

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Small and Local Business Development



Public Hearing on:

B23-0918, “Local Business Enterprise Clarification Amendment Act of 2020”; and
B23-0959, “Supporting Local Business Enterprises Amendment Act of 2020”

Testimony of
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Virtual Hearing

Before the
Committee on Business and Economic Development
Kenyan McDuffie, Chairman

October 29, 2020
3:00PM

Good afternoon, Chairman McDuffie, distinguished members of the Council, District residents and fellow entrepreneurs. My name is Kristi C. Whitfield and I have the privilege of serving as the Director of the Department of Small and Local Business Development, also known as DSLBD.

DSLBD's mission is to support the development, economic growth, and retention of District-based businesses and to promote economic development throughout the District's commercial corridors.

I am grateful for the opportunity to testify before you today on two bills that will undoubtedly have an impact on our District's Certified Business Enterprise ("CBE") Program: B23-918, the "Local Business Enterprise Clarification Amendment Act of 2020," and B23-959, the "Supporting Local Business Enterprises Amendment Act of 2020."

B23-918 would require local business enterprises seeking certification to be either "independently owned, operated, and controlled," "owned, operated, and controlled by a District-based enterprise," or "owned by a non-District-based business enterprise that is more than 50 percent owned by District residents."

I am happy that the Committee has incorporated the requirement of "independently owned and operated" which was shared with Council by the Executive, but I have concerns regarding the inclusion of language that would allow a business seeking certification to be owned by a non-District-based business enterprise, even if the out-of-state enterprise is majority owned by District residents. Such an inclusion appears on its face to counter the shared goal of ensuring that certified local business enterprises are not gaining unfair advantages via the financial support and overall backing of out-of-state parent organizations or affiliates. It also appears counter to the goal of keeping local dollars local by ensuring that out-of-state parent enterprises are not usurping the benefits of the CBE Program from business enterprises actually based within the boundaries of the District.

This past year, I have personally heard from District businesses that are concerned and believe that out-of-state enterprises, or "local" enterprises owned and controlled by out-of-state enterprises, are able to get certified; these concerns are top of mind for the Executive.

Therefore, I would recommend that the Committee adopt the Executive's proposed legislation, B23-959, the "Supporting Local Business Enterprises Amendment Act of 2020," in its entirety. Passage of B23-959 would strengthen the CBE Program through the enactment of comprehensive and substantive amendments that will close loopholes in existing law.

This bill already incorporates the core tenets of B23-918 by requiring a local business seeking certification to be "independently owned and operated" or "owned and operated by a certified business enterprise" and goes a step further by carefully defining these terms to guarantee that business enterprises cannot continue to skirt the gray margins of the law for ill-gotten gains.

Moreover, B23-959's improvements to Program entry criteria will unquestionably help to optimize and further streamline compliance and enforcement functions through the weeding out of non-local CBEs.

This legislation was carefully drafted following meaningful and ongoing conversations with the CBE community and considers ways to improve the Program based on the expertise of staffers that are immersed in this law daily. Accordingly, the legislation makes six sweeping improvements.

First, the bill strengthens the integrity of the certification process by permanently tightening eligibility requirements for becoming a local business enterprise, the prerequisite for gaining entry into the CBE Program. Again, this legislation requires a business applying for certification as a local business enterprise to be "independently owned and operated" or "owned and operated by a CBE."

The bill also eliminates the "asset test" as a qualification for eligibility as a local business enterprise in order to thwart out-of-state, larger businesses from establishing a "local" office for the purpose of gaining preferences for District contracts and procurements. Following the bill's introduction and our agency's recent roundtable with the CBE community, I understand that removal of the "asset test" may have an unintended consequence for longtime resident businesses that are good actors unable to meet other local business enterprise criteria to maintain CBE status. I welcome the opportunity to work with Council and CBE community stakeholders to address this issue.

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

Third, the bill ensures that beneficiaries who do business with the District and fail to demonstrate the use of "commercially reasonable best efforts" to meet CBE law subcontracting requirements are forced to pay the difference between the amount the beneficiary was required to subcontract with CBEs and the actual dollar volume subcontracted with CBEs. This increased penalty, albeit fair and just, will guarantee that the District and the CBE community are made whole as well as guarantee enhanced subcontracting compliance by beneficiaries.

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

Fifth, the bill protects equity sponsors from bearing disproportionate project costs while ensuring that proportionate voting rights are guaranteed. In addition, the bill also tightens eligibility requirements for equity sponsors to ensure that certain relationships do not exist between them and project sponsors that would create bias or conflict or the perception of bias or conflict.

And sixth, the bill establishes requirements to best protect and accommodate business enterprises seeking CBE certification and recertification during a declared public health emergency.

I urge the Council to take prompt and favorable action on B23-959.

In closing, I would like to quote the late Justice Ruth Bader Ginsburg who once said, “Fight for the things that you care about, but do it in a way that will lead others to join you.” I want to assure the small and local business community that B23-959 is a testament to the Executive’s commitment to fight for and advocate on behalf of you and to make certain that truly local businesses benefit from the CBE Program. And, I am thrilled that the Council wants to work with the Bowser Administration to close these gaps in the law.

I would also like to voice my great appreciation for the team at DSLBD who suit up every day, whether virtually or in person, to further the interests of small and local businesses in the District. Throughout this public health emergency, these staffers have made it a top priority to personally call and check in with every single certified business enterprise to inquire whether there is anything DSLBD can do to further assist them with their small and local business needs. This team realizes that when District businesses succeed, so do the communities, neighborhoods, and District residents who depend upon those local businesses for employment, goods, and services.

Thank you for the opportunity to testify today. I am happy to answer any questions.