



# KING COUNTY AUDITOR'S OFFICE

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## Contracting Inequities Persist in Race-Neutral Environment

MEGAN KO  
DALE MARKEY-CRIMP  
ANU SIDHU  
BROOKE LEARY

### Executive Summary

While the County has made strides to increase contracting opportunities to small businesses, contracting inequities persist and the County could do more to reduce racial disparities. We found that the County disproportionately contracts with White-owned businesses, to the detriment of some Black-owned businesses. Racial disparities in county contracting happen in part due to limited accountability. The County has not established clear responsibility for increasing the use of minority- and women-owned business enterprises (MWBs), further limiting transparency and achievement of strategic goals. We recommend the County put in place processes to conduct a formal study of racial disparities, designate a process owner for increasing opportunities for MWBs, and increase capacity to implement pro-equity contracting countywide.



**King County**

## Auditor's Office Terms and Values

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**Language is an important tool for advancing equity and accountability, and data systems sometimes include words that lag behind the evolution of terms.** The words used in the body of the report may not match terms used in exhibits. For exhibits, we selected terms based on their original data sources. We note instances where we made these changes in the text or footnotes. The following list identifies some changes we made in this report and the communities which may be affected:

- Department of Executive Services data disaggregates the racial category "Subcontinent Asian" from "Asian or Pacific Islander" (API) but does not further disaggregate API nor disaggregate "American Indian, Alaska Native," which are used to represent a diversity of peoples. In this report, we use the term "Indigenous people" to reference communities categorized in the data as "American Indian/Alaska Native (AIAN)."
- The terms "minority" and "women" are used to mirror the language used by the Washington State Office of Minority- and Women-Owned Business Enterprises. Minority refers to Black, Indigenous, Asian, and Latinx/Hispanic people. The original data system categorizes people as either "woman-owned" or not. Information for intersex people as well as for people's gender identities was unavailable.

**The King County Auditor's Office is committed to equity, social justice, and ensuring that King County is an accountable, inclusive, and antiracist government.** While planning our work, we develop research questions that aim to improve the efficiency and effectiveness of King County government and to identify and help dismantle systemic racism. In analysis, we strive to ensure that communities referenced are seen, not erased. We promote aligning King County data collection, storage, and categorization with just practices. We endeavor to use terms that are respectful, representative, and people- and community-centered recognizing that inclusive language continues to evolve. For more information, see the King County [Equity and Social Justice Strategic Plan](#), King County's [statement on racial justice](#), and the King County [Auditor's Office Strategic Plan](#).

## Acknowledgment

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We would like to acknowledge the work performed by the Business Development and Contract Compliance (BDCC) and Procurement & Payables (P&P) offices of the Finance and Business Operations Division (FBOD) of the Department of Executive Services. We began our audit close to the start of the COVID-19 pandemic. Even in this exceptional environment, FBOD staff made time to answer our questions and provide easy access to their data systems, policies, and records.

The nature of performance audits is to focus on areas for improvement, which does not highlight the good work BDCC and FBOD are doing. In 2019, BDCC partnered with King County's Interdepartmental Development Forum to implement Equity and Social Justice Innovation Plans, which are a best practice for increasing opportunities for minority- and women-owned business enterprises (MWBES). In 2020, BDCC started sending agencies monthly reports to increase transparency and accountability for meeting contracting requirements for spending with small businesses. Further, BDCC and FBOD have worked with county agencies to conduct targeted outreach to MWBEs, offer technical assistance, and more. P&P has also recently launched an e-Procurement system through its Procurement Technology Modernization project. The new system is intended to streamline communication and increase transparency of the procurement process. FBOD, BDCC, and P&P have worked collaboratively throughout the audit process and we have appreciated their partnership in this work.

Many of the issues we identify in this audit have systemic and societal causes that are outside of the control of any one agency and will require the collective action of county stakeholders to fully address. In addition, Washington state law prohibits preferential treatment based on race and gender in contracting, constraining the ways FBOD can take action to reduce racial inequities in public contracts. We discuss these and other challenges in our audit report.

# Contracting Inequities Persist in Race-Neutral Environment

## REPORT HIGHLIGHTS

### What We Found

King County disproportionately contracted with White-owned small businesses while under-contracting with Black-owned and Latinx/Hispanic-owned small businesses. After state law banned race-based preferential treatment in contracting in 1998, the County started its Small Contractor and Supplier (SCS) program, a race-neutral initiative focused on small businesses. County agencies have worked to increase outreach to minority- and women-owned business enterprises (MWBEs), but the County has not done a disparity study that could lead to more targeted efforts.

MWBEs and small businesses face several roadblocks to public contracting, such as complicated processes, excessive evaluation criteria, and high insurance costs. County agencies have taken steps to remove these barriers, but actions have been siloed, reducing consistency and impact. There is no clear accountability structure for increasing opportunities for MWBEs and few specific, measurable countywide goals for spending with these firms. This framework does not effectively support the pro-equity contracting goals established in the County's Equity and Social Justice Strategic Plan.

The SCS program increased county contracting opportunities with small businesses, investing more than \$47 million in these businesses annually since 2014. However, without early monitoring and enforcement, prime contractors may have cost small subcontractors up to \$1.9 million over three years by not meeting SCS requirements. Moreover, the poor data reliability of the SCS directory may reduce the effectiveness of the small business program.

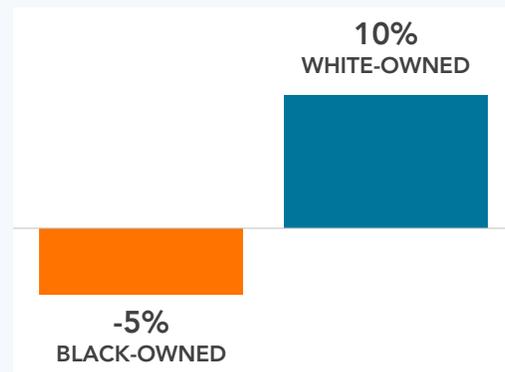
### What We Recommend

We recommend that the County put in place steps to conduct a formal study of racial disparities. We also recommend that the County clarify roles and responsibilities for increasing opportunities for MWBEs, create specific, measurable targets for strategic equity goals, reduce barriers to contracting, and increase access to resources that increase staff capacity to implement pro-equity contracting countywide.

### Why This Audit Is Important

In 2019, King County awarded \$2.1 billion in contracts. King County's strategic equity goals include expanding contracting opportunities to MWBEs. While Washington state law prohibits preferential treatment in contracting, it allows agencies to set voluntary goals for contracting with MWBEs. The state attorney general has interpreted state law to allow for some race- and sex-conscious measures in contracting (so long as they do not favor a less-qualified contractor over a more-qualified one).

County disproportionately awarded more contracts to White-owned small businesses.



Note: For a further breakdown of this graphic by other racial groups, please see exhibit B.

Source: King County Auditor's Office analysis of Business Development Contract Compliance data between July 2015 and June 2020.

# Contracting Inequities Persist in Race-Neutral Environment

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# Racial Disparities Exist in Small Contractor and Supplier Program

## SECTION SUMMARY

**Within King County's Small Contractor and Supplier (SCS) program, White-owned businesses were awarded more contracts while Black-owned and Latinx/Hispanic-owned businesses were awarded fewer.** We found that of contracts monitored by the SCS program, they were disproportionately awarded to White-owned businesses and significantly under-awarded to Black-owned and Latinx/Hispanic-owned businesses. Data monitoring by the Business Development and Contract Compliance (BDCC) office does not track racial disparities, reducing transparency and accountability. We recommend that the County track data on racial disparities to better target efforts to reduce barriers in public contracting. We also recommend that, when appropriate, the County conduct a disparity study to determine whether it can use race- and sex-conscious strategies to increase equity in county contracting.

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## White-owned businesses over-represented in contracts with SCS requirements

**Efforts to increase spending with small contractors have shown some success, while disproportionately benefiting White-owned firms.** As a result of King County's SCS program, from 2014 through 2018 the County awarded between \$47 and \$95 million per year to small firms in contracts with SCS requirements, in-line with the program's goal to support small businesses. However, among contracts with SCS requirements between July 2015 and June 2020, while White-owned firms accounted for 65 percent of SCS firms, they received 75 percent of these contracts. In contrast, Black-owned firms accounted for 12 percent of SCS firms but only 7 percent of SCS contracts while Latinx/Hispanic-owned firms accounted for 6 percent of SCS firms but only 3 percent of SCS contracts (see exhibit B).<sup>1</sup> This data excludes 188 instances where race was missing and does not include information on business type or qualification of the SCS firms.<sup>2</sup> The SCS program allows eligible firms to apply for SCS certification, which can advantage them in the procurement process (see exhibit A).<sup>3</sup> The BDCC office within the Finance and Business Operations Division (FBOD) manages the SCS program. BDCC is viewed by agencies as the County's expert in pro-equity contracting.

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<sup>1</sup> This represents a five-percentage point underrepresentation of Black-owned SCS firms and three percentage point underrepresentation of Latinx/Hispanic-owned SCS firms, which are statistically significant at the 99 percent confidence level. We performed a chi-squared analysis comparing the total number of White-, Latinx/Hispanic-, and Black-owned SCS firms to the number of firms the County contracted with between July 2015 and June 2020. We found that the County contracted much less often with Black-owned and Latinx/Hispanic-owned SCS firms compared to their availability among SCS firms.

<sup>2</sup> Therefore, it is possible that racial disparities could in part be driven by different qualifications of businesses based on the County's contracting needs. This is a limitation of our analysis. Additionally, the 188 instances where race was missing from the data were excluded from this analysis.

<sup>3</sup> For a summary of the County's pro-equity contracting programs and policies related to SCS firms, see appendix.

EXHIBIT A: To be eligible for certification, a small contractor or supplier (SCS) must be small based on income and business size.



SCS owner's net worth must not exceed \$1.32 million



SCS business income and staff size must not exceed 50% of federal standards

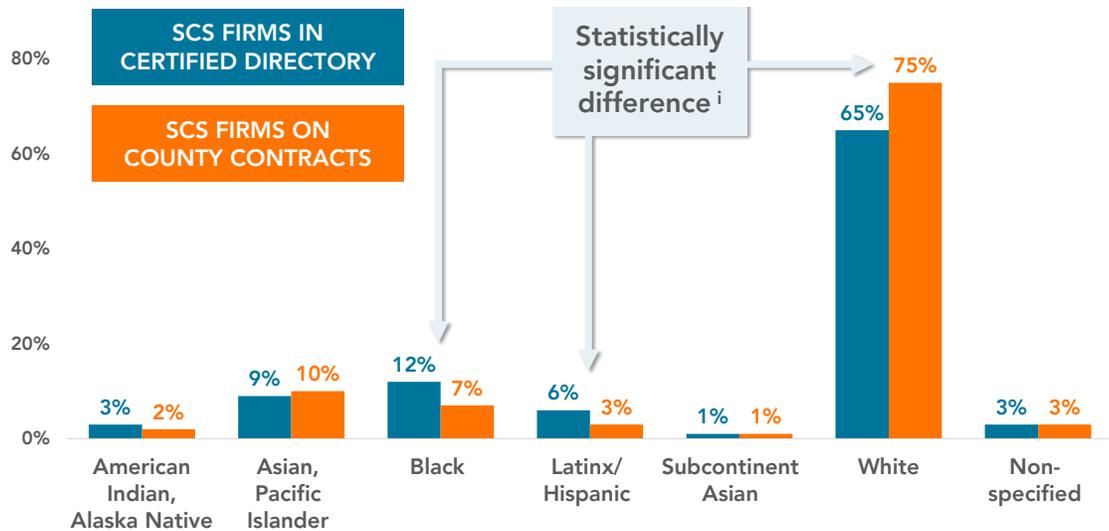
1,878

Number of SCS-certified firms as of August 2020

Source: King County Auditor's Office.

Note: The U.S. Small Business Administration establishes relevant federal government standards.

EXHIBIT B: County awarded disproportionately more contracts to White-owned small contractors and suppliers (SCS) and fewer to Black-owned and Latinx/Hispanic-owned SCS businesses, July 2015 to June 2020.



Source: King County Auditor's Office analysis of Business Development Contract Compliance data.

<sup>i</sup> Statistically significant difference represents a five-percentage-point underrepresentation of Black-owned SCS firms and three percentage point underrepresentation of Latinx/Hispanic-owned SCS firms, which are statistically significant at the 99 percent confidence level. In contrast, White-owned SCS firms are overrepresented by 10 percentage points, significant at the 99 percent confidence level. This analysis is not a disparity study and does not consider the qualifications of each firm. There were 188 instances where race was missing in the data; we excluded these instances from this analysis.

Black-owned businesses might have earned less

**The differences in contracting for Black-owned businesses might have been equivalent to millions of dollars over five years.** While Black-owned firms worked on seven percent of SCS contracts, their earnings only accounted for four percent, or \$5.48 million, of the \$137 million value of SCS contracts from July 2015 to June 2020. If Black-owned firms earned the same percentage of contract dollars as they did number of contracts (at seven percent), we would have expected them to earn up to \$4.9 million more over the period. In addition, if Black-owned firms were represented proportionately among SCS contracts (at about 12 percent), we would have expected them to earn up to \$7 million more. In contrast, White-owned businesses worked on 75 percent of SCS contracts and earned 83 percent of the value of SCS contracts.

**Part of the reason Black-owned businesses earn less is because they are less likely to be selected as prime contractors.** As a prime contractor, a firm is the lead on a project and generally earns more than their subcontractors. In addition to financial gain, prime contractors get management experience and work more closely with county agencies, providing further growth and networking opportunities. We found that between July 2015 and June 2020, SCS-certified businesses bid as prime contractor 321 times and won 89 times. Of these, White-owned SCS businesses constituted 69 percent of total bids and 76 percent of wins, while Black-owned SCS businesses constituted 10 percent of total bids and only 6 percent of wins (see exhibit C). Black-owned businesses won, on average, less than 16 percent of the time they bid, lower than any other racial or ethnic group (see exhibit D).<sup>4</sup>

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<sup>4</sup> Additionally, our analysis shows that 75 percent of Black-owned SCS businesses and 79 percent of Latinx/Hispanic-owned SCS businesses that bid never won as a prime contractor, compared to only 50 percent of White-owned SCS businesses.

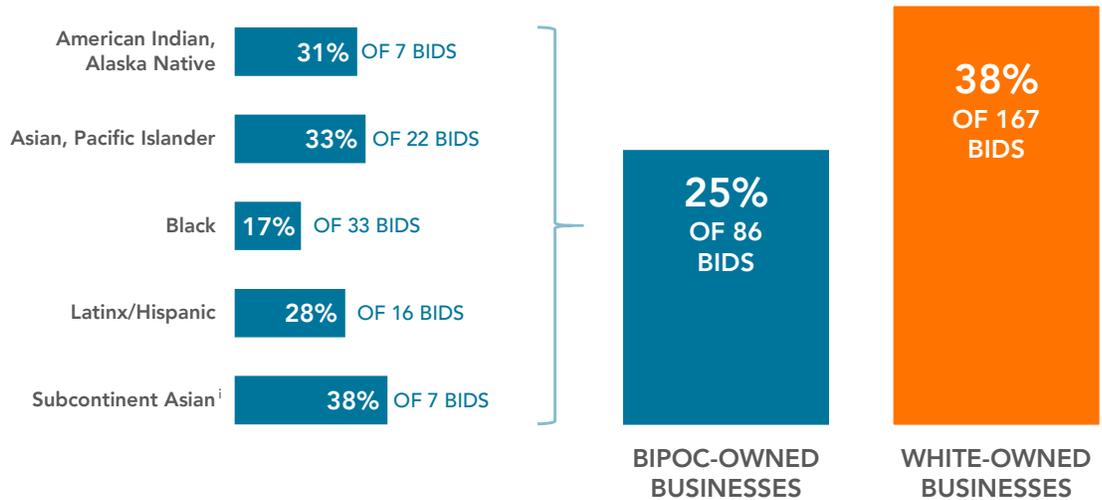
EXHIBIT C: White-owned small contractors and suppliers (SCS) bid and won more as prime contractors, while Black-owned SCS businesses won less, July 2015 to June 2020.



Source: King County Auditor’s Office analysis of online vendor registration portal.

Note: Two bids by non-specified racial identities were excluded from this data.

EXHIBIT D: White-owned businesses won at a higher frequency than businesses owned by Black, Indigenous and people of color (BIPOC) as prime contractors, July 2015 to June 2020.



Source: King County Auditor’s Office analysis of King County online vendor registration portal.

Note: Racial categories are represented as presented in the data. The number of bids presented are from a statistically represented sample and do not reflect the total bid amount between the time period.

<sup>i</sup> The Subcontinent Asian racial category appears to have a higher frequency of wins than the White racial category. However, the sample size of the Subcontinent Asian group is very small with a total of six bidders of which two won, driving the percentage to look much higher. In comparison, White-owned firms bid 222 times of which 68 won.

**Racial disparities persist in part because these disparities are not proactively tracked.** BDCC's annual SCS report shares data on the number of contracts awarded to SCS firms. While BDCC has race data on successful SCS contractors, it does not track race data of other available SCS firms, which means that BDCC does not assess or report on the extent to which the program is reaching SCS firms by race. Best practice states that consistent monitoring of disparities can help agencies tailor strategies to address barriers.

Racial inequities in contracting may occur for a variety of reasons, including systemic ones. However, without ongoing tracking of these inequities it is difficult to know whether mitigating strategies actually work to reduce inequities. For example, the County recently implemented an Equity and Social Justice Innovation Plan, applying MWBE goals on certain contracts with the aim of increasing spending with minority- and women-owned businesses. Tracking outcomes on these contracts can help determine whether these efforts are effective and under what circumstances, which will help inform continuous improvement.

## Recommendation 1

**The Business Development and Contract Compliance office should develop, document, and implement a strategy to track racial inequities in contract spending for the Small Contractor and Supplier program on an ongoing basis.**

County has not conducted a disparity study

**The County has not conducted a disparity study that could allow it to use race- and sex-conscious contracting practices.** A disparity study is a study that assesses, quantifies, and evaluates the prevalence, significance, and scope of race- or sex-based discrimination in the marketplace.<sup>5</sup> Governments must find strong evidence of a significant market disparity before they can put race- and sex-conscious contracting practices in place.<sup>6</sup> A disparity study will also typically make recommendations for steps jurisdictions should take to maximize the efficacy of race- and sex-neutral contracting measures prior to recommending jurisdictions implement race- and sex-conscious contracting practices. A disparity study alone is not a guarantee that a jurisdiction will be allowed to implement race- and sex-conscious programs.<sup>7</sup>

**Other local governments have recently completed or are considering conducting disparity studies.** As mentioned above, Washington state received the results of a disparity study in 2019. The City of Seattle is also working toward conducting a disparity study and released a request for proposals for this study in 2020 with a

<sup>5</sup> Disparity studies take into account business sector and qualifications of firms to perform work, which we do not assess in this audit.

<sup>6</sup> In *City of Richmond v. J.A. Croson Co.* 488 U.S. 469 (1989), the Supreme Court stated that discriminatory exclusion in public contracting can be inferred where there is a significant statistical disparity between the availability of qualified MWBEs willing and able to perform in the market and the number of these businesses with government contracts in that same market ("utilization"). A utilization that is less than 80 percent of the group with the highest utilization rate is a generally recognized benchmark for showing a significant disparity.

<sup>7</sup> This report expresses no view about whether a race-conscious program may be permitted under state law.

budget of \$800,000. This study will provide information to assist Seattle in determining whether it might be able to use race- and sex-conscious programs to address systemic racism. Because disparity studies are jurisdiction-specific, King County cannot adopt Seattle's study as its own to justify race- and sex-conscious contracting.

**King County has not yet implemented many key steps that a 2019 disparity study of contracting at the state level indicate must happen before race-conscious measures would be allowed.** While FBOD, BDCC, and King County departments and divisions have taken steps to implement race- and sex-neutral contracting measures to increase opportunities for minority- and women-owned businesses, there are also several steps that the County has not yet taken. For example, the County does not currently track MWBE participation across all contracts countywide. See exhibit E for a list of race-neutral recommendations included in a 2019 disparity study of Washington state government contracts and information on whether those practices are in place in King County. A part of why these practices may have not yet been implemented is because the County lacks a process owner responsible for implementing practices to increase MWBE usage countywide, an issue that is further discussed in section 2, "County Lacks Minority- and Women-Owned Business Program."

EXHIBIT E: King County has not implemented several steps needed to use race-conscious contracting, per a 2019 state disparity study.

Recommendations to Washington State from 2019 Disparity Study	Implemented at King County
Targeted outreach to MWBEs	YES
Hold pre-bid conferences	YES
Increase technical assistance to MWBEs and small firms	YES
Implement a data collection and monitoring system to track participation of MWBEs and small firms on all contracts	PARTIAL <sup>i</sup>
Lengthen solicitation times	PARTIAL
Unbundling contracts by size and scope	PARTIAL
Develop benchmarks for utilization of MWBEs and small firms	PARTIAL
Review evaluation requirements on contracts	PARTIAL
Expedite time of payment to firms (ideally payments should happen within two weeks)	PLANNING <sup>ii</sup>
Provide training to contracting staff on unconscious bias in contracting	NO <sup>iii</sup>

Source: State of Washington 2019 Disparity Study and King County Auditor’s Office analysis.

Note: The recommendations were made to Washington state and not to King County. King County column does not consider the quality or sufficiency of implementation.

<sup>i</sup> Partial implementation means that some county contracts include these practices but not all.

<sup>ii</sup> Planning implementation means that there has been some discussion, but no implementation yet of this practice. The Interdepartmental Development Forum of pro-equity county contracting staff are actively collecting data to assess implementation of expedited payment but have not yet done so.

<sup>iii</sup> In our interview with Department of Community and Human Services staff, they mentioned they would like to provide an unconscious bias training to contracting staff but had not yet done so.

## Recommendation 2

**In order to determine an appropriate time to conduct a disparity study, the process owner the County identifies for Recommendation 4 should assess and document what steps should be taken prior to a disparity study.**

## Recommendation 3

**If disparities persist following steps taken per Recommendation 2, then the County should conduct a disparity study.**



# County Lacks Minority- and Women-Owned Business Program

## SECTION SUMMARY

**The County lacks clear roles and responsibilities for pro-equity contracting, limiting progress on strategic goals.** The County does not have a designated MWBE program nor does it have specific, measurable goals for spending with MWBEs at the county-level. Meanwhile, MWBEs and other small firms face myriad barriers to public contracting including limited outreach, costly insurance, and strict evaluation criteria. Some county agencies have started to develop ways to overcome these difficulties, but without clear roles and responsibilities, progress has been uneven. We recommend that the County designate a process owner responsible for increasing contracting opportunities for MWBEs, increase tracking of relevant spending, and rollout clear policies and procedures for how to address barriers to contracting.

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## County lacks MWBE lead

**Since there is no process owner charged with increasing contracting opportunities for MWBEs, there is little accountability for strategic pro-equity contracting goals.** In lieu of a process owner, the County has a number of independent decision-makers that influence pro-equity contracting. These decision-makers include county department and division staff who decide what to buy and when; and groups like Procurement & Payables (P&P), BDCC, and the Office of Equity and Social Justice, which lead and support the work in various ways (see exhibit F). BDCC is the only procurement agency that focuses on pro-equity contracting, and its main focus is small businesses, as per King County Code 2.97. The separation of P&P and BDCC may reduce the impact of pro-equity contracting by limiting communication and collaboration and by siloing decision-making. P&P noted a lack of oversight of the procurement process at county agencies. According to an MWBE advocate we interviewed, even with commitment at the top, without communicating to the people doing contract work on the ground, an organization will not get anywhere.

EXHIBIT F: County lacks process owner for increasing contracting opportunities for minority- and women-owned business enterprises.



Source: King County Auditor's Office.

**Other governments have programs focused on MWBEs, increasing accountability.**

At the state level, the governor has a subcabinet on business diversity made up of 12 agencies. At the local level, the City of Seattle has a citywide MWBE program managed by its Finance and Administrative Services Section. An organizational structure with clear assignment of responsibility helps to achieve objectives. For example, at the City of Seattle, departments are responsible for setting annual spending goals, the mayor approves goals, and the Finance and Administrative Services Section rolls them into a citywide target and monitors progress. Departments have either a dedicated or part-time MWBE advisor, and the City has an MWBE interdepartmental team to share best practices and consult on barriers.

As part of his equity and social justice strategic plan, the County Executive aimed to report annual increases in the number of MWBEs servicing external contracts by 2020. However, the County has neither a process owner nor clear roles and responsibilities to track progress or otherwise hold itself accountable to this goal. Of the eight agencies we interviewed, only Road Services Division (Roads) said it had a goal to see an annual increase in MWBE spending. Without a clear assignment of responsibility for achieving this goal, agencies can opt out of working toward it.

## Recommendation 4

**The County Executive should design, document, and communicate roles and responsibilities, including a process owner, for increasing contracting opportunities for minority- and women-owned business enterprises.**

County requires MWBE goals only on select construction contracts

**County code only requires MWBE goals on construction contracts with SCS requirements, reducing opportunities for minority- and women-owned businesses.** Procurement reform in 2020 (CON 7-12 AEO) established a county policy that requires voluntary goals for MWBEs on county-funded construction projects with SCS requirements. King County Code 28.20 states that county departments must establish goals for the use of MWBEs more generally, but it is unclear whether those provisions are still in effect.<sup>8</sup> Most county agencies do not have specific, measurable MWBE goals. A county equity expert said this was because of concerns that goals would be confused with quotas. While state law prohibits mandatory quotas, it does not prohibit voluntary goals for departments or for contractors. Furthermore, there is nothing in state law that would prevent the County from expanding this policy and requiring voluntary MWBE goals on all procurement contracts.

**The County does not report year-over-year spending on MWBEs, which would highlight progress toward equity goals and help hold departments accountable.** External stakeholders noted that it would be helpful to small businesses and small business advocates to see how much firms are earning disaggregated by race, sex, and industry. Communicating information to external parties, including the general public, is a way for government agencies to ensure that these parties can help achieve government objectives. Other jurisdictions with clear department-level MWBE goals and transparent reporting have increased spending with MWBEs. For example, the City of Seattle publishes year-over-year spend on MWBEs by department and compares spending to voluntary goals. In 2018, Seattle spent 14 percent of purchasing contracts and 23 percent of consulting contracts on MWBEs, while King County spent one and four percent, respectively.

## Recommendation 5

**The process owner the County identifies for Recommendation 4 should work with agencies to develop, document, and publicly report annual, voluntary department-level and county-level goals for procurement spending with minority- and women-owned business enterprises.**

<sup>8</sup> The County last updated KCC 28.20 prior to the merger of King County and Metro. KCC 28.20 references other sections of code that the County has since repealed. Staff we interviewed about KCC 28.20 either did not know it existed, noted that it was confusing, or said it was not enforced.

Small firms, MWBEs face barriers to contracting

**The County's procurement process is long and confusing, creating barriers for small businesses and MWBEs.** Four of the eight county agencies we interviewed said that submitting a bid is a difficult process. One agency said it can often take weeks to put a bid in with the county compared to a few days at other institutions. As a result, the county process may require firms to expend more effort to compete for contracts than they are willing or able to spend. One MWBE advocate noted that small firms do not have the same capacity as larger firms to complete multiple requests for proposals, which are time-intensive. One agency said this weeding out process decreases the quality of the vendor pool, while another said procurement staff often see the same contractors winning prime contracts. According to the state Office of Minority and Women Business Enterprises (OMWBE), organizational processes often create unintended barriers that prevent small businesses and MWBEs from accessing public contracts. As a result, OMWBE says that organizations should review procurement practices to reduce barriers. The head of another MWBE advocate noted that it is important to support small firms through the often-complicated process of public contracting.

Agencies we interviewed listed several barriers to contracting along with some of the ways their agencies have tried to address them (see exhibit G). We get into some of these barriers and promising practices in more detail later in this section. According to OMWBE, women and people of color face greater structural barriers than other small firms because of lack of access to capital, lack of experience or networks, and/or lack of mentorship opportunities from larger firms. Language barriers may also exist among small business owners, which make it more difficult to fill out paperwork to gain certification or compete for contracts. FBOD aims to reduce barriers to certification by working with the state OMWBE to recognize each other's certifications so that a firm that is SCS-certified can more easily be MWBE-certified and vice versa.

EXHIBIT G: Department and division staff listed several barriers to contracting and ways to address them.

Select barriers	Ways county agencies may address barriers
Not hearing about opportunities	<ul style="list-style-type: none"> <li>• Remind or help firms register as county vendors</li> <li>• Hold networking events</li> <li>• Rely on diverse networks for outreach</li> </ul>
Not having time to prepare bids, proposals	<ul style="list-style-type: none"> <li>• Do quarterly forecasting and planning to advertise opportunities earlier</li> </ul>
Facing costly insurance premiums	<ul style="list-style-type: none"> <li>• Include cost of premium in contract price</li> <li>• Negotiate premiums based on contract risk</li> <li>• Limit insurance period to contract term</li> <li>• Provide bonding assistance</li> </ul>
Facing excessive evaluation criteria	<ul style="list-style-type: none"> <li>• Remove criteria that limit competition, like excessive experience requirements</li> <li>• Break up the work so more firms are eligible</li> </ul>
Getting stuck as subcontractors	<ul style="list-style-type: none"> <li>• Use rosters that allow small firms to compete against each other</li> <li>• Train small businesses how to register for rosters</li> <li>• Hire contractors that agree to mentor small businesses and MWBEs, for example, using Equity and Social Justice Innovation Plans</li> </ul>

Source: King County Auditor’s Office analysis of agency interviews.

**Timely knowledge of contracting opportunities takes work**

**County agencies have worked separately to increase outreach to small businesses and MWBEs.** For example, the Department of Information Technology (KCIT) holds an annual vendor forum, while the Solid Waste Division (SWD) hosts pre-bid meetings in local communities. In-line with best practice, the Department of Community and Human Services (DCHS) and Wastewater Treatment Division (WTD) advertise upcoming procurements months in advance, compared with two weeks’ notice as required by law. To find new contractors, Roads and the Department of Human Resources (DHR) engage frontline staff and county affinity groups, respectively. Agencies also said they give P&P outreach lists to send opportunities to MWBEs and small businesses once opportunities are made public. Because different agencies have different contracting needs and businesses provide different services, not all businesses will benefit from improved outreach by just one or several county agencies.

**Many businesses did not register as county vendors due to siloed IT systems and poor communication, causing them to miss contracting opportunities.** Around 70 percent of users failed to register as a county vendor due to the poor usability of the registration system, which the County retired in late 2020. Without a successful registration, businesses do not receive email notices of upcoming contracts. For small businesses, the process is even more complex. The system where small businesses apply for SCS certification is different than where they register as county vendors. Some small businesses do not know they need to register separately as county vendors and as a result, do not receive notices of upcoming contracts.

In October 2020, the County moved to a new vendor registration system that it expects to be easier to use. However, since smaller firms have less capacity to navigate bureaucratic changes, there is a risk that SCS firms will not register as county vendors and continue to miss contracting opportunities. P&P staff have provided technical assistance to some firms registering on the new system but does not plan to offer training to vendors on how to use the new tool.

## Recommendation 6

**The Business Development and Contract Compliance office and Finance and Business Operations Division should develop, document, and implement a plan to ensure that all active Small Contractors and Suppliers are registered as county vendors.**

High insurance premiums can reduce competition

**High insurance premiums are barriers for small businesses and MWBEs, reducing competition.** Minimum insurance requirements set by the Office of Risk Management Services (ORM) include general liability coverage of \$1 to \$2 million for contractors and/or subcontractors on non-construction contracts. On IT projects, the County requires \$5 million of cyber liability coverage, which is unlikely for small firms to be able to get.<sup>9</sup> A staffer at the state OMWBE noted that a common barrier to small businesses are solicitations that often have disproportionately large bond or insurance requirements given the size of the contract; for example, a \$1 million dollar bond on a contract worth \$20,000. In terms of insurance, pro-equity goals are at odds with goals related to finance and cybersecurity. However, the County has explicitly stated that the need to achieve our strategic objectives, such as equity, take priority over other risk areas, such as financial risks.<sup>10</sup> Best practice for pro-equity contracting is to review standard contract language to reevaluate requirements that may be barriers for small businesses and MWBEs.

<sup>9</sup> DHR said that even a multinational corporation needed ORM to lower the insurance requirement to \$3 million, the industry standard, in order for the firm to perform a county contract.

<sup>10</sup> Structural racism is the county's number two risk as per its November 2020 Enterprise Risk Register. Data breaches related to cybersecurity and budget issues fall outside of the top 10.

**The County allows prime contractors to carry insurance for their subcontractors, but prime contractors typically do not do so, leaving subcontractors with higher overhead.** If small businesses are not able to cover the cost of insurance, a prime contractor might choose a different subcontractor. This limits competition for subcontracting work, which could drive up cost, reduce quality, and prevent some small firms from obtaining valuable experience that would allow them to grow. Due to well-documented systemic racism in the finance industry, MWBE firms have greater barriers to insurance than other small businesses.

**Agencies have different strategies to make insurance requirements more accessible, but there is no central guidance on how to address this barrier from ORM or FBOD.** DHR said it negotiates with ORM for lower requirements for small businesses, while rate-funded agency SWD has built the cost of insurance premiums into its contracts. DCHS worked with ORM to create a risk matrix for all its programs to clarify what levels of insurance are needed based on contract risk. All these practices can make insurance more affordable for smaller firms. The right approach depends on what smaller businesses need and what agencies can afford. ORM recommends agencies either build insurance premiums into the price of their contracts or reimburse firms for the premiums. ORM does not recommend waiving insurance requirements, which help protect small firms from costs that could bankrupt them in the event of a lawsuit.

### Recommendation 7

**The process owner the County identifies for Recommendation 4 should work with the Office of Risk Management to review, revise, and communicate standard contract language on insurance requirements to reduce the extent to which insurance is a barrier to contracting with King County for small businesses and minority- and women-owned business enterprises.**

### Recommendation 8

**The process owner the County identifies for Recommendation 4 should work with the Office of Risk Management to develop, document, and communicate guidance for departments and divisions to reduce the extent to which insurance is a barrier to contracting with King County for small businesses and minority- and women-owned business enterprises.**

Staff lack pro-equity training and tools

**County agencies do not have the training and tools they need to address barriers to contracting, reducing staff capacity to achieve strategic goals.** Several agencies said they wanted more training around pro-equity contracting policy and practice. Some said more communication and training were necessary on the Equity and Social Justice Innovation Plan. Innovation Plans are a best practice for increasing access to contracting opportunities among MWBEs. In partnership with King County’s Interdepartmental Development Forum in 2019, BDCC rolled out the Equity and Social Justice Innovation Plans, which ask architecture and engineering consultants to document how they maximize work and growth opportunities for MWBEs when submitting a proposal. One staffer succinctly noted a sense that departments need to “build their own wheels” to meet pro-equity goals. They said guidance on best practice from central procurement would be helpful.

P&P runs the County’s procurement website and trainings but does not offer resources on pro-equity contracting.<sup>11</sup> P&P offers sustainable purchasing resources in-line with strategic climate goals but no pro-equity equivalent. The King County Equity and Social Justice Strategic Plan calls on the County to create “visible and accessible” pro-equity contracting processes and eliminate barriers to staff seeking to promote pro-equity contracting. Similarly, management best practice is to set expectations for competence and offer resources to reach that level of competence. Because the County lacks an MWBE process owner and clear roles and responsibilities, there is no entity that has set expectations for training, resources, and competency for pro-equity contracting focused on MWBEs.

**Other governments have tools and trainings that reduce barriers to public contracting.** The OMWBE offers statewide tools for equity in public spending on its website. The City of Seattle runs monthly trainings and workshops for new staff on MWBE goals and programs. Without the right tools, agencies may miss the opportunity to apply a pro-equity lens early in the process. One MWBE advocate we interviewed said that training should be mandatory for project managers to understand why pro-equity contracting matters since their decisions can determine whether small businesses survive.

Recommendation 9

**The process owner the County identifies for Recommendation 4 should develop, document, and implement a plan to offer tools and trainings to increase contracting opportunities with King County for small businesses and minority- and women-owned business enterprises.**

<sup>11</sup> BDCC does provide information about federally funded contract requirements on its website.

Evaluation criteria can help or hurt small businesses

**Evaluation criteria can be barriers to small businesses and MWBEs, limiting competition and opportunity.**<sup>12</sup> Evaluation criteria is often confusing and exclusionary, requiring more experience than small, new firms typically have, a subject matter expert at the state OMWBE said. A local advocate agreed, saying that small firms are qualified to do the work, but the bar is too high. For example, standard scoring for goods and services proposals requires firms to “far exceed” expectations with their “authoritative” knowledge to gain full marks in most areas. Another example of evaluation criteria drafted at the agency level required firms to demonstrate their record of performance with at least five examples of services provided to the County or employers of similar size and scope within the last three years.

Two agencies we interviewed indicated that the boilerplate criteria they start from may create barriers to small businesses and MWBEs. P&P noted that since each agency can set and score their own evaluation criteria, there are inconsistencies in the process. Moreover, FBOD noted that because MWBEs are often subcontractors, prime contractors—not the County—are often responsible for deciding who to hire, and that criteria such as firm age, size, qualifications, and experience can contribute to racial disparities.

Procurement best practice is to ensure that evaluation criteria do not limit competition. Limiting competition to those with the most experience is likely to worsen racial disparities as people of color have historically been excluded from education and employment opportunities. Facilities Management Division (FMD) gave an example of reducing required experience from 10 years to two to three years on a contract to increase competition.

**Recommendation 10**

**The process owner the County identifies for Recommendation 4 should work with the Finance and Business Operations Division to develop, document, and communicate guidance on how agencies can reduce the extent to which evaluation criteria are barriers to contracting with King County for small businesses and minority- and women-owned business enterprises.**

<sup>12</sup> Evaluation criteria are factors used to rate, score, and select the best value proposals or contractors.



# Limited Monitoring, Expired Certifications Reduce Dollars to Small Firms

## SECTION SUMMARY

### **Limited monitoring and inaccurate data may reduce investment in small firms.**

The County spends most of its money on goods and services yet has not made this an area of focus for pro-equity contracting, reducing opportunities for small businesses and MWBEs. County prime contractors cost small subcontractors nearly \$2 million over three years by not meeting requirements to use SCS as subcontractors. In addition, the directory the County uses to identify SCS firms contains hundreds of businesses with expired certifications, making it difficult to ensure that small business incentives are targeted properly. We recommend BDCC put in place better controls to ensure early monitoring of SCS spending and remove expired firms from the SCS directory in a timely manner.

### Highest spend area not a focus for pro-equity impact

**The County spends most of its money on goods and services yet has not made this an area of focus for pro-equity contracting, reducing opportunities for small businesses and MWBEs.** This is partly because the County's preferred method of payment for goods and services are purchasing cards (p-cards), the data for which is stored in a separate system, making it more difficult to analyze. Finally, P&P has staff focused on goods and services contracts, but they do not track spending with small firms and MWBEs because they are not required to do so. Even though BDCC does not actively monitor goods and services contracts, it does report how much the County spends with MWBEs on goods and services contracts by doing a manual review at year-end. In 2018, BDCC reported that the County spent \$12 million on construction, \$9 million on consulting, and \$7.6 million on goods and services with MWBEs.<sup>13</sup> However, these contract categories made up \$222 million, \$245 million, and \$1 billion of total county spending in 2019, respectively, indicating that goods and services is a key area where King County could increase contracting with MWBEs (see exhibit H). The City of Seattle reported hiring MWBEs for \$56 million, or 14 percent, of its goods and services contracts in 2018.<sup>14</sup> Best practice is to find ways to increase contractor diversity across each category of spending.

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<sup>13</sup> BDCC reports spending on minority business enterprises and women business enterprises separately, so any dollars going to MWBEs would be double-counted. BDCC does not currently track p-card spend on goods and services, so any dollars going to MWBEs via p-cards would not be included here.

<sup>14</sup> City of Seattle data is not directly comparable to King County data because the City allows MWBE firms to self-identify as minority- and/or woman-owned, while the County takes a stricter approach of requiring MWBE firms to be certified by the state.

**Some county policies that encourage agencies to buy with small firms do not include provisions for monitoring progress, reducing accountability.** For example, the County encourages agencies to spend 50 percent of their goods and services direct buys (valued under \$10,000) with SCS firms but does not monitor progress. Similarly, as part of the three-quote process, agencies are encouraged to get quotes from three viable companies and including at least one SCS firm. There is no oversight on SCS usage for direct buys or the three-quote process since agencies can conduct these processes without input from P&P or BDCC. BDCC staff noted that it was unclear whether agency staff knew about these policy goals or were actively encouraged to meet them.

EXHIBIT H: Goods and services is a key area where the County could increase contracting with minority- and women-owned business enterprises (MWBE).

	Total County spend (2019)	MWBE spend (2018) <sup>ii</sup>	Percentage
Construction	\$222 million	\$12 million	5%
Consulting <sup>i</sup>	\$245 million	\$9 million	4%
Goods and services	\$1 billion	\$7.6 million	1%

Source: King County Auditor’s Office analysis of Business Development and Contract Compliance and Procurement and Payables data.

<sup>i</sup> Consulting includes architecture, engineering, and professional services.

<sup>ii</sup> Percentages are for relative comparison rather than exact amounts since some contracts may not be reviewed for MWBE spend because they are exempt from normal contracting processes, as in the case of emergency contracts. BDCC does not currently track p-card spend on goods and services, so any dollars going to MWBEs via p-cards are not included.

## Recommendation 11

**The process owner the County identifies for Recommendation 4 should track and publicly report annual county procurement spending with small businesses and minority- and women-owned business enterprises for goods and services.**

Lack of enforcement costs small businesses money

**Lack of enforcement of SCS requirements for prime contractors costs small subcontractors nearly \$2 million.** BDCC establishes SCS requirements on certain contracts for prime contractors to ensure that a portion of the work they subcontract out include SCS firms. At least 17 prime contractors did not meet their SCS requirements, leaving small businesses with \$1.9 million less in revenue than county contracts required.<sup>15</sup> Under contract and King County Code 2.97, the County may sanction or exclude prime contractors that do not meet SCS requirements from competing for future contracts. However, the County did not sanction or disqualify any of these contractors, and in some cases, repeatedly contracted with them.

**Sanctions were not applied between 2017 and mid-2020 because BDCC waited until the end of the contract to monitor SCS compliance, which is often too late to hold contractors accountable.** BDCC checked for compliance with SCS requirements when an agency sent a request to make the final payment on a contract. This was the point at which the sanction process theoretically began. However, at this point, there is no more work for a contractor to subcontract to an SCS business if they failed to meet their requirements. In addition, the County holds some responsibility for failing to meet SCS requirements in cases where departments and divisions change project scope, schedule, and/or budget in ways that make it hard for prime contractors to meet their original SCS projections. For example, eight of the 17 contracts that failed to meet SCS requirements were work order contracts, where work is not guaranteed. In 2020, BDCC started sending out monthly SCS compliance reports to departments, which may help departments hold contractors accountable to their SCS requirements proactively.

**Agencies who actively monitor contracts for SCS requirements achieve their goals more frequently than agencies who wait for BDCC to monitor compliance.** Of the eight departments and divisions we interviewed, only Roads said that it regularly reviews all contractor invoices for spending with SCS businesses.<sup>16</sup> This led to better outcomes. Overall, Roads' contractors achieved 92 percent of their SCS requirements. Roads said regular and ongoing monitoring gives contractors more chances to get on track to meet SCS requirements if they are falling behind. SWD and WTD, which use a more limited form of monitoring, achieved 72 to 79 percent of their SCS requirements. These percentages exceeded those of agencies that left monitoring to BDCC (see exhibit I), which achieved between 20 and 44 percent of their SCS requirements. BDCC said that starting in 2020, it began conducting regular compliance reviews at 25, 50, and 75 percent of project completion for active contracts with SCS requirements.

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<sup>15</sup> BDCC increased compliance activity to review whether contracts met SCS requirements in mid-2020. Prior to that time, it did not have enough staff to do this regularly.

<sup>16</sup> We interviewed procurement and equity staff at the following agencies, which were selected based on high contract spending and diversity of contracting focus: DCHS, DHR, FMD, KCIT, Metro Transit, Roads, SWD, and WTD.

EXHIBIT I: Road Services Division came closest to its small contractor and supplier (SCS) spending targets due to regular contract monitoring.

Agency	SCS spend	Percent of SCS requirements met
Road Services Division	\$10.6 million	92%
Solid Waste Division	\$12.8 million	79%
Wastewater Treatment Division	\$91.5 million	72%
Metro Transit Department	\$10 million	62%
Facilities Management Division	\$7.9 million	44%
Department of Information Technology	\$670,000	36%
Department of Community and Human Services	\$181,000	25%
Department of Human Resources	\$48,000	20%

Source: King County Auditor’s Office analysis of Business Development and Contract Compliance data between July 2015 and June 2020.

### Recommendation 12

**Finance and Business Operations Division should develop, document, and implement policies and procedures that outline a process for agencies to conduct regular monitoring of Small Contractors and Suppliers requirements and to report at least quarterly to the Business Development and Contract Compliance office on their progress.**

### Recommendation 13

**Following regular monitoring from Recommendation 12, Finance and Business Operations Division should ensure that contractors that repeatedly fail to meet Small Contractors and Suppliers requirements are sanctioned in-line with King County Code 2.97.100.**

Small  
business  
directory lists  
expired firms

**BDCC has left hundreds of businesses in the SCS directory past the date their certification expired, affecting the reliability of SCS incentives and requirements.**

The County has procurement policies that offer incentives to small businesses that are part of the SCS directory.<sup>17</sup> SCS status is active for three years after which BDCC requires recertification or removal from the directory. Recertification ensures that if businesses outgrow the program through an increase in receipts, employees, or net worth, they do not receive the benefits set aside to help small businesses compete for public contracts.<sup>18</sup> However, we found BDCC did not consistently remove businesses with expired certifications from the directory. As a result, 860 businesses with expired SCS certifications were still able to get incentives set aside for firms with current certifications.

In April 2019, BDCC got a new data system that can automatically remove businesses with expired certifications from the SCS directory. However, this system will not automatically remove businesses the County certified prior to April 2019; instead, the County will need to manually remove these firms. Since BDCC relies on the number and type of firms in the SCS directory to determine what percentage of a contract small businesses could complete, leaving expired firms in the directory could have resulted in BDCC setting SCS requirements that were too high for contractors to meet based on the number of businesses actually available. Management best practice is to use quality information that is current and correct.

**Recommendation 14**

**The Business Development and Contract Compliance office should develop, document, and implement a plan to ensure that it removes expired firms from the Small Contractors and Suppliers directory after three years, in-line with policy.**

<sup>17</sup> These incentives include 1) allowing an SCS business to win as lowest bidder if their bid is the second lowest and typically no more than five to ten percent higher than the lowest non-SCS bidder, and 2) giving higher evaluation scores to non-SCS businesses that plan to hire SCS subcontractors.

<sup>18</sup> SCS criteria include 1) being 50 percent smaller than size standards set by the U.S. Small Business Administration for numbers of employees or average annual receipts, and 2) each owner having net worth no greater than \$1.32 million.

## Conclusion

As acknowledged in the King County Equity and Social Justice Strategic Plan, systemic racial disparities are well-documented, persistent, and in some cases worsening. The County has made several efforts to increase opportunities to small businesses, primarily through its SCS program, but this has not resolved racial disparities in contracting. We found that White-owned businesses gained the most from the SCS program, while Black-owned businesses gained the least. County procurement leaders say that race- and sex-conscious measures are necessary to fully close the racial divide in county contracting; however, the County has several steps to take before it can apply race- and sex-conscious contracting measures in-line with state law. If the County is to achieve its strategic goals related to pro-equity contracting, it will need to take decisive action at the highest level and provide clear authority to those charged with driving the County toward its goals, rather than leaving county departments and divisions to chart their own paths.

Racial disparities persist in part because of a lack of measurement, accountability, and tools to amplify promising practices in pro-equity contracting. The County collectively spends over a billion dollars on procurement each year. To reach the County's vision of eliminating race as a predictor of prosperity, all agencies that make purchases need to know how to increase equity in contracting. We recommend that the County track data on racial inequities and, when eligible, conduct a disparity study. Finally, we recommend that the County clarify roles and responsibilities and provide more tools to ensure that all procurement staff are ready to achieve pro-equity contracting goals that lead with race.



# Appendix

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## List of County Pro-Equity Contracting Policies

### For Small Contractor and Supplier (SCS)

Name	Description	Contract / procurement type	Contract amount
Architecture & Engineering Roster	<ul style="list-style-type: none"> <li>Limits competition to firms on the roster and requires at least one SCS firm be invited to bid if a relevant firm is available</li> <li>Sets annual spending limit for contracted non-SCS firms at \$500,000 and no annual spending limit for contracted SCS firms</li> </ul>	<ul style="list-style-type: none"> <li>Architecture, engineering</li> </ul>	N/S
Direct Buy Rule	<ul style="list-style-type: none"> <li>Agencies must review SCS directory for direct buys</li> <li>50% of spend with SCS firms where available</li> </ul>	<ul style="list-style-type: none"> <li>Goods &amp; services</li> </ul>	<\$10,000
Pricing and Scoring Incentives: Invitations to Bid (ITB)	<ul style="list-style-type: none"> <li>An SCS firm will be awarded the contract as the lowest bidder if its price is within 5-10 percent of lowest non-SCS bidder</li> </ul>	<ul style="list-style-type: none"> <li>Goods &amp; services</li> </ul>	>\$50,000
Pricing and Scoring Incentives: Requests for Proposals (RFP)	<ul style="list-style-type: none"> <li>A firm can score higher in evaluation criteria if it agrees to hire an SCS firm to do a part of the proposed work</li> </ul>	<ul style="list-style-type: none"> <li>Architecture, engineering, and professional services (A/E/P)</li> <li>Technical services</li> </ul>	>\$50,000
Small Business Accelerator	<ul style="list-style-type: none"> <li>Limits competition to SCS firms if there are a minimum of three relevant firms in the SCS directory</li> </ul>	<ul style="list-style-type: none"> <li>Goods &amp; services (Metro Transit, WTD only)</li> <li>Technical services</li> </ul>	>\$50,000

Name	Description	Contract / procurement type	Contract amount
Three-Quote Rule	<ul style="list-style-type: none"> <li>Get at least one quote from an SCS firm where available</li> </ul>	<ul style="list-style-type: none"> <li>Goods &amp; services</li> </ul>	\$10,000 to \$50,000
Utilization Requirements	<ul style="list-style-type: none"> <li>For construction, BDCC sets the utilization requirement based on number of SCS firms available</li> </ul>	<ul style="list-style-type: none"> <li>Construction</li> </ul>	>\$50,000

### For Minority- and Women-Owned Business Enterprises (MWBE)

Name	Description	Contract / procurement type	Contract amount
Equity and Social Justice Innovation Plan	Consultant proposals may be required to include a plan to maximize work and growth opportunities for MWBE firms	<ul style="list-style-type: none"> <li>Architecture, engineering, and professional services (A/E/P)</li> <li>Technical services</li> </ul>	>\$50,000
Utilization goals	Establish reasonably achievable biennial goals for use of MWBE and Disadvantaged Business Enterprise firms	All	N/S
Voluntary goals	Agencies shall set voluntary goals for hiring MWBE firms on projects with SCS requirements	Construction, with SCS goals	>\$50,000

Source: King County Auditor’s Office analysis of county policy.

Note: The list of policies excludes federal- and state-specified programs in which the County participates.

# Executive Response

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**King County**  
**Dow Constantine**  
King County Executive  
401 Fifth Avenue, Suite 800  
Seattle, WA 98104  
**206-296-9600** Fax 206-296-0194  
TTY Relay: 711  
[www.kingcounty.gov](http://www.kingcounty.gov)

May 17, 2021

Kymer Waltmunson  
King County Auditor  
Room 1033  
C O U R T H O U S E

**RECEIVED**  
**MAY 17, 2021**  
**KING COUNTY AUDITOR**

RE: Response to Contracting Inequities Audit

Dear Ms. Waltmunson:

I would like to thank the Council Auditor for the detailed audit report titled “Contracting Inequities Persist in Race-Neutral Environment.” Enclosed are responses to the specific audit recommendations. We concur with each of the fourteen recommendations. The recommendations will help transform the County’s existing race and gender-neutral contracting program into one that is more pro-equity and amplifies the participation of minority and women owned business enterprises (MWBs). We fully support this transformation towards pro-equity contracting because it is aligned with the County’s Strategic Plan for Equity and Social Justice and is consistent with the True North value of making King County a welcoming community where every person can thrive.

Since the adoption of Washington State Initiative 200 in 1998, King County’s Contracting Opportunities Program (“Program”) has been designed as a race and gender-neutral program intended to support the participation of small businesses in County contracting. Although the Program has been race and gender neutral, the Program has historically taken affirmative actions to increase participation in public contracting by underrepresented groups. These affirmative actions continue today and are highlighted throughout our response to the audit.

Following are highlights of outcomes as a result of the Program’s outreach efforts, utilization strategies, and procurement methods over the past five years (2016 to 2020):

## Response to Contracting Inequities Audit

May 17, 2021

Page 2

- The County has exceeded its goals for the participation of certified Small Contractors and Suppliers (SCS) in the Program and awarded more than \$280 million to these small businesses for an average of \$56 million annually since 2016.
- Of the \$280 million total, \$61 million or 22 percent went to minority-owned businesses that are also SCS certified.
- Over the same five-year period, the County awarded \$150 million to other larger non-SCS minority-owned businesses, making the grand total received by all minority-owned businesses \$211 million.

The audit report acknowledges the analysis about racial inequities in contracting is limited because it does not take into account such factors as the availability of firms in the marketplace and the qualifications of the firms. These are important factors that would be elements of any future disparity study, which is included as one of the audit's recommendations.

Although racial inequities are difficult to prove without a true disparity study, we know from our equity and social justice work that MWBE firms face challenges in public contracting. We are committed to addressing these challenges and making it easier for MWBEs to contract with King County. As pointed out in our detailed responses, we are addressing these challenges by continuing previous affirmative actions and initiatives, while also launching new efforts aimed at increasing MWBE participation in contracting. Following are highlights from the responses to the audit:

- Executive Order: We will be implementing a new governance structure for pro-equity contracting following the issuance of an Executive Order earlier this month. The Executive Order reinforces the role of the Finance and Business Operations Division (FBOD) to be the process leader for enhancing MWBE participation in contracting. The Executive Order emphasizes department level ownership and commitments, including equity goals, best practices, monitoring, training, and reporting results.
- Continued Reporting: The Business Development and Contract Compliance (BDCC) unit within FBOD will continue to provide monthly reports that assist agencies in tracking the participation of SCS, disadvantaged business enterprises (DBEs) and MWBE firms. Additional reports will be developed as part of implementing the Executive Order.
- Reciprocal Certification Program: We will be proposing an ordinance amendment that would allow a business that is certified by Washington State as an MWBE to automatically qualify as an SCS firm under the County's program. This should greatly expand the number of MWBE firms that would be eligible for contracting opportunities.
- Disparity Study: We will be exploring the feasibility of implementing a regional disparity study with the participation of other nearby jurisdictions. We will determine whether the disparity study should be limited in scope to just certain types of contracting categories that may be the most under-represented.
- Innovative Contracting Methods: We will continue existing methods designed to increase small business and MWBE participation including the small business

Response to Contracting Inequities Audit  
 May 17, 2021  
 Page 3

accelerator for certain goods and technical services contracts; the ESJ innovation plan requirement for architectural/engineering and technical services contracts; updated consultant rosters for small-scale architecture/engineering services contracts; small public works rosters for small-scale construction projects; job order contracting for small-scale construction projects; and ensuring at least one SCS or MWBE firm is part of any under-\$50,000 three-quote informal bidding process.

- Improved Access to Contracting Opportunities: There will be a concerted effort to ensure all SCS firms are registered in the County's new supplier registration system. There will be quarterly reports showing the progress of this effort.
- Reducing Barriers: We will continue to reduce barriers by allowing more flexibility for insurance requirements; adjusting evaluation criteria in requests for proposals (RFPs); unbundling contracts by size and scope when feasible; and lengthening solicitation times when feasible.
- Outreach and Community Partnerships: We will continue existing and longstanding outreach programs and continue to partner with groups such as Tabor 100 to provide financial and technical assistance to small and minority owned businesses. We will also leverage outreach to MWBEs by partnering with the federal Small Business Administration.

Thank you again for the valued work of the Council Auditor and we look forward to providing updates about our progress. If you have any questions about this response to the audit, please contact Ken Guy, Director of the Finance and Business Operations Division, at 206-263-9254.

Sincerely,



Dwight Dively  
 Director, Office of Performance, Strategy and Budget

Enclosure

cc: King County Councilmembers  
 ATTN: Carolyn Busch, Chief of Staff  
 Melani Pedroza, Clerk of the Council  
 Shannon Braddock, Deputy Chief of Staff, Office of the Executive  
 Brenda Bauer, Deputy Chief Operating Officer  
 Karan Gill, Director, Council Relations, Office of the Executive  
 Caroline Whalen, Director, County Administrative Office, Department of Executive Services (DES)  
 Ken Guy, Director, Finance and Business Operations Division (FBOD), DES  
 Sandy Hanks, Business Development and Contracts Compliance Manager, FBOD, DES

**Recommendation 1**

The Business Development and Contract Compliance office should develop, document, and implement a strategy to track racial inequities in contract spending for the Small Contractor and Supplier program on an ongoing basis.

**AGENCY RESPONSE****Concurrence****Concur****Implementation date**

- Implement Executive Order emphasizing the pro-equity transformation of the County's small business program and MWBE participation in contracting (Q2 to Q3-2021)
- Analyze need for additional staff position(s) in FBOD/BDCC to help support transition to pro-equity contracting, including goal setting, best practices, reporting and training for departments (Q2 to Q3-2021)
- Establish interdepartmental pro-equity contracting team(s) based on executive order (Q2 to Q3-2021)
- Develop department level and countywide targets associated with equity goals in contracting (Q4-2021)
- Implement and begin reporting on actuals vs targets (Q1 to Q4-2022)

**Responsible agency** **BDCC with support of other county agencies**

**Comment:**

We agree with the underlying intent of this recommendation, which is to enhance the tracking of contract spending and how contracts are awarded in order to help the county make the transformation from a race and gender-neutral contracting program to one that is more pro-equity. We are committed to this transformation, which is in alignment with the County's Strategic Plan for equity and social justice. This effort will include implementing the new Executive Order amplifying minority and women owned business enterprise (MWBE) participation in contracting, including the creation of specific and measurable department level goals for equity that are tracked on an ongoing basis.

The auditor's report acknowledges that the analysis comparing firms listed in the SCS directory to firms awarded contracts is limited and is not a true disparity study because it does not consider such important factors as the availability of firms in the marketplace or the qualifications of firms.

Although racial inequities are difficult to prove without a disparity study, we recognize that challenges encountered by minority businesses in public contracting are longstanding. Major barriers encountered by minority owned businesses include, but are not limited to, the lack of financial capital, fewer assets, and diminished access to business loans. It is important to distinguish between barriers to participation in the County's contracting activities and barriers to the formation and growth of minority owned businesses. We believe that diminished credit access and higher borrowing costs for minority owned businesses are influencing factors that contribute to the number of contracts that are identified in the audit report as disproportionately awarded to White-owned SCS firms as compared to minority owned SCS firms.

The audit report is correct in stating that the County does not report multiple year-over-year spending on MWBEs. It is important to emphasize, however, that Business Development and Contract Compliance (BDCC) prepares annual reports for the County Council that meet code requirements and compare total small business spending between the current year's report and the previous year's report. Table A below reflects the spending and other statistical information provided in a typical annual report:

## TABLE A:

Annual Contracting Opportunities Program Report:

Appendix B - Tables and Charts:

Table 1: Total Dollar Amount by Contract Category

Table 2: Awards with SCS Incentives or Requirements by Race and Gender

Table 2A: Total Amount Awarded to SCS Firms through the Small Business Accelerator

Table 3: Awards to SCS Firms for Goods & Services when not the Lowest Bidder

Table 4: Goods and Services Awards to SCS Firms

Table 5: Architectural, Engineering, Professional, and Technical SCS Consulting Awards

Table 6: Awards with SCS Requirements

Table 7: Construction Awards to SCS Firms

Table 8: Certified SCS Firm Statistics

Table 9: Goods & Services SCS Firms by Annual Gross Receipts

Table 10: A&E & Technical Consulting SCS Firms by Annual Gross Receipts

Table 11: Construction SCS Firms by Annual Gross Receipts

Table 12: Utilization Data – All Certified Firms (SCS, MBE, WBE, DBE)

## Recommendation 2

In order to determine an appropriate time to conduct a disparity study, the process owner the County identifies for Recommendation 4 should assess and document what steps should be taken prior to a disparity study.

## AGENCY RESPONSE

### Concurrence

**Concur**

### Implementation date

Please refer to milestones and dates in Recommendation 1.

### Responsible agency

**BDCC**

### Comment:

We agree that the County should take additional steps to move towards pro-equity contracting prior to launching a disparity study. As noted in the response to Recommendation 1, a preliminary step is to implement the new Executive Order focused on MWBE participation in county contracts. The Executive Order emphasizes department/division level ownership and commitments, including goal setting, best practices, monitoring, and reporting results (see response to Recommendation #1).

As acknowledged in the audit report, King County has fully or partially implemented multiple actions to enhance MWBE participation in contracting. The transformation to a pro-equity contracting program that includes the amplified commitment, collaboration and support of county agencies is expected to produce even better results. A prime example of this is how departments are beginning to use a monthly report from BDCC to assess the participation of small contractors and MWBEs as part of contracts involving architecture/engineering services and construction. BDCC began distributing these reports in November 2020.

With the collaboration of departments, BDCC will continue to implement existing measures and additional measures for enhancing MWBE participation are outlined in Tables B and C below. Note that this information is intended as a general illustration and is not an exhaustive list of existing and future actions.

TABLE B: Existing Race and Gender-Neutral Measures:

- Technology improvements (e.g., supplier registration)
- Race and gender-neutral small business program emphasizing MWBE participation
- Regional small business certification
- Federal Disadvantaged Business Program
- Outreach and networking events
- Financial support for technical and business assistance via community-based organizations (e.g., Tabor 100 Economic Development Hub)
- Voluntary MWBE participation and hiring goals in county solicitations
- Monitoring and reporting systems, (e.g., online Diversity Compliance Management System)
- Equity in Design Initiative
- Innovative contracting methods, (e.g., small business accelerator, ESJ Innovation Plans, modified Consultant Roster, small public works contracting, job order contracting)
- Changes in contract language, requirements, and qualifications
- Monthly utilization reports

TABLE C: Additional Measures:

- Aspirational MWBE goals for all county departments/divisions
- Training for staff on unconscious bias and supplier diversity best practices
- Benchmarks for utilization of MWBEs and small firms
- Lengthening solicitation times, when feasible
- Unbundling contracts
- Improving the methodology for monitoring and reporting 3-quote spend and P-cards
- Reciprocal certification program with State's OMWBE (refer to response to Recommendation 14 for details)
- Partnering with SBA for outreach to MWBEs

### Recommendation 3

If disparities persist following steps taken per Recommendation 2, then the County should conduct a disparity study.

#### AGENCY RESPONSE

##### Concurrence

##### Concur

##### Implementation date

- Assess whether a disparity study, to be useful, must be jurisdiction-specific or whether it could be regional in focus (Q2 to Q3-2021)
- Contact other jurisdictions who may be interested in a regional disparity study, assuming such a scope is feasible (Q3 to Q4- 2021)
- Prepare a 2022 supplemental budget request, or a 2023-2024 biennial budget request, for a disparity study (Q2-2022)

**Responsible agency**      **BDCC in consultation with the Prosecuting Attorney’s Office**

**Comment:**

A disparity study will help the county to obtain an independent, objective review to determine if inequities exist in the county’s contracting that adversely affect businesses owned by minorities and/or women. The decision to proceed with a disparity study is dependent on upcoming discussions with other nearby jurisdictions, the anticipated scope of the study and the availability of funding.

Disparity studies are large, complex documents that provide a framework for understanding whether there are proven disparities in contracting and recommendations for mitigating those disparities. Given that the costs of a disparity study for the county would probably start at \$1 million or greater, the BDCC unit of the Finance and Business Operations Division (FBOD) plans to contact other jurisdictions—such as the City of Seattle, the Port of Seattle, Sound Transit, Pierce County and Snohomish County—to determine their interest in conducting a regional disparity study. This approach could offset the costs of conducting this study as a single jurisdictional effort. Although the audit report states that disparity studies are “jurisdiction-specific,” we plan to further investigate this assertion as part of assessing the scope and deliverables of conducting a regional disparity study. Another way to reduce the potential cost of such a study is to limit the initial scope to certain contracting categories that the county and other jurisdictional partners are the most interested in, such as MWBE participation in construction contracts. FBOD plans to make a recommendation on whether to pursue a disparity study as part of a supplemental budget request in 2022 or as part of a biennial budget proposal in 2023-2024, after contacting other jurisdictions, assessing the scope of the study and assessing the impact of actions highlighted in the response to Recommendations 1 and 2 above.

**Recommendation 4**

The County Executive should design, document, and communicate roles and responsibilities, including a process owner, for increasing contracting opportunities for minority- and women-owned business enterprises.

**AGENCY RESPONSE**

**Concurrence**

**Concur**

**Implementation date**

- Implement the new Executive Order ensuring departments are committed to MWBE participation in contracting and for monitoring and reporting results (Q2-2021)
- Establish interdepartmental pro-equity contracting team(s) to share MWBE best practices and consult on barriers (Q3 to Q4-2021)

**Responsible agency**      **FBOD with support from County departments**

**Comment:**

The County already has a clear process owner for increasing contracting opportunities for MWBEs. Departments recognize FBOD/BDCC as that process owner. The County Executive recently issued an Executive Order to support this recommendation, as identified in the response to Recommendation #1. The Executive Order reaffirms FBOD as the process owner, with support from BDCC and the Procurement and Payables section ("Procurement"). The Executive Order directs departments to take actions that amplify the participation of MWBEs, consistent with existing laws, in the procurement and contracting activities for their projects. FBOD will take the lead to form an interdepartmental team(s) to share best practices and consult on barriers for MWBE contracting. These actions align with King County’s Equity and Social Justice Strategic Plan to be pro-equity, set a clear direction, and delegate authority and responsibility to departments that are action oriented.

**Recommendation 5**

The process owner the County identifies for Recommendation 4 should work with agencies to develop, document, and publicly report annual, voluntary department-level and county-level goals for procurement spending with minority- and women-owned business enterprises.

**AGENCY RESPONSE**

**Concurrence**            **Concur**

**Implementation date**        Please refer to response in Recommendation 1.

**Responsible agency**    **BDCC with support of other County agencies**

**Comment:**

BDCC will work with departments and their designated representative(s) to identify specific and measurable equity goals that can be tracked and reported. BDCC will identify a process for data collection, and identify and communicate county departments roles and responsibilities in the data collection and reporting efforts. The availability of staff resources and funding is an important consideration in executing a countywide data collection effort that will amplify the tracking of MWBE contracting data, such as tracking actual contract spending compared to pre-set goals. BDCC will likely need additional staff resources to support the annual data collection and reporting.

In addition, it is important to clarify that BDCC already sets voluntary MWBE goals on many federally funded and County funded contracts, mostly in the areas of construction, architecture and engineering (A/E), and technical services contracts. In particular, on A/E and technical services contracts, the County has required proposers to prepare an ESJ Innovation Plan that includes voluntary goals and specific actions to enhance MWBE participation. After the County awards a contract to the selected proposer, the ESJ Plan becomes a contractual requirement. This innovative requirement has bolstered the subcontracting opportunities of MWBE firms.

**Recommendation 6**

The Business Development and Contract Compliance office and Finance and Business Operations Division should develop, document, and implement a plan to ensure that all active Small Contractors and Suppliers are registered as county vendors.

**AGENCY RESPONSE**

**Concurrence**            **Concur**

**Implementation date**        •Continue to provide outreach to SCS firms so they are registered as county vendors (ongoing)  
    •Submit quarterly report on percentage of SCS firms registered (quarterly, starting Q2 to Q3-2021)

**Responsible agency**    **BDCC with support of Procurement**

**Comment:**

Procurement, in collaboration with BDCC, is conducting outreach communications with all SCS firms to inform them of the E-Procurement system and the requirement to register in the County's supplier portal in order to do business with the County. Procurement will follow-up quarterly by running a report to verify the percentage of SCS firms registered in E-Procurement and continue the outreach efforts in order to pursue 100% registration of certified SCS firms in the supplier portal.

**Recommendation 7**

The process owner the County identifies for Recommendation 4 should work with the Office of Risk Management to review, revise, and communicate standard contract language on insurance requirements to reduce the extent to which insurance is a barrier to contracting with King County for small businesses and minority- and women-owned business enterprises.

**AGENCY RESPONSE**

**Concurrence**            **Concur**

**Implementation date**        Continue implementation of pro-equity changes that remove barriers for MWBEs (ongoing)

**Responsible agency**    **ORMS in collaboration with BDCC and Procurement**

**Comment:**

We agree with the underlying intent of this recommendation, which is to help create a racially-just contracting process by working with a designated process owner to facilitate countywide communication and foster a greater understanding of standard contract language, while reducing barriers it may present. Below are points clarifying the current philosophy and recent revisions of practices in setting contractual insurance requirements, reflecting how we are currently on the pro-equity path:

- Commercial General Liability limits of \$1 million per occurrence and \$2 million aggregate are industry standard minimum limits for businesses to carry. The insurance premium for \$1 million in insurance coverage should not equate to the limits being maintained and should only represent a small percentage of the insurance limits.

- There is no industry standard for cyber liability insurance limits, a key emerging insurance market (see footnote 10 of Auditor’s Report). Cyber liability insurance limits are set based on the exposures to the County given the scope of work and the risk of a potential breach of our residents’ personal identifiable information (PII) or personal health information (PHI).

- ORMS sets insurance limits based off exposures to the County in the work being performed, and not based on contract cost. Contract cost does not determine the level of risk associated with the work being completed.

- Over the past several years, ORMS has made several key changes to the insurance provision of some of the County’s key boilerplate contracts to reduce barriers to contractors and their subcontractors, which include the following:

- o     Deductible/Retention Requirements: The County previously required its contractors to declare and get approval from the County for their level of deductible on their insurance policies. We no longer require a contractor to declare its deductible or retention for County approval. Contractors are now allowed to maintain deductibles/retentions at a level that they deem reasonable for their business.

- o     Subcontractor Insurance Requirements: The County used to require the prime contractor to insure its subcontractors, or, if the prime did not insure its subcontractors under its insurance policies, then the subcontractors would need to maintain the same insurance limits as required of the prime in the contract. ORMS recognized this requirement as a barrier to smaller businesses and modified the language so that the prime can either include its subcontractors under its policies, or alternatively, require “appropriate and reasonable insurance” of its subcontractors given their scope of work.

- o     The County used to always require any of its contractors to carry \$1 million auto liability policy when conducting any onsite work; but ORMS has built in an alternative requirement of statutory limits for those who are driving onto County property to host a meeting or participate in a meeting.

•ORMS readily reduces and/or waives insurance requirements for low risk work conducted remotely by community-based organizations, such as training events facilitated online.

ORMS will continue to review the County's boilerplate indemnification and insurance provisions to identify barriers to minority and women-owned business enterprises and make appropriate revisions while balancing the County's goals and risk appetite. We will take into consideration feedback from our client agencies and from our small business, and minority and women-owned business partners.

### **Recommendation 8**

The process owner the County identifies for Recommendation 4 should work with the Office of Risk Management to develop, document, and communicate guidance for departments and divisions to reduce the extent to which insurance is a barrier to contracting with King County for small businesses and minority- and women-owned business enterprises.

### **AGENCY RESPONSE**

#### **Concurrence**

**Concur**

#### **Implementation date**

•Continue implementation of pro-equity actions that remove barriers for MWBEs (ongoing)

•Issue additional communication guidance to departments to inform decision-making about waving insurance requirements (Q2 to Q3-2021)

#### **Responsible agency**

**ORMS in collaboration with BDCC and Procurement**

#### **Comment:**

We agree with this recommendation to facilitate countywide communication around guidance for departments and divisions to reduce the extent to which insurance is a barrier to contracting with King County. Below are points clarifying how ORMS is currently on the pro-equity path for guiding agencies and the plans for the future:

•In the new e-procurement system, we have inserted the following statement under the insurance section: "Feel Free to contact ORMS to discuss adapting insurance requirements and risk appetite to support work that furthers the County's ESJ initiative." ORMS readily reduces and/or waives insurance requirements for low-risk work conducted remotely by community organizations, such as training events facilitated online. We also encourage project managers and procurement to reach out to ORMS if a bidder voices concern over the insurance requirements to re-evaluate the exposures to the County.

•ORMS has created a risk insurance matrix for use by DCHS for its standard programs which clarifies the minimum levels of insurance needed based on scope of work exposures to the county. Similarly, ORMS has worked with DPH to develop minimum insurance requirements for contractors, which is posted on the DPH website.

•Because the cost of a claim will almost always be more expensive than the cost of an insurance premium, it is important for contractors, especially small businesses, to carry insurance for their own financial well-being. ORMS encourages agencies to consider subsidizing a portion of the insurance premiums for their small business partners, including minority and women-owned business partners, if such costs become a barrier for contracting with the County.

ORMS agrees there needs to be more formal documentation to communicate guidance to departments if insurance requirements become a barrier to contracting. ORMS will look to include communication regarding the exposure to both the County and the contractor when insurance requirements are reduced or waived so that agencies can make well-informed decisions that take impacts into consideration.

**Recommendation 9**

The process owner the County identifies for Recommendation 4 should develop, document, and implement a plan to offer tools and trainings to increase contracting opportunities with King County for small businesses and minority- and women-owned business enterprises.

**AGENCY RESPONSE**

**Concurrence**            **Concur**

**Implementation date**        Develop a toolkit that contains pro-equity policies and best practices for use by agencies. (Q3 to Q4-2021, dependent on availability of resources)

**Responsible agency**    **BDCC in collaboration with Procurement**

**Comment:**

We agree with this recommendation and acknowledge there is much to gain from providing access to additional resources, tools, and training on pro-equity contracting policies and practices for agencies. BDCC, in collaboration with Procurement, will assist agencies in applying these strategies. BDCC will take the lead in developing a toolkit for use by agencies to implement pro-equity policies and best practices. As previously mentioned as part of the response to Recommendations 1 and 5, additional staff resources (or consulting resources) may be needed to fulfill these toolkit and training needs.

**Recommendation 10**

The process owner the County identifies for Recommendation 4 should work with the Finance and Business Operations Division to develop, document, and communicate guidance on how agencies can reduce the extent to which evaluation criteria are barriers to contracting with King County for small businesses and minority- and women-owned business enterprises.

**AGENCY RESPONSE**

**Concurrence**            **Concur**

**Implementation date**        •Continue to assess whether evaluation criteria are creating barriers to contracting for small and MWBE firms (ongoing)  
 •Develop guidance/examples for agencies on evaluation criteria to help reduce barriers for MWBE firms (Q3 to Q4-2021, dependent on availability of resources)

**Responsible agency**    **BDCC with support of Procurement**

**Comment:**

BDCC and Procurement are continuing to apply best practices to ensure that evaluation criteria do not limit competition. An example is the action of Procurement to modify evaluation criteria for consulting services. This change was made in response to input gathered through the Equity in Design Initiative from small, minority and women-owned consulting firms. A concern expressed by these small businesses was the potential to be removed from a proposing prime's consulting team due to a lack of experience required in County solicitations for these services. Procurement made a change to acknowledge that although small consulting firms may lack the required experience, one or more members of their staff may possess the requisite experience. Procurement made a change to the evaluation criteria for all future solicitations for architectural, engineering, and professional services to remove this unplanned barrier. BDCC, with support from Procurement, will continue to work collaboratively with internal agency teams to reduce barriers to contracting caused by overly stringent evaluation criteria.

**Recommendation 11**

The process owner the County identifies for Recommendation 4 should track and publicly report annual county procurement spending with small businesses and minority- and women-owned business enterprises for goods and services.

**AGENCY RESPONSE****Concurrence****Concur****Implementation date**

- Continue to explore opportunities for unbundling large goods and services contracts to increase opportunities for small and MWBE firms (ongoing)
- Continue to apply fair market range of 5 to 10 percent on goods and services procurements (ongoing)
- Use Procurement staff to ensure 3-quote contracts have at least one bid from a small and/or MWBE firm (starting in Q2 to Q3-2021)
- Compile results for 3-quote contracts (starting in Q3 to Q4-2021)

**Responsible agency** **BDCC with support of Procurement****Comment:**

The Annual Contracting Opportunities Program Report contains data on the County's spend with small, minority, and women-owned businesses for all formally advertised contracts for goods and services. The relatively large size of many goods or services contracts may preclude small vendors from competing successfully. Procurement and BDCC will explore the use of pro-equity contracting best practices such as unbundling large goods or services contracts to increase the number of contracting opportunities for small, minority, and women-owned businesses for goods and services.

For smaller scale purchases involving goods and services under \$50,000 (called "3-quotes"), Procurement implemented a change in practices starting in 2021 that will enable Procurement staff to provide enhanced support to agencies for these types of purchases. Procurement staff, working with BDCC, will be asked to make the additional effort to identify small and MWBE contractors who may be competitive for these smaller scale contracts. The goal will be to ensure at least one out of three quotes are from a small and/or MWBE firm.

Alternative procurement methods, such as the Small Business Accelerator, allow like-sized small contractors to compete for designated technical consulting services and certain goods. BDCC, in cooperation with Procurement, will continue to implement the Small Business Accelerator that permits SCS firms to compete against each other for certain goods and services contracts at the prime contractor level.

**Recommendation 12**

Finance and Business Operations Division should develop, document, and implement policies and procedures that outline a process for agencies to conduct regular monitoring of Small Contractors and Suppliers requirements and to report at least quarterly to the Business Development and Contract Compliance office on their progress.

**AGENCY RESPONSE****Concurrence****Concur****Implementation date**

- Continue distribution of monthly reports for Small Business Utilization to departments (ongoing)
- Continue distribution of monthly reports for ESJ Innovation Plan (ongoing)
- Work with departments to develop additional tracking and reporting (starting Q4-2021, see response to Recommendation 1)

**Responsible agency** **BDCC**

**Comment:**

We agree with the audit report statement that agencies which actively monitor their contracts for small business and MWBE participation achieve higher participation rates than agencies that do not monitor or track their progress.

In 2020, BDCC leveraged its Business Intelligence (BI) analytics reporting system to produce monthly summary reports that contain data on the progress of contractors in meeting or exceeding the small business requirements established on their contracts. BDCC began distributing the reports in November 2020. The reports are distributed by the 20th of each month for the prior month's activity. Report recipients include County councilmembers, department directors and deputies, County project control and management staff, procurement staff and other internal stakeholders. The purpose of these reports is to provide a resource for engagement of departments in regularly monitoring the progress of their contractors in meeting the small business and workforce goals and/or requirements established on their projects.

The following contracting equity reports are distributed monthly to county agencies:

- Small Business Utilization Monthly Summary Report – This comprehensive report contains data on the participation rates for small businesses and or minority and women owned business for all active architectural, engineering, and professional services and construction contracts that include these goals and/or requirements. This report is formatted by departments and their respective divisions.
- Equity and Social Justice (ESJ) Innovation Plan Monthly Summary Report – This report contains data on the progress of contractors towards meeting the minority and women owned business goals identified in their ESJ Plans for architectural, engineering, professional services, and technical services agreements.

Additional reporting involving departments and their divisions will be determined as part of implementing the Executive Order described in the response to Recommendation 1.

**Recommendation 13**

Following regular monitoring from Recommendation 12, Finance and Business Operations Division should ensure that contractors that repeatedly fail to meet Small Contractors and Suppliers requirements are sanctioned in-line with King County Code 2.97.100.

**AGENCY RESPONSE****Concurrence****Concur****Implementation date**

Continue to implement current practices in accordance with KCC 2.97.100 (ongoing)

**Responsible agency****BDCC in consultation with the Prosecuting Attorney's Office****Comment:**

BDCC concurs with this recommendation and will continue to sanction contractors who fail repeatedly to meet the SCS requirements in accordance with King County Code 2.97.100. Per the County contract terms and conditions, the contractor must comply with the Small Contractors and Suppliers (SCS) utilization requirements established for the contract. Unless otherwise determined by the County, a contractor's failure to comply with the SCS utilization requirement for the contract is deemed as a material breach of contract and may subject the contractor to either:

- A suspension for a period of not more than six (6) months; or
- A debarment for a period not more than two (2) years, from consideration for award of contracts with the County.

In 2020, BDCC began conducting monthly reviews of all active contracts that have SCS requirements applied to the contract at 25, 50 and 75 percent of project completion. For all projects not meeting the requirement, BDCC provides written notice to a contractor to notify them of a potential violation with the SCS utilization requirements established for the contract. The applicable County project manager is included in this communication. The contractor has an opportunity to submit a written reply within ten (10) business days from the date of the notice of potential violation letter.

#### **Recommendation 14**

The Business Development and Contract Compliance office should develop, document, and implement a plan to ensure that it removes expired firms from the Small Contractors and Suppliers directory after three years, in-line with policy.

#### **AGENCY RESPONSE**

##### **Concurrence**

##### **Concur**

##### **Implementation date**

- Remove expired firms from the Small Contractors and Suppliers directory after three years, in-line with policy (Q2-2021 to Q2-2022, dependent on availability of staff resources)
- Prepare and transmit ordinance to council for reciprocal certification process with State's OMWBE (Q2 to Q3-2021)
- Evaluate options and prepare recommendations for leadership regarding the administration of small business certifications (Q3 to Q4-2021)

##### **Responsible agency**

**BDCC**

##### **Comment:**

To address the backlog of firms not re-certified within three years, BDCC is planning to immediately adopt renewal certification practices currently used by Washington State to certify MWBEs. State MWBE certifications require that businesses renew every three years. For State certifications, applicants for certification renewal can submit a sworn declaration that there have been no changes that would impact their ability to remain certified. The sworn statement is accompanied by the submittal of three years of business tax returns. If the business owners were close to the personal net worth threshold during the last review, the applicant may be requested to provide an updated personal net worth form and three years of personal tax returns. BDCC plans to adopt this same practice for SCS certifications.

King County is also working to implement a reciprocal certification program with the Washington state Office of Minority and Women's Business Enterprises (OMWBE) to further enhance opportunities for contracting with WMBEs. Essentially, reciprocity is an agreement between King County and the OMWBE to recognize the certifications issued by each other. The OMWBE certifies small businesses owned and controlled by minority, women, and socially and economically disadvantaged persons, to increase contracting opportunities for these businesses with state and local governments.

Currently, King County and the OMWBE have different eligibility size standards for small business certification. King County's size standards are set a 50% of the U.S. Small Business Administration (SBA) size standards. The OMWBE size standards are equal to 100% of the U.S. SBA size standards. To implement a reciprocal certification program requires that the County amend the Contracting Opportunities Program ordinance to match the State's OMWBE size standards. The benefits of a reciprocal certification process include eliminating the redundancy in certification processes that have overlapping eligibility criteria. In addition, the certifying entities

can be confident that every certified business has received the same level of eligibility review before being certified to participate in its programs. The efficiencies gained can be significant because applicant business owners are required to have their certification eligibility approved by the County or the OMWBE to receive the benefits afforded to these businesses in the competitive public procurement process.

BDCC is also considering the option to recognize the OWMBE as its certification entity. The OMWBE provides certification for the County's federal Disadvantaged Business Enterprise programs. By RCW, the County is assessed a fee each biennium for the State's certification services for Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Small Business Enterprises (SBE), and Disadvantaged Business Enterprise (DBE). Currently, the County has very limited staffing to conduct certification for applicants seeking SCS certification. Despite the growth of the regional SCS certification program, the County has not addressed the required staffing necessary to perform these services satisfactorily. Without additional staffing resources or other out-sourcing options, the current backlog of certifications and certification renewals will likely continue. Therefore, BDCC will be preparing an analysis for County leadership that reviews options for adding more staff/consultant resources or contracting with the State's OMWBE for all certification and renewal services.



# Statement of Compliance, Scope, Objective & Methodology

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## Statement of Compliance with Government Auditing Standards

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Scope of Work on Internal Controls

We assessed internal controls relevant to the audit objectives. This included a review of selected policies, procedures, and law, as well as interviews with the Finance Business and Operations Division (FBOD) and Business Development and Contract Compliance (BDCC) office staff. In performing our audit work, we identified concerns related to sufficiency of monitoring to track compliance to policy, goal-setting in alignment with policy priorities, and training for staff on pro-equity contracting.

## Scope

This audit reviewed the County's pro-equity contracting practices and compliance with county code and best practices. We reviewed data for county contracts awarded and closed between July 1, 2015 and June 30, 2020 across county departments and conducted a deeper review of a sample of contracts.

## Objectives

- To what extent do county strategies to achieve pro-equity contracting goals align with county code and best practice?
- To what extent do county contracting dollars go to small businesses and minority- and women-owned firms?

## Methodology

For this audit, we analyzed data from the BDCC within FBOD. This data included information on county contracts that had small business requirements between July 1, 2015 and June 30, 2020. We used this data to analyze the amount of county contract spending that went toward small businesses and minority- and women-owned business enterprises (MWBE). Since we were interested in comparing the availability of certified small businesses and MWBEs to the County's use of these firms, we also obtained a data directory of certified firms in Washington state from the Office of Minority and Women Business Enterprises (OMWBE). We used this data to compare the racial composition of small businesses in this directory to the racial composition of small businesses awarded county contracts. We assessed the reliability of the data by reviewing anomalies, interviewing users of the data, and comparing the datasets against one another. We determined that all the data is sufficient to support the findings and conclusions we reported.

We used BDCC's data and the state OMWBE directory to assess differences in contracting outcomes based on a contractor's race. We limited this comparison to small businesses since our analysis was concerned with how well the county's small business program was addressing inequities. There were reliability concerns regarding the county's directory of certified small businesses due to the fact that expired certifications were still maintained as active. However, this was true in the OMWBE directory as well and these firms were effectively treated as certified small businesses whether or not they were verified to be small after their expiry period (see audit recommendation 14). It might be the case that some proportion of these firms are no longer small, however since the state and county considers them small if they are in the directory, we do not believe this limitation affects our findings and conclusions.

We also ran a chi-squared test to determine whether the differences in the racial composition of the OMWBE directory and the certified small businesses the County contracted with were statistically significant. We found that the disparity across White-, Latinx/Hispanic- and Black-owned small firms was significant at the 99 percent confidence level.

In order to understand which businesses were bidding on county contracts, we also constructed a dataset using the County's online vendor registration (OVR) portal which retains data documenting all contract bidders in PDF format. In order to generate a generalizable sample of contract bidders between July 1, 2015 and June 30, 2020, we sampled for a 99 percent confidence level and five percent margin of error of contracts to review. We determined that we would need to review, at minimum, 586 out of 4,904 total contracts. We exceeded this minimum requirement and sampled 645 contracts, including at least 100 from each contract type (construction, goods and services, technical services, architecture, engineering, and professional services). We then used the data directory of certified firms to assess which types of firms were bidding and winning. When making conclusions in the aggregate of this sample, we applied weights for proportional representation.

The largest limitation of this methodology is the possibility of error due to the manual pull and entry of OVR data, however our quality assurance process ensures that these errors are minimized. We assessed the reliability of OVR by comparing it against the Oracle procurement database and interviewing users of the data. We determined that the data is sufficient to support our findings and conclusions.

We conducted interviews with staff and leadership in FBOD, BDCC, and county agencies. County agencies we interviewed included: Facilities Management Division, Metro Transit Department, Wastewater Treatment Division, Solid Waste Division, Road Services Division, Department of Human Resources, and King County Information Technology. We also interviewed small business and minority- or women-owned business advocacy organizations as well as pro-equity experts to better understand barriers and opportunities for improvement.



# List of Recommendations

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## Recommendation 1

**The Business Development and Contract Compliance office should develop, document, and implement a strategy to track racial inequities in contract spending for the Small Contractor and Supplier program on an ongoing basis.**

## Recommendation 2

**In order to determine an appropriate time to conduct a disparity study, the process owner the County identifies for Recommendation 4 should assess and document what steps should be taken prior to a disparity study.**

## Recommendation 3

**If disparities persist following steps taken per Recommendation 2, then the County should conduct a disparity study.**

## Recommendation 4

**The County Executive should design, document, and communicate roles and responsibilities, including a process owner, for increasing contracting opportunities for minority- and women-owned business enterprises.**

## Recommendation 5

**The process owner the County identifies for Recommendation 4 should work with agencies to develop, document, and publicly report annual, voluntary department-level and county-level goals for procurement spending with minority- and women-owned business enterprises.**

## Recommendation 6

**The Business Development and Contract Compliance office and Finance and Business Operations Division should develop, document, and implement a plan to ensure that all active Small Contractors and Suppliers are registered as county vendors.**

## Recommendation 7

The process owner the County identifies for Recommendation 4 should work with the Office of Risk Management to review, revise, and communicate standard contract language on insurance requirements to reduce the extent to which insurance is a barrier to contracting with King County for small businesses and minority- and women-owned business enterprises.

## Recommendation 8

The process owner the County identifies for Recommendation 4 should work with the Office of Risk Management to develop, document, and communicate guidance for departments and divisions to reduce the extent to which insurance is a barrier to contracting with King County for small businesses and minority- and women-owned business enterprises.

## Recommendation 9

The process owner the County identifies for Recommendation 4 should develop, document, and implement a plan to offer tools and trainings to increase contracting opportunities with King County for small businesses and minority- and women-owned business enterprises.

## Recommendation 10

The process owner the County identifies for Recommendation 4 should work with the Finance and Business Operations Division to develop, document, and communicate guidance on how agencies can reduce the extent to which evaluation criteria are barriers to contracting with King County for small businesses and minority- and women-owned business enterprises.

## Recommendation 11

The process owner the County identifies for Recommendation 4 should track and publicly report annual county procurement spending with small businesses and minority- and women-owned business enterprises for goods and services.

## Recommendation 12

Finance and Business Operations Division should develop, document, and implement policies and procedures that outline a process for agencies to conduct regular monitoring of Small Contractors and Suppliers requirements and to report at least quarterly to the Business Development and Contract Compliance office on their progress.

### Recommendation 13

**Following regular monitoring from Recommendation 12, Finance and Business Operations Division should ensure that contractors that repeatedly fail to meet Small Contractors and Suppliers requirements are sanctioned in-line with King County Code 2.97.100.**

### Recommendation 14

**The Business Development and Contract Compliance office should develop, document, and implement a plan to ensure that it removes expired firms from the Small Contractors and Suppliers directory after three years, in-line with policy.**



# KING COUNTY AUDITOR'S OFFICE

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## Advancing Performance & Accountability

KYMBER WALTMUNSON, KING COUNTY AUDITOR

**MISSION** Promote improved performance, accountability, and transparency in King County government through objective and independent audits and studies.

**VALUES** INDEPENDENCE - CREDIBILITY - IMPACT

**ABOUT US** The King County Auditor's Office was created by charter in 1969 as an independent agency within the legislative branch of county government. The office conducts oversight of county government through independent audits, capital projects oversight, and other studies. The results of this work are presented to the Metropolitan King County Council and are communicated to the King County Executive and the public. The King County Auditor's Office performs its work in accordance with Government Auditing Standards.



This audit product conforms to the GAGAS for independence, objectivity, and quality.