



King County

King County
Public Rules and Regulations

Public Rules

Title Rules Implementing Equal Benefits Ordinance 14823, and Ordinance 16856	Document Code No. CON-7-15-1 (PR)
Department/Issuing Agency Executive Administration SERVICES	Effective Date. January 30, 2011

- 1.0 **SUBJECT TITLE:** Rules Implementing Equal Benefits Ordinances 14823 and 16856
- 1.1 **EFFECTIVE DATE:** ~~June 26, 2010~~ January 30, 2011
- 1.2 **TYPE OF ACTION:** Supersedes CON 7-15 (PR), June 25, 2005
- 2.0 **PURPOSE:** To establish uniform rules to implement the provisions of King County Ordinance 14823 requiring certain County Contractors to provide the same or equivalent benefits to employees with spouses and employees with Domestic Partners and to create an implementation plan designed to provide clear guidance to entities seeking to comply with the law.
- 3.0 **ORGANIZATIONS AFFECTED:**
- 3.1 All County departments, offices and agencies authorized to enter into or to administer Contracts on behalf of the County.
- 3.2 All Contractors entering into a Contract to perform services or provide tangible personal property that entails a legally binding obligation of Twenty-Five Thousand Dollars (\$25,000.00) or more.
- 4.0 **REFERENCES:**
- 4.1 King County Ordinance 14823
- 4.2 King County Code 3.12.010
- 4.3 King County Code 4.16.010
- 4.4 King County Code 4.16.040
- 4.5 King County Code 4.16.050
- 4.6 King County Code 4.16.085
- 5.0 **DEFINITIONS:**
- 5.1 "Contract" means an agreement to perform services, including public works, professional and technical services and other services, or to provide tangible personal property, as defined in King County Code 4.16.010, that entails a legally binding obligation of Twenty-Five Thousand Dollars (\$25,000.00) or more, or such other threshold dollar amount as the King County Council may enact in the future. A Contract does not include: noncompetitive human services contracts; a contract between a Contract Awarding Authority and a public entity; a contract for the

- purchase, lease or rent of real estate; or a collective bargaining agreement.
- 5.2 "Noncompetitive human services contracts" means any contract involving more than twenty-five thousand dollars for department of community and human services or public health – Seattle and King County that is noncompetitive, does not have to be advertised and is not processed by the procurement and contract services section of the finance and business operations division.
- 5.3 "Contract Award" means any notice of selection, notice of intent to award or acceptance of a bid/proposal mailed or otherwise furnished to the successful contractor that is intended to result in an executed contract. Until the contract is executed, any work done on the project or commitment of any funds is at the contractor's risk.
- 5.4 "Contract Awarding Authority" means the County officer, department, employee, or other County governmental unit authorized to enter into or to administer a Contract on behalf of the County.
- 5.5 "Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, including a "vendor" or a "consultant", who submits a bid, proposal, and/or enters into a Contract with a Contract Awarding Authority.
- 5.6 "Department" or "DES" means the Department of Executive Services, unless otherwise specified.
- 5.7 "Executive" means the King County Executive or his or her designee.
- 5.8 "Domestic Partner" means any person who is a Domestic Partner, same sex or opposite sex, as defined in K.C.C. 3.12.010 and is registered with the employee's employer as the employee's Domestic Partner or, in the absence of such an employer-provided registry, is registered as a Domestic Partner with a governmental body in accordance with the state or local law authorizing the registration. Any internal employer registry of domestic partnership must comply with the criteria for domestic partnerships as specified herein.
- 5.9 "Employee Benefits" or "Benefits" means any plan, program or policy provided by a Contractor to its employees as part of the employer's total compensation package. "Employee Benefits" includes, but is not limited to: pension and retirement benefits, medical, dental and vision plans or other health benefits; bereavement, family medical, parental and other leave policies; disability, life, and other types of insurance; employee assistance programs; memberships or discounts; moving expenses; access to facilities, services and events; travel and relocation expenses; incentive, stock option, and profit sharing plans and other compensation programs; vacation; travel benefits; and other benefits given to employees, provided that it does not include benefits to the extent that the application of the requirements of these rules to such benefits may be preempted by federal or state law.
- 5.10 "Legally domiciled member of household" means any person who:
1. a. Currently lives in the same residence as the employee;
 - b. Intends to continue living in the same primary residence as the employee;

- c. Is jointly responsible with the employee for the basic living expenses of the household;
 - d. Is eighteen years of age or older; and
 - e. Is not married; or
 - 2. Is an adult, dependent relative living in the same primary residence as the employee and is claimed as the employee's tax dependent.
- 5.11 "Non-discrimination in Benefits" means the provision of the same or equivalent benefits to employees with spouses and employees with Domestic Partners, to spouses of employees and Domestic Partners of employees, and to dependents and family members of spouses and dependents and family members of Domestic Partners. Non-discrimination in Benefits is further defined by Ordinance 14823 and elsewhere within these rules. Non-discrimination in Benefits is also referred to as provision, or implementation, of "Equal Benefits" elsewhere within these rules.
- 5.12 "Reasonable Measures" means a determination by King County that a reasonable amount of effort has been taken by the Contractor to provide the same or equivalent benefits to employees with spouses and employees with Domestic Partners, and that no form of substantial compliance applies to the Contractor.
- 5.13 "Roster" means a list of qualified consultants or Contractors maintained by the County as provided for in King County Code 4.16.085 or another list of qualified Contractors utilized by the County pursuant to a cooperative agreement with any other state or local agency.

6.0 POLICIES:

- 6.1 General: It is the policy of King County that benefit discrimination against any persons with Domestic Partners constitutes a matter of local concern and is contrary to the public welfare, health, peace and safety of the citizens of King County. No Contract Awarding Authority shall execute a Contract with a Contractor unless such Contractor has agreed that the Contractor will not discriminate in the provision of employee benefits as provided for in Ordinance 14823 and these rules.

These rules are intended to provide the County with guidelines for implementing the requirements such that the County can provide clarification and assistance to businesses in learning about these emerging concepts of equality in employment and such that businesses are encouraged to provide equal benefits. Concurrently, the rules are intended to provide the County with guidelines for implementing the requirements such that the County continues to be able to purchase necessary goods and services to conduct its business.

- 6.2 Effective Date: These rules shall apply to any Contract awarded on or after April 1, 2004. They shall not apply to amendments or extensions pursuant to existing contract terms awarded prior to April 1, 2004, except that the extension process shall not be used for the purpose of evading the requirements of Ordinance 14823 or these provisions.

- 6.3 Contracts: All Contracts awarded by the County and covered by Ordinance 14823 shall contain provisions developed by the Department of Executive Services prohibiting discrimination in the provision of employee benefits, including provisions containing appropriate remedies for the breach thereof as prescribed by Ordinance 14823, except as exempted by this chapter or these rules or procedures.
- 6.4 Subcontracts and Subcontractors: The Non-discrimination in Benefits requirement does not apply to subcontracts or subcontractors.
- 6.5 Covered Entity: The scope of work, goods, or services as outlined in the Contract will define which entity or part of the legal structure of the contracting company must comply with Ordinance 14823. Separate corporate entities, including parents and subsidiaries of the entity that contracts with the County, are not required to comply. In the case of a joint venture, all joint venture members are required to comply with Ordinance 14823. The County will examine the corporate structure of the entity to determine whether it has been created for separate, independent and legitimate business reasons, and not for the purpose of avoiding the ordinance. The factors to be considered in this determination may include but are not limited to:
- 6.5.1 The legal structure of the entity;
 - 6.5.2 The degree of control the entity exercises over the provision of benefits;
 - 6.5.3 The date the entity was formed; and
 - 6.5.4 The role within the entity of the person signing the contract.
- 6.6 Location: Contractors are encouraged to end discrimination in benefits throughout their operations in the U.S. The Non-discrimination in Benefits requirement applies to a Contractor in all of its operations located:
- 6.6.1 Within King County;
 - 6.6.2 On real property outside of the County if the property is owned by the County or if the County has a right to occupy the property, and if the Contractor's presence at that location is connected to a Contract with the County; or
 - 6.6.3 Elsewhere in the United States where the Contractor performs work relating to a County Contract.

Where a Contractor declines to end discrimination in benefits throughout the Contractor's operation in the U.S., the County shall determine where compliance under this section 6.6.3 is required before the Contractor enters into each individual contract.

The determination of where compliance is required shall be based upon a consideration of factors which include but are not limited to:

- 6.6.3.1 The nature of the work being performed in locations other than King County;
- 6.6.3.2 The degree of connection between the contract at issue and the work being performed in locations other than King County;
- 6.6.3.3 The amount of contact and communication that persons performing work in locations other than King County have with other persons performing work related to the contract.

Comment: The following is an example of how Ordinance 14823 applies to companies that have several different locations: Company Z has offices in Seattle, Boston, and Nashville. Company Z enters into a consultant Contract with the County, with all of the consulting work to be performed in its Nashville office. Under its Contract with the County, Company Z must practice non-discrimination in benefits in both its Seattle and Nashville offices, but is not obligated to do so in its Boston office.

6.7 Covered Benefits: A Contractor must not discriminate in all benefits offered to married employees or employees with Domestic Partners, and in all benefits offered to employees' spouses or employees' Domestic Partners.

6.7.1 Employee benefits covered by the federal Employment Retirement Income Security Act of 1974 ("ERISA") must be offered on a non-discriminatory basis under Ordinance 14823. ERISA-covered benefits include benefits provided under employee welfare plans (such as medical insurance) and employee pension plans.

6.7.1.1 Exception: If a Contractor demonstrates that, with respect to a particular Contract, the County is exercising more power in the marketplace than an ordinary consumer of the goods or services at issue in the Contract, the Contractor then may limit the benefits offered on a nondiscriminatory basis to exclude those benefits provided under ERISA-sponsored benefits plan.

Policy: The Contractor is responsible for raising this issue with the County and must submit documentation that supports its claim of limited application. The County will provide a form for this purpose. The County shall make the final determination as to which benefits must be offered on a non-discriminatory basis. This determination shall be required before the Contractor enters into each individual Contract.

6.8 Employee Benefit Policies – Options for Compliance: Provided that a Contractor does not discriminate in the provision of benefits between employees with spouses and employees with Domestic Partners and between the spouses and Domestic Partners of employees, the following employee benefit policies are in compliance with the requirements of Ordinance 14823:

- 6.8.1 The Contractor provides benefits to individuals in addition to employees with spouses and employees with Domestic Partners and the spouses and Domestic Partners of employees; or

Comment: Under Section 6.8.1, a Contractor who provides equal benefits to employees with spouses and employees with Domestic Partners may elect to also provide coverage for additional individuals. For example, one major national bank has a policy that, in addition to spouses and Domestic Partners, it extends some benefits to "other individuals if the relationship with [the employee] is especially close and it would be normal for them to turn to [the employee] for assistance."

- 6.8.2 The Contractor provides benefits on a basis independent of marital or Domestic Partner status by allowing all employees to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent benefits; or

Comment: Under Section 6.8.2, a Contractor may elect to provide benefits on a basis unrelated to marital and Domestic Partner status. For example: ABC Service Provider is a faith-based organization that objects to the implications of the title of Domestic Partner, and is willing to comply with Ordinance 14823 by allowing ALL employees to designate a member of their household as a recipient of benefits.

- 6.8.3 The Contractor provides benefits neither to the spouse or domestic partner of an employee.

*Comment: All of the examples below describe employer benefit policies that are in compliance with Ordinance 14823. The standard measure of non-discriminatory benefits policy is **parity** – benefits offered to one group (married employees or the spouses of employee's), must be offered, on equal terms, to the other group (employees with a domestic partner or the Domestic Partner of employees):*

- 1) LEAVE BENEFITS: Company Q does not offer any healthcare benefits to its employees. The company does allow married employees: time off to care for a sick spouse; family leave to care for the children of his/her spouse (i.e., stepchildren); bereavement leave upon the death of a family member (including persons related by marriage, such as parents in-law). Company Q allows the same leave time, on the same terms (e.g., paid or unpaid), for employees with Domestic Partners. Married employees and employees with Domestic Partners are equally informed of the availability of this leave time.*
- 2) ACCESS TO INSURANCE: Company Y offers healthcare benefits to its employees. Spouses of employees are eligible to enroll in the insurance plan but the employee seeking to enroll a spouse must pay 100% of the extra premium cost. Domestic Partners are also eligible to enroll in the insurance plan and the employee seeking to enroll a Domestic Partner is also required to pay 100% of the extra premium cost. (Note: If the extra premium cost were shared between Company Y and the married employee, the same terms must be offered to the employee with a Domestic Partner.)*
- 3) NO BENEFITS: Company X is small and cannot afford to offer any benefits*

to its employees, married or otherwise. This policy is in compliance with Ordinance 14823 in that there is parity between employees with spouses and employees with Domestic Partners.

4) NO BENEFITS TO SPOUSES OF EMPLOYEES: Company Z provides to its employees: travel stipends, gym membership, relocation expenses, and discounts on Company Z merchandise. No benefits are available for the spouses or Domestic Partners of its employees and none are given to an employee because he/she is married or has a Domestic Partner. This policy is in compliance with Ordinance 14823 in that there is parity between employees with a spouse and employees with a Domestic Partner.

- 6.9 Substantial Compliance – Non-Discriminatory Discrepancies in Benefits: A Contractor will not be deemed to be discriminating in the provision of benefits where, upon approval by the County, the implementation of policies ending discrimination in benefits is delayed, or cash equivalent is offered to the employees with a Domestic Partner in lieu of ending discrimination. The County shall not enter into a contract with a Contractor unless they have received authorization from the Procurement and Contracting Services Section (PCSS) to delay implementation, or offer cash equivalent. The Contractor is responsible for submitting the **Substantial Compliance Authorization Form** (See APPENDICES) to PCSS in a timely manner.

Before the first award of a County Contract to a Contractor, delays are considered for Open Enrollment, Administrative Steps, and Collective Bargaining Agreements. Cash Equivalent is also a consideration for Substantial Compliance.

- 6.9.1 Open Enrollment. The Contractor must submit evidence that a reasonable amount of effort has been taken to end discrimination in benefits and can illustrate that Equal Benefits will be offered upon the first effective date after the first open enrollment process following the date the Contract with the County begins. This delay may not exceed twelve (12) months from the date the Contract with the County is entered, and only applies to benefits for which an open enrollment process is applicable.

Comment: For purposes of Section 6.9.1, the term "effective date" refers to the date upon which the next benefits plan year begins; the term "open enrollment period" refers to the time when employees are eligible to enroll themselves or others in the Contractor's benefits plan; the term "open enrollment process" begins when the Contractor starts planning for, and negotiating with its insurance provider(s) regarding, the benefits to be offered during the next benefits plan year, and ends at the next effective date.

- 6.9.2 Administrative Steps. The Contractor must submit evidence that additional time is needed in order to fully incorporate nondiscriminatory benefits into its infrastructure. The time allotted for these administrative steps shall apply only to those benefits for which administrative steps are necessary and may not exceed three (3) months. An extension of this time may be granted at the discretion of the County upon the written request of the Contractor.
- 6.9.3 Collective Bargaining Agreement. The Contractor must submit evidence of a current collective bargaining agreement(s) where all of the following conditions

have been met:

- 6.9.3.1 The provision of benefits is governed by one or more collective bargaining agreement(s); and
 - 6.9.3.2 The Contractor takes a reasonable amount of effort to end discrimination in benefits by requesting that the union(s) involved agree to either reopen the agreement(s) in order for the Contractor to take whatever steps are necessary to end discrimination in benefits or the union ends discrimination in benefits without reopening the collective bargaining agreement(s).
- 6.9.4 Cash Equivalent Payment. In limited circumstances, the County may authorize a contractor to provide eligible employees with a cash equivalent payment in lieu of benefits that are unavailable due to circumstances outside of the contractor's control. Where a Contractor is unable to end discrimination in benefits by the date of the Contract and, further, does not anticipate being able to end discrimination in benefits at any time during the term of the Contract, the Contractor must provide to employees with a Domestic Partner a Cash Equivalent Payment.

The Cash Equivalent Payment shall be the amount of money **paid by the Contractor** for the benefit given to a similarly situated employee during the term of the Contract. Cash Equivalent is only what the company pays, and does not include what the employee contributes. To the extent that a Contractor limits the availability of any benefit to the spouses of employees, or vice versa, the availability of a Cash Equivalent Payment may be similarly limited. The Cash Equivalent Payment shall be made either on the same schedule as the County Contractor uses for the benefit given to employees with spouses, or, if no such schedule exists, on another schedule so long as such payment is made no less than once per month. No Cash Equivalent Payment will be required where making such a payment would violate federal or state law.

Comment: 1) The following scenarios are provided as examples of Cash Equivalent Payments for similarly situated employees:

(a) Company Q provides health insurance coverage for its employees, including spousal coverage for married employees. Because Company Q only has 20 employees, no insurance company is willing to sell Domestic Partner coverage to Company Q. Company Q pays \$100/month for Insurance coverage for an unmarried employee. Company Q pays \$150/month for Insurance coverage for a married employee whose spouse is also covered by the plan. The Cash Equivalent Payment amount due to an employee with a Domestic Partner is \$50/month.

(b) Company Z has locations in Dallas, TX and Bridgeport, CT, and offers spousal health insurance to its employees in both locations. Company Z is doing business with King County such that they are required to comply with Ordinance 14823 in both locations. Company Z is unable to provide health insurance for the Domestic Partners of its employees in both locations. The Cash Equivalent Payment amount owed to eligible employees is calculated by

comparing Company Z's insurance costs within a single location (i.e. either Bridgeport or Dallas). Therefore, the Cash Equivalent Payment Company Z would pay to its Bridgeport employees would be the difference between the amount of money paid by the company for insurance in Bridgeport for an unmarried employee and a married employee whose spouse is also covered; similarly, the Cash Equivalent Payment Company Z would pay to its Dallas employees would be the difference between the amount of money paid by the company for insurance in Dallas for an unmarried employee and a married employee whose spouse is also covered.

2) The following scenario is provided as an example of limiting the availability of a Cash Equivalent Payment: A Contractor limits the availability of spousal health insurance coverage to only those spouses who are not already covered by their own employer's health insurance plan. This Contractor is unable to provide health insurance to the Domestic Partners of its employees and instead offers a Cash Equivalent Payment. The Contractor may limit the availability of a Cash Equivalent Payment to an employees who's Domestic Partner is already covered by their own employer's health insurance plan.

6.10 Waivers: A Contract Awarding Authority, after encouraging a non-compliant prospective Contractor to comply with Ordinance 14823, may submit to the Executive or his or her designee a request to waive certain Equal Benefit requirements where:

6.10.1 Award of a Contract or amendment to a Contract is necessary in an emergency, as "emergency" is defined in K.C.C. 4.16.050;

6.10.2 The Contract is for a proprietary purchase under K.C.C. 4.16.040. Contracting department/agency shall perform all investigation necessary to establish these facts, and shall submit its findings in writing to Procurement and Contract Services Section (PCSS);

6.10.3 There are no Contractors capable of responding to the County's requirements that comply with the provision of Ordinance 14823;

Comment: The following is an example of when a Waiver under Section 6.10.3 might be necessary: In response to a call for bids/proposals, a Contract Awarding Authority receives two bids/proposals for a particular contract. Both Contractors satisfy all the County's requirements except for providing Equal Benefits. The County under these conditions may grant a Waiver of the Equal Benefits requirement, provided that the Contract Awarding Authority may not seek a Waiver under this provision until they have sought to facilitate compliance from both responsive bidders/proposers.

6.10.4 The Contractor, despite taking all reasonable measures to do so, demonstrates it is unable to extend a particular employee benefit to Domestic Partners;

Comment: Only the particular employee benefit that is outside of the Contractor's control will be considered for this type of waiver, all other benefits within the Contractor's control must be offered equally.

6.10.4.1 The County will determine whether a Contractor has taken all Reasonable Measures upon the review of a **Reasonable Measures Waiver Request Form (See APPENDICES)** and any attached compelling documentation provided by the Contractor that demonstrates that it is not possible for the Contractor to end discrimination in benefits. Determinations shall be based upon the following factors:

6.10.4.1.1 All forms of Substantial Compliance as outlined in these rules have been reviewed by the Contractor and they are still unable to meet the requirements; and

6.10.4.1.2 The Contractor has contacted and identified, in writing, a number of alternate benefit providers and provided documentation that these providers will not provide benefits to Domestic Partners. The County's final determination will also be based on the discovery, or existence of benefit providers willing to offer these benefits to the Contractor; and

6.10.4.1.3 The existence of federal or state laws, which preclude the Contractor from ending discrimination in benefits.

6.10.5 The requirements are inconsistent with a grant, subvention or agreement with a public agency; or

6.10.6 The County is purchasing goods and/or services through a cooperative or joint purchasing agreement.

Comment: Waivers for an emergency as defined by K.C.C. 4.16.050, for a proprietary purchase as defined by K.C.C. 4.16.040, public agencies and purchasing through cooperative or joint agreements will be considered automatically waived, and an Equal Benefits Declaration form is not necessary to execute this type of contract.

6.11 Requests for Waivers: Requests for waivers of these provisions are to be made to the PCSS Manager by the requesting department/agency via a written justification prior to the award of the Contract. The written justification requesting a waiver must provide information on the following factors:

6.11.1 A description of the item or service to be purchased and the name of contractor, vendor or consultant;

6.11.2 A clear statement of the kind of waiver being requested (i.e. emergency, single source, etc);

6.11.3 Reference to what section of equal benefit Ordinance 14823 is applicable to the requested waiver;

- 6.11.4 An indication of reasons or rationale for the request for waiver and the special circumstances;
- 6.11.5 A description of what efforts have been made to get the Contractor to comply and the results of these efforts;
- 6.11.6 A description of the steps taken to identify other qualified Contractors or methods of purchasing and an explanation of the rationale for selecting the Contractor or proposed method of purchasing.
- 6.11.7 The decisions by the Executive to issue or deny Waivers are final.
- 6.11.8 Additional Waiver Requirements. Where a Contract Awarding Authority seeks to obtain the approval of a Waiver from the Executive, the Contract Awarding Authority must:
 - 6.11.8.1 Inform the prospective Contractor that the Non-discrimination in Benefits requirement of Ordinance 14823 applies to the Contract in question; and
 - 6.11.8.2 Attempt to award any future Contracts for the needed goods, public works, or services to a Contractor that does not discriminate in the provision of benefits by developing contacts with other providers who do comply with the Non-discrimination in Benefits requirement of Ordinance 14823; and/or
 - 6.11.8.3 Refer the single source provider to the County's Contracting Services Section to assist a single source provider in fully complying with Equal Benefit requirements of Ordinance 14823.
- 6.12 Sanctions and Remedies: The Executive shall determine and impose appropriate sanctions or remedies, or both, for a Contractor's breach of a Contract subject to the requirements of Ordinance 14823 and these rules including, but not limited to:
 - 6.12.1 Disqualification of the Contractor from bidding on or being awarded a County Contract for up to two (2) years, provided however, the Contractor shall be given reasonable notice and reasonable opportunity to be heard;
 - 6.12.2 Remedies allowable by Contract including, but not limited to, liquidated damages and termination of the Contract;
 - 6.12.3 Other appropriate civil remedies and sanctions allowable by law;
 - 6.12.4 Allowance for remedial action after a finding of non-compliance. Where the County determines that the best resolution of non-compliance would be remedial action by the Contractor, the County may take such action in lieu of Contract termination or disqualification. The Executive may require other appropriate remedial action, including expedited implementation of equal benefits, provided that any remedial action authorized under Ordinance 14823 must be taken with sixty (60) days of the date of the finding of non-

compliance. Circumstances that would favor remedial action include:

- 6.12.4.1 Where the Contractor's non-compliance was nominal or unintentional; or
 - 6.12.4.2 Where the Contractor believed in good faith that its benefits policies were in compliance with the requirements of Ordinance 14823 and these rules and procedures; or
 - 6.12.4.3 Where the County determines that remedial action is superior to other authorized sanctions or remedies in ensuring the provision of equal benefits to eligible employees.
- 6.12.5 Procurement and Contract Services Section (PCSS) may reject an entity's bid or proposal if PCSS determines that the entity was set up, or is being used, for the purpose of evading the requirements or the intent of Ordinance 14823 or these rules.
- 6.12.5.1 PCSS may examine the corporate structure of the entity to determine whether it has been created for separate, independent and legitimate business reasons, and not for the purpose of evading the requirements or the intent of Ordinance 14823. The factors to be considered in this determination may include but are not limited to:
 - 6.12.5.1.1 The legal structure of the entity;
 - 6.12.5.1.2 The degree of control the entity exercises over the provision of benefits
 - 6.12.5.1.3 The date the entity was formed; and
 - 6.12.5.1.4 The role within the entity of the person signing the Contract.
- 6.13 Internal Domestic Partnership Registry: For purposes of administering non-discriminatory benefits, a Contractor may choose to recognize as valid domestic partnerships registered pursuant to any state or local law authorizing such registration. For example, the City of Seattle maintains a Domestic Partnership Registry that has no residency requirements, and any citizen, regardless of where they are located, may register their Domestic Partnership with the City of Seattle. In addition, a Contractor may institute an internal Domestic Partnership registry to allow for the provision of equal benefits to employees with Domestic Partners. For employees who are located in a jurisdiction where no governmental Domestic Partnership registry is available, and the Contractor chooses not to utilize the City of Seattle's registry, the Contractor must utilize an internal registry of Domestic Partnerships in order to administer Equal Benefits.

Comment: An employer may not use a criterion that is more restrictive than those used in the Affidavit of Domestic Partnership (See APPENDICES). For example, a more restrictive requirement for domestic partnership would be one that requires an employee to wait one hundred and eighty days (180) from the termination of a domestic partnership before filing another Affidavit of Domestic Partnership, instead

of ninety days (90), the required waiting period for re-marriage.

- 6.14 Verification of Domestic Partnership or Marriage: A Contractor may verify the existence of a domestic partnership or marriage to the extent such verification is undertaken equally for employees with Domestic Partners and employees with spouses. If eligibility for employee benefits extended to the spouse of a married employee requires the employee to provide a copy of a marriage license, the Contractor may also require an employee seeking benefits for a Domestic Partner to also provide a Certificate of Domestic Partnership.

Comment: For example, if a Contractor requires a married employee to provide a copy of his or her marriage license, the Contractor may also require an employee to provide a Certificate of Domestic Partnership. For many employers, an employee's sworn statement on an employer-provided Affidavit of Domestic Partnership functions as sufficient verification of a domestic partnership.

- 6.15 Excess Cost: In the event that the actual cost of providing a particular benefit to an employee with a Domestic Partner or an employee's Domestic Partner exceeds that of providing the benefit to an employee with a spouse or to an employee's spouse, or vice versa, the Contractor may condition its provision of equal benefits upon the employee agreeing to pay the excess costs. The excess costs the Contractor may pass on to the employee may include only the actual costs of the benefit for that employee and may not include implementation or administrative costs, any tax consequence to the employer, or additional costs to other employees.

Comment: For example, if a Contractor is able to demonstrate that it is required to pay a higher premium for dental coverage for an employee's Domestic Partner than for an employee's spouse, the Contractor may require the employee to pay this excess cost. (Note: This does not include a situation where an increase in the pool of eligible enrollees may have the effect of raising premiums across the board.) By contrast, if, in implementing a new dental plan in order to offer coverage to Domestic Partners, the Contractor incurred broker's fees, the employee with a Domestic Partner cannot be required to pay any portion of this excess cost.

- 6.16 Taxation: The withholding of income tax from an employee for income associated with the provision of benefits is permissible to the extent the taxation is required by state or federal law. A Contractor is not required to compensate employees for any employee tax obligations associated with receipt of Domestic Partner benefits and the application of federal or state tax law.

6.16.1 Nothing in these rules is intended to require a Contractor to take any action that would jeopardize the tax-qualified status of a benefit plan.

- 6.17 Notification: Notification by a Contractor to its employees regarding the provision of benefits to employees with spouses and employees with Domestic Partners must be conducted so that all employees are given equal notice of all available benefits.

Comment: New and existing employees must be notified that Employee Benefits includes those employees with Domestic Partners. Employers that make Equal Benefits available only at the time of an employee's request will be deemed non-

compliant with the requirements of Ordinance 14823.

- 6.18 Application to Small Works and Other Roster Programs: The requirements of Ordinance 14823 and these rules apply to Contractors that enter into Contracts pursuant to a small works or consultant roster program as authorized by RCW 39.04.155, 35.22.620 and King County Code 4.16.085, respectively. Ordinance 14823 and these rules apply to small works rosters whether such roster is maintained by the County or the County enters into an interlocal agreement with another public entity to utilize its roster.
- 6.19 Investigative Authority: Upon the Contractor's entry into a Contract with the County or upon the County's receipt of a Contractor's Bid Form or any other document in which the Contractor asserts its compliance with the Non-discrimination in Benefits requirement, the County shall have the authority to inspect all supporting evidence reasonably necessary to validate the Contractor's compliance with Ordinance 14823 and these rules. Supporting evidence may include but is not limited to: documentation that defines or outlines benefit plans and policies, reports, and information (including interviews) from Contractors, Contractor employees, bidders, members of the Contract Awarding Authority, and others as necessary. Such investigation may be made subsequent to a report of non-compliance or pursuant to a random audit of a Contractor's employee benefits policies.

A Contractor's failure to provide information requested pursuant to the County's investigative authority, will be a material breach of the Contract and subject the Contractor to sanctions and/or remedies, as authorized by Contract and these rules.

- 6.20 Registering a Complaint of Non-Compliance: A covered employee may report to the Procurement and Contract Services Section (PCSS) any alleged breach by a Contractor of Ordinance 14823. All complaints under Ordinance 14823 from a covered employee shall be submitted to PCSS. Contracting Departments, other Contractors, other covered employees, or other parties on behalf of a specific covered employee may also make complaints, however they will not be considered to be protests. Protests must follow the formal Bid Protest procedure. Complaints may be submitted by phone or by mail to: King County, Procurement and Contract Services Section, 821 Second Avenue, 8th Floor, Seattle, WA 98104-1598. To the extent permitted by state law, PCSS will maintain the confidentiality of all complainants who register a complaint pursuant to this provision (See, RCW Ch. 42.17, Washington State Public Disclosure Act). Complainants will have the opportunity to request confidentiality when registering their complaint.
- 6.21 Legislative Authority: Nothing in these provisions shall limit the right of the County Council to waive the requirements of Ordinance 14823 or these rules and procedures.

7.0 PROCEDURES:

Action By: Requisitioning Department
Action:

- 7.1 Completes requisition materials, and includes Equal Benefit forms made available by Procurement and Contract Services Section when needed.
- 7.2 Seeks a Waiver from requirements of Equal Benefits when no responsive Contractor meets the requirements of Ordinance 14823.

Action By: Contract Awarding Authority
Action:

- 7.3 Issues Contract materials, including standard Equal Benefits boilerplate language and Equal Benefit forms made available by Procurement and Contract Services Section.
- 7.4 Receives Contract materials and reviews submitted materials for Equal Benefits responsiveness and awards Contract to compliant Contractor.
- 7.5 Seeks a Waiver from requirements of Equal Benefits when no responsive Contractor meets the requirements of Ordinance 14823.

Action By: Contractor
Action:

- 7.6 Completes Equal Benefit compliance forms including but not limited to: Compliance Worksheet and Declaration, Substantial Compliance Authorization Form, or Reasonable Measures Waiver Request.
- 7.7 Completes Equal Benefits complaint form when appropriate.
- 7.8 Completes Application To Limit Benefits - Marketplace Participation, when requested to do so by Procurement and Contract Services Section.

Action By: Executive or his or her designee
Action:

- 7.9 Approves Waiver procedure.
- 7.10 Approves investigation and audit procedures.
- 7.11 Determines and imposes appropriate sanctions or remedies for violations of Equal Benefit requirements.

8.0 RESPONSIBILITIES:

- 8.1 The Contractor is responsible for taking all reasonable measures to provide the same or equivalent benefits to employees with spouses and employees with Domestic Partners.

8.2 The Executive or his or her designee is responsible for:

8.2.1 Adopting public and administrative rules establishing standards and procedures to implement Equal Benefits Ordinance 14823;

8.2.2 Receiving, reviewing and approving all appropriate waivers associated with Ordinance 14823;

8.2.3 Receive, investigate and resolve Equal Benefits complaints.

8.3 Contract Awarding Authority is responsible for:

8.3.1 Assuring all relevant language and documents are included in RFPs/ITBs, Contracts issued by the Contract awarding authority;

8.3.2 Receiving, reviewing and approving all compliance forms associated with Ordinance 14823;

8.3.3 Ensure the retention of records sufficient to document that the Contractor certified compliance with Ordinance 14823;

8.3.4 Awarding Contracts to Contractors who are in compliance with the Equal Benefits.

9.0 APPENDICES:

9.1 Sample Forms – Attached

9.1.1 Affidavit of Domestic Partnership

9.2 These appendices are available from the Procurement and Contract Services Section

9.2.1 Worksheet and Declaration

9.2.2 Substantial Compliance Authorization Form

9.2.3 Reasonable Measures Waiver Request Form

SAMPLE AFFIDAVIT OF MARRIAGE/DOMESTIC PARTNERSHIP

SECTION I

I, _____ certify that (Complete either "A" or "B"):
Name of Employee (Print)

A. I, and _____ were legally married on _____.
Name of Spouse (Print) Date of Marriage (Print)

-OR-

B. I, and _____ are domestic partners, and we:
Name of Domestic Partner (Print)

1. Share the same regular and permanent residence; and
2. Have a close, personal relationship; and
3. Are jointly responsible for "basic living expenses", as defined below; and
4. Are not married to anyone; and
5. Are each eighteen (18) years of age or older; and
6. Are not related by blood closer than would bar marriage in the State of _____; and
7. Were mentally competent to consent to contract when our domestic partnership began; and
8. Are each other's sole domestic partner and are responsible for each other's common welfare.

"Basic living expenses" means the cost of basic food, shelter, and any other expenses of a Domestic Partner, which are paid at least in part by a program or benefit for which the partner qualified because of the Domestic Partnership. The individuals need not contribute equally or jointly to the cost of these expenses as long as they agree that both are responsible for the cost.

SECTION II

A. I understand that this affidavit shall be terminated upon the death of my spouse/domestic partner or by a change of my circumstance attested to in this affidavit.

I agree to notify my payroll/personnel representative if there is any change of circumstances attested to in this affidavit with thirty (30) days of change by filing a Statement of Termination of Marriage/Domestic Partnership.

B. After such termination, I understand that another Affidavit of Marriage/Domestic Partnership cannot be filed until ninety (90) days after a Statement of Termination of Marriage/Domestic Partnership has been filed with my payroll/personnel representative, unless such termination is due to the death of my spouse/domestic partner or dissolution of my marriage.

SECTION III

We understand that is information will be held confidential and will be subject to disclosure only upon our express written authorization or if otherwise required by law.

We understand that this declaration of responsibility for our common welfare may have legal implications under state law.

We understand that a civil action may be brought against us for any losses, including reasonable attorney's fees, because of a false statement contained in this affidavit of Marriage/Domestic Partnership.

We also certify under penalty of perjury, under laws of the State of _____, that the foregoing is correct and true.

I, the undersigned employee, understand that willful falsification of information on this affidavit may lead to disciplinary action, up to and including discharge from employment.

Signature of Employee

Signature of Spouse/Domestic Partner

Address

Address
