



MURIEL BOWSER
MAYOR

September 29, 2020

The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Chairman Mendelson:

Enclosed for consideration by the Council is the "Supporting Local Business Enterprises Amendment Act of 2020" ("the Act"). The Act strengthens the District's Certified Business Enterprise (CBE) Program by making substantive and technical amendments to current CBE law. Of particular note, the Act makes five sweeping improvements for the benefit of bona fide local businesses participating in the Program.

First, the Act strengthens the integrity of the certification process by permanently tightening eligibility requirements for becoming a local business enterprise (LBE), the prerequisite for gaining entry into the CBE Program. More specifically, the Act requires a business applying for certification as an LBE to be "independently owned and independently operated," and eliminates the "asset test" as a qualification for eligibility as an LBE in order to thwart out-of-state, larger businesses from establishing a "local" office for the purpose of gaining preference for District contracts and procurements.

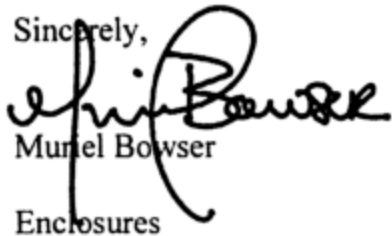
Second, the Act adds protections for CBE subcontractors by mandating beneficiaries to invoice the District for work performed on a government-assisted project every 30 days, and following receipt of payment by the District, to pay subcontractors for work invoiced and performed, further guaranteeing that CBE subcontractors are paid timely and at a regular cadence.

Third, the Act ensures that beneficiaries who do business with the District and fail to demonstrate the use of "commercially reasonable best efforts" to adhere to CBE law subcontracting requirements will still be required to pay the District the value of this subcontracting amount in order to meet their contractual obligation under the law. This will guarantee that the District and the CBE community are made whole.

Fourth, the Act eliminates the ability for a beneficiary awarded a contract over \$250,000 to fulfill the mandated 35% subcontracting requirement by subcontracting to a business enterprise that it has an ownership or financial interest in.

Fifth, the Act protects equity sponsors (*i.e.*, small investors, disadvantage investors, certified equity participants) from bearing disproportionate project costs while ensuring that proportionate voting rights are guaranteed. In addition, the Act also tightens eligibility requirements for equity sponsors to ensure that certain existing relationships do not exist between them and project sponsors that would create bias or conflict or the perception of bias or conflict.

I urge the Council to take prompt and favorable action on the enclosed legislation.

Sincerely,

Muriel Bowser
Enclosures

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Chairman Phil Mendelson
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Small and Certified Business Enterprise Development and Assistance Act of 2005 to require a business applying for certification as a local business enterprise to be independently owned and operated, to eliminate the asset test as a qualification for eligibility as a local business enterprise, to increase the penalty for beneficiaries who fail to show commercially reasonable best efforts to meet subcontracting requirements, to prevent a beneficiary from fulfilling subcontracting requirements by hiring a certified business enterprise in which it has an ownership interest, to limit eligibility requirements for equity sponsors to prevent conflicts of interest, to protect equity sponsors from bearing disproportionate project costs on projects and protect equity sponsor voting rights, to clarify contracting and subcontracting requirements for certified business enterprise beneficiaries, to eliminate certain Department reporting requirements, to establish certification procedures during a public health emergency, and to repeal the Living Wage Certification Program, Triennial Review of Program and Subchapter, and Volunteer Corp of Executives and Entrepreneurs provisions of the Act; and to amend the Quick Payment Act to impose invoice submission timing requirements on beneficiaries and to authorize fines and other penalties for failure to comply with the invoicing requirements.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Supporting Local Business Enterprises Amendment Act of 2020".

Sec. 2. The Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*), is amended as follows:

(a) The table of contents is amended as follows:

37 (1) The section designation for section 2315 is amended to read as follows:

38 “Sec. 2315. Living Wage Certification Program. [Repealed]”.

39 (2) The section designation for section 2337 is amended to read as follows:

40 “Sec. 2337. Local business enterprise with its principal office located in an enterprise
41 zone.”.

42 (3) The section designation for section 2346 is amended to read as follows:

43 “Sec. 2346. Performance and subcontracting requirements for government-assisted
44 projects; subcontracting plans.”.

45 (4) A new section designation is added to read as follows:

46 “Sec. 2361a. Certificate of registration during a public health emergency.”.

47 (5) The section designation for section 2367 is amended to read as follows:

48 “Sec. 2367. Establishment of the Volunteer Corp of Executives and Entrepreneurs.
49 [Repealed]”.

50 (6) The section designation for section 2371 is amended to read as follows:

51 “Sec. 2371. Triennial review of program and subchapter. [Repealed]”.

52 (b) Section 2302 (D.C. Official Code § 2-218.02) is amended as follows:

53 (1) A new paragraph (8A) is added to read as follows:

54 “(8A) “Equity sponsor” means a small investor as defined in paragraph (16A) of
55 this subsection, a disadvantaged investor as defined in paragraph (5A) of this subsection, or a
56 certified equity participant as defined in paragraph (1F) of this subsection.”.

57 (2) A new paragraph (10A) is added to read as follows:

58 “(10A) “Independently owned and operated” means, with respect to a business,
59 that the ownership interests, management, and operation of the business are not subject to

60 control, restriction, modification, or limitation by a person with no formal role in the operation of
61 the business. A business shall be rebuttably presumed not to be independently owned and
62 operated if:

63 “(A) A person with no formal role in the operation of the business owns or
64 controls 50% or more of the voting stock; or

65 “(B) One or more owners, general partners, directors, officers, or members
66 of another business controls or has the power to control or influence the day-to-day operations of
67 the business, the business’s board of directors, or owner of the applicant business.”.

68 (3) Paragraph (11) is amended to read as follows:

69 “(11) “Joint venture” means a business arrangement in which 2 or more persons
70 combine their property, capital, efforts, skills, or knowledge to carry out a single project.”.

71 (4) Paragraph (13A) is amended to read as follows:

72 “(13A) “Material change” means a change in:

73 “(A) The business’s ownership;

74 “(B) The address of the business’s principal office;

75 “(C) The business’s size, if the business is certified as a small business
76 enterprise; and

77 “(D) Any other characteristic of the business that affects whether the
78 business continues to qualify for certification under a CBE category under which the business
79 enterprise is certified.”.

80 (5) New paragraphs (13A-1) and (13A-2) are added to read as follows:

81 “(13A-1) “Person” means any individual, firm, partnership, general partner of a
82 partnership, limited liability company, registered limited liability partnership, foreign limited

83 liability partnership, association, corporation, unincorporated business, company, syndicate,
84 estate, trust, business trust, trustee, trustee in bankruptcy, receiver, executor, administrator,
85 assignee, fiduciary, or organization of any kind.”.

86 “(13A-2) “Principal office” means the location where
87 the central operational, financial, and recordkeeping functions of the business occur.”.

88 (c) Section 2315 (D.C. Official Code § 2-218.15) is repealed.

89 (d) Section 2331 (D.C. Official Code § 2-218.31) is amended as follows:

90 (1) A new paragraph (1A) is added to read as follows:

91 “(1A) Is independently owned and operated, or owned and operated by a certified
92 business enterprise;”.

93 (2) Paragraph (2A) is amended as follows:

94 (A) Subparagraph (B) is amended by striking the semicolon and inserting
95 the phrase “; or” in its place.

96 (B) Subparagraph (C) is repealed.

97 (e) Section 2332 (D.C. Official Code § 2-218.32) is amended as follows:

98 (1) Subsection (a) is amended as follows:

99 (A) Paragraph (1)(A) is amended by striking the semicolon and inserting
100 the phrase “; and” in its place.

101 (B) Paragraph (2) is repealed.

102 (C) Paragraph (3)(A) is amended to read as follows:

103 “(A) Meets the definition of a small business concern under section 3(a) of
104 the Small Business Act, approved July 18, 1958 (72 Stat. 863; 15 U.S.C. § 632(a)); or”.

105 (2) Subsections (b) and (c) are repealed.

106 (f) Section 2333 (D.C. Official Code § 2-218.33) is amended as follows:

107 (1) Subsection (a) is amended as follows:

108 (A) Paragraph (1) is amended to read as follows:

109 “(1) Owned by, and its management and daily operations are under the control of,
110 an individual who is, or a majority of individuals who are, economically disadvantaged; and”.

111 (B) Paragraph (2)(A) is amended by striking the phrase “; or” and
112 inserting a period in its place.

113 (2) Subsection (b) is repealed.

114 (g) Section 2337 (D.C. Official Code § 2-218.37) is amended to read as follows:

115 “Sec. 2337. Local business enterprise with its principal office located in an enterprise
116 zone.

117 “A local business enterprise shall be eligible for certification as a local business
118 enterprise with its principal office located in an enterprise zone if its principal office is located in
119 an enterprise zone as defined by section 2302(8).”.

120 (h) Section 2338 (D.C. Official Code § 2-218.38) is amended as follows:

121 (1) Paragraph (2) is amended by striking the semicolon and inserting the phrase “;
122 and” in its place.

123 (2) Paragraph (3) is amended by striking the phrase “; and” and inserting a period
124 in its place.

125 (3) Paragraph (4) is repealed.

126 (i) Section 2346 (D.C. Official Code § 2-218.46) is amended as follows:

127 (1) The section heading is amended by striking the phrase “construction and non-
128 construction contracts” and inserting the phrase “government-assisted projects” in its place.

129 (2) Subsection (a) is amended as follows:

130 (A) Paragraph (3) is amended to read as follows:

131 “(3) A local business enterprise is not subject to the requirements in paragraph (1)
132 or (2) of this subsection.”.

133 (B) A new paragraph (4) is added to read as follows:

134 “(4) For the purposes of this section, acquisition costs and related financing fees
135 shall not count toward the total dollar volume of a government-assisted project.”.

136 (3) Subsection (b) is amended as follows:

137 (A) Paragraph (1)(A) is amended to read as follows:

138 “(A)(i) This paragraph applies to each contract for a government-assisted
139 project for which a certified business enterprise was selected as a beneficiary and was:

140 “(I) Granted points or a price reduction pursuant to section
141 2343 of this act; or

142 “(II) Selected through a set-aside program under this
143 subpart.

144 “(ii) If the contract for the government-assisted project is valued at
145 or over \$1 million:

146 “(I) The certified business enterprise shall perform at least
147 35% of the work on the contract with its own organization and resources; and

148 “(II) If the certified business enterprise subcontracts, at
149 least 35% of the dollar volume of the overall subcontract shall be subcontracted with certified
150 business enterprises.

151 “(iii) If the project is valued at less than \$1 million:

152 “(I) The certified business enterprise shall perform at least
153 50% of the work on the contract with its own organization and resources; and

154 “(II) If the certified business enterprise subcontracts, at
155 least 35% of the dollar volume of the overall subcontract shall be subcontracted with certified
156 business enterprises.”.

157 (B) Paragraph (2)(A) is amended to read as follows:

158 “(A) For each government-assisted project for which a certified joint
159 venture is selected as a beneficiary and is granted points or a price reduction pursuant to section
160 2343 of this act, selected through a set-aside program under this subpart, or conferred a
161 procurement preference for being a certified business enterprise:

162 “(i) Each certified business enterprise holding a majority or
163 minority interest in the certified joint venture shall, with its own organization and resources,
164 perform a percentage of the work equal to or greater than its percentage interest in the joint
165 venture.

166 “(ii) If the certified joint venture subcontracts, at least 35% of the
167 dollar volume of the subcontract shall be subcontracted with qualified certified business
168 enterprises.”.

169 (4) Subsection (b-1) is amended by striking the phrase “subsections (a) and (b) of
170 this subsection” and inserting the phrase “subsections (a) and (b) of this section” in its place.

171 (5) Subsection (c) is repealed.

172 (6) A new subsection (c-1) is added to read as follows:

173 “(c-1) Any dollar volume of a contract for a government-assisted project that is
174 subcontracted to a certified business enterprise in which a beneficiary of that contract has an

175 ownership or financial interest shall not count toward the fulfillment of the 35% dollar volume
176 subcontracting requirement set forth in this section.”.

177 (7) Subsection (d)(3) is amended by striking the word “District” and inserting the
178 phrase “procurement agency” in its place.

179 (8) Subsection (h) is repealed.

180 (9) Subsection (i) is amended as follows:

181 (A) Paragraph (1) is amended by striking the phrase “A beneficiary” and
182 inserting the phrase “A beneficiary on a government-assisted project subject to subcontracting
183 requirements under subsections (a), (b), or (b-1) of this section” in its place.

184 (B) A new paragraph (1A) is added to read as follows:

185 “(1A) The initial quarterly report filed by the beneficiary shall include a copy of
186 the subcontracting plan.”

187 (B) New paragraphs (3) and (4) are added to read as follows:

188 “(3) A subcontractor identified on a beneficiary’s subcontracting plan shall not
189 commence performance on the subcontract until the subcontract has been executed. The
190 beneficiary shall not receive credit for monies paid to a certified business enterprise
191 subcontractor for work performed on the government-assisted project before the subcontract
192 agreement was executed.

193 “(4) If a beneficiary fails to timely submit copies of the executed subcontracts, the
194 beneficiary’s failure shall render voidable by the District any underlying contract with the
195 beneficiary for that project.”.

196 (k) Section 2349a(a) (D.C. Official Code § 2-218.49a(a)) is amended as follows:

197 (1) A new paragraph (1A) is added to read as follows:

198 “(1A) An investment of a small investor, disadvantaged investor, or certified
199 equity participant shall not count toward the 20% equity requirement set forth in paragraph (1) of
200 this subsection if the small investor, disadvantaged investor, or certified equity participant and
201 the beneficiary for the project stand in any of the following relationships with one another:

202 “(A) One stands in an employee-employer relationship to the other;

203 “(B) One has an ownership or financial interest in the other; or

204 “(C) One has a fiduciary duty to the other.”.

205 (2) New paragraphs (4), (5), and (6) are added to read as follows:

206 “(4) An equity sponsor for a government-assisted project shall not be required to
207 pay developer fees, acquisition fees, or general contractor fees that, when totaled, are
208 unreasonably disproportionate to the percentage of its equity investment in the project.

209 “(5) An equity sponsor for a government-assisted project shall have voting rights
210 pertaining to personnel and managerial decisions on a covered project that are commensurate
211 with its percentage of equity investment.

212 “(6) The Mayor shall issue rules, pursuant to section 2372, specifying:

213 “(A) The maximum ratio between the percentage of total fees an equity
214 sponsor is required to pay and the percentage of its equity investment, before those fees become
215 unreasonably disproportionate for purposes of paragraph (4) of this subsection; and

216 “(B) The minimum ratio, between an equity sponsor’s percentage of total
217 voting rights and the percentage of its equity investment in the project, that makes the sponsor’s
218 voting rights commensurate with its percentage of equity investment for purposes of paragraph
219 (5) of this subsection.”.

220 (l) Section 2354(a), (b), and (c)(2) (D.C. Official Code § 2-218.54(a), (b), and (c)(2)) are
221 repealed.

222 (m) Section 2361 (D.C. Official Code § 2-218.61) is amended by adding a new
223 subsection (f) to read as follows:

224 “(f)(1) Within 90 days after the effective date of the 2020 Act, a business enterprise
225 certified as a local business enterprise as of the day before the 2020 Act’s effective date shall
226 submit an updated application for certification to the Department, regardless of the date on which
227 the certified business enterprise’s certification is scheduled to expire, if:

228 “(A) The business enterprise is not independently owned and operated
229 within the meaning of this act; or

230 “(B) The certification of the business enterprise was based in part on its
231 demonstration that more than 50% of the assets of the business enterprise, excluding bank
232 accounts, were located in the District.

233 “(2) An application required by this subsection shall contain the information
234 required by subsection (b) of this section; provided, that the Department may by rule modify the
235 documents or information required to be submitted with the application.

236 “(3) The Department shall revoke the certification of a certified business
237 enterprise subject to paragraph (1) of this subsection if:

238 “(A) The business enterprise timely files an application under this
239 subsection, and the Department determines that the business no longer meets the requirements
240 for certification under this act; or

241 “(B) The business enterprise fails to timely file an application under this
242 subsection.

243 “(4) A business enterprise whose certification is revoked under paragraph (3) of
244 this subsection shall nonetheless be treated as a certified business enterprise for the purpose of
245 the following contracts, including with respect to the contracting, subcontracting, and
246 procurement requirements of this act, as well as any applicable subcontractor credit described in
247 this act, so long as the business enterprise remains in compliance with the other provisions of this
248 act:

249 “(A) Any contract between the business enterprise and the District that
250 was executed before the effective date of the 2020 Act; and

251 “(B) Any contract executed before the effective date of the 2020 Act on
252 which the business enterprise was included as a subcontractor on a subcontracting plan.

253 “(5) For the purpose of this subsection, the phrase “2020 Act” refers to the
254 Supporting Local Business Enterprises Amendment Act of 2020, introduced on ____ (Bill 23-
255 __).”

256 (n) A new section 2361a is added to read as follows:

257 “Sec. 2361a. Certificate of registration during a public health emergency.

258 “(a) During a public health emergency declared by the Mayor pursuant to section 5a of
259 the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law
260 14-194; D.C. Official Code § 7-2304.01):

261 “(1) A business enterprise that satisfies all elements of section 2331 other than
262 section 2331(2) shall still be eligible for certification or subsequent certification as provided in
263 section 2361 if:

264 “(A) The business enterprise demonstrates that its chief executive officer
265 and highest-level managerial employees are restricted from working in the business enterprise’s
266 principal office due to the declared public health emergency; and

267 “(B) The principal office maintained by the business enterprise in the
268 District is either:

269 “(i) A brick-and-mortar dedicated office space leased or owned by
270 the business enterprise; or

271 “(ii) A leased or owned dwelling in which the majority owner of
272 the business enterprise resides.

273 “(2) A business enterprise certified pursuant to paragraph (1) of this subsection
274 shall be eligible for subsequent certification pursuant to section 2361(c-1) during the public
275 health emergency if it either:

276 “(A) Files a no-change affidavit, pursuant to section 2361(c-1), attesting
277 that there has been no material change in the business enterprise’s business status and that the
278 business enterprise continues to satisfy the requirements of paragraph (1) of this subsection; or

279 “(B) Demonstrates that the business enterprise satisfies section 2331.

280 “(b) A business enterprise certified pursuant to paragraph (a)(1) of this section shall be
281 eligible for subsequent certification after the public health emergency has ended so long as the
282 business enterprise demonstrates that it satisfies section 2331.

283 “(c) Notwithstanding section 2361(d), a certificate of registration issued during a public
284 health emergency to a business enterprise shall expire 1 year after the date of approval of the
285 application if the business enterprise did not demonstrate its compliance with section 2331(2).”.

286 (o) Section 2363 (D.C. Official Code § 2-218.63) is amended as follows:

287 (1) Subsection (a) is amended as follows:

288 (A) Paragraph (3)(J) is amended by striking the phrase “regulations.” and
289 inserting the phrase “regulations; or” in its place.

290 (B) A new paragraph (4) is added to read as follows:

291 “(4) A business enterprise:

292 “(A) Willfully obstructed or impeded, or attempted to obstruct or
293 impede, a District government employee investigating the qualifications of a business enterprise
294 that has requested certification;

295 “(B) In any certified business enterprise matter administered under this
296 act:

297 “(i) Fraudulently obtained, attempted to obtain, or aided another
298 person in fraudulently obtaining or attempting to obtain, public moneys to which the person is
299 not entitled under this subsection;

300 “(ii) Willfully falsified, concealed, or covered up a material fact by
301 any scheme or device;

302 “(iii) Made a materially false statement or representation; or

303 “(iv) Used a false writing or document that the business enterprise
304 knows to contain a false statement or entry.”.

305 (2) Subsection (c) is amended as follows:

306 (A) Paragraph (3) is amended as follows:

307 (i) The lead-in language is amended by striking the phrase
308 “subsection (a)(3), in addition to” and inserting the phrase “subsection (a)(3) or (a)(4), in
309 addition to” in its place.

310 (ii) Subparagraph (A) is amended by striking the phrase
311 “subsection (a)(3)” and inserting the phrase “subsection (a)(3) or (a)(4)” in its place.

312 (iii) Subparagraph (B) is amended by striking the phrase
313 “subsection (a)(3)” and inserting the phrase “subsection (a)(3) or (a)(4)” in its place.

314 (B) Paragraph (4) is amended by striking the phrase “10% of the dollar
315 volume of the contract that the beneficiary or certified joint venture was required but failed to
316 subcontract.” and inserting the phrase “100% of the difference between the dollar volume the
317 beneficiary or certified joint venture was required to subcontract to certified business enterprises
318 under section 2346 and the actual dollar volume subcontracted to certified business enterprises”
319 in its place.

320 (3) Subsection (g)(1) is amended by striking the word “certified”.

321 (p) Section 2367 (D.C. Official Code § 2-218.67) is repealed.

322 (q) Section 2371 (D.C. Official Code § 2-218.71) is repealed.

323 Sec. 3. Section 3 of the District of Columbia Government Quick Payment Act of 1984,
324 effective March 15, 1985 (D.C. Law 5-164; D.C. Official Code § D.C. Code § 2-221.02), is
325 amended as follows:

326 (a) Subsection (d) is amended by adding a new paragraph (1A) to read as follows:

327 “(1A) A clause requiring a beneficiary performing work on a government-assisted
328 project for which a certified business enterprise (“CBE”) is utilized to meet the subcontracting
329 requirements pursuant to section 2346 of the Small and Certified Business Enterprise
330 Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C.
331 Official Code § 2-218.36), to submit an invoice to the District every 30 calendar days for work
332 by the CBE subcontractor that, in the beneficiary’s judgment, the subcontractor has satisfactorily

333 performed and properly invoiced, with the first invoice due to the District no later than 35
334 calendar days after the certified business enterprise submits its initial invoice to the beneficiary,
335 unless the beneficiary's contract with the District requires a different payment timeline or
336 deliverable;”.

337 (b) A new subsection (g) is added to read as follows:

338 “(g) The Mayor may impose a fine or other penalty on a contractor, including a
339 beneficiary, for failure to comply with a provision of this section or a contract clause required by
340 this section. The processes for determining the amount of the fine and imposing the fine shall be
341 established by the Mayor by rule issued pursuant to Title I of the District of Columbia
342 Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code §
343 2-501 *et seq.*)”.

344 Sec. 4. Fiscal impact statement.

345 The Council adopts the fiscal impact statement in the committee report as the fiscal
346 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
347 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

348 Sec. 5. Effective date.

349 The act shall take effect following approval by the Mayor (or in the event of veto by the
350 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
351 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
352 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
353 Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE



Legal Counsel Division

MEMORANDUM

TO: Ronan Gulstone
Director
Office of Policy and Legislative Affairs

FROM: Brian K. Flowers
Deputy Attorney General
Legal Counsel Division

DATE: September 28, 2020

SUBJECT: Legal Sufficiency Review – Draft “Supporting Local Business Enterprises
Amendment Act of 2020”
(AE-20-349 B)

This is to Certify that this Office has reviewed the above-referenced draft legislation and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

Brian K. Flowers

Brian K. Flowers


Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: September 28, 2020

SUBJECT: Fiscal Impact Statement – Supporting Local Business Enterprises
Amendment Act of 2020

REFERENCE: Draft Bill as provided to the Office of Revenue Analysis on September
26, 2020

Conclusion

Funds are sufficient in the fiscal year 2020 budget and the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill.

Background

The Department of Small and Local Business Development (DSLBD) supports the growth and development of the District's small businesses through education, grants, certification programs, and enforcement of the District's contracting laws related to small business participation.

The bill makes several changes to DSLBD's business enterprise certification programs. The bill requires that a business seeking a local business enterprise¹ (LBE) certification must be independently owned and operated or owned by a certified business enterprise (CBE). The bill no longer requires an LBE to have 50 percent of its assets located in the District. The bill removes provisions for an applicant to easily obtain a small business enterprise² (SBE) or disadvantaged

¹ Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.31).

² D.C. Official Code § 2-218.32.

The Honorable Phil Mendelson

FIS: "Supporting Local Business Enterprises Amendment Act of 2020," Draft Bill as provided to the Office of Revenue Analysis on September 26, 2020

business enterprise³ (DBE) certification based on its affiliation with an existing SBE or DBE. The bill also amends the DBE certification requirements to include ownership and operating control by a disadvantaged person, but not economic control of the business enterprise. For veteran-owned business enterprises,⁴ the bill removes a certification requirement that a veteran control the management or daily operations of the business.

The bill expands requirements around the disposition of District-owned properties. Currently, when the District disposes of District-owned properties,⁵ the receiving entity or developer is required to obtain at least 20 percent equity participation in the project from small investors, disadvantaged investors, or certified equity participants.⁶ The bill places restrictions on the type of investors and the control of those investors that can meet the 20 percent requirement. The bill prohibits an equity investment from meeting the 20 percent requirement when there is an employee-employer relationship, one investor has an ownership or financial interest in the other, or when one investor has a fiduciary duty to the other. The bill requires the Mayor to establish, through rules, a maximum ratio of various fees⁷ to the equity participation and a minimum ratio of voting rights relative to participation. An equity sponsor under the 20 percent requirement cannot pay fees or have voting rights unreasonably disproportionate to its share of equity participation.

The bill provides a process for a business enterprise to be certified or recertified as an LBE during a public health emergency. If a business certified during the public health emergency fails to meet the requirement that the chief executive officer and senior managers perform their functions in the District-based principal office, unless restricted from doing so by the public health emergency, then the business' certification will expire after one year.

The bill clarifies, requires, and prohibits numerous activities around the 35 percent SBE subcontracting requirements for government-assisted projects valued over \$250,000.⁸ The bill clarifies that if an LBE is the contract awardee, then it is not subject to the subcontracting requirement. The bill prohibits the inclusion of acquisition and financing costs in determining the dollar volume of the project subject to the subcontracting requirement. The bill prohibits a contract awardee from counting the work of any subcontractor toward the subcontracting requirement if the awardee has an ownership or financial interest in the subcontractor. The bill clarifies that subcontractor payments are subject to the District's contractor quick payment provisions⁹ and that contract awardees must submit invoices to the District every thirty days for work performed by a subcontractor. The bill requires a contract awardee to submit its executed subcontracting

³ D.C. Official Code § 2-218.33.

⁴ Department of Small and Local Business Development Amendment Act of 2009, effective April 20, 2010 (D.C. Law 18-141; D.C. Official Code § 2-218.38).

⁵ Pursuant to An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801).

⁶ D.C. Official Code § 2-218.49a.

⁷ Fees include developer, acquisition, or general contractor fees.

⁸ D.C. Official Code § 2-218.46.

⁹ District of Columbia Government Quick Payment Act of 1984 Amendment Act of 1992, effective March 20, 1992 (D.C. Law 9-81; D.C. Official Code § 2-221.02).

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agreements to the District at the time it files its first quarterly report¹⁰ and prohibits a subcontractor from working on a project prior to the execution of a subcontracting agreement.

The bill imposes more stringent work requirements on a CBE or certified joint venture that is awarded a contract or procurement with the benefit of set-asides or contract award point or pricing preferences. Currently, the CBE must perform at least 35 percent of the actual work required under the contract and if the CBE subcontracts some of the work, then at least 35 percent of the subcontracted work must go to qualified CBEs. If the project is less than \$1 million, the CBE must perform 50 percent of the actual work. The bill adds that projects less than \$1 million must also ensure that at least 35 percent of the subcontracted work must go to qualified CBEs. For joint ventures, the CBE must perform actual work on the project at a minimum level consistent with its share of its interest in the joint venture. A CBE participating in a joint venture must also comply with the subcontracting requirements whereby a qualified CBE must receive at least 35 percent of the subcontracted work.

The bill enhances DSLBD's ability to enforce subcontracting requirement violations. The bill authorizes the Mayor to enforce any quick payment contractor provisions. The bill authorizes DSLBD to take enforcement action against any business enterprise seeking certification if it willfully obstructs the investigation of a certification request or provides DSLBD with fraudulent information. The bill also changes the civil penalty formula for fraudulent actions related to meeting the contract awardee's subcontracting requirements. DSLBD will impose a civil penalty equal to the difference in contract volume between the 35 percent required and 100 percent of the amount actually subcontracted.

The bill also repeals several program and reporting requirements. In 2019, the District established a Living Wage Certification Program¹¹ (Program) to certify businesses that pay their employees a living wage. These businesses could then advertise their designation as a living wage employer under the Program. The bill repeals this Program. The bill also repeals the Volunteer Corp of Executives and Entrepreneurs, a program to provide mentoring, education, consulting, and networking to CBEs.¹² The bill repeals a triennial independent evaluation of DSLBD's CBE programs, various reports that were required to be submitted to the D.C. Auditor's Compliance Unit, and a report on SBE and CBE contracting opportunities due to the chairperson of the Council committee with DSLBD oversight.

Financial Plan Impact

Funds are sufficient in the fiscal year 2020 budget and the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. DSLBD can implement and enforce the bill's provisions related to certification programs, property dispositions, contracting set-asides, and subcontracting within the agency's existing budgeted resources. The bill's repeal of the Program will save DSLBD \$100,000 annually. There is no budget impact from the repeal of the Volunteer Corp of

¹⁰ D.C. Official Code § 2-218.46(i)(1).

¹¹ Living Wage Certification Grant Program Amendment Act of 2018, effective October 30, 2018 (D.C. Law 22-168; D.C. Official Code § 2-218.15).

¹² Small Business Stabilization and Job Creation Strategy Amendment Act of 2010, effective May 27, 2010 (D.C. Law 18-159; D.C. Official Code § 2-218.67).

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Executives and Entrepreneurs because this program is not currently operational within DSLBD. The Office of the Chief Technology Officer (OCTO) will need to update two DSLBD databases for a cost of \$221,000. OCTO can absorb these costs within its existing budgeted resources.

The bill's provisions impose more stringent requirements on recipients of District-owned property or government-assisted contracts and procurements. The bill's provisions should provide more opportunities for SBEs and other qualified CBEs to benefit from government-assisted opportunities, but it could also prove more challenging to meet the equity participation and subcontracting levels if insufficient SBEs and qualified CBEs exist to do the required work. DSLBD believes that it can provide the support and enforcement necessary to limit any disruptions to the District's contracting plans.