatre Association for construction of a technical pavilion addition to the Charlotte Martin Theatre.

ORDINANCE NO. 119594

AN ORDINANCE authorizing an expenditure from the Judgment/Claims Fund to be reimbursed by the Drainage Fund to settle the claim of Diane Dambacher (C-84860), all by a two-thirds vote of the City Council.

ORDINANCE NO. 119601

AN ORDINANCE to be known as the Fair Contracting Practices Ordinance and prohibiting discrimination in contracting; providing remedies for victims of such discrimination, and creating a new position and increasing expenditure allowance in the 1999 Seattle Office for Civil Rights budget.

ORDINANCE NO. 119602

AN ORDINANCE creating a program to promote the use of small economically disadvantaged businesses in competing for City contracting opportunities.

ORDINANCE NO. 119603

AN ORDINANCE directing City Departments to use available tools to promote race and gender equity in contracting.

ORDINANCE NO. 119605

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Publication ordered by JUDITH PIP-PIN, City Clerk.

Date of official publication in Daily Journal of Commerce, Seattle, August 25, 1999. 8/25(199350)