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§ 2–218.02. Definitions.

For the purposes of this subchapter, the term:

(1) “Agency” means an agency, department, office, board, commission, authority, or other instrumentality of the District government, with or without legal existence separate from that of the District government.

(1A) “Agency contracting officer” means the contracting officer of an agency or government corporation.

(1B) “Beneficiary” means a business enterprise that is the prime contractor or developer on a government-assisted project.

(1C) “Business enterprise” means a business entity organized for profit.

(1D) “Certified business enterprise” means a local business enterprise certified pursuant to [part D of this subchapter](#) [[§ 2-218.31](#) et seq.].

(1E) “Certified joint venture” means a joint venture certified pursuant to [§ 2-218.39a](#).

(1F) “Certified equity participant” means a single-purpose legal entity created to participate in real estate development projects and includes members that are small investors or disadvantaged investors.

(1G) “Commercially useful function” means work performed by a certified business enterprise in a particular transaction that, consistent with industry practices and other relevant considerations, has a necessary and useful role in the transaction. The certified business enterprise shall be responsible for the execution of the work of the contract and carry out its responsibility by actually performing, managing, and supervising the work involved. The certified business enterprise shall be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials and installing (where applicable) and paying for the material itself.

(2) “Commission” means the District of Columbia Small and Local Business Opportunity Commission, established by [§ 2-218.21](#).

(3) “Department” means the Department of Small and Local Business Development, established by [§ 2-218.11](#).

(4) “Director” means the Director of the Department of Small and Local Business Development.

(5) “Disadvantaged business enterprise” means a business enterprise as described in [§ 2-218.33](#).

(5A) “Disadvantaged investor” means:

(A) A disadvantaged business enterprise pursuant to [§ 2-218.33](#); or

(B) A District-domiciled economically disadvantaged individual as determined by regulations promulgated by the Department.

(5B) “District gross receipts” means all income derived from any activity whatsoever from sources within the District, other than income a local business enterprise derives from an ownership or beneficial interest in other local business enterprises, whether compensated in the District or not, before the deduction of any expense whatsoever connected with the production of the income; provided, that the calculation of the income shall not include:

(A) The collection of federal or local taxes on motor vehicle fuel; or

(B) Fees retained by a retail establishment under [§ 8-102.03\(b\)\(1\)](#).

(6) “District of Columbia Supply Schedule” or “DCSS” means the District of Columbia’s multiple award schedule procurement program for providing commercial products or services to District government agencies.

(7) “Economically disadvantaged individual” means an individual whose ability to compete in the free enterprise system is impaired because of diminished opportunities to obtain capital and credit as compared to others in the same line of business where such impairment is related to the individual’s status as socially disadvantaged. An individual is socially disadvantaged if the individual has reason to believe that the individual has been subjected to prejudice or bias because of his or her identity as a member of a group without regard to his or her qualities as an individual.

(8) “Enterprise zone” means:

(A) The area of the District designated as the District of Columbia Enterprise Zone under 26 U.S.C. § 1400); or

(B) An economic development zone designated by the Mayor and approved by the Council pursuant to §§ [6-1501](#) through [6-1504](#).

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

(9) “Expendable budget” means the total appropriated budget of an agency, reduced by such funding sources, object classes, objects, and other items, including any contract, the value of which does not lend itself to performance by a small or certified business enterprise, as shall be identified by the Department through rulemaking.

(9A) “Government-assisted project” means:

(A) A contract executed by an agency on behalf of the District or pursuant to statutory authority that involves District funds or, to the extent not prohibited by federal law, funds that the District administers in accordance with a federal grant or otherwise;

(B) A project funded in whole or in part by District funds;

(C) A project that receives a loan or grant from a District agency;

(D) A project that receives bonds or notes or the proceeds from bonds or notes issued by a District agency, including tax increment financing or payment in lieu of tax bonds or notes, but not including industrial revenue bonds.

(E) A project that receives District tax exemptions or abatements that are specific to the project and not to the nature of the entity undertaking the project, such as a religious institution or nonprofit corporation; or

(F) A development project conducted pursuant to a disposition under [§ 10-801](#).

(10) Repealed.

(10A) “Independently owned and operated” means, with respect to a business, that the ownership interests, management, and operation of the business are not subject to control, restriction, modification, or limitation by a person with no formal role in the operation of the business. A business shall be rebuttably presumed not to be independently owned and operated if:

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

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

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

(12) “Local business enterprise” means a business enterprise as described in [§ 2-218.31](#).

(12A) “Local manufacturing business enterprise” means a business enterprise as described in [§ 2-218.39](#).

(13) “Longtime resident business” means a business enterprise that has been continuously eligible for certification as a local business enterprise, as defined in [§ 2-218.31](#), for 20 consecutive years, or a small business enterprise, as defined in [§ 2-218.32](#), for 15 consecutive years.

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

(A) The business’s ownership;

(B) The address of the business’s principal office; ~~Address; or~~

(C) The business’s size, if certified as a small business enterprise; and ~~Size, if certified as a small business enterprise as defined in § 2-218.32.~~

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

(13A-1) “Person” means any individual, firm, partnership, general partner of a partnership, limited liability company, registered limited liability partnership, foreign limited liability partnership, association, corporation, unincorporated business, company, syndicate, estate, trust, business trust, trustee, trustee in bankruptcy, receiver, executor, administrator, assignee, fiduciary, or organization of any kind.

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

(13B) “Qualified” means a business enterprise deemed by the Department to have the capability to perform the work that has been issued a certificate of registration issued pursuant to this subchapter.

(14) “Regional governmental entity” means an organization that represents the District and surrounding local or state governments.

(15) “Resident-owned business” means a local business enterprise owned by an individual who is, or a majority number of individuals who are, subject to personal income tax solely in the District of Columbia.

(16) “Small business enterprise” means a business enterprise as described in [§ 2-218.32](#).

(16A) “Small investor” means:

(A) A small business enterprise pursuant to [§ 2-218.32](#); or

(B) A District-domiciled individual with a net worth that does not exceed the limit set by the Department for investors.

(17) “Veteran-owned business enterprise” means a business enterprise as described in [§ 2-218.38](#).

§ 2–218.11. Establishment of the Department of Small and Local Business Development.

(a) Pursuant to [§ 1-204.04\(b\)](#), there is established, as a subordinate agency, in the Executive Branch of the government of the District of Columbia, the Department of Small and Local Business Development.

§ 2–218.12. Director of the Department of Small and Local Business Development.

(a)(1) The Department shall be under the supervision of a Director who shall carry out the functions and authorities assigned to the Department.

(2) The Mayor shall appoint the Director with the advice and consent of the Council.

(b) The Director shall have full authority over the Department and all functions and personnel assigned to the Department, including the power to re-delegate to other employees and officials of the Department such powers and authority as in the judgment of the Director are warranted in the interests of efficiency and sound administration.

(c) The Director shall monitor the accomplishment of the requirements of this subchapter.

(d) Repealed.

(e) Repealed.

(f) Repealed.

(g) The Director shall have the authority to enforce the provisions of this subchapter and may impose fines, fees, penalties, and other remedial actions for violations of [§ 2-218.63](#) or the regulations promulgated pursuant to this subchapter.

(h) The Director shall establish within the Department, oversee, and administer such divisions, offices, or other units as may be necessary or appropriate to perform the functions and duties of the Department.

(i) The Director may take such other actions as are necessary or appropriate to carry out the provisions of this subchapter.

§ 2–218.13. Functions of the Department.

(a)(1) It shall be the goal and responsibility of the Department to stimulate and foster the economic growth and development of businesses based in the District of Columbia, particularly certified business enterprises, with the intended goals of:

- (A) Stimulating and expanding the local tax base of the District of Columbia;
- (B) Increasing the number of viable employment opportunities for District residents; and
- (C) Extending economic prosperity to local business owners, their employees, and the communities they serve.

(2) Through advocacy, business development programs, and technical assistance offerings, the Department shall seek to maximize opportunities for certified business enterprises to participate in:

- (A) The District's contracting and procurement process;
- (B) The District's economic development activities; and
- (C) Federal and private sector business opportunities.

(b) The Department shall administer [part D of this subchapter](#) except for those responsibilities assigned to another agency by this subchapter or through an order of the Mayor. The Director shall establish procedures and guidelines for the implementation of the programs established pursuant to [part D of this subchapter](#). The Mayor shall not reassign a responsibility specifically assigned to the Department by this subchapter.

(c) Repealed.

(c-1) The Department shall have the authority to issue grants to local businesses (whether or not certified pursuant to this subchapter), community and neighborhood groups or other nonprofit organizations as necessary to effectuate the mission of the Department and the purposes of this subchapter.

(d) Repealed.

(e) The Department, in coordination with the agency contracting officer, shall have the authority, in reviewing participation by certified business enterprises, to disregard participation by a certified business enterprise when that certified business enterprise serves no commercially useful function in the performance of a contract.

§ 2–218.14. Transfers from the Office of Local Business Development to the Department.

All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Office of Local Business Development established by [§ 2-1205.01](#) [repealed], are hereby transferred to the Department.

§ 2–218.15. Living Wage Certification Program.

Repealed.

~~(a) There is established a Living Wage Certification Program ("program") within the Department, which shall be administered by an organization selected in accordance with subsection (b) of this section ("administrator") and funded by a grant from the Department, that will certify employers that meet the requirements of the program established by this section and pursuant to this section.~~

~~(b) The Department shall:~~

- ~~(1) Select the administrator through the competitive bid process;~~
- ~~(2) Establish the criteria to be eligible for the grant and the selection as administrator; provided, that the administrator shall be a nonprofit organization located in the District;~~
- ~~(3) Issue a request for proposals no later than December 31, 2018; and~~
- ~~(4) Enter into a grant agreement with the bid awardee to serve as administrator in accordance with the requirements of this section.~~

~~(c)(1) Under the program, the administrator shall certify an employer that applies for certification and that shows, to the satisfaction of the administrator, that the employer:~~

- ~~(A) Pays its employees, including independent contractors, a living wage;~~
- ~~(B) Commits to paying its employees and independent contractors a living wage for the duration of the certification;~~
- ~~(C) Maintains its primary office in the District;~~
- ~~(D) Possesses a current license pursuant to Chapter 28 of Title 47; and~~
- ~~(E) Certifies that at least a majority of its owners are District residents or that at least a majority of its employees are District residents.~~

~~(2) The administrator shall develop criteria to verify that the employer meets each criterion set forth in this subsection.~~

~~(d)(1) Certification shall be valid for 3 years.~~

~~(2) To maintain certification and obtain recertification, a certified employer must demonstrate that it continues to meet the criteria set forth in subsection (c) of this section.~~

~~(3) A certified employer shall have 3 months to increase its employees' wages to match an increase in the living wage mandated under subchapter X A of this chapter.~~

~~(e)(1) The administrator shall maintain a public list of all certified employers.~~

~~(2) The administrator shall create a unique logo to designate an employer as certified under this section and shall provide the employer with digital and physical copies of the logo for display and promotional purposes.~~

~~(f) The Department may consider combining the list maintained pursuant to subsection (e)(1) of this section with any similar list created under the Made in DC program, established in subchapter IV B of Chapter 12 of this title.~~

~~(g) For the purposes of this section, the term "living wage" shall have the same meaning as provided in § 2-220.02(4).~~

§ 2–218.24. Record keeping.

(a) Repealed.

(b) The Department shall maintain a register of all applicants for registration showing for each applicant the date of the application, name, qualifications, place of business, place of applicant's residence, and whether the certificate was granted or denied.

(c) Repealed.

§ 2–218.31. Local business enterprises.

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

- (1) Has its principal office located physically in the District of Columbia;
~~(1A) Is independently owned and operated, or owned and operated by a certified business enterprise;~~
- (2) Requires that its chief executive officer and the highest level managerial employees of the business enterprise perform their managerial functions in their principal office located in the District; ~~and~~
 - (2A) Can demonstrate one of the following:
 - (A) More than 50% of the employees of the business enterprise are residents of the District;
 - (B) The owners of more than 50% of the business enterprise are residents of the District; ~~or;~~
 - (C) ~~More than 50% of the assets of the business enterprise, excluding bank accounts, are located in the District; or Repealed.~~
 - (D) More than 50% of the business enterprise's gross receipts are District gross receipts; and
 - (3) Can demonstrate one of the following:
 - (A) The business enterprise is licensed pursuant to Chapter 28 of Title [47];
 - (B) The business enterprise is subject to the tax levied under Chapter [18] of Title 47; or
 - (C) The business enterprise is a business enterprise identified in [§ 47-1808.01\(1\)](#) through (5) and more than 50% of the business is owned by residents of the District.

§ 2-218.32. Small business enterprises.

(a) A business enterprise shall be eligible for certification as a small business enterprise if the business enterprise:

(1)(A) Is a local business enterprise;

(B) Repealed.

(2) ~~Is independently owned, operated, and controlled; and Repealed.~~

(3)(A) Meets the definition of a small business concern under section 3(a) of the Small Business Act, approved July 18, 1958 (72 Stat. 863; 15 U.S.C. § 632(a)); or ~~Is certified by the United States Small Business Administration as a small business concern or meets the definition of a small business concern under the Small Business Act, approved July 18, 1958 (72 Stat. 863; 15 U.S.C. § 631 et seq.); or~~

(B) Has had averaged annualized gross receipts for the 3 years preceding certification not exceeding the limits established by rules issued pursuant to [§ 2-218.72](#).

(b) ~~Repealed. A business enterprise that is affiliated with another business enterprise through common ownership, management, or control shall be eligible for certification as a small business enterprise if:~~

(1) ~~The business enterprise seeking certification as a small business enterprise is a local business enterprise;~~

(2) ~~The consolidated financial statements of the affiliated business enterprises do not exceed the average annualized gross receipt limits established by subsection (a)(3)(B) of this section; and~~

(3) ~~In the event of a parent subsidiary affiliation, the parent company qualifies for certification as a small business enterprise.~~

(c) ~~Repealed. If a business enterprise seeking certification as a small business enterprise is affiliated only with one or more business enterprises that are in a different line of business, subsection (b) of this section shall not apply, and the business enterprise shall be eligible for certification as a small business enterprise if it meets the requirements of subsection (a) of this section.~~

§ 2-218.33. Disadvantaged business enterprises.

(a) A business enterprise shall be eligible for certification as a disadvantaged business enterprise if the business enterprise is:

(1) Owned by, and its management and daily operations are under the control of, an individual who is, or a majority of individuals who are, economically disadvantaged; and
~~Owned, operated, and controlled by economically disadvantaged individuals; and~~

(2)(A) Is a local business enterprise; ~~or.~~

(B) Repealed.

(b) Repealed. ~~A business enterprise that is affiliated with another business enterprise through common ownership, management, or control shall be eligible for certification as a disadvantaged business enterprise if:~~

~~(1) The business enterprise seeking certification as a disadvantaged business enterprise is a local business enterprise;~~

~~(2) In the event of a parent subsidiary affiliation, both enterprises meet the requirements of subsection (a) of this section; and~~

~~(3) The business enterprise has annualized gross receipts not exceeding limits as enumerated in rules issued pursuant to § 2-218.72.~~

§ 2–218.35. Resident-owned businesses.

A business enterprise shall be eligible for certification as a resident-owned business if it meets the definition of resident-owned business pursuant to [§ 2-218.02\(15\)](#).

§ 2–218.36. Longtime resident businesses.

A business enterprise shall be eligible for certification as a longtime resident business if it meets the definition of longtime resident business pursuant to [§ 2-218.02\(13\)](#).

§ 2-218.37. Local business enterprise with its principal office located in an enterprise zone. ~~Local business enterprises with principal offices located in an enterprise zone.~~

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

~~A local business enterprise shall be eligible for certification as a local business enterprise with principal offices located in an enterprise zone if its principal offices are located in an enterprise zone as defined by § 2-218.02(8).~~

§ 2–218.38. Veteran-owned business enterprises.

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

- (1) Is a local business enterprise;
- (2) Is not less than 51% owned and operated by one of more veterans (as defined in 38 U.S.C. § 101(2)); and
- (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) Repealed. ~~One or more veterans control the management and daily operations.~~

§ 2–218.39. Local manufacturing business enterprises.

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

- (1) Is a local business enterprise;
- (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; and
- (3) Repealed;
- (4) Manufactures only in the District of Columbia.

§ 2-218.39a. Certified joint venture.

(a) A joint venture shall be eligible for certification as a certified joint venture if the joint venture intends to submit a response to solicitation in which the joint venture will provide goods or perform services, and has a member that owns a majority or minority interest in the joint venture and meets the definition of a certified business enterprise pursuant to [§ 2-218.02\(1D\)](#). A joint venture shall be certified for a specific solicitation. The Department shall promulgate regulations that provide for a simplified procedure for the certification of a joint venture if the joint venture, having the same participants and structure, has been certified by the Department on a previous government-assisted project.

(a-1) The Department shall have the authority to certify a joint venture for all public, public-private, and private projects.

(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;

(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) In determining whether a joint venture is eligible to be certified as a certified joint venture, the Department shall consider the totality of the circumstances, including 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 of the joint venture; and

(2) Documentation of the financial contribution of each joint venture 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.

(e) A joint venture shall relinquish its status as a certified joint venture if it has not been awarded the contract or if the solicitation has been withdrawn or cancelled.

(f) Unless a joint venture’s certification is relinquished pursuant to subsection (e) of this section, a certified joint venture shall retain its certification for the duration of the contract awarded through the solicitation for which it was certified, including any extension of the contract.

(g) A joint venture shall not be certified:

(1) To meet the small and certified business enterprise subcontracting requirements set forth in [§ 2-218.46](#); or

(2) To meet the small and certified business equity and development participation requirements set forth in [§ 2-218.49a](#).

(h) A certified joint venture shall receive preference points or price reductions in accordance with [§ 2-218.43](#) as follows:

(1) If the Department determines that a certified business enterprise owns a majority interest in the joint venture, the joint venture shall receive the preference points or price reductions that the certified business enterprise would receive in accordance with [§ 2-218.43](#); provided, that if the certified joint venture is formed to serve as a general contractor on a project, the joint venture shall be required also to establish to the reasonable satisfaction of the Department that:

(A) The certified business enterprise owner with majority interest in the joint venture has bonding capacity equal to at least 51% of the total contract amount;

(B) The individual primarily responsible for project decisions, such as the project executive, shall be provided by the certified business enterprise; and

(C) At least 50% of the staff that the joint venture will devote to the project will be provided by the certified business enterprise.

(2) If the Department determines that a certified business enterprise owns a minority interest in the joint venture, the Department's certification of the joint venture shall indicate such and specify the preference points or price reductions that the joint venture shall receive, but in no event shall the preference points or price reductions exceed 50% of the preference points or price reductions that would otherwise be applicable to the certified business joint venture partner.

(3) Similar to the requirements set forth in paragraph (1)(A), (B), and (C) of this subsection, the Department may adopt regulations that establish additional industry-specific requirements for the certification of a joint venture that has a majority interest held by a certified business enterprise.

(i)(1) No later than 60 days after the end of each operating quarter of the calendar year, a joint venture shall submit quarterly income statements to the Department showing all income and contract receipts and expenses, including the:

(A) Fees for services and labor;

(B) Salaries of the principals of the joint venture; and

(C) Distribution of profits.

(2) No later than 45 days after the completion of the project, the joint venture shall submit a project-end income statement to the Department with a statement of final profit distribution.

§ 2–218.41. Goals for District agencies with respect to contracting and procurement.

(a) Each agency, including an agency that contracts or procures in whole or in part through the Office of Contracting and Procurement, shall exercise its contracting and procurement authority so as to meet, on an annual basis, the goal of procuring and contracting 50% of the dollar volume of its expendable budget to qualified small business enterprises.

(a-1) If the agency determines in writing that there are not at least 2 qualified small business enterprises, the agency may use any qualified certified business enterprises to fulfill the requirements of subsection (a) of this section.

(a-2)(1) An agency that cannot meet the requirements of subsections (a) and (a-1) of this section shall notify the Mayor and shall be prohibited from spending its remaining expendable budget with non-small business enterprises or non-certified business enterprises.

(2) The Mayor may waive the prohibition set forth in paragraph (1) of this subsection and grant approval for the agency to spend its remaining expendable budget with non-small business enterprises or non-certified business enterprises.

(a-3) By October 1, 2015, and no later than October 1 of each succeeding year, an agency shall submit to the Department:

(1) A spending plan that details how an agency intends to spend its expendable budget with small business enterprises and certified business enterprises during the fiscal year; and

(2) An annual allocation letter signed by the agency director on a form prescribed by the Department that specifies the agency's 50% expendable budget goal.

(b) Repealed.

(c) The provisions of this subchapter relating to contracting and subcontracting goals and requirements shall be applicable to every government-assisted project unless the Department, by regulation, establishes a specific exemption for a particular type or class of government-assisted project.

§ 2–218.42. Required programs, procedures, and policies to achieve contracting and procurement goals.

To achieve the goals set forth in this subchapter, the Department shall establish by rules issued pursuant to [§ 2-218.72](#), programs for certified business enterprises. The Department shall include among these programs:

- (1) A bid preference mechanism for certified business enterprises;
- (2) A set-aside program for small business enterprises; and
- (3) A set-aside program for certified business enterprises for the District of Columbia Supply Schedule.

§ 2–218.43. Bid and proposal preferences.

(a) In evaluating bids or proposals, agencies shall award preferences as follows:

(1) In the case of proposals, points shall be granted as follows:

(A) Three points for a small business enterprise;

(B) Five points for a resident-owned business;

(C) Five points for a longtime resident business;

(D) Two points for a local business enterprise;

(E) Two points for a local business enterprise with its principal office located in an enterprise zone;

(F) Two points for a disadvantaged business enterprise;

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

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

(2) In the case of bids, a percentage reduction in price shall be granted as follows:

(A) Three percent for a small business enterprise;

(B) Five percent for a resident-owned business;

(C) Ten percent for a longtime resident business;

(D) Two percent for a local business enterprise;

(E) Two percent for a local business enterprise with its principal office located in an enterprise zone;

(F) Two percent for a disadvantaged business enterprise;

(G) Two percent for a veteran-owned business enterprise; and

(H) Two percent for a local manufacturing business enterprise.

(b) A certified business enterprise shall be entitled to any or all of the preferences provided in this section, but in no case shall a certified business enterprise be entitled to a preference of more than 12 points or a reduction in price of more than 12 percent.

§ 2–218.44. Mandatory set-asides of District agency contracts for small business enterprises or certified business enterprises.

(a) Except as provided in subsections (a-1) and (b) of this section or [§ 2-218.45](#), each agency shall set aside contracts or procurements of \$250,000 or less for qualified small business enterprises.

(a-1) If an agency determines in writing that there are not at least 2 qualified small business enterprises that can provide the services or goods that are the subject of the contract, the agency may use any qualified certified business enterprise to fulfill the requirements of subsection (a) of this section.

(b) An agency may decline to award a contract or procurement set aside under this section, and may thereafter issue the contract or procurement in the open market, if the agency determines in writing that the bids for the contract or procurement set aside for a small or certified business enterprise are believed to be 12% or more above the likely price on the open market.

(c) Each written determination pursuant to subsections (a-1) or (b) of this section shall be submitted to the Director, who shall post a copy of the determination so that it can reasonably be accessed by the public via the Department's website or such other locations as the Department may establish.

§ 2–218.45. Mandatory set-asides of contracts in the District of Columbia Supply Schedule for small business enterprises or certified business enterprises.

(a) Except as provided in subsections (b) and (c) of this section, each agency shall award contracts of \$250,000 or less to a qualified small business enterprise included on the District of Columbia Supply Schedule.

(b) If an agency determines in writing that there are not at least 2 qualified small business enterprises on the District of Columbia Supply Schedule that can provide the services or goods that are the subject of the contract, the agency may use any qualified certified business enterprise to fulfill the requirements of subsection (a) of this section.

(c) An agency may decline to award a contract or procurement set aside under this section, and may thereafter issue the contract or procurement in the open market, if the agency determines in writing that the bids for the contract or procurement set aside for a small or certified business enterprise are believed to be 12% or more above the likely price on the open market.

(d) Each written determination pursuant to subsections (b) or (c) of this section shall be submitted to the Director, who shall post a copy of the determination so that it can reasonably be accessed by the public via the Department's website or such other locations as the Department may establish.

§ 2–218.45a. Mandatory set-asides for small business enterprises and certified business enterprises with respect to follow-on and renewable acquisitions.

(a) Except as provided in subsection (b) of this section, where a contract or procurement is awarded by a District agency to a small business enterprise or certified business enterprise, its follow-on or renewable acquisition shall be set aside for small business enterprises or certified business enterprises.

(b) An agency that would like to fulfill a follow-on or renewable acquisition without using a small business enterprise or certified business enterprise shall:

- (1) Make a written request to the Director; and
- (2) Receive written approval from the Director to allow the agency to waive the requirements set forth in this section.

§ 2–218.46. Performance and subcontracting requirements for ~~construction and non-construction contracts~~government-assisted projects; subcontracting plans.

(a)(1) All construction contracts for government-assisted projects in excess of \$250,000 shall include the following requirements unless a waiver has been approved in accordance with [§ 2-218.51](#):

(A) At least 35% of the dollar volume of the contract shall be subcontracted to small business enterprises; or

(B) If there are insufficient qualified small business enterprises to completely fulfill the requirement of subparagraph (A) of this paragraph, then the subcontracting requirement may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises; provided, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

(2) All non-construction contracts for government-assisted projects in excess of \$250,000 shall include the following requirements unless a waiver has been approved in accordance with [§ 2-218.51](#):

(A) At least 35% of the dollar volume of the contract shall be subcontracted to small business enterprises; or

(B) If there are insufficient qualified small business enterprises to completely fulfill the requirement of subparagraph (A) of this paragraph, then the subcontracting requirement may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises; provided, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

~~(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. A local business enterprise is not subject to the requirements in paragraph (1) or (2) of this subsection.~~

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

~~(b)(1)(A) Each government-assisted construction and non-construction contract for which a certified business enterprise is selected as a beneficiary and is granted points or a price reduction pursuant to [§ 2-218.43](#) or is selected through a set-aside program under this subpart shall include a requirement that the certified business enterprise perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracted effort shall be with certified business enterprises.~~

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

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

~~(II) Selected through a set-aside program under this subpart; or~~

~~(III) Conferred a procurement preference for being a certified business enterprise.~~

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

~~(I) The certified business enterprise shall perform at least 35% of the work on the government-assisted project with its own organization and resources; and~~

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

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

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

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

(B) If the total contracting effort performed by the certified business enterprise is less than the amount required by subparagraph (A) of this paragraph, then the business enterprise shall be subject to enforcement pursuant to [§ 2-218.63](#).

~~(2)(A) Each government-assisted construction and non-construction contract for which a certified joint venture is selected as a beneficiary and is granted points or a price reduction pursuant to [§ 2-218.43](#) or is selected through a set-aside program under this subpart shall include a requirement that the certified business enterprise perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracted effort shall be with certified business enterprises. For each government-assisted project for which a certified joint venture is selected as a beneficiary and is granted points or a price reduction pursuant to section 2343 of this act, selected through a set-aside program under this subpart, or conferred a procurement preference for being a certified business enterprise:~~

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

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

(B) If the total contracting effort performed by the certified business enterprise is less than the amount required by subparagraph (A) of this paragraph, then the business enterprise shall be subject to enforcement pursuant to [§ 2-218.63](#).

(b-1) Each government-assisted construction and non-construction project for which a certified business enterprise is utilized to meet the subcontracting requirements pursuant to subsections (a) and (b) of this subsection shall include a requirement that the certified business enterprise perform at least 35% of the contracting effort with its own organization and resources.

~~(c) Each government-assisted construction and non-construction project of \$1 million or less for which a certified business enterprise is selected as a beneficiary and is granted points or a price reduction pursuant to [§ 2-218.43](#) or is selected through a set-aside program under this subpart shall include a requirement that the certified business enterprise perform at least 50% of the on-site work with its own workforce. Repealed.~~

~~(c-1) Any dollar volume of a contract for a government-assisted project that is subcontracted to a certified business enterprise in which a beneficiary of that contract has an ownership or financial interest shall not count toward the fulfillment of the 35% dollar volume subcontracting requirement set forth in this section.~~

(d)(1) Bids or proposals responding to a solicitation, including an open market solicitation, shall be deemed nonresponsive and shall be rejected if a subcontracting plan is required by law and the beneficiary fails to submit a plan that meets the criteria set forth in paragraph (2) of this subsection.

(2) A subcontracting plan shall include the following information:

- (A) The name and address of each subcontractor;
- (B) A current certification number of the small or certified business enterprise;
- (C) The scope of work to be performed by each subcontractor; and
- (D) The price to be paid by the beneficiary to each subcontractor.

(3) The subcontracting plan required by paragraph (2) of this subsection shall be provided before the procurement agency District accepts the submission of the bid or proposal.

(d-1) Notwithstanding subsection (d) of this section, a design-build project shall not be required to identify specific subcontractors as a condition precedent to performing preconstruction services; provided, that a detailed subcontracting plan that meets the requirements of subsection (d) of this section shall be submitted before entering into a guaranteed maximum price or such other contractual action authorizing the contractor to commence construction.

(e) No beneficiary shall be allowed to amend the subcontracting plan filed as part of its bid or proposal except with the consent of the Director. Any reduction in the dollar volume of the subcontracted portion resulting from such amendment of the plan shall inure to the benefit of the District.

(f) No multiyear contracts or extended contracts which are not in compliance with this subchapter at the time of the contemplated exercise of the option or extension, shall be renewed or extended, and any such option or extension shall be void.

(g) The subcontracting requirements of this section may be waived pursuant to [§ 2-218.51](#).

~~(h) Repealed. A beneficiary shall submit to the agency contracting officer, project manager, and Director copies of the executed contracts with the subcontracts identified in the subcontracting plan. Failure to submit copies of the executed contracts shall render the underlying contract voidable by the District.~~

~~(i)(1) A beneficiary on a government-assisted project subject to subcontracting requirements under subsections (a), (b), or (b-1) of this section A beneficiary shall provide a quarterly report to the Department, agency contracting officer, and project manager. The quarterly report shall include the following information for each subcontract with a subcontractor identified in the subcontracting plan:~~

- ~~(A) The price to be paid by the beneficiary to the subcontractor under the subcontract;~~
- ~~(B) A description of the goods procured or the services subcontracted for;~~
- ~~(C) The amount paid by the beneficiary to the subcontractor under the subcontract; and~~
- ~~(D) A copy of the fully executed subcontract, if the fully executed subcontract was not provided in a prior quarterly report.~~

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

~~(2) If the fully executed subcontract is not included with a quarterly report, the beneficiary shall not receive credit toward the subcontracting requirements of this section for that subcontract.~~

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

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

(j)(1) The beneficiary shall meet on an annual basis with the Department, agency contracting officer, and project manager to provide an update of the subcontracting plan for utilization of small business enterprises and certified business enterprises.

(2) The beneficiary shall be given a 30-day written notice of the meeting by the Department.

(k) The beneficiary shall provide written notice to the Department upon the initiation and completion of a project.

(l) If a certified business enterprise or certified joint venture is the beneficiary and must meet the subcontracting requirements as set forth in this section, it shall fulfill the requirements of subsections (h), (i), (j), and (k) of this section.

(m) A beneficiary, certified business enterprise, or member of a certified joint venture that fails to meet the requirements of this section shall be subject to the penalties set forth in [§ 2-218.63](#).

(n) With regard to government-assisted projects, the obligations under this section shall expire upon completion of the development or other activity that serves as the basis for such activity qualifying as a government-assisted project; provided, that the Mayor shall have the authority to negotiate any extensions under this section in the transaction documents that qualify an activity as a government-assisted project.

§ 2–218.47. Unbundling requirement.

The Mayor shall establish procedures to ensure that solicitations are subdivided and unbundled and that smaller contracts are created to the extent feasible and fiscally prudent.

§ 2–218.48. Enforcement and penalties for breach of subcontracting plan.

(a) For any subcontracting plan required by law, the beneficiary shall be deemed to have breached the subcontracting plan for utilization of small or certified business enterprises in the performance of a contract if the beneficiary:

(1) Fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner;

(2) Submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or

(3) Fails to meet the subcontracting requirements pursuant to [§ 2-218.46](#).

(b) Repealed.

(c) A contractor that is found to have breached a subcontracting plan for utilization of certified business enterprises shall be subject to the imposition of penalties, including monetary fines, pursuant to [§ 2-218.63](#).

§ 2–218.49. Other procedures and programs.

(a) The Mayor shall establish policies and procedures to maximize the participation of certified business enterprises in the contracting and procurement processes, including:

(1) A procedure whereby an agency may waive bid security requirements on contracts in excess of \$100,000, where the waiver is appropriate to achieve the purposes of this subchapter; and

(2) A policy whereby an agency shall make advance payments to a certified contractor, where the payments are necessary to achieve the purposes of this subchapter; provided, that an agency shall not be permitted to advance more than 10% of the total value of any contract.

(b) The Mayor may establish a pilot set-aside program for small business enterprises with gross revenues of \$5 million or less.

§ 2-218.49a. Equity and development participation.

(a)(1) In all development projects conducted pursuant to a disposition under [§ 10-801](#), small investors, disadvantaged investors, or certified equity participants shall invest a minimum of 20% of the total sponsor equity, excluding debt financing, mezzanine financing, or other equity contributions by limited or institutional investors.

(1A) For the purpose of this section, a small investor, disadvantaged investor, or certified equity participant is not eligible to be an equity sponsor for a government-assisted project if it and the beneficiary for the project stand in any of the following relationships with one another:

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

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

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

(2) Demonstration by a project sponsor of its intent and ability to meet the 20% equity requirement pursuant to paragraph (1) of this subsection shall be a condition precedent to the transfer of any District-owned property for a covered project.

(3) In meeting the equity investment requirement in paragraph (1) of this subsection, a certified equity participant may be a 100% sponsor of a component of a covered project; provided, that the certified equity participant participation totals 20% of the total equity of the covered project.

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

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

(6) The Mayor shall issue rules, pursuant to section 2372 of this act, specifying:

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

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

(b) For each government-assisted project involving development, in addition to complying with the general subcontracting provisions in [§ 2-218.46](#), at least 20% of the dollar volume of non-construction development goods and services shall be subcontracted to small business enterprises, and if there are insufficient qualified small business enterprises to completely fulfill this requirement, then the requirement may be satisfied by contracting 20% of that dollar volume to any qualified certified business enterprises; provided, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall development goods and services work.

(c)(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.

(d) This section shall not apply if the entity that controls the development project is an entity tax-exempt under 26 U.S.C. § 501(c), or other not-for-profit entity.

(e) This section shall not apply to any development project for which a contract for purchase of one or more parcels of real property has been executed prior to March 2, 2007.

§ 2–218.51. Waiver of subcontracting requirements.

(a) The subcontracting requirements of [§ 2-218.46](#) may be waived only if there is insufficient market capacity for the goods or services that comprise the project and such lack of capacity leaves the contractor commercially incapable of achieving the subcontracting requirements at a project level. The subcontracting requirements of [§ 2-218.46](#) may only be waived in writing by the Director. An agency seeking waiver of the subcontracting requirements of [§ 2-218.46](#) shall submit to the Director a request for waiver, which shall include the following:

(1) The number of certified business enterprises, if any, qualified to perform the elements of work that comprise the project;

(2) A summary of the market research or outreach conducted to analyze the relevant market; and

(3) The consideration given to alternate methods for acquiring the work to be subcontracted in order to make the work more amenable to being performed by certified business enterprises.

(a-1) Before the Director approves an agency's waiver request, the Director shall:

(1) Send an electronic notice to all certified business enterprises notifying them of the agency's waiver request; and

(2) Post a copy of the agency's waiver request on the Department's website, or such other locations as the Department may establish, for 10 days to provide the public reasonable notice of the waiver request.

(b) If the Director approves an agency's request for waiver of the subcontracting requirements of [§ 2-218.46](#) and grants such a waiver, the Director's determination shall set forth the information outlined in subsection (a) of this section.

§ 2–218.52. Enforcement mechanism against an agency.

(a) If an agency fails to meet any of the goals set forth in [§ 2-218.41](#), the Department may require that a portion of the agency's contracts and procurements be made part of a set-aside program for small business enterprises.

(b) The performance plan for each agency shall include a metric for compliance with the provisions of this subchapter and the performance evaluation for each agency director shall reflect the agency's success in meeting compliance goals.

§ 2-218.53. Agency reporting requirements.

(a) Each agency shall submit a quarterly report to the Department within 30 days after the end of each quarter, except for the 4th quarter report. The 4th quarter and annual report shall be submitted together. When submitting a quarterly report, the agency shall list each expenditure as it appears in the general ledger from the expendable budget of the agency during the quarter. For each expenditure, the report shall include:

- (1) The name of the vendor from which the goods or services were purchased;
- (2) The vendor identification number;
- (3) A description of the goods or services provided;
- (4) Whether the vendor was a small or 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 percentage of the agency's total dollar amount of expenditures in the quarter to all small business enterprises and certified business enterprises.

(a-1) In addition to the report of prime contracting activity required by subsection (a) of this section, each agency shall also submit to the Department within 30 days of the end of each quarter, a report on a contract basis of payments made by beneficiaries to subcontractors that are certified business enterprises and such payments shall be reported against the amounts included in the approved detailed certified business enterprise subcontracting plan.

(b) Each agency shall submit to the Department, within 30 days of the issuance of the Comprehensive Annual Financial Report, an annual report listing each expenditure as it appears in the general ledger from the expendable budget of the agency during the fiscal year which shall include:

- (1) The information required to be included in the quarterly reports (with calculations for the fiscal year);
- (2) A description of the activities the agency engaged in, including the programs required by this part, to achieve the goals set forth in [§ 2-218.41](#); and
- (3) A description of any changes the agency intends to make during the succeeding fiscal year to the activities it engages in to achieve the goals set forth in [§ 2-218.41](#).

(c) The Department shall monitor agency compliance with the reporting requirements of this section.

(d) Repealed.

(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 [§ 2-218.41](#). The Department shall make recommendations on activities the agency should engage in to meet or exceed the goals set forth in [§ 2-218.41](#). The Department's recommendations shall be submitted to the agency and the Council within 30 days of the agency's annual report submission.

§ 2-218.54. Department reporting requirements.

~~(a) Within 45 days after its receipt of the annual reports required by § 2-218.53(b), the Department shall submit to the District of Columbia Auditor, through the Compliance Unit established by part K of subchapter I of Chapter 3 of Title 1 [§ 1-301.181 et seq.], the following documents and information:~~

- ~~(1) A copy of the annual reports required by § 2-218.53; and~~
- ~~(2) A chart listing the following information with respect to each agency for the current fiscal year:
 - ~~(A) The total budget of each agency;~~
 - ~~(B) The expendable budget of each agency;~~
 - ~~(C) A description of each funding source, object class, object, or item that was excluded from the total budget of the agency in the Department's calculation of the expendable budget of the agency;~~
 - ~~(D) Each goal of the agency under § 2-218.41 in percentage and dollar terms; and~~
 - ~~(E) The actual dollar amount expended with each small business enterprise and certified business enterprise. Repealed.~~~~

~~(b) Within 45 days after its receipt of the annual reports required by § 2-218.50(g), the Department shall submit to the District of Columbia Auditor, through the Compliance Unit established by part K of subchapter I of Chapter 3 of Title 1 [§ 1-301.181 et seq.] a report containing the following information with respect to each government corporation for the current and prior fiscal years:~~

- ~~(1) The expendable budget of the government corporation.~~
- ~~(2) A list of all agencies and government corporations that have not submitted a report for that quarter with a detailed explanation of what actions were taken by the Department to effectuate compliance with the reporting requirement. Repealed.~~

(c) On a semiannual basis, the Department shall report the following to the chairman of the Council committee that has purview over the Department:

- (1) District agencies' compliance with [§ 2-218.41](#);
- ~~(2) A list of contracting opportunities for small business enterprises and certified business enterprises with District agencies; Repealed.~~
- (3) A list of projects in the District that require a 35% minimum subcontracting requirement in accordance with [§ 2-218.46](#);
- (4) A list of beneficiaries, small business enterprises, certified business enterprises, or certified joint ventures that fail to meet the 35% minimum subcontracting requirements in accordance with [§ 2-218.46](#);
- (5) A list of projects in the District that have a 20% equity and development participation requirement in accordance with [§ 2-218.49a](#);
- (6) A list of beneficiaries that fail to meet the 20% equity and development participation requirements in accordance with [§ 2-218.49a](#);
- (7) A list of District government contracts or procurements and government-assisted projects that were granted waivers or modifications to the requirements set forth in [§ 2-218.46](#);
- (8) A list of District agencies that fail to meet the requirements set forth in [§ 2-218.41](#);
- (9) A list of small business enterprises and certified business enterprises; and

(10) A list of joint ventures certified by the Department, including the number of compliance checks completed on the joint ventures and a summary of the results, and a list of joint ventures that met the requirements set forth in [§ 2-218.39a\(i\)](#).

[(d)] On an annual basis, the Department shall submit to the Council a report on sports wagering licensee certified business enterprise compliance as it relates to the certified business enterprise requirements of [subchapter II of Chapter 6 of Title 36](#).

§ 2–218.55. Regional governmental entities.

(a) Except as provided in subsection (b) of this section, a regional governmental entity shall be exempt from the requirements of this subchapter to the extent that the requirements of this subchapter impact on the regional governmental entity's operations within the territory of a member government other than the District.

(b) The District of Columbia Water and Sewer Authority shall be exempt from the requirements of this subchapter to the extent that the requirements of this subchapter are contrary to procurement regulations promulgated pursuant to statutes establishing the District of Columbia Water and Sewer Authority.

§ 2–218.61. Certificate of registration.

(a) No business enterprise shall be permitted to participate in a program established under this part unless the business has demonstrated its capability to perform and has been issued a certificate of registration under the provisions of this subchapter.

(b)(1) A business enterprise seeking to be certified in a category under this subpart shall file with the Department a written application on such form as may be prescribed by the Department.

(2) The application shall include, at a minimum, documents and information enumerated in rules established pursuant to [§ 2-218.72](#) and any other information the Department may require, and the following documents and information:

(A) A certification of the correctness of the information provided;

(B) Written evidence that the applicant is:

(i) A bona fide local business enterprise;

(ii) A bona fide disadvantaged business enterprise;

(iii) A bona fide small business enterprise;

(iv) A bona fide local business enterprise located in an enterprise zone;

(v) A bona fide resident-owned business;

(vi) A bona fide longtime resident business;

(vii) A bona fide veteran-owned business enterprise; or

(viii) A bona fide local manufacturing business enterprise;

(C) Evidence of ability and character;

(D) Evidence of financial position, which may be the applicant's most recent financial statement. For the purposes of this subparagraph, the term "recent" means produced from current data no more than 90 days prior to the application date;

(E) Any other information the Department may require; and

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

(c) The Department shall issue the applicant a certificate of registration if:

(1) The information provided in the application or additional filings is satisfactory to the Department;

(2) The business enterprise meets the standards of this subchapter; and

(3) The applicant fulfills other requirements as may be established by the Department.

(c-1)(1) A certified business enterprise seeking a subsequent certificate of registration that has no material change in its business status shall be required to submit only a written application to renew its certificate of registration on a form as prescribed by the Department.

(2) The application required pursuant to paragraph (1) of this subsection, shall include:

(A) A no-change affidavit executed under penalty of perjury attesting that there has been no material change in the certified business enterprises' business status and that the certified business enterprise still meets the certification requirements required under this subpart; and

(B) Proof of clean hands and good standing as required by §§ [47-2861](#) and [29-102.08](#) or the certified business enterprises' authorization that the Department may confirm clean hands and good standing with relevant District agencies.

(3) A subsequent certificate of registration of a certified business enterprise that meets the requirements of this subsection shall be deemed approved upon filing of the written application.

(d) A certificate of registration shall expire 3 years from the date of approval of the application. 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 3-year term.

(e) Repealed.

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

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

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

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

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

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

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

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

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

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

(5) For the purpose of this subsection, the phrase "2020 Act" refers to the Supporting Local Business Enterprises Amendment Act of 2020, introduced on _____ (Bill 23-____)".

§ 2–218.61a. Certificate of registration during a public health emergency.

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

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

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

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

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

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

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

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

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

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

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

§ 2–218.63. Revocation of registration; challenges to registration; penalties.

(a) It shall be a violation of this subchapter and penalties shall be assessed if the Department determines that:

(1) A beneficiary, certified business enterprise, or certified joint venture fails to comply with the requirements set forth in [§ 2-218.46](#), [§ 2-218.48](#), or [§ 2-218.49a](#);

(2) A certified business enterprise:

(A) Acted with gross negligence, financial irresponsibility, or misconduct in the practice of a trade or profession;

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

(C) Misrepresents its capability to the Department; or

(3) A beneficiary, certified business enterprise, or certified joint venture has:

(A) Fraudulently obtained or held certification;

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

(C) In any certified business enterprise matter administered under this subchapter:

(i) 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;

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

(iii) Made a materially false statement or representation;

(iv) Used a false writing or document that the person knows to contain a false statement or entry;

(D) Aided another person in performing an act prohibited under subparagraphs (A), (B) or (C) of this paragraph;

(E) Furnished substantially inaccurate or incomplete ownership or financial information;

(F) Failed to report changes that affect its eligibility for certification, including relocation of its principal office or change in ownership or control;

(G) Willfully violated any provision of this subchapter or rules adopted pursuant to this subchapter;

(H) Substantially failed to operate and manage a certified joint venture in accordance with [§ 2-218.39a](#); There shall be a rebuttable presumption that the failure to operate and manage the joint venture in accordance with the joint venture application was the parties' intent. If the joint venture demonstrates that the failure to operate and manage the joint venture in accordance with the joint venture application was necessary due to unforeseen business or operational issues, the failure shall not be a violation of this subchapter.

(I) Knowingly and willfully submits a monitoring or compliance report or other required subcontracting information containing a materially false statement or knowingly and willfully violates the terms of a subcontracting plan; or

(J) Committed any other cause the Department determines to be sufficiently serious and compelling to affect responsibility as a District government contractor, including revocation, suspension, or debarment by another governmental enterprise for any cause listed in rules and regulations; or-

(4) A business enterprise:

(A) Willfully obstructed or impeded, or attempted to obstruct or

impede, a city official or employee investigating the qualifications of a business enterprise that has requested certification;

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

(i) 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;

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

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

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

(b) It shall be a violation of this subchapter and penalties may be assessed if the Department determines that an individual or business enterprise has willfully failed to cooperate in an audit or investigation conducted by:

(1) The District of Columbia Auditor pursuant to 1-204.55; or

(2) The Chairman of the Council or the chairperson of the committee of the Council that conducts an investigation pursuant to [§ 1-204.13](#).

(c) If the Department determines, in accordance with the procedure set forth in subsection (e) of this section, that an individual or business enterprise:

(1) Has committed a violation of subsection (a)(1) of this section, the Department shall:

(A) Assess a civil penalty of not more than \$5,000 for the first offense;

(B) Assess a civil penalty of not more than \$15,000 for the second offense; and

(C)(i) For each offense thereafter, the Director shall refer the matter to the Attorney General for the District of Columbia, who may bring a civil action under paragraph (3)(A) of this subsection; provided, that if the Attorney General for the District of Columbia does not bring an action under paragraph (3)(A) of this subsection, the Department shall assess a civil penalty of not more than \$25,000 against the beneficiary, certified business enterprise, or certified joint venture; and

(ii) The Department shall refer the matter to the Office of Contracting and Procurement, including matters involving agencies not subject to the Office of Contracting and Procurement authority pursuant to [§ 2-352.01\(b\)](#), for investigation. If the Office of Contracting and Procurement determines that more than 2 violations of subsection (a)(1) of this section have occurred, the beneficiary, certified business enterprise, or certified joint venture shall be:

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

(I) Deemed ineligible from consideration for government-assisted projects with the District government for a period of no more than 5 years;

(2) Has committed a violation of subsection (a)(2) or (a)(3) of this section, the Department shall suspend or revoke the certification of the beneficiary, certified business enterprise, or certified joint venture;

(3) Has committed a violation of subsection (a)(3) or (a)(4), in addition to the penalties set forth in paragraph (2) of this subsection:

(A) The Attorney General for the District of Columbia may bring a civil action in the Superior Court of the District of Columbia against the beneficiary, certified business enterprise, or certified joint venture and its directors, officers, or principals. An individual, beneficiary, certified business enterprise, or certified joint venture found to be in violation under subsection

(a)(3) or (a)(4) of this section shall be subject to a civil penalty of the greater of \$100,000 or triple the profit earned by the individual, beneficiary, certified business enterprise, or certified joint venture on all contracts awarded; and

(B) The Department shall refer the matter to the Office of Contracting and Procurement, including matters involving agencies not subject to the Office of Contracting and Procurement authority pursuant to [§ 2-352.01\(b\)](#), for investigation. If the Office of Contracting and Procurement determines there has been a violation of subsection (a)(3) or (a)(4) of this section, the beneficiary, certified business enterprise, or certified joint venture shall be:

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

(ii) Deemed ineligible from consideration for government-assisted projects with the District government for a period of no more than 5 years;

(4) Has failed to use commercially reasonable best efforts to meet the subcontracting requirements established in [§ 2-218.46](#), the Department, notwithstanding the penalties in paragraph (1) of this subsection, shall assess a civil penalty equal to ~~10% of the dollar volume of the contract that the beneficiary or certified joint venture was required but failed to subcontract~~ 100% of the difference between the dollar volume the beneficiary or certified joint venture was required to subcontract to certified business enterprises under section 2346 and the actual dollar volume subcontracted to certified business enterprises. For the purposes of this paragraph, the term “commercially reasonable best efforts” shall require that the beneficiary or certified joint venture take all actions that a similarly situated beneficiary or certified joint venture would take to accomplish the goal; provided, that the beneficiary or certified joint venture shall not be required to expend amounts that are disproportionate to the benefit being obtained; and

(5) Has committed a violation of subsection (b) of this section, the Department shall assess a civil penalty of not more than \$5,000.

(d) The penalties provided for in subsection (c) of this section shall be in addition to any other causes of action or remedies, legal or equitable, that may be available.

(e)(1)(A) Any person may file with the Department a complaint alleging a violation of this subchapter against an applicant for registration as a certified business enterprise or certified joint venture registered pursuant to this subchapter. 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 Department 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, the certified business enterprise, or the certified joint venture alleged to be in violation of this section;

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

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

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

(A) The name of the applicant, certified business enterprise, or certified joint venture alleged to be in violation of this subchapter;

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

(C) A description of the complaint.

(4)(A)(i) If the Department does not determine that a complaint is frivolous or without merit in accordance with paragraph (2) of this subsection, it shall hold a hearing on the complaint within 3 months of the filing of the complaint. The Department shall determine the time and place of the hearing.

(ii) The Department shall cause to be issued and served on the person, the certified business enterprise, or certified joint venture alleged to have committed the violation, hereafter called the “respondent”, a written notice of the hearing together with a copy of the complaint at least 30 days before the scheduled hearing. Notice shall be served by registered or certified mail, return receipt requested, or by personal service.

(iii) At the hearing, the respondent shall have the right to appear personally or by a representative and to cross-examine witnesses and to present evidence and witnesses.

(B) If, after the conclusion of the hearing, the Department determines that the respondent has violated the provisions of this subchapter or regulations issued pursuant to this subchapter, the Department shall issue, and cause to be served on the respondent, a decision and order, accompanied by findings of fact and conclusion of law, and any penalty permitted by subsection (c) of this section.

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

(D) The Department shall have the authority to issue subpoenas requiring the attendance of witnesses and to compel the production of records, papers, and other documents.

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

(g)(1) A ~~certified~~ business enterprise or certified joint venture may appeal to the Office of Administrative Hearings:

(A) The denial by the Department of an application for certification;

(B) The revocation or change to a previously issued certification; or

(C) An enforcement action taken pursuant to this section.

(2) The Office of Administrative Hearings shall consider the appeal pursuant to [Chapter 18A of this title](#) [§ 2-1831.01 et seq.] and [Chapter 18 of this title](#) [§ 2-1801.01 et seq.], and to rules promulgated pursuant to those chapters.

(3) The Office of Administrative Hearings shall conduct such hearing based on the record developed by the Department. The decision of the Office of Administrative Hearings shall be the final administrative decision.

§ 2–218.64. Identification of small or certified business enterprises in bids or proposals; false statements on certification; penalties.

(a)(1) Except as otherwise provided by law, a beneficiary, certified business enterprise, certified joint venture, or an individual may not:

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

(i) Has obtained authorization from the small or certified business enterprise to identify the small or certified business enterprise in its bid or proposal;

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

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

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

(2) A violation of any provision of this subsection is a felony and is subject to a fine not to exceed \$15,000, imprisonment not to exceed 5 years, or both.

(b)(1) A beneficiary, certified business enterprise, certified joint venture, or an individual shall not make false statements about whether a business is certified by the Department as a certified business enterprise or a certified joint venture.

(2) A violation of this subsection is a misdemeanor and is subject to a fine not to exceed \$5,000, imprisonment not to exceed one year, or both.

§ 2-218.65. 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 [§ 2-218.61](#). The District of Columbia Auditor shall submit findings and recommendations to the Department and the Council.

§ 2–218.66. Services to certified business enterprise.

(a) The Department shall provide the following services to certified business enterprises:

(1) Specialized programs to assist certified business enterprises in securing capital and repairing damaged credit;

(2) Informational seminars on securing credit and loans; and

(3) Access to non-traditional financing sources, as well as traditional lending sources.

(b) The Department shall:

(1) Develop a catalog of on-line survival and growth tools and resources that certified business enterprises can access through the Internet or other organizations;

(2) Enter into a memorandum of understanding with a third-party vendor to provide expert consulting and education to assist certified businesses enterprises at risk of failure, including certified business enterprises that are considering filing for bankruptcy;

(3) Develop a formal listing of financing options for business enterprises;

(4) Deliver services that assist workers who become unemployed due to economic fluctuations to begin new businesses; and

(5) Enter into a memorandum of understanding with a third-party vendor to provide one-on-one counseling with potential borrowers to improve financial presentations to lenders.

§ 2-218.67. Establishment of the Volunteer Corp of Executives and Entrepreneurs.

Repealed.

~~(a) There is established the Volunteer Corp of Executives and Entrepreneurs to provide mentoring, education, consulting, and networking services to certified business enterprises within the Department. Notwithstanding any other provision of law, the Volunteer Corp of Executives and Entrepreneurs may solicit contributions from the private sector to be used to carry out its functions under this section.~~

~~(b)(1) The Volunteer Corp of Executives and Entrepreneurs shall consist of individuals with at least 10 years of experience in the industry.~~

~~(2) Individuals serving within the Volunteer Corp of Executives and Entrepreneurs shall serve without compensation for their services.~~

~~(c) The Director shall:~~

~~(1) Ensure that the Volunteer Corp of Executives and Entrepreneurs carries out a plan to increase the proportion of persons within the certified business enterprises who are from socially and economically disadvantaged backgrounds;~~

~~(2) Ensure that the Volunteer Corp of Executives and Entrepreneurs establishes benchmarks for use in evaluating the performance of its activities and the performance of the individuals serving in the Volunteer Corp of Executives and Entrepreneurs, including the following:~~

~~(A) The demographic characteristics and the geographic characteristics of persons within the certified business enterprises assisted by the Volunteer Corp of Executives and Entrepreneurs;~~

~~(B) The hours spent mentoring by individuals within the Volunteer Corp of Executives and Entrepreneurs; and~~

~~(C) The performance evaluations of the persons or the certified business enterprises assisted by the Volunteer Corp of Executives and Entrepreneurs;~~

~~(3) Ensure that the Volunteer Corp of Executives and Entrepreneurs provides one-on-one advice to certified business enterprises; and~~

~~(4) Implement a networking program through the Volunteer Corp of Executives and Entrepreneurs, which provides certified business enterprises with the opportunity to make business contacts in their industry.~~

~~(d) The Council shall receive an annual report on the implementation of this section.~~

§ 2–218.68. Management and direction.

(a)(1) Beginning with fiscal year 2011, the Department shall develop an annual job creation plan (“Plan”) for using District small business development resources as a catalyst for job creation and submit the Plan to the Council within 45 days of October 1st.

(2) The Plan shall include the Department’s strategy for drawing on existing programs and other available resources. To evaluate the success of the Department’s actions regarding these efforts, the Director shall identify, in consultation with the appropriate personnel from small business development programs, the performance measures and criteria, to include job creation, retention, and retraining goals.

(b)(1) The Department, pursuant to [subchapter I of Chapter 5 of this title](#) [§ 2-501 et seq.], shall issue rules to develop and implement a consistent data collection process to cover all small business development programs in the District.

(2) The data collection process shall include data relating to:

(A) Job creation;

(B) Performance; and

(C) Any other data determined appropriate by the Director.

(c) Beginning with fiscal year 2011, the Director, in consultation with other departments and agencies, shall submit, within 45 days of October 1, an annual report to the Council on opportunities to foster coordination, limit duplication, and improve program delivery for small business development programs.

(d)(1) The Director shall designate a staff member as a community specialist who is responsible for working with local small development service providers to increase coordination with federal resources.

(2) The Director shall develop benchmarks for measuring the performance of the community specialist under this subsection.

§ 2–218.69. Procurement training and assistance.

The Department shall:

- (1) Identify contracts that are suitable for certified business enterprises;
- (2) Assist certified business enterprises in identifying and preparing for business opportunities made available under the American Recovery and Reinvestment Act of 2009, approved February 17, 2009 (Pub. L. No. 111-5; 123 Stat. 115), through informational presentations and the dissemination of information; and
- (3) Provide technical assistance regarding the District and federal procurement processes, including assisting certified business enterprises to comply with local and federal regulations and bonding requirements.

§ 2–218.71. Triennial review of program and subchapter.

Repealed.

~~(a) Every 3 years following October 20, 2005, the Department shall submit to the Council and the Mayor the results of an independent evaluation of the certified business enterprise programs. This evaluation shall compare the costs of contracts awarded pursuant to this subchapter to the cost of contracts awarded without use of the set-asides and bid preferences authorized by this subchapter. This evaluation shall also compare economic outcomes such as revenue, tax payments, and employment of District residents for certified business enterprises certified pursuant to part D of this subchapter to economic outcomes for similar firms that are not certified pursuant to part D of this subchapter.~~

~~(b) The Department shall review the findings in the triennial report and the goals, intents, and purposes of this subchapter. The Department shall transmit to the Council and the Mayor a report setting forth any recommended amendments to this subchapter.~~

§ 2–218.72. Rulemaking authority.

(a) The Mayor shall, pursuant to [subchapter I of Chapter 5 of Title 2](#), issue proposed rules to implement this subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(b) Within 120 days after June 10, 2014, the Mayor shall issue rules to implement the amended provisions of this subchapter.

§ 2–218.75. Small Business Capital Access Fund.

(a) For the purposes of this section, the term:

(1) “Eligible recipient” means a business certified, or eligible to be certified, as a small business enterprise pursuant to [§ 2-218.32](#) or a disadvantaged business enterprise pursuant to [§ 2-218.33](#).

(2) “Fund” means the Small Business Capital Access Fund.

(b) There is established as a nonlapsing fund the Small Business Capital Access Fund, which shall be used for the following purposes:

(1) To grant the local funds necessary to obtain federal matching funds to establish a procurement technical assistance program in the Department;

(2) To make a one-time grant in an amount of \$50,000 to provide operating support to a newly formed business association in Ward 3; and

(3) To provide financial assistance, including grants, loans, and loan guarantees, to eligible recipients.

(c)(1) All funds deposited into the Fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(2) Any penalties assessed by the Department pursuant to [§ 2-218.48](#) and any civil penalties imposed pursuant to [§ 2-218.63\(c\)](#) and any fees collected pursuant to § 2-218.49a(a-1) shall be collected by the Department and deposited into the Fund.

(d) Preference for financial assistance shall be given to:

(1) Eligible recipients that are certified as a small business enterprise pursuant to [§ 2-218.32](#), a disadvantaged business enterprise pursuant to [§ 2-218.33](#), or a resident-owned business enterprises pursuant to [§ 2-218.35](#); or

(2) Eligible recipients that serve, or whose principal office is located in:

(A) A DC Main Street corridor; or

(B) Repealed;

(C) Another area identified by the Mayor for economic development or commercial revitalization.

(e) Within 90 days of September 18, 2007, the Mayor shall issue rules to implement the provisions of this section. The Mayor shall submit the proposed rules to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within the 45-day review period, the proposed rules shall be deemed approved.

§ 2–221.02. Rules and regulations governing interest penalty payments by District agencies; computation and payment of penalties.

(a)(1) In accordance with rules and regulations issued by the Mayor of the District of Columbia (“Mayor”), each agency of the District of Columbia government (“District”), under the direct control of the Mayor, which acquires property or services from a business concern but which does not make payment for each complete delivered item of property or service by the required payment date shall pay an interest penalty to the business concern in accordance with this section on the amount of the payment which is due.

(2) Each rule or regulation issued pursuant to paragraph (1) of this subsection shall:

(A) Specify that the required payment date shall be:

(i) The date on which payment is due under the terms of the contract for the provision of the property or service; or

(ii) 30 calendar days, excluding legal holidays, after receipt of a proper invoice for the amount of the payment due, if a specific date on which payment is due is not established by contract;

(B)(i) Specify, in the case of any acquisition of meat or of a meat food product, a required payment date which is not later than 7 calendar days, excluding legal holidays, after the date of delivery of the meat or meat food product; and

(ii) Specify, in the case of any acquisition of a perishable agricultural commodity, a required payment date which is not later than 10 calendar days, excluding legal holidays, after the date of delivery of the perishable agricultural commodity pursuant to this subchapter;

(C) Specify separate required payment dates for contracts under which property or services are provided in a series of partial executions or deliveries, to the extent that the contract provides for separate payment for partial execution or delivery; and

(D) Require that, within 15 days after the date on which any invoice is received, District agencies notify the business concern in writing of any defect in the invoice or delivered goods, property or services or impropriety of any kind which would prevent the running of the time period specified in subparagraph (A)(ii) of this paragraph.

(b)(1) Interest penalties on amounts due to a business concern under this subchapter shall be due and payable to the concern for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made, except that no interest penalty shall be paid if payment for the complete delivered item of property or service concerned is made on or before: (A) the 3rd day after the required payment date, in the case of meat or a meat product, described in subsection (a)(2)(B)(i) of this section; (B) the 5th day after the required payment date, in the case of an agricultural commodity, described in subsection (a)(2)(B)(ii) of this section; or (C) the 15th day after the required payment date in the case of any other item. Interest, computed at a rate of not less than 1%, shall be determined by the Mayor by regulation.

(1A) Each contract executed pursuant to [Chapter 3 of Title 2](#) shall include in the solicitation a description of the contractor’s rights and responsibilities under the chapter.

(1B) Paragraphs (1) and (1A) of this subsection shall apply to claims arising after October 7, 1998.

(2) Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

(c) This section does not authorize the appropriation of additional funds for the payment of interest penalties required by this section. A District agency shall pay any interest penalty required by this section out of funds made available for the administration or operation of the program for which the penalty was incurred.

(d) Any contract awarded by a District agency shall include:

(1) A payment clause that obligates the contractor to take one of the 2 following actions within 7 days of receipt of any amount paid to the contractor by the District agency for work performed by any subcontractor under a contract:

(A) Pay the subcontractor for the proportionate share of the total payment received from the District agency that is attributable to the subcontractor for work performed under the contract; or

(B) Notify the District agency and the subcontractor, in writing, of the contractor's intention to withhold all or part of the subcontractor's payment with the reason for the nonpayment;

(1A) A clause requiring a beneficiary performing work on a government-assisted project for which a certified business enterprise ("CBE") is utilized to meet the subcontracting requirements pursuant to section 2346 of 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 § 2-218.46), to submit an invoice to the District every 30 calendar days for work by the CBE subcontractor that, in the beneficiary's judgment, the subcontractor has satisfactorily performed and properly invoiced, with the first invoice due to the District no later than 35 calendar days after the certified business enterprise submits its initial invoice to the beneficiary, unless the beneficiary's contract with the District requires a different payment timeline or deliverable;

(2) An interest clause that obligates the contractor to pay interest to the subcontractor or supplier as provided in subsection (b)(1) and (2) of this section;

(3) A clause that obligates the contractor to include in any subcontract a provision that requires each subcontractor to include the payment and interest clauses required under paragraphs (1) and (2) of this subsection in a contract with any lower-tier subcontractor or supplier;

(4) A change order clause that:

(A) Prohibits the District or a prime contractor from requiring a prime contractor or a subcontractor to undertake any work that is determined to be beyond the original scope of the prime contractor's or a subcontractor's contract or subcontract, including work under a District-issued change order, when the additional work increases the contract price beyond the not-to-exceed price or negotiated maximum price of the underlying contract, unless the contracting officer:

(i) Agrees with the prime contractor and, if applicable, the subcontractor on a price for the additional work;

(ii) Obtains a certification from the Chief Financial Officer that there are sufficient funds to compensate the prime contractor and, if applicable, the subcontractor for the additional work;

(iii) Has made a written, binding commitment with the prime contractor to pay for the additional work within 30 days after the prime contractor submits a proper invoice for the additional work to the contracting officer; and

(iv) Gives written notice of the funding certification from the Chief Financial Officer to the prime contractor;

(B) Requires a prime contractor to include in its subcontracts a clause that requires the prime contractor to:

(i) Within 5 business days of receipt of the notice required under subparagraph (A)(iv) of this paragraph, provide the subcontractor with notice of the approved amount to be paid to the subcontractor based on the portion of the additional work to be completed by the subcontractor;

(ii) Pay the subcontractor any undisputed amount to which the subcontractor is entitled for any additional work within 10 days of receipt of payment for the additional work from the District; and

(iii) If the prime contractor withholds payment from a subcontractor, notify the subcontractor in writing and state the reason why payment is being withheld and provide a copy of the notice to the contracting officer; and

(C) Prohibits the District, a prime contractor, or a subcontractor from declaring another party to the contract to be in default or assessing, claiming, or pursuing damages for delays in the completion of the construction due to the inability of the parties to agree on a price for the additional work; and

(5) A dispute-resolution clause that obligates the contractor to include in any subcontract a provision that would require the contractor, at the election of the subcontractor, to participate in negotiation or mediation as an alternative to administrative or judicial resolution of a dispute.

(e)(1) A contractor's obligation to pay an interest charge to a subcontractor pursuant to subsection (d)(2) of this section shall not constitute an obligation of the District agency.

(2) A contract modification shall not be made for the purpose of providing reimbursement for any interest charge pursuant to subsection (d)(2) of this section.

(3) A cost reimbursement claim shall not include any amount for reimbursement for any interest charge pursuant to subsection (d)(2) of this section.

(f)(1) A dispute between a contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under the provisions of this subchapter does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(2) This subsection shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to a contractor or subcontractor in the event of a dispute involving late payment or nonpayment by a prime contractor or deficient subcontract performance or nonperformance by a subcontractor.

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