ORDINANCE NO. 1310

AN ORDINANCE ESTABLISHING POLICIES FOR THE PARTICIPATION OF BUSINESSES OWNED AND CONTROLLED BY MINORITIES, WOMEN, AND OTHER DISADVANTAGED INDIVIDUALS AND BUSINESSES IN THE LOCAL BUSINESS AREA IN CONTRACTS BY AND THROUGH THE COUNTY OF SOLANO

WHEREAS, the citizens of the County of Solano recognize responsibility to take positive steps to end the practices of racial discrimination and racism; and

WHEREAS, the Board of Supervisors recognizes and embraces the founding principles of our Constitution that all men are created equal and endowed with certain inalienable rights to life, liberty and the pursuit of happiness; and

WHEREAS, the United States Supreme Court has upheld the power of local governments to make legitimate economic decisions without being subject to the restraints of the interstate commerce clause when it participates in the market place as a corporation or a citizen as opposed to exerting its regulatory powers; and

WHEREAS, the County of Solano declares that it is the policy of the County to further the equality of all disadvantaged peoples and to determine with whom it seeks to have business relations in accordance with that policy; and

WHEREAS, the intent of this plan is to provide local socially and economically disadvantaged business enterprises with an equal opportunity to do business with the County and implementation of this plan will promote increased contracts and purchases with local socially and economically disadvantaged business enterprises; and

WHEREAS, historically, minority and women owned businesses have not fully participated in the labor market, yet they play a critical role in the community by providing jobs, catalyzing economic growth and stabilizing the economic basis of the community and further, minority businesses tend to locate in predominately minority communities and also tend to hire workers who are members of minority groups; and

WHEREAS, in recognition of the historic and current socio-economic conditions which have constrained minority and women's owned business participation, the Federal government has issued a series of Executive Orders and Regulations which call for all levels of government to encourage and support minority and women owned businesses, including, but not limited to, OMB Circular A-102, Executive Order 11625, Executive Order 12138, Executive Order 12432, and the regulation of the United States Department of Housing and Urban Development; and
WHEREAS, policies and programs which enhance the viability of minority owned, women owned, and local businesses will best serve the public interest because the growth and development of such businesses will have a significant positive impact on the economic health of the County; and

WHEREAS, Public Contract Code Section 2000 provides in pertinent part as follows:

2000 (a) Notwithstanding any other provision of law requiring a local agency to award contracts to the lowest responsible bidder, any local agency may require that a contract be awarded to the lowest responsible bidder who also does either of the following:

(1) Meets goals and requirements established by the local agency relating to participation in the contract by minority business enterprises and women business enterprises. If the bidder does not meet the goals and requirements established by the local agency for that participation, the local agency shall evaluate the good faith effort of the bidder to comply with those goals and requirements as provided in paragraph (2).

(2) Makes a good faith effort in accordance with the criteria established pursuant to subdivision (b), prior to the time bids are opened, to comply with the goals and requirements established by the local agency relating to participation in the contract by minority or women business enterprises.

(b) (1) The bidder attended any presolicitation or prebid meetings that were scheduled by the local agency to inform all bidders of the minority and women business enterprise program requirements for the project for which the contract will be awarded. A local agency may waive this requirement if it determines that the bidder is informed as to those program requirements.

(2) The bidder identified and selected specific items of the project for which the contract will be awarded to be performed by minority or women business enterprises to provide an opportunity for participation by those enterprises.

(3) The bidder advertised, not less than 10 calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, specified by the local agency for minority or women business enterprises that are interested in participating in the project. This paragraph applies only if the local agency gave public notice
of the project not less than 15 calendar days prior to the date the bids are opened.

(4) The bidder provided written notice of his or her interest in bidding on the contract to the number of minority or women business enterprises required to be notified by the project specifications not less than 10 calendar days prior to the opening of bids. To the extent possible, the local agency shall make available to the bidder not less than 15 calendar days prior to the date the bids are opened a list or a source of lists of enterprises which are certified by the local agency as minority or women business enterprises. If the local agency does not provide that list or source of lists to the bidder, the bidder may utilize the list of certified minority or women business enterprises prepared by the Department of Transportation pursuant to Section 14030.5 of the Government Code for this purpose.

(5) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.

(6) The bidder provided interested minority and women business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.

(7) The bidder requested assistance from minority and women community organizations; minority and women contractor groups; local, state, or federal minority and women business assistance offices; or other organizations that provide assistance in the recruitment and placement of minority or women business enterprises, if any are available.

(8) The bidder negotiated in good faith with the minority or women business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any minority or women business enterprises, as determined by the local agency.

(9) Where applicable, the bidder advised and made efforts to assist interested minority and women business enterprises in obtaining bonds, lines of credit, or insurance required by the local agency or contractor.

(10) The bidder's efforts to obtain minority and women business enterprise participation could reasonably be expected by the local agency to produce a level of participation sufficient to meet the goals and requirements of the local agency.
(c) The performance by a bidder of all of the criteria specified in subdivision (b) shall create a rebuttable presumption, affecting the burden of producing evidence, that a bidder has made a good faith effort to comply with the goals and requirements relating to participation by minority and women business enterprises established pursuant to subdivision (a); and

WHEREAS, the Solano County Board of Supervisors desires to implement the provisions of Public Contract Code Section 2000;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors does ordain as follows:

SECTION I.

Section 22-17 of Chapter 22 of the Solano County Code is hereby added, to read as follows:

Section 22-17. Disadvantaged/Women/Local Business Enterprise Program.

(a) Policy. The Board of Supervisors hereby implements Public Contract Code Section 2000 allowing the County in the awarding of contracts to the lowest responsible bidder to require that a contract be awarded to the lowest responsible bidder who also meets goals and requirements established by the County relating to participation in the contract by minority business enterprises and women business enterprises. If the bidder does not meet the goals and requirements established by the County for that participation, the County shall evaluate the good faith effort of the bidder to comply with the established goals and requirements. The good faith effort of a bidder to meet the established goals and requirements, shall be evaluated in accordance with the following criteria:

(1) The bidder attended any presolicitation or prebid meetings that were scheduled by the County to inform all bidders of the minority and women business enterprise program requirements for the project for which the contract will be awarded. The County may waive this requirement if it determines that the bidder is informed as to those program requirements.

(2) The bidder identified and selected specific items of the project for which the contract will be awarded to be performed by minority or women business enterprises to provide an opportunity for participation by those enterprises.

(3) The bidder advertised, not less than 10 calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, specified by the County for minority or women business enterprises that are interested in participating in the project. This paragraph applies
only if the County gave public notice of the project not less than 15 calendar days prior to the date the bids are opened.

(4) The bidder provided written notice of his or her interest in bidding on the contract to the number of minority or women business enterprises required to be notified by the project specifications not less than 10 calendar days prior to the opening of bids. To the extent possible, the County shall make available to the bidder not less than 15 calendar days prior to the date the bids are opened a list or a source of lists of enterprises which are certified by the County as minority or women business enterprises. If the County does not provide that list or source of lists to the bidder, the bidder may utilize the list of certified minority or women business enterprises prepared by the Department of Transportation pursuant to Section 14030.5 of the Government Code for this purpose.

(5) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.

(6) The bidder provided interested minority and women business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.

(7) The bidder requested assistance from minority and women community organizations; minority and women contractor groups; local, state, or federal minority and women business assistance offices; or other organizations that provide assistance in the recruitment and placement of minority or women business enterprises, if any are available.

(8) The bidder negotiated in good faith with the minority or women business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any minority or women business enterprises, as determined by the County.

(9) Where applicable, the bidder advised and made efforts to assist interested minority and women business enterprises in obtaining bonds, lines of credit, or insurance required by the County or contractor.

(10) The bidder's efforts to obtain minority and women business enterprise participation could reasonably be expected by the County to produce a level of participation sufficient to meet the goals and requirements of the County.

(11) The performance by a bidder of all the criteria specified in subsection 1 through 10 above shall create a rebuttable presumption, affecting the burden of producing evidence, that a bidder has made a good faith effort to comply with the goals and
requirements relating to participation of minority and women business enterprises established by the County.

(b) Goals and Requirements. The County Administrator shall establish, subject to the approval of the Board of Supervisors, goals and requirements not in conflict with Public Contract Code Section 2000 to assist the County in meeting goals relating to participation in public contracts by minority business enterprises, women business enterprises, and local business enterprises.

SECTION II.

This Ordinance shall be published once before the expiration of FIFTEEN (15) DAYS after its final passage in the Daily Republic, a newspaper of general circulation, printed and published in Solano County, State of California, and shall be in full force and effect THIRTY (30) DAYS after its passage.

ATTEST:

LINDA TERRA, Clerk of the Board of Supervisors

I, LINDA TERRA, Clerk of the Board of Supervisors, County of Solano, State of California, do hereby certify that the foregoing Ordinance was regularly introduced, passed and adopted by said Board at a regular meeting held June 9, 1987, on Motion of Supervisor Brann, Seconded by Supervisor Caddle, by the following vote:

AYES: SUPERVISORS BRANN, CADDLE, PIPPO, STURN, AND CHAIRMAN DAVIS

NOES: SUPERVISORS NONE

ABSTAINED: SUPERVISORS NONE

ABSENT: SUPERVISORS NONE

WITNESS my hand and Seal of said Board this 9th day of June, 1987.

LINDA TERRA, Clerk of the Board of Supervisors

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