

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 to authorize the Director of the Department of Small and Local Business Development to impose fines for violations of the act, to require certain compliance documents and reports be provided to the District of Columbia Auditor, to eliminate certain responsibilities from the District of Columbia Small and Local Business Opportunity Commission, to establish certification categories for veteran-owned business enterprises, local manufacturing business enterprises, and joint venture business enterprises, to adjust the percentage points awarded for proposals of longtime resident businesses and to provide percentage points awarded for proposals of veteran-owned business enterprises and local manufacturing business enterprises, to establish reporting requirements for contractors on subcontracting, to revise the standard for assessing penalties for willful breaches of a subcontracting plan for utilization of certified business enterprises, to require that no more than 25% of the current certified business enterprise equity participation requirement may be in the form of development services, to require that if a developer is unable to meet the 20% certified business enterprise equity participation requirement that the District shall be the recipient of the outstanding certified business enterprise equity participation sum to be used to benefit vocational education programs and small businesses, to establish certain duties, responsibilities, and reporting requirements of the agencies and the Department of Small and Local Business Development, to expand the circumstances under which the District of Columbia Small and Local Business Opportunity Commission may revoke or suspend a certificate of registration for a business enterprise, to require the District of Columbia Small and Local Business Opportunity Commission to revoke the certificate of registration for a person or business enterprise that fails to cooperate with an audit or investigation conducted by the District of Columbia Auditor or the Council, to require the Department of Small and Local Business Development to establish a hotline for the reporting of violations, to require the Director of the Department of Small and Local Business Development to issue a report on dismissed complaints, to prohibit a contractor or business enterprise from identifying a certified business enterprise in a bid or proposal unless certain conditions are met, to prohibit a person from making false statements about whether an entity has certification, and to provide that the District of Columbia Auditor may

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conduct random audits of certification files to determine compliance with requirements of the act; and to amend the District of Columbia Procurement Practices Act of 1985 to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Department of Small and Local Business Development Amendment Act of 2009".

Sec. 2. The 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 § 2-218.01 *et seq.*), is amended as follows:

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

(1) A new paragraph (12A) is added to read as follows:

“(12A) “Local manufacturing business enterprise” means a business as described in section 2339.”.

(2) Paragraph (15) is amended by striking the phrase “subject to personal income tax in the District of Columbia” and inserting the phrase “subject to personal income tax solely in the District of Columbia.” in its place.

(3) A new paragraph (17) is added to read as follows:

“(17) “Veteran-owned business enterprise” means a business as described in section 2338.”.

(b) Section 2312 (D.C. Official Code § 2-218.12) is amended by adding a new subsection (g) to read as follows:

"(g) The Director shall have the authority to impose fines for violations of the act or the regulations implemented thereunder."

(c) Section 2313(c)(1) (D.C. Official Code § 2-218.13(c)(1)) is amended as follows:

(1) The introductory language is amended by striking the phrase ", Compliance, and Enforcement,".

(2) Subparagraph (E) is amended as follows:

(A) Strike the phrase “the Commission” and insert the phrase "the Commission and the District of Columbia Auditor" in its place.

(B) Strike the phrase "section 2322” and insert the phrase “section 2322, section 2350, and section 2353" in its place.

(3) Subparagraphs (F), (G), and (H) are repealed.

(d) Section 2322 (D.C. Official Code § 2-218.22) is amended to read as follows:

“Sec. 2322. Functions of the Commission.

“The Commission shall:

"(1) Hear all requested appeals by business enterprises upon the denial of an application for certification by the Department; and

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"(2) Take such other actions as are necessary or appropriate to carry out the responsibilities of the Commission under this subtitle."

(e) Section 2323 (D.C. Official Code § 2-218.23) is repealed.

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

(1) Paragraph (1) is amended by striking the word "and" at the end.

(2) Paragraph (2) is amended by striking the period and inserting the phrase "and" in its place.

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

"(3) The business enterprise has an average annualized gross receipts totaling \$75 million or less."

(g) New sections 2338, 2339, and 2339a are added to read as follows:

"Sec. 2338. Veteran-owned business enterprises.

"A business enterprise shall be eligible for certification as a veteran-owned business enterprise if the business enterprise:

"(1) Meets the definition of a small business enterprise as described in section 2332;

"(2) Is not less than 51% owned and operated by one of more veterans (as defined in 38 U.S.C. § 101(2));

"(3) In the case of any publicly owned business, not less than 51% of the stock of which is owned by one or more veterans; and

"(4) One or more veterans control the management and daily operations.

"Sec. 2339. Local manufacturing business enterprises.

"A business enterprise shall be eligible for certification as a local manufacturing business enterprise if the business enterprise:

"(1) Meets the definition of a local business enterprise as described in section 2331;

"(2) Makes a product through a process involving raw materials, components, or assemblies, usually on a large scale, with different operations divided among different workers;

"(3) Has an annual revenue of \$2 million in the manufactured product; and

"(4) Has its principal location of manufacturing in the District of Columbia.

"Sec. 2339a. Joint venture business enterprises.

"(a) A business enterprise shall be eligible for certification as a joint venture business enterprise if the joint venture has a member that owns a majority interest or minority interest in the joint venture business enterprise and meets the definition of a certified business enterprise pursuant to section 2302.

"(b) For the purposes of this section, the term:

"(1) "Majority interest" means:

"(A) More than 50% of the total combined voting power of all classes of stock of the joint venture business enterprise or more than 50% of the total value of all of the joint venture business enterprise;

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"(B) A financial contribution to the enterprise of more than 50%; and

"(C) More than 50% of the total interest in the capital, profits, and loss, or beneficial interest in the joint venture business enterprise.

"(2) "Minority interest" means:

"(A) Less than 50% of the total combined voting power of all classes of stock of the joint venture business enterprise or less than 50% of the total value of all of the joint venture business enterprise;

"(B) A financial contribution to the enterprise of less than 50%; and

"(C) Less than 50% of the total interest in the capital, profits, and loss, or beneficial interest in the joint venture business enterprise.

"(c) The Department shall consider the defined contributions and defined benefits provided by each member of the joint venture, which shall be demonstrated by the following information:

“(1) Organizational documents of the joint venture, including the joint venture agreement, the operating agreement, and any other agreement between or among the members; and

“(2) Documentation of the financial contribution of each member, including access to bank records and organizational resolutions and agreements.

"(d) Decisions concerning the affairs of the business shall require the consent of those members with voting rights holding at least a majority interest in the business.”.

(h) Section 2343(a)(1) is amended as follows:

(1) Subparagraph (C) is amended by striking the phrase "Ten points" and inserting the phrase "Five points" in its place.

(2) Subparagraph (E) is amended by striking the word “and”.

(3) Subparagraph (F) is amended by striking the period and inserting the phrase “; and” in its place.

(4) New subparagraphs (G) and (H) are added to read as follows:

“(G) Two points for a veteran-owned business enterprise”; and

“(H) Two points for a local manufacturing business enterprise.”.

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

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

(A) Paragraph (2) is amended by striking the phrase "which a portion of the work is subcontracted" and inserting the phrase "excess of \$250,000, unless a waiver has been approved by the Office of Contracting and Procurement,," in its place.

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

“(3) For the purposes of this section, a business enterprise certified as a small business enterprise, local business enterprise, or disadvantaged business enterprise shall not have to comply with the requirements set forth in paragraphs (1) or (2) of this subsection.”.

(2) Subsection (d) is amended by striking the phrase "the solicitation requires submission of a certified business enterprise subcontracting plan" and inserting the phrase "the

law requires subcontracting" in its place.

(3) A new subsection (i) is added to read as follows:

"(i) Beginning on the effective date of the Department of Small and Local Business Development Amendment Act of 2009, passed on 2nd reading on December 1, 2009 (Enrolled version of Bill 18-332), each developer or beneficiary shall provide a copy of the certified business agreement, which includes the subcontracting plan for utilization of certified business enterprises, within 10 business days of its execution to the Office of District of Columbia Auditor. A quarterly report shall be provided to the Department and the Office of District of Columbia Auditor by the developer or beneficiary, which shall include a list of each subcontractor identified in the subcontracting plan for utilization of certified business enterprises, and for each subcontract:

"(1) The price to be paid by the contractor to the subcontractor;

"(2) A description of the goods procured or the services contracted for; and

"(3) The amount paid by the contractor to the subcontractor."

(j) Section 2348 (D.C. Official Code § 2-218.48) is amended to read as follows:

"Sec. 2348. Enforcement and penalties for willful breach of subcontracting plan.

"(a) There shall be a rebuttable presumption that a contractor willfully breached a subcontracting plan for utilization of certified business enterprises in the performance of a contract if the contractor:

"(1) Fails to submit any required subcontracting plan monitoring or compliance report; or

"(2) Submits a monitoring or compliance report with the intent to defraud, by means of a false statement, failure to disclose information, or other fraudulent scheme or device.

"(b) The presumption that a contractor willfully breached a subcontracting plan for utilization of certified business enterprises may be rebutted with a showing, by clear and convincing evidence, of full compliance with the requirements set forth in the subcontracting plan for utilization of certified business enterprises.

"(c) A contractor that is found to have willfully breached a subcontracting plan for utilization of certified business enterprises shall be subject to the imposition of penalties, including monetary fines of \$ 15,000 or 5% of the total amount of the work that the contractor was to subcontract to certified business enterprises, whichever is greater, for each breach."

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

(1) Subsection (a) is amended to read as follows:

"(a) Local business enterprises, small business enterprises, or disadvantaged business enterprises shall receive 20% in equity participation and 20% in development participation in all development projects supported by District funds and in all development projects that take place on District-owned property."

(2) A new subsection (a-1) is added to read as follows:

"(a-1)(1) No more than 25% of the total 20% equity participation requirement ("equal to 5%") set forth in subsection (a) of this section may be met by a certified business enterprise

providing development services in lieu of a cash equity investment that will be compensated by the developer in the future at a date certain ("sweat equity contribution").

"(2) The developer and the certified business enterprise shall sign a service agreement describing the following:

"(A) A detailed description of the scope of work that the certified business enterprise will perform;

"(B) The dollar amount that the certified business enterprise will be compensated for its services and the amount the certified business enterprise is forgoing as an investment in a project;

"(C) The date or time period when the certified business enterprise will receive compensation;

"(D) The return, if any, the certified business enterprise will receive on its sweat equity contribution; and

"(E) An explanation of when the certified business enterprise will receive its return as compared to other team members or investors.

"(3) If a developer is unable to meet the 20% equity participation requirement, including sweat equity contribution and cash equity investment, the developer shall pay to the District the outstanding cash equity amount as a fee in lieu of the unmet equity participation requirement.

"(4) Any administrative costs associated with subsection (a)(3) of this section shall be reimbursed through fees collected by the District as a result of unmet equity and development participation requirements. The collected fees shall be used as follows:

"(A) Fifty percent shall be used to support vocational training programs benefitting District residents.

"(B) The remainder shall be used to provide:

"(i) Low-interest loans for small businesses located in a MainStreet, Great Street, or underserved area in the District; and

"(ii) Grants to small businesses negatively impacted by District subsidized construction or street-scaping projects.

"(5) The Office of the Deputy Mayor for Planning and Economic Development shall:

"(A) Issue a solicitation for the grant and loan applications described in paragraph (4)(B) of this subsection;

"(B) Manage, receive, and review the grant and loan applications; and

"(C) Determine which vocational training programs and small businesses shall receive assistance pursuant to paragraph (4)(A) and (B) of this subsection." .

(1) Section 2350 (D.C. Official Code § 2-218.50) is amended as follows:

(1) Subsections (f), (g), (h), and (i) are amended to read as follows:

"(f) Beginning with the first full quarter after the effective date of the Department of Small and Local Development Amendment Act of 2009, passed on 2nd reading on December 1,

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2009 (Enrolled version of Bill 18-332), each government corporation shall provide a quarterly report for every quarter, except for the 4th quarter, to the Department and to the District of Columbia Auditor within 30 days after the end of each quarter. The 4th quarter and annual report shall be submitted together. A quarterly report shall include the following information:

“(1) The dollar volume and percentage of awards to local, small, and disadvantaged business enterprises in construction and development projects;

“(2) The dollar volume and percentage of awards to local, small, and disadvantaged business enterprises in development projects as equity partners;

“(3) The dollar volume and percentage of awards to certified business enterprises for contracting and procurement of goods and services;

“(4) The dollar amount actually expended with local, small, and disadvantaged business enterprises in construction and development projects;

“(5) The dollar amount actually expended with certified business enterprises in development projects as equity partners; and

“(6) The dollar amount actually expended with certified business enterprises for contracting and procurement of goods and services.

“(g) Beginning with fiscal year 2006, each government corporation shall provide an annual report to the Department and to the District of Columbia Auditor within 45 days after the end of each fiscal year. The annual report shall include the information required to be included in the quarterly reports (with the dollar percentages and volumes calculated on an annual basis, including 4th quarter reports).

“(h) The District of Columbia Auditor shall monitor government corporation compliance with the reporting requirements of this section.

“(i) The Department shall review the annual report of a government corporation to determine whether the planned activities of the government corporation for the succeeding fiscal year are likely to enable the government corporation to achieve the goals set forth in this section. The Department shall make recommendations concerning activities in which the government corporation should engage in to meet or exceed the requirements set forth in this section. The Department's recommendations shall be submitted to the government corporation, the Commission, the Council, the Mayor, and the District of Columbia Auditor within 30 days of the government corporation's annual report submission.”.

(m) Section 2353 (D.C. Official Code § 2-218.53) is amended as follows:

(1) Subsection (a) is amended to read as follows:

“(a) Each agency shall submit a quarterly report to the Department and to the District of Columbia Auditor within 30 days after the end of each quarter, except for the 4th quarter report. When submitting a quarterly report, each agency shall list each expenditure as it appears in the general ledger from the expendable budget of the agency during the quarter, which shall include:

"(1) The name of the vendor from which the goods or services were purchased;

"(2) The vendor identification number as it appears in the general ledger;

"(3) A description of the goods or services;

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- "(4) Whether the vendor was a certified small business enterprise;
- "(5) The funding source for the expenditure (local, federal, capital, or other);
- "(6) The date of the expenditure;
- "(7) The dollar amount of the expenditure; and
- "(8) The total expenditure on certified small business enterprises and the

percentage the total expenditure on certified small business enterprises is of the total expenditure.”.

(2) Subsection (b) is amended by striking the phrase “the Department” and inserting the phrase "the Department and the District of Columbia Auditor" in its place.

(3) Subsection (e) is amended to read as follows:

“(e) The Department shall review the annual report of an agency to determine whether the planned activities of the agency for the succeeding fiscal year are likely to enable the agency to achieve the goals set forth in section 2341. The Department shall make recommendations on activities the agency should engage in to meet or exceed the goals set forth in section 2341. The Department's recommendations shall be submitted to the agency, the Office of District of Columbia Auditor, and the Council within 30 days of the agency’s annual report submission.”.

(n) Section 2361 (D.C. Official Code § 2-218.61) is amended as follows:

(1) Subsection (a)(1) is amended by striking the phrase “Has been” and inserting the phrase "Has demonstrated its capability to perform and been” in its place.

(2) Subsection (b)(2) is amended as follows:

(A) Subparagraph (D) is amended by striking the word “and” at the end.

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

(C) A new subparagraph (F) is added to read as follows:

“(F) Federal income taxes, both corporate and personal, as well as District taxes, both corporate and personal.”.

(3) Subsection (d) is amended by adding a second sentence to read as follows: "A business enterprise that is registered with the Department may voluntarily relinquish its registration as a certified business enterprise at any time prior to the expiration of the 2-year term."

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

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

(A) The introductory language is amended by striking the phrase "The Commission may revoke or suspend the" and inserting the phrase "After reasonable notice to a person or a business, and a reasonable opportunity to be heard, the Commission may revoke or suspend the” in its place.

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

“(1) Fraudulently obtained or held, or attempted to obtain or hold, certification;”.

(C) New paragraphs (1A), (1B), and (1C) are added to read as follows:

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“(1A) Willfully obstructed or impeded, or attempted to obstruct or impede, a city official or employee investigating the qualifications of a business entity that has requested certification;

“(1B) In any certified business enterprise matter administered under this subtitle:

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

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

“(C) Made a false or fraudulent statement or representation; or

“(D) Used a false writing or document that the person knows to contain a false or fraudulent statement or entry.

“(1C) Aided another person in performing an act prohibited under paragraphs (1), (1A), or (1B) of this subsection.”.

(C) Paragraph (3) is amended by striking the phrase “for certification” and inserting the phrase “for certification, including relocation of its principal office or change in ownership or control” in its place.

(D) Paragraph (4) is amended by striking the phrase “profession; or” and inserting the phrase “profession;” in its place.

(E) Paragraph (5) is amended by striking the period and inserting a semicolon in its place.

(F) New paragraphs (6), (7), and (8) are added to read as follows:

“(6) Misrepresented its capability to the Department and failed to perform satisfactorily in the performance of a contract;

“(7) No longer qualifies as a local business enterprise; or

“(8) Any other cause the Commission determines to be sufficiently serious and compelling to affect responsibility as a District government contractor, including revocation, suspension, or debarment by another governmental entity for any cause listed in rules and regulations.”.

(2) A new subsection (a-1) is added to read as follows:

“(a-1)(1) After reasonable notice to a person or business and reasonable opportunity to be heard by the Commission, the Commission shall revoke the certificate of registration of the person or business enterprise that has willfully failed to cooperate in an audit or investigation conducted by:

“(A) The District of Columbia Auditor pursuant to section 455 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.55); or

“(B) The Chairman of the Council or the chairperson of the Council committee that conducts an investigation pursuant to section 413 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 789; D.C. Official Code § 1-204.13).

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"(2) The revocation shall be for a period of 2 years, unless the Department receives written notification, from the Commission, that determines within the 2-year period that the affected business has cooperated in the audit or investigation referred to in paragraph (1) of this subsection and has come into full compliance for re-certification."

(3) Subsection (b) is amended to read as follows:

"(b)(1)(A) Any person may file with the Department a complaint alleging a violation of this subtitle against an applicant for registration or a business enterprise registered pursuant to this subtitle. The complaint shall be in writing, sworn to by the complainant, and notarized.

"(B) The Department shall establish a fraud hotline for reporting violations of this section.

"(2) The Department, without a hearing, may dismiss a complaint which it determines to be frivolous or otherwise without merit. If the Department dismisses a complaint, the Director shall prepare a report documenting the following:

"(A) A statement detailing the complaint, including the name, address, and telephone number of the person filing the complaint;

"(B) The name of the applicant for registration or business enterprise alleged to be in violation of this subtitle;

"(C) The facts and legal authority considered in rendering the determination; and

"(D) Any other information considered in rendering the determination.

"(3) The Director shall maintain a record listing all complaints, which shall contain the following information:

"(A) The name of the applicant or business enterprise alleged to be in violation of this subtitle;

"(B) The date the complaint was made to the Department; and

"(C) A description of the complaint."

(4) A new subsection (d-1) is added to read as follows:

"(d-1) The Department may at any time reissue a certificate of registration to any firm or joint venture whose certificate has been revoked. The Department may consider whether the firm or joint venture should be required to submit satisfactory proof that conditions within the company that led to the violation have been corrected."

(5) A new subsection (f) is added to read as follows:

"(f) The Department may downgrade the certification of registration of a business enterprise that ceases to meet the requirements of a particular category of certification; provided, that this subsection shall not apply where a business enterprise ceases to qualify as a local business enterprise."

(p) New sections 2364 and 2365 are added to read as follows:

"Sec. 2364. Identification of certified business enterprises in bids or proposals; false statements on certification; penalties.

"(a)(1) Except as otherwise provided by law, a contractor or business enterprise may not:

“(A) Identify a certified business enterprise in a bid or proposal unless it:

“(i) Has requested, received, or otherwise obtained authorization from the certified business enterprise to identify the certified business enterprise in its bid or proposal;

“(ii) Has notified the certified business enterprise before execution of the contract of its inclusion in the bid or proposal; and

“(iii) Uses the certified business enterprise in the performance of the contract; or

“(B) Pay the certified business enterprise solely for the use of its name in the bid or proposal.

“(2) A person who violates any provision of this subsection is guilty of a felony and, upon conviction, subject to a fine not to exceed \$15,000, imprisonment, or both.

“(b)(1) A person may not make false statements about whether an entity has business enterprise certification.

“(2) A person who violates this subsection is guilty of a misdemeanor and, upon conviction, subject to a fine not to exceed \$5,000, imprisonment not to exceed one year, or both.

“Sec. 2365. Certification audits.

“The District of Columbia Auditor may conduct random audits of certification files to determine whether the Department followed the requirements set forth in section 2361. The District of Columbia Auditor shall submit findings and recommendations to the Department and the Council.”.

Sec. 3. Section 804(b)(4) of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-308.04(b)(4)), is amended to read as follows:

"(4) A violation under section 814(a) or the 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 § 2-218.01 *et seq.*);".

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia