



## SMALL BUSINESS ROUNDTABLE

*focusing on the*

### Proposed CBE Law Reform

#### Post-Event Questions & Answers

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**Question:** With the ongoing investment of Amazon into Arlington, has any consideration been given to reciprocity through the VA Small Women and Minority owned (SWAM) program?

**Answer:** Not at this time. The District's CBE Program is race and gender neutral. The District is, however, may undertake a disparity study to assess its present program, accordingly..

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**Question:** Would DSLBD give the fine money to the slighted CBE?

**Answer:** To be clear, just because a prime does not meet its 35% subcontracting obligation with the District, does not necessarily mean that successfully performing subs would not get paid for their services. With the proposed fine, the District would recoup the difference between the CBE expenditure and the 35% contractual agreed upon. Nevertheless, DSLBD would ensure that any fines received would be invested back into the District's small and local business community.

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**Question:** When a prime is awarded a fixed-price contract by the District government, the flow down clauses of D.C. Standard Contract Provisions should apply to ensure that the CBE is provided a fixed-price subcontract. There is a growing practice by prime contractors to do otherwise. Once a fixed-price contract is awarded to the prime, it then attempts to imposes a Time & Material (T&M) contract with the subcontractor. With T&M contracts, CBEs cannot hire full-time employees but instead hire short-term contractors. Is this the intent of the City and DSLBD? What is the position of DSLBD? Is this addressed in the legislation?

**Answer:** DSLBD is not a procurement agency and has no authority in the involvement of contractual agreements entered into between a procuring agency and a prime and subsequently between a prime and a subcontractor. DSLBD, however, is an advocate for CBEs. As such, a CBE may work with, or through, DSLBD to assist in ameliorating concerns with a prime or District agency. It should be noted that privity of contract prevents the Department from representing a subcontractor.

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**Question:** Can we close the gap between CBEs having to comply with all Districts requirements but many agencies overlooking the same requirements for larger companies which are based outside of the District? Is that being considered?

**Answer:** District law, as it pertains to CBE requirements, shall be applied to all government-assisted projects. The proposed amendment aims to strengthen the CBE law within the scope of DSLBD's authority. Please note that DSLBD is not a procuring agency and cannot choose what enterprises are chosen to be on a District contract. The agency can, and does, advocate on behalf of CBEs. Thus, it is helpful when a CBE notifies the Department that it can perform the requisite work on a contract. In addition, DSLBD's Compliance and Enforcement division closely monitors District agencies' spend to ensure that their respective spend goals with District small and local businesses set by the Mayor are, in fact, met.

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**Question:** Can a new DC-Based business apply for CBE as soon as they are licensed to do business in DC?

**Answer:** Yes, so long as the business satisfies all the criteria in section 2331 of the CBE law.

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**Question:** If the local asset test is eliminated, what replaces it? Will CBEs continue to be expected to keep an office with a computer in the District? We have an office we're paying rent for that we haven't gone to since March. Can we stay certified if everybody starts working from home? We're a resident owned CBE.

**Answer:** Even with the asset test eliminated, all businesses are still required to maintain a principal office in the District with the CEO and highest-level managers expected to perform their managerial functions in that office. With respect to the second issues, the Executive understands that the public health emergency may hinder the managers from performing their business functions as traditionally required. Therefore, the proposed amendment allows for certain exceptions during a public health emergency to ensure that businesses can maintain CBE status while remaining safe.

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**Question:** What if we required an existing LBE with a national presence to partner/JV with a small business for a certain percentage on CBE project? The companies that pass the asset and DC receipts are paying taxes, hiring residents, etc. Do we run the risk of the District losing companies will leave the District and the taxes associated?

**Answer:** DSLBD is currently working with agencies to implement a mentor-protégé program whereby less experienced CBEs are mentored. In short, we hope to see larger businesses working with smaller businesses in order to help the latter increase their skills and capacity.

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**Question:** What steps have you taken to make sure that the procurement officers at different District agencies notify the prime contractors (in the construction industry) to utilize professional services from registered CBEs.

**Answer:** DSLBD provides training and feedback to all agencies annually, as to the requirements outlined in CBE law. All contracts over \$250K are required to subcontract 35% of the contract value with CBEs, unless a waiver is granted. Through the Department's Compliance and Enforcement Division, DSLBD ensures that this 35% requirement is being met, in part, by analyzing submitted quarterly reports on qualifying projects.

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**Question:** Where is the Public Hearing on the October 29th?

**Answer:** The Committee on Business & Economic Development will hold a virtual Public Hearing at 3PM on October 29 regarding B23-959, the "Supporting Local Business Enterprises Amendment Act of 2020."

Watch Live:

- On the Council site, at <https://bit.ly/2ooL0l1>
- On the OCTFME site, at <https://bit.ly/2JNZlro>
- On TV, usually Channel 13

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