



MURIEL BOWSER
MAYOR

February 27, 2024

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 "Certified Business Enterprise Program Compliance and Enforcement Support Emergency Declaration Resolution of 2024", the "Certified Business Enterprise Program Compliance and Enforcement Support Emergency Amendment Act of 2024" and the "Certified Business Enterprise Program Compliance and Enforcement Support Temporary Amendment Act of 2024."

The resolution and accompanying emergency and temporary bills close gaps in the District's Certified Business Enterprise (CBE) Program by making critical amendments to sections 2302, 2346, and 2363 of the Small and Certified Business Enterprise Development and Assistance Act of 2005 ("the Act").

More specifically, these amendments will: (1) establish uniform hearing procedures for all departmental enforcement actions before OAH; (2) expand the scope of DSLBD's complaint hotline for the public reporting of issues beyond allegations of potential certified business enterprise program fraud; (3) add penalties for any person that violates section 2363 of the Act; (4) increase the penalty for beneficiaries who fail to show commercially reasonable best efforts to meet required CBE subcontracting requirements; (5) establish minimum periods of departmental suspensions and revocations for violations under the Act; and (6) expand the statutory definition of "beneficiary" to include non-profit entities, ensuring that all prime contractors on government-assisted projects are subject to the Act's CBE subcontracting and reporting requirements.

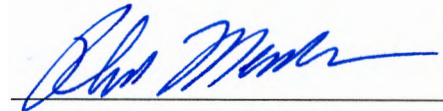
These necessary, time-sensitive changes will allow the District to more effectively and efficiently enforce the District's CBE compliance requirements.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser", written over a light blue circular stamp.

Muriel Bowser
Enclosures



Chairman Phil Mendelson
at the request of the Mayor

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, the Small and Certified Business Enterprise Development and Assistance Act of 2005 to establish uniform hearing procedures for enforcement actions under the act, to expand the scope of the Department of Small and Local Business Development’s complaint hotline, to add penalties for any business enterprise that violates section 2363 of the act, to increase the penalty for beneficiaries who fail to show commercially reasonable best efforts to meet required certified business enterprise subcontracting requirements, to include non-profit entities as beneficiaries subject to certified business enterprise subcontracting and reporting requirements, and to establish minimum and maximum periods of revocations for violations under the act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Certified Business Enterprise Program Compliance and Enforcement Support Emergency Amendment Act of 2024”.

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

(1) Paragraph (1B) is amended to read as follows:

“(1B) “Beneficiary” means a business enterprise, not-for-profit business, or other person that is the prime contractor or developer on a government-assisted project.”.

(2) A new paragraph (9A) is added to read as follows:

32 “(9A) “Formal complaint” means a complaint that is submitted to the Department
33 in writing, sworn to by the complainant, and notarized.”.

34 (3) A new paragraph (10A) is added to read as follows:

35 “(10A) “Informal complaint” means a complaint other than a formal complaint
36 and includes complaints submitted in person, by email, by telephone, or through the
37 Department’s complaint hotline.”.

38 (4) Paragraph (13B) is redesignated as paragraph (13D).

39 (5) New paragraphs (13B) and (13C) are added to read as follows:

40 “(13B) “Person” means any individual, firm, partnership, joint venture, general
41 partner of a partnership, limited liability company, registered limited liability partnership, foreign
42 limited liability partnership, association, corporation, unincorporated business, company,
43 syndicate, estate, trust, business trust, trustee, trustee in bankruptcy, receiver, executor,
44 administrator, assignee, fiduciary, or entity of any kind.

45 “(13C) “Principal office” means the location where the central operational,
46 financial, and recordkeeping functions of the business occur.”.

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

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

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

50 (i) Subparagraph (B) is amended by striking the word “city” and
51 inserting the phrase “District government” in its place.

52 (ii) Subparagraph (C) is amended as follows:

53 (I) Sub-subparagraph (iii) is amended by striking the word
54 “Made” and inserting the phrase “Willfully made” in its place.

55 (II) Sub-subparagraph (iv) is amended to read as follows:

56 “(iv) Used a document that the person knows to contain a false
57 statement or entry; or”.

58 (III) A new sub-subparagraph (v) is added to read as
59 follows:

60 “(v) Willfully omitted a material fact in a submission to the
61 Department.”.

62 (iii) Subparagraph (H) is amended to read as follows:

63 “(H) Substantially failed to operate and manage a certified joint venture in
64 accordance with section 2339; provided, that:

65 “(i) There shall be a rebuttable presumption that the failure to
66 operate and manage the joint venture in accordance with the joint venture application was the
67 parties’ intent; and

68 “(ii) If the joint venture demonstrates that the failure to operate and
69 manage the joint venture in accordance with the joint venture application was necessary due to
70 unforeseen business or operational issues, the failure shall not be a violation of this act.”.

71 (iv) Subparagraph (I) is amended by striking the word “submits”
72 and inserting the word “submitted” in its place.

73 (v) Subparagraph (J) is amended by striking the period at the end
74 and inserting the phrase “; or” in its place.

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

76 “(4) A business enterprise:

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

80 “(B) In any certified business enterprise matter administered under this
81 act:

82 “(i) Fraudulently obtained, attempted to obtain, or aided another
83 person in fraudulently obtaining or attempting to obtain, public moneys to which the person is
84 not entitled;

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

87 “(iii) Willfully made a materially false statement or representation;

88 “(iv) Used a document that the business enterprise knows to
89 contain a false statement or entry; or

90 “(v) Willfully omitted a material fact in a submission to the
91 Department.”.

92 (2) Subsection (b) is amended by striking the phrase “an individual or business”
93 and inserting the phrase “a person” in its place.

94 (3) Subsection (c) is amended as follows:

95 (A) The lead-in language is amended to read as follows:

96 “(c) If the Department determines, in accordance with procedures set forth in subsection
97 (g) of this section, that a person:”.

98 (B) Paragraph (1)(C) is amended as follows:

99 (i) Sub-subparagraph (i) is amended to read as follows:

100 “(i) Assess a civil penalty of not more than \$25,000 for the third
101 and any subsequent offense.”.

102 (ii) Sub-subparagraph (ii) is repealed.

103 (C) Paragraph (2) is amended to read as follows:

104 “(2) Has committed a violation of subsection (a)(2) or (a)(3) of this section and is
105 a certified business enterprise or certified joint venture, the Department shall suspend or revoke
106 its certification;”.

107 (D) Paragraph (3) is repealed.

108 (E) Paragraph (4) is amended as follows:

109 (i) Strike the word “reasonably” and insert the word “reasonable”
110 in its place.

111 (ii) Strike the phrase “10% of the dollar volume of the contract that
112 the beneficiary or certified joint venture was required but failed to subcontract.” and insert the
113 phrase “the difference between the dollar volume the beneficiary or certified joint venture was
114 required to subcontract to certified business enterprises under section 2346 and the actual dollar
115 volume subcontracted to certified business enterprises.” in its place.

116 (iii) Strike the phrase “; and” and insert a semicolon in its place.

117 (F) Paragraph (5) is amended by striking the period at the end and
118 inserting the phrase “; and” in its place.

119 (G) A new paragraph (6) is added to read as follows:

120 “(6) Ceases to meet the requirements of a particular category of certification and
121 is a certified business enterprise, the Department may change the business enterprise’s certificate
122 of registration by removing the category of certification for which the business enterprise no

123 longer meets the requirements of certification; provided, that this paragraph shall not apply if a
124 certified business enterprise ceases to qualify as a local business enterprise.”.

125 (4) New subsections (d-1) and (d-2) are added to read as follows:

126 “(d-1) The Department may refer matters to the Office of Contracting and Procurement,
127 including matters involving agencies not subject to the Office of Contracting and Procurement’s
128 authority pursuant to section 201(b) of the Procurement Practices Reform Act of 2010, effective
129 April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.01(b)), for investigation. If the
130 Office of Contracting and Procurement through its hearing procedures determines that a
131 beneficiary, business enterprise, or certified joint venture has committed more than 2 violations
132 of subsection (a)(1) of this section, or any violations of subsections (a)(3) or (a)(4) of this
133 section, the beneficiary, business enterprise, or certified joint venture shall be:

134 “(1) Debarred from consideration of award of contracts or subcontracts with the
135 District government for a period of no more than 5 years; and

136 “(2) Deemed ineligible from consideration for government-assisted projects with
137 the District government for a period of no more than 5 years.

138 “(d-2) The Department may refer any suspected violation of subsection (a)(3) or (a)(4) of
139 this section to the Attorney General for the District of Columbia, who may bring a civil action in
140 the Superior Court of the District of Columbia against any person, including the directors or
141 officers of a business enterprise, alleged to have committed the violation. A person alleged to
142 have violated subsection (a)(3) or (a)(4) of this section shall be subject to civil penalties of
143 \$100,000, or triple the profit earned by the person on all contracts awarded, whichever is greater.
144 If the Department does not refer the violation to the Attorney General or if the Attorney General

145 does not timely bring an action following a referral, the Department may assess a fine in
146 accordance with subsection (c) of this section.”.

147 (5) Subsection (e) is amended as follows:

148 (A) Paragraphs (1) through (3) are amended to read as follows:

149 “(1) Any person may file with the Department a formal or informal complaint
150 alleging a violation of this act. The Department shall maintain a hotline for the filing of informal
151 complaints.

152 “(2) The Department shall investigate each formal or informal complaint filed
153 with it, except as provided in paragraph (3) of this subsection.

154 “(3) The Department may dismiss a complaint without conducting an
155 investigation if the Department determines the complaint is frivolous or otherwise without merit.
156 If the Department dismisses a formal complaint as frivolous or otherwise without merit, the
157 Department shall prepare a report documenting the following:

158 “(A) A statement detailing the formal complaint, including the name,
159 address, and telephone number of the person filing the complaint;

160 “(B) The name of the person or certified joint venture alleged to be in
161 violation of this act;

162 “(C) The facts and law considered in rendering the determination; and

163 “(D) Any other information considered in rendering the determination.”.

164 (B) Paragraph (4) is repealed.

165 (C) New paragraphs (5) and (6) are added to read as follows:

166 “(5) After the completion of an investigation conducted pursuant to this
167 subsection, the Department shall take such enforcement action, if any, as it deems appropriate.

168 “(6) The Department shall maintain a record listing all formal complaints, which
169 shall contain the following information:

170 “(A) The name of the person alleged to be in violation of this act;

171 “(B) The date the formal complaint was made to the Department; and

172 “(C) A description of the formal complaint.”.

173 (6) Subsection (f) is repealed.

174 (7) Subsection (g) is amended to read as follows:

175 “(g)(1) Except as provided in paragraph (8) of this subsection, before issuing a civil
176 penalty to, or denying, suspending, changing, or revoking a certification of, a person or a
177 certified joint venture, the Department shall issue a notice of determination to the person or
178 certified joint venture. The notice of determination shall describe the basis for the Department’s
179 determination; the proposed penalty, if any; and the process and timeline by which the person or
180 certified joint venture may request a hearing.

181 “(2) The person or designated representative on behalf of a certified joint venture
182 may request a hearing before the Office of Administrative Hearings, pursuant to paragraph (3) of
183 this subsection, within 10 calendar days after receiving the notice. If the person or certified joint
184 venture does not request a hearing within that time, the civil penalty, denial, suspension, change,
185 or revocation shall become final, and the person or certified joint venture shall be deemed to
186 have waived the opportunity for judicial review.

187 “(3) If a hearing is requested, the Office of Administrative Hearings shall consider
188 the matter pursuant to the provisions of the Office of Administrative Hearings Establishment Act
189 of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.16.), and the

190 rules promulgated thereunder. The Department shall bear the burden of establishing the
191 violation by a preponderance of the evidence.

192 “(4) The decision of the Office of Administrative Hearings shall be the final
193 administrative decision for purpose of judicial review.

194 “(5) Notice of a final suspension or revocation of a certification shall be published
195 on the Department’s website.

196 “(6) A business enterprise or joint venture whose certification has been revoked
197 shall not be eligible to apply for a new certification from the Department until 36 months after
198 the date that the revocation became final.

199 “(7) The Department may at any time, upon motion by a business enterprise or
200 joint venture whose certification has been suspended or revoked, remove the suspension or
201 reissue a certification, if the Department determines that it is in the District government's interest
202 to remove the suspension or reissue the certification before the end of the 36-month period and
203 such removal or reissuance does not endanger the health, safety, or welfare of the general public.
204 In determining whether to remove a suspension or reissuance a certification, the Department
205 shall consider in part whether the business enterprise or joint venture submitted satisfactory
206 proof that conditions within, or actions by, the business enterprise or joint venture that led to the
207 suspension or revocation have been corrected. A business enterprise or joint venture whose
208 certification is reissued shall cease to be subject to the 36-month waiting period established in
209 paragraph (5) of this subsection.

210 “(8) If, after an investigation, the Department determines that a business
211 enterprise or joint venture certified under this act has violated any provision of this act in such a
212 manner as to present an imminent danger to the health, safety, or welfare of any person or the

213 general public, the Department may summarily suspend the certification of the business
214 enterprise or joint venture upon issuing the notice of determination described in paragraph (1) of
215 this subsection. The notice of determination shall inform the business enterprise or joint venture
216 of the reason for the summary suspension and the right to request a hearing before the Office of
217 Administrative Hearings pursuant to paragraph (1) of this subsection. If a business enterprise or
218 joint venture timely requests a hearing on a summary suspension, the Office of Administrative
219 Hearings shall conduct the hearing within 14 days after receiving the request, unless a longer
220 period of time is agreed to by the business enterprise or joint venture, and shall issue a decision
221 within 14 days after the record for the hearing closes.”.

222 (c) Section 2375(c)(2) (D.C. Official Code § 2-218.75(c)(2)) is amended by striking the
223 phrase “pursuant to section 2363(c)” and inserting the phrase “pursuant to section 2363(d-2)” in
224 its place.

225 Sec. 3. Fiscal impact statement.

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

229 Sec. 4. Effective date.

230 The act shall take effect following approval by the Mayor (or in the event of veto by the
231 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
232 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
233 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
234 Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



BRIAN L. SCHWALB
ATTORNEY GENERAL

LEGAL COUNSEL DIVISION

MEMORANDUM

TO: Tommy Wells
Director
Office of Policy and Legislative Affairs

FROM: Megan D. Browder
Deputy Attorney General
Legal Counsel Division

DATE: September 5, 2023

SUBJECT: Legal Sufficiency Review – Draft “Certified Business Enterprise Program Compliance and Enforcement Support Emergency Amendment Act of 2023,” “Certified Business Enterprise Program Compliance and Enforcement Support Temporary Amendment Act of 2023,” and “Certified Business Enterprise Program Compliance and Enforcement Support Emergency Declaration Resolution of 2023” (AE-23-284)

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 (202) 724-5524.

A handwritten signature in black ink that reads "Megan D. Browder".

Megan D. Browder