



Synopsis of Recent Amendments to the New CBE Law

On March 11, 2015, the Small and Certified Business Enterprise Waiver and Recertification Amendment Act of 2014, L20-0234 (“Waiver and Recertification Amendment”) became official law in the District. The following summarizes the Waiver and Recertification Amendment’s changes to the Small and Certified Business Enterprise Development and Assistance Amendment Act of 2014, L20-0108, D.C. Official Code § 2-218.01 *et seq.* (“2014 Act”) which: Removes industrial revenue bonds (“IRBs”) from the definition of government-assisted project thereby exempting IRBs from the 35% Small Business Enterprise (SBE) subcontracting requirement of D.C. Code § 2-218.46; Prohibits an agency from spending more than 50% of its expendable budget with non-SBEs or non-Certified Business Enterprises (“CBEs”); Changes the Department of Small and Local Business Development’s (“DSLBD”) process for granting an agency’s waiver request; Changes the requirements for a CBE to recertify; and, Extends the certification period from two (2) years to three (3) years.

Exclusion of IRBs from Definition of Government-Assisted Project **NEW CHANGES**

- D.C. Code § 2-218.02(9A)(D) is amended as follows: “(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.”

Changes to District Agencies’ Contracting & Procurement Goals D.C. Code § 2-218.41

NEW CHANGES

- An agency, including an agency that contracts or procures in whole or in part through the Office of Contracting and Procurement (OCP), that cannot meet the goal of procuring and contracting **50%** of the dollar volume of its expendable budget to qualified SBEs or CBEs shall notify the Mayor and shall be prohibited from spending its remaining expendable budget with non-SBEs or non-CBEs.
- The Mayor may waive the prohibition set forth above.
- By October 1 of each year beginning October 1, 2015, each agency is required to submit to DSLBD a spending plan that details how the agency intends to spend its expendable budget with SBEs and CBEs during the fiscal year and an annual allocation letter signed by the agency director that specifies the agency’s 50% expendable budget goal.

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.” D.C. Code § 2-218.02(1).

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Changes in DSLBD's Waiver Process D.C. Code § 2-218.51 **NEW CHANGES**

- Before DSLBD's Director can approve an agency's² waiver request the Director shall: 1) send an electronic notice to all CBEs notifying them of the agency's waiver request; and 2) post a copy of the agency's waiver request on DSLBD's website (or other location established by DSLBD) for ten (10) days to provide the public reasonable notice of the waiver request.
- DSLBD is no longer required to post the Director's determination on its website for 5 days such that the public shall have reasonable access to the determination before the Director grants any waiver.

Changes in DSLBD's Certification and Recertification Process D.C. Code § 2-218.61 **NEW**

CHANGES

- The certification period is extended from two (2) years to three (3) years³
- A CBE that has had no material change in its business status can obtain recertification by submitting a written application for recertification (on a form prescribed by DSLBD). The application must include:
 - A sworn affidavit attesting that the CBE has had no material change and still meets the certification requirements⁴; and,
 - Proof of clean hands and good standing required by D.C. Code §§ 47-2861 and 29-102.08.
- "Material change" is defined as a change in a business' ownership, address, or size (if a SBE).
- A CBE that meets the requirements above is deemed recertified upon the submission of the written application. [See footnote 4 below.]

² A waiver request must come from an agency; not the beneficiary.

³ CBEs may still receive certification numbers that reflect a two-year expiration while DSLBD works to reprogram the system that automatically generates those numbers. Affected CBEs will receive an accompanying letter reflecting the correct expiration date.

⁴ Since the 2014 Act changed the requirements for certification, only CBEs that have been certified once under the 2014 Act's requirements (i.e., all CBEs that are re-certified on or after October 1, 2014 and after expiration apply for re-certification) can attest that there is no material change and that the CBE still meets the certification requirements. Such CBEs are eligible for recertification under this new process.

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*The Waiver and Recertification Amendment does not amend D.C. Code §2-218.49a. The following section summarizes the changes made to §2-218.49a by the 2014 Act and has been included to provide the definitions of **Small Investor**, **Disadvantaged Investor**, and **Certified Equity Participant**. (definitions provided in the footnotes).*

Equity Participation and Development Participation D.C. Code § 2-218.49a **NEW**

CHANGES

- In all development projects conducted pursuant to a disposition authorizing the sale of certain real estate in the District no longer required for public purposes under DC Code §10-801, **Small Investors**⁵, **Disadvantaged Investors**⁶, or **Certified Equity Participants**⁷ 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. **NEW CHANGES**
- A Project sponsor must demonstrate its intent and ability to meet the 20% equity requirement of this section prior to the transfer of any District-owned property for the project. **NEW**
- In meeting the equity investment requirement, a certified equity participant may be a 100% sponsor of a component of a covered project; provided, that the certified equity participant's participation totals 20% of the total equity of the covered project. **NEW**
- For each government-assisted project involving development, in addition to the 35% subcontracting requirements of §2-218.46, at least 20% of the dollar volume of non-construction development goods and services shall be subcontracted to SBEs, if there are insufficient qualified SBEs to completely fulfill this requirement, then the requirement may be satisfied by contracting 20% of that dollar volume to any qualified CBEs; provided that all reasonable efforts shall be made to ensure that qualified SBEs are significant participants in the overall development goods and services work. **NEW**
- No more than 25% of the total 20% of equity participation (equal to 5% of the overall non-institutional equity contributed to the project) may be met by a CBE 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").

⁵ Pursuant to §2-218.02(16A), "Small Investor" means: (A) a SBE; or (B) A District-domiciled individual with a net worth that does not exceed the limit set by DSLBD for investors.

⁶ Pursuant to §2-218.02(5A), "Disadvantaged Investor" means: (A) a DBE; or (B) A District-domiciled economically disadvantaged individual as determined by regulations promulgated by DSLBD.

⁷ Pursuant to §2-218.02(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 and Disadvantaged Investors.

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- *In the case of a sweat equity contribution, the developer and the CBE shall enter a service agreement describing the following:*
 - *A detailed description of the work that the CBE will perform;*
 - *The dollar amount that the CBE will be compensated for its services and the amount the CBE is foregoing as an investment in the project;*
 - *The date or time period the CBE will receive compensation;*
 - *The return, if any, the CBE will receive on its sweat equity contribution; and*
 - *An explanation of when the CBE will receive its return as compared to other team members or investors.*

The equity and development participation requirement does not apply if the entity that controls the development project is an entity tax-exempt under 26 U.S.C.S. § 501(c), or other not-for-profit entity.