

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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

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

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

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

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

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 [Repealed]”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

73 “(A) The business’s ownership;

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

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

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

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

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

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

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

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

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

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

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

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

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

96 (B) Subparagraph (C) is repealed.

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

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

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

101 (B) Paragraph (2) is repealed.

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

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

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

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

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

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

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

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

113 (2) Subsection (b) is repealed.

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

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

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

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

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

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

125 (3) Paragraph (4) is repealed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

179 (8) Subsection (h) is repealed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

291 “(4) A business enterprise:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

344 Sec. 4. Fiscal impact statement.

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

348 Sec. 5. Effective date.

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