

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

At-Large Councilmember Vincent B. Orange, Sr. introduced the following bill, which was referred to the Committee on \_\_\_\_\_.

To amend the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 by redesignating that act as the Small and Certified Business Enterprise Development and Assistance Act of 2005, to clarify the definition of a small business enterprise (“SBE”) and a certified business enterprise (“CBE”), to classify contractors and developers as beneficiaries, to redesignate the joint venture business enterprise as a certified joint venture, to define what constitutes a government-assisted project to be subjected to the requirements of this act, to abolish the Small and Local Business Opportunity Commission, to require local business enterprises (“LBEs”) to maintain offices and perform managerial functions in their principal office located in the District, to amend the certification requirements of a SBE by requiring a SBE to be a LBE and to either be certified or defined as a small business concern under the Small Business Act or to have average annualized gross receipts that do not exceed the limits pursuant to Department regulations, to amend the eligibility requirements for local manufacturing business enterprises, to grant the Department the authority to certify a joint venture for all public, public-private, and private projects, to allow a certified joint venture to keep its certification for the duration of a contract, to mandate a joint venture shall not be certified to meet the subcontracting requirements in accordance with sections 2346 and 2350 or the equity and development participation requirements in accordance with section 2349a, to require contracts or procurement under \$250,000 to be set-aside for a SBE or CBE, to require contracts under \$250,000 to be awarded to a SBE or CBE on the District of Columbia Supply Schedule, to require follow-on or renewable acquisitions from a District agency to remain with a SBE or CBE, where the original contract or procurement was awarded to a SBE or CBE, to clarify that the subcontracting requirements of section 2346 apply to all government-assisted construction and non-construction projects, to require 35% SBE or CBE utilization across all Construction Specifications Institute ("CSI") divisions on a government-assisted construction project, to allow a SBE or CBE, for all contracts that are \$1 million or less, to waive the 35% subcontracting requirement if they self-perform the entire contract, to void all options or extension of multiyear or extended contracts which are not in compliance with this subchapter, to institute new reporting requirements for utilization of subcontractors on government-assisted projects in accordance with sections 2346 and 2350, to institute new fines and penalties for beneficiaries, SBEs, CBEs, and certified joint ventures that fail to

1 meet the subcontracting requirements pursuant to sections 2346 and 2350, to require the  
2 Mayor to debar from consideration for award of contracts and to deem ineligible for  
3 government-assisted projects any beneficiary, SBE, CBE, or certified joint venture that  
4 willfully breaches a subcontracting plan twice over a 5-year period in accordance with  
5 section 2448(a), to institute new reporting requirements for SBE and CBE equity and  
6 development participation agreements, to institute new fines and penalties for breach of  
7 the equity and development participation agreements, to require the Mayor to debar from  
8 consideration for award of contracts and to deem ineligible for government-assisted  
9 projects a beneficiary that twice during a 5-year period fails to fulfill the original terms of  
10 the equity and development participation agreement with a SBE or CBE, to mandate that  
11 only the Director may waive or modify the subcontracting requirements pursuant to  
12 sections 2346 and 2350, to require the Director on a semi-annual basis to report to the  
13 Committee that has purview over the Department of the status of District agencies  
14 compliance with section 2341, a list of contracting opportunities for SBEs and CBEs with  
15 District agencies, a list of projects that have a 35% subcontracting requirement, a list of  
16 beneficiaries, SBEs, CBEs, and certified joint ventures that fail to meet the 35%  
17 subcontracting requirement, a summary of adverse actions taken against beneficiaries,  
18 SBEs, CBEs, and certified joint ventures that fail to meet the 35% subcontracting  
19 requirement, a list of projects that have a 20% equity and development participation  
20 requirement, a list of beneficiaries that fail to meet the 20% equity and development  
21 participation requirement, a summary of adverse actions against a beneficiary that fails to  
22 meet the 20% equity and development participation requirement, a list of District  
23 government contracts or procurements and government-assisted projects that were  
24 granted waivers or modifications to the requirements set forth in sections 2346 and 2350,  
25 a list of District agencies that fail to meet the requirements set forth in section 2341, a list  
26 of SBEs and CBEs, to repeal the Department's authority to grant provisional  
27 certifications, to clarify that CBEs and certified joint ventures who commit fraud shall be  
28 subject to fines, penalties, suspension and debarment, to require the Director to make a  
29 determination as to whether business enterprises should have their certification suspended  
30 or revoked, and to require the Office of Administrative Hearings to handle all appeals of  
31 the Director's final determination concerning a business enterprises certification status, to  
32 clarify that if a beneficiary, CBE, or certified joint venture provides false information in  
33 response to a bid or proposal or makes false statements as to their certification status shall  
34 be subject to fines and criminal penalties, to repeal the Volunteer Corp. of Executives and  
35 Entrepreneurs program, the management and direction program, the procurement training  
36 and assistance program, and the triennial review of program and subchapter requirement;  
37 to require all fines, fees, and penalties assessed pursuant to this subchapter be deposited  
38 into the Small Business Development Fund and to require the Mayor to promulgate rules  
39 for this act within 180 days of the effective date of this act.

40  
41 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
42 act may be cited as the "Small and Certified Business Enterprise Development and Assistance  
43 Amendment Act of 2013".

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

4           (a) Section 2301 (D.C. Official Code § 2-218.01) is amended by striking the  
5 phrase “Small, Local, and Disadvantaged” and inserting the phrase “Small and Certified”  
6 in its place.

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

8           (1) Redesignate paragraphs (1A) and (1B) as paragraphs (1C) and (1D),  
9 respectively.

10           (2) New paragraphs (1A) and (1B) are added to read as follows:

11           “(1A) “Agency contracting officer” means the contracting officer of an  
12 agency or government corporation.

13           “(1B) “Beneficiary” means a contractor or developer who performs work  
14 on a government-assisted project.”.

15           (3) The newly designated paragraph (1D) is amended by striking the  
16 phrase “a business enterprise” and inserting the phrase “a local business enterprise” in its  
17 place.

18           (4) A new paragraph (1E) is added to read as follows:

19           “(1E) “Certified joint venture” means a joint venture certified pursuant to  
20 section 2339a.”.

21           (5) Paragraph (2) is repealed.

22           (6) A new paragraph (2A) is added to read as:

1                   “(2A) “CSI” means construction products and activities as defined by the  
2 Construction Specifications Institute.

3                   (7) Paragraph (9) is amended as follows:

4                   (A) Strike the phrase “total budget” and inserting the phrase “total  
5 appropriated budget” in its place.

6                   (B) Add, after the first sentence, a new sentence to read as follows:

7                   “Such regulation may include exclusions for goods or services for  
8 which there are not an adequate number of qualified small or certified business  
9 enterprises.”.

10                  (8) A new paragraph (9A) is added to read as follows:

11                  “(9A) “Government-assisted project” means:

12                  “(A) A contract executed by the Mayor that involves District funds  
13 or funds that the District administers in accordance with a federal grant or otherwise;

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

15                  “(C) A project that receives a District agency or government  
16 corporation loan or grant;

17                  “(D) A project that receives bonds or notes issued by a District  
18 agency or government corporation, including tax increment financing or payment in lieu  
19 of tax bonds and notes, industrial revenue bonds, and bonds issued by the Housing  
20 Finance Agency;

21                  “(E) A project that receives District tax exemptions or abatements;

22 or

1                   “(F) A project developed pursuant to a land transfer, land  
2 disposition agreement, ground lease, or lease entered into with a District agency or  
3 government corporation.”.

4                   (9) Paragraph (12A) is amended by striking the phrase “business as” and  
5 inserting the phrase “business enterprise as” in its place.

6                   (10) Paragraph (13) is amended by striking the phrase “business which”  
7 and inserting the phrase “business enterprise that” in its place.

8                   (11) A new paragraph (13A) is added to read as follows:

9                   “(13A) “Qualified” means a business enterprise deemed by the  
10 Department to have the capability to perform and been issued a certificate of registration  
11 issued pursuant to this subchapter.

12                   (12) Paragraph (17) is amended by striking the phrase “business as” and  
13 inserting the phrase “business enterprise as” in its place.

14                   (c) Section 2312 (D.C. Official Code § 2-218.12) is amended as follows:

15                   (1) Subsection (c) is amended by striking the phrase “in contracting and  
16 procurement performed by any government corporation involved in the development of a  
17 commercial ballpark or soccer stadium and in all projects exceeding \$10 million in  
18 value”.

19                   (2) Subsections (d), (e), and (f) are repealed.

20                   (3) Subsection (g) is amended as follows:

21                   (A) Strike the phrase “fines for violations” and insert the phrase  
22 “fines, fees, and penalties for violations” in its place.

1 (B) Strike the phrase “regulations implemented” and insert the  
2 phrase “regulations promulgated” in its place.

3 (C) Add a new sentence at the end of the subsection to read as  
4 follows:

5 “Any such fines, fees, or penalties not enumerated in this  
6 subchapter shall be established by rules issued pursuant to section 2372.”.

7 (d) Section 2313 (D.C. Official Code § 2-218.13) is amended as follows:

8 (1) Subsection (a)(1) is amended by striking the phrase “based in and  
9 serving the” and inserting the phrase “based in the” in its place.

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

11 (A) Strike the phrase “, the following”.

12 (B) Strike the phrase “shall have the stated responsibilities:” and  
13 insert the phrase “shall have responsibilities to carry out the functions enumerated in this  
14 subchapter.”.

15 (C) Paragraphs (1)-(3) are repealed.

16 (3) Subsection (d) is amended by striking the phrase “establish such other  
17 offices and the Department may”.

18 (e) Section 2321 (D.C. Official Code § 2-218.21) is repealed.

19 (f) Section 2322 (D.C. Official Code § 2-218.22) is repealed.

20 (g) Section 2324 (D.C. Official Code § 2-218.24) is amended as follows:

21 (1) Subsection (a) is repealed.

22 (2) Subsection (b) is amended by striking the phrase “and the Commission  
23 may”.

1 (3) Subsection (c) is repealed.

2 (h) Section 2325 (D.C. Official Code § 2-218.25) is amended as follows:

3 (1) The section heading is amended to read as follows:

4 “Sec. 2325. Internal rules.”.

5 (2) Paragraph (1) is repealed.

6 (3) Paragraph (2) is amended by striking the phrase “bylaws and”.

7 (i) Section 2331(2) (D.C. Official Code § 2-218.31(2)) is amended by striking the  
8 phrase “maintain their offices and perform their managerial functions in the District” and  
9 inserting the phrase “perform their managerial functions in their principal office located  
10 in the District” in its place.

11 (j) Section 2332(a) (D.C. Official Code § 2-218.32(a)) is amended as follows:

12 (1) Paragraph (1)(A) is amended by striking the word “or”.

13 (2) Paragraph (3)(A) is amended by striking the phrase “as a small  
14 business concern” and inserting the phrase “as a small business concern or meets the  
15 definition of a small business concern” in its place.

16 (3) Subparagraph (B) is amended to read as follows:

17 “(B) Has had averaged annualized gross receipts for the 3 years preceding  
18 certification not exceeding the limits established by rules issued pursuant to section  
19 2372.”.

20 (k) Section 2333(b)(3) (D.C. Official Code § 2-218.33(b)(3)) is amended by  
21 striking the phrase “has an average annualized gross receipts totaling \$75 million or less”  
22 and inserting the phrase “has annualized gross receipts not exceeding limits as  
23 enumerated in rules issued pursuant to section 2372” in its place.

1 (l) Section 2335 (D.C. Official Code § 2-218.35) is amended by striking the  
2 phrase “2302” and inserting the phrase “2302(15)” in its place.

3 (m) Section 2336 (D.C. Official Code § 2-218.36) is amended by striking the  
4 phrase “2302” and inserting the phrase “2302(13)” in its place.

5 (n) Section 2337 (D.C. Official Code § 2-218.37) is amended by striking the  
6 phrase “2302” and inserting the phrase “2302(8)” in its place.

7 (o) Section 2338(1) (D.C. Official Code § 2-218.38(1)) is amended to read as  
8 follows:

9 “(1) Is a local business enterprise;”.

10 (p) Section 2339 (D.C. Official Code § 2-218.39) is amended as follows:

11 (1) Paragraph (1) is amended to read as follows:

12 “(1) Is a local business enterprise;”.

13 (2) Paragraph (2) is amended by striking the phrase “workers;” and  
14 inserting the phrase “workers; and” in its place.

15 (3) Paragraph (3) is repealed.

16 (4) Paragraph (4) is amended by striking the phrase “principal location of  
17 manufacturing” and inserting the phrase “locations of manufacturing only” in its place.

18 (q) Section 2339a (D.C. Official Code § 2-218.39a) is amended as follows:

19 (1) The section heading is amended to read as follows:

20 “Sec. 2339a. Certified joint venture.”.

21 (2) Subsection (a) is amended to read as follows:

22 “(a) A joint venture shall be eligible as a certified joint venture if the joint venture  
23 intends to submit a response to a solicitation in which the joint venture will provide

1 goods or perform services, has a member that owns a majority interest or minority  
2 interest in the joint venture, and meets the definition of a certified business enterprise set  
3 forth in section 2302(1D).”.

4 (3) A new subsection (a-1) is added to read as follows:

5 “(a-1) The Department shall have the authority to certify a joint venture as a  
6 certified joint venture for all public, public-private, and private projects.”.

7 (4) Subsection (c) is amended as follows:

8 (A) Paragraph (1) is amended by striking the phrase “members;”  
9 and inserting the phrase “members of the joint venture;” in its place.

10 (B) Paragraph (2) is amended by striking the phrase “each  
11 member” and inserting the phrase “each joint venture member” in its place.

12 (5) Subsection (d) is repealed.

13 (6) New subsections (e), (f), and (g) are added to read as follows:

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

16 “(f) A certified joint venture shall retain its certification only for the duration of  
17 the contract, including extensions to the contract, unless the certification is revoked  
18 pursuant to the provisions of this act.

19 “(g) A joint venture shall not be certified:

20 “(1) To meet the small and certified business enterprise subcontracting  
21 requirements set forth in sections 2346 and 2350; or

22 “(2) To meet the small and certified business enterprise equity and  
23 development participation requirements set forth in section 2349a.”.

1 (r) Section 2341 (D.C. Official Code § 2-218.41) is amended as follows:

2 (1) Strike the word “volume” wherever it appears and insert the word  
3 “amount” in its place.

4 (2) Strike the word “small” and insert the phrase “qualified small” in its  
5 place.

6 (3) A new subsection (a-1) is added to read as follows:

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

10 “(2) The agency must submit a copy of its determination to the Director.”.

11 (s) Section 2342(1) (D.C. Official Code § 2-218.42(1)) is amended to read as  
12 follows:

13 “(1) A bid preference mechanism for each certified business category set  
14 forth in this act.”.

15 (t) Section 2343(a)(2) (D.C. Official Code § 2-218.43(a)(2)) is amended as  
16 follows:

17 (1) Subparagraph (E) is amended by striking the word “and”.

18 (2) Subparagraph (F) is amended by striking the period and inserting a  
19 semicolon in its place.

20 (3) New subparagraphs (G) and (H) are added to read as follows:

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

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

23 (u) Section 2344 (D.C. Official Code § 2-218.44) is amended as follows:

1 (1) The section heading is amended to read as follows:

2 “Sec. 2344. Mandatory set-asides of District agency contracts for small business  
3 enterprises or certified business enterprises.”

4 (2) Subsection (a) is amended to read as follows:

5 “(a) Except as provided in section 2345, each agency shall set aside contracts or  
6 procurements of \$250,000 or less for qualified small business enterprises.”

7 (3) A new subsection (a-1) is added to read as follows:

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

12 (4) Subsection (b) is amended by striking the phrase “small business  
13 enterprise” and inserting the phrase “small or certified business enterprise” in its place.

14 (5) A new subsection (c) is inserted to read as follows:

15 “(c) Pursuant to subsection (b) of this section, each written determination must be  
16 submitted to the Director.”

17 (v) Section 2345 (D.C. Official Code § 2-218.45) is amended as follows:

18 (1) The section heading is amended to read as follows:

19 “Sec. 2345. Mandatory set-asides of contracts in the District of Columbia supply  
20 schedule for small business enterprises or certified business enterprises.”

21 (2) Subsection (a) is amended to read as follows:

22 “(a) Each agency shall award contracts of \$250,000 or less to a qualified small  
23 business enterprise included on the District of Columbia Supply Schedule.”

1 (3) New subsections (b) and (c) are added to read as follows:

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

6 “(c) Pursuant to subsection (b) of this section, each written determination must be  
7 submitted to the Director.”.

8 (w) A new section 2345a is added to read as follows:

9 “Sec. 2345a. Mandatory set-asides for small business enterprises and certified  
10 business enterprises with respect to follow-on and renewable acquisitions.

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

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

17 “(1) Make a written request to the Director; and

18 “(2) Receive written approval from the Director to allow the agency to  
19 waive the requirements set forth in this section.”.

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

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

22 (A) Paragraph (1) is amended as follows:

1 (i) The lead-in language is amended by striking the phrase  
2 “construction contracts” and inserting the phrase “government-assisted construction  
3 projects” in its place.

4 (ii) Subparagraph (A) is amended as follows:

5 (I) Designate the existing language as sub-  
6 subparagraph (i).

7 (II) Strike the word "small" wherever it appears and  
8 insert the phrase "qualified small" in its place.

9 (III) Strike the phrase “; or” and insert a period in  
10 its place.

11 (IV) A new sub-subparagraph (ii) is added to read  
12 as follows:

13 “(ii) The 35% minimum requirement shall apply to  
14 each applicable construction specification institute division.”.

15 (iii) Subparagraph (B) is amended by striking the word  
16 “certified” and inserting the phrase “qualified certified” in its place.

17 (iv) A new subparagraph (C) is added to read as follows:

18 “(C) If no qualified small or certified business enterprise is  
19 available in an applicable division, the overall 35% project minimum requirement shall  
20 still be met.”.

21 (B) Paragraph (2) is amended as follows:

22 (i) The lead-in language is amended as follows:

1 (I) Strike the phrase “All non-construction  
2 contracts” and insert the phrase “Government-assisted non-construction projects” in its  
3 place.

4 (II) Strike the phrase “, unless a waiver has been  
5 approved by the Office of Contracting and Procurement,” in its place.

6 (ii) Subparagraph (A) is amended by striking the word  
7 “small” wherever it appears and inserting the phrase “qualified small” in its place.

8 (iii) Subparagraph (B) is amended by striking the word  
9 “certified” inserting the phrase “qualified certified” in its place.

10 (2) Subsection (b) is amended as follows:

11 (A) Paragraph (1) is amended as follows:

12 (i) Subparagraph (A) is amended as follows:

13 (I) Designate the existing language as sub-  
14 subparagraph (i).

15 (II) Strike the phrase “Each construction contract  
16 for which a small or certified business enterprise is selected as a prime contractor” and  
17 insert the phrase “Government-assisted construction or non-construction projects for  
18 which a qualified small or certified business enterprise is selected as a beneficiary” in its  
19 place.

20 (III) Strike the phrase “with certified” and insert the  
21 phrase “with qualified small” in its place.

22 (IV) New sub-subparagraphs (ii), (iii), and (iv) are  
23 added to read as follows:

1                   “(ii) For government-assisted construction projects, the  
2 35% minimum requirement shall apply to each applicable construction specification  
3 institute division.”.

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

10                   “(iv) If no qualified small or certified business enterprise is  
11 available in an applicable division, the overall 35% project minimum requirement shall  
12 still be met.”.

13                   (ii) A new subparagraph (A-1) is added to read as follows:

14                   “(A-1) A small or certified business enterprise that is a beneficiary  
15 of a government-assisted construction or non-construction project that is \$1 million or  
16 less shall be exempt from the requirements set forth in subparagraph (A) of this  
17 paragraph, if it self-performs the entire contract using its own organization and  
18 resources.”.

19                   (iii) Subparagraph (B) is repealed.

20                   (B) Paragraph (2) is amended as follows:

21                   (i) Subparagraph (A) is amended as follows:

22                   (I) Designate the existing language as sub-  
23 subparagraph (i).

1 (II) Strike the phrase “Each construction contract  
2 for which a joint venture is selected as a prime contractor” and insert the phrase  
3 “Government-assisted construction or non-construction projects for which a qualified  
4 certified joint venture is selected as a beneficiary” in its place

5 (III) Strike the phrase “shall be with certified  
6 business enterprises” and insert the phrase “shall be with qualified small business  
7 enterprises” in its place.

8 (IV) New sub-subparagraphs (ii), (iii) and (iv) are  
9 added to read as follows:

10 “(ii) For government-assisted construction projects, the  
11 35% minimum requirement shall apply to each applicable construction specification  
12 institute division.”.

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

19 “(iv) If no qualified small or certified business enterprise is  
20 available in an applicable division, the overall 35% project minimum requirement shall  
21 still be met.”.

22 (ii) Subparagraph (B) is repealed.

23 (3) Subsection (c) is amended as follows:

1 (A) Strike the phrase “Each construction contract of \$1 million or  
2 less for which a certified business enterprise is selected as a prime contractor” and insert  
3 the phrase “Government-assisted construction project of \$1 million or less for which a  
4 qualified small or certified enterprise is selected as a beneficiary” in its place.

5 (B) Strike the phrase “business enterprise” and insert the phrase  
6 “qualified small or certified business enterprise” in its place.

7 (4) Subsection (d) is amended to read as follows:

8 “(d)(1) Bids or proposals responding to a solicitation, including an open market  
9 solicitation, shall be deemed nonresponsive and shall be rejected if the law requires a  
10 subcontracting plan and the beneficiary fails to submit a plan pursuant to the criteria in  
11 paragraph (2) of this subsection.

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

13 “(A) The name and address of each subcontractor;

14 “(B) A current certification number of the small or certified  
15 business enterprise;

16 “(C) The scope of work to be performed by each subcontractor;  
17 and

18 “(D) The price to be paid by the beneficiary to each subcontractor.

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

21 (5) Subsection (e) is amended as follows:

22 (A) Strike the phrase “prime contractor” and insert the word  
23 “beneficiary” in its place.

1 (B) Strike the phrase “the contracting officer and”.

2 (6) Subsection (f) is amended by striking the phrase “in which the options  
3 or extensions exceed \$1 million in value.”.

4 (7) Subsection (h) is amended by striking the phrase “prime contractor  
5 shall submit to the contracting officer and the” and inserting the phrase “beneficiary shall  
6 submit to the agency contracting officer, project manager, District of Columbia Auditor,  
7 and” in its place.

8 (8) Subsection (i) is amended to read as follows:

9 “(i)(1) A beneficiary shall provide a quarterly report to the Department, agency  
10 contracting officer, project manager, and District of Columbia Auditor. The quarterly  
11 report shall include the following information for each subcontract with a subcontractor  
12 identified on the subcontracting plan:

13 “(A) The price to be paid by the beneficiary to the subcontractor  
14 under the subcontract;

15 “(B) A description of the goods procured or the services  
16 subcontracted for;

17 “(C) The amount paid by the beneficiary to the subcontractor under  
18 the subcontract; and

19 “(D) A copy of the fully executed subcontract, if the fully executed  
20 subcontract was not provided in a prior quarterly report.

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

1 (9) New subsections (j), (k), (l), and (m) are added to read as follows:

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

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

8 “(k) The beneficiary shall provide written notice to the Department and District of  
9 Columbia Auditor upon the initiation and completion of a project.

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

14 “(m) A beneficiary, small business enterprise, certified business enterprise, or  
15 member of a certified joint venture that fails to meet the requirements of this subsection  
16 shall be subject to the penalties set forth in section 2348.”.

17 (y) Section 2348 (D.C. Official Code § 2-218.48) is amended to read as follows:

18 “Sec. 2348. Enforcement and penalties for breach of subcontracting plan and  
19 other violations.

20 “(a) A beneficiary, small business enterprise, certified business enterprise, or  
21 member of a certified joint venture shall be deemed to have breached a subcontracting  
22 plan if it:

23 “(1) Fails to timely submit subcontracting plans and quarterly reports;

1                   “(2) Submits a subcontracting plan or quarterly report containing a false  
2 statement or false information;

3                   “(3) Fails to disclose required information in the subcontracting plan or  
4 quarterly reports;

5                   “(4) Fails to comply with subcontracting plan requirements set forth in  
6 sections 2346 and 2350; or

7                   “(5) Fails to meet the requirements set forth in sections 2346(j) and  
8 2350(g).

9                   “(b)(1) A beneficiary, small business enterprise, certified business enterprise, or  
10 member of a certified joint venture found to have breached a subcontracting plan  
11 pursuant to subsection (a) of this section shall be subject to the imposition of fines or  
12 penalties established by rules pursuant to section 2372.

13                   “(2) Any fines or penalties collected by the Department shall be deposited  
14 into the Small Business Development Fund established in section 2375 (“Fund”).

15                   “(c) Upon a second violation of subsection (a) of this section within a 5-year time  
16 frame, the Mayor shall:

17                   “(1) Debar a beneficiary, small business enterprise, certified business  
18 enterprise, or member of a certified joint venture from consideration for award of  
19 contracts or subcontracts with the District for a period of no more than 5 years; and

20                   “(2) Deem a beneficiary, small business enterprise, certified business  
21 enterprise, or member of a certified joint venture ineligible from consideration for  
22 government-assisted projects with the District of Columbia for a period of no more than 5  
23 years.”.

1 (z) Section 2349 (D.C. Official Code § 2-218.49) is amended as follows:

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

3 (A) The lead-in language is amended by striking the phrase  
4 “certified business enterprises” and inserting the phrase “small or certified business  
5 enterprises” in its place.

6 (B) Paragraph (2) is amended to read as follows:

7 “(2) A policy whereby an agency may make advance payments to a small  
8 or certified business enterprise contractor, where the payments are necessary to achieve  
9 the purposes of this act.”.

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

11 (1) Subsection (a) is amended to read as follows:

12 “(a)(1) Qualified small business enterprises shall receive 20% in equity  
13 participation and 20% in development participation in development projects that are  
14 supported by District funds and take place on District-owned property.

15 “(2) If there are insufficient qualified small business enterprises, any  
16 certified business enterprise may be used to meet the 20% equity participation and 20%  
17 development participation requirement.”.

18 (2) Subsection (a-1) is amended as follows:

19 (A) Strike the word “certified” wherever it appears and insert the  
20 phrase “small or certified” in its place.

21 (B) Strike the word “developer” wherever it appears and insert the  
22 phrase “beneficiary” in its place.

23 (C) Paragraph (3) is amended as follows:

1 (i) Designate the existing language as subparagraph (A).

2 (ii) The newly subparagraph (A) is amended to read as  
3 follows:

4 “(A) If a beneficiary is unable to meet the 20% equity participation  
5 requirement, including sweat equity contribution and cash equity investment, the  
6 beneficiary shall pay to the Department the outstanding cash equity amount as a fine in  
7 lieu of the unmet equity participation requirement. Fines collected in accordance with  
8 this provision shall be deposited into the Fund.”.

9 (iii) New subparagraphs (B) and (C) are added to read as  
10 follows:

11 “(B) If a beneficiary is unable to meet the 20% development  
12 participation requirement, the beneficiary shall pay to the Department a fine enumerated  
13 in rules established pursuant to section 2372. Fines collected in accordance with this  
14 provision shall be deposited into the Fund.

15 “(C) A beneficiary shall make a good-faith effort to meet the  
16 participation requirements as set forth in subsection (a) of this section. A good-faith  
17 effort may be demonstrated by:

18 “(i) Conducting conferences to inform small and certified  
19 business enterprises of opportunities;

20 “(ii) Advertising in general circulation newspapers, trade  
21 association journals, and the media concerning the opportunities;

1                                   “(iii) Providing written notice to a reasonable number of  
2 specific small and certified business enterprises, in sufficient time to allow the small and  
3 certified business enterprises to participate effectively;

4                                   “(iv) Following up initial solicitations of interest by  
5 conducting negotiations with small and certified business enterprises;

6                                   “(v) Making a determination a small or certified business  
7 enterprise is unqualified based on sound reasoning and investigation of their capabilities;

8                                   “(vi) Utilizing the services of the Department in recruiting  
9 qualified and responsible small and certified business enterprises; and

10                                   “(vii) Any other factors that may be relevant in a particular  
11 case.”.

12                                   (D) Paragraph (4) is repealed.

13                                   (E) Paragraph (5) is repealed

14                                   (3) Subsection (c) is repealed.

15                                   (4) New subsections (f), (g), (h), and (i) are added to read as follows:

16                                   “(f) A beneficiary shall provide a copy of the agreement with a small or certified  
17 business enterprise, which includes the equity and development participation plan for  
18 utilization of small or certified business enterprises, within 10 business days of its  
19 execution to the Department, project manager, and District of Columbia Auditor. A  
20 quarterly report shall be provided to the Department, project manager, and District of  
21 Columbia Auditor by the beneficiary, which shall include a list of each small or certified  
22 business enterprise, identified in the equity and development participation plan for  
23 utilization of small or certified business enterprises.

1           “(g)(1) The beneficiary shall meet on an annual basis with the Department,  
2 project manager, and District of Columbia Auditor to provide an update on the equity and  
3 development participation plan for utilization of small or certified business enterprises.

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

6           “(h) If a beneficiary fails to meet the requirements as set forth in subsections (f)  
7 and (g) of this section, the beneficiary shall pay to the Department a fine enumerated in  
8 rules established pursuant to section 2372.

9           “(i) Upon a second violation of the requirements set forth in subsections (a-  
10 1)(3)(C), (f), and (g) of this section, within a 5-year time frame, the Mayor shall:

11           “(1) Debar a beneficiary from consideration for award of contracts or  
12 subcontracts with the District of Columbia for a period of no more than 5 years; and

13           “(2) Deem a beneficiary ineligible from consideration for government-  
14 assisted projects with the District of Columbia for a period of no more than 5 years.”.

15           (bb) Section 2350 (D.C. Official Code § 2-218.50) is amended to read as follows:

16           “Sec. 2350. Special requirements for government corporations.

17           “(a) A government corporation is subject to and shall comply with all provisions  
18 of this act, including sections 2341, 2344, 2345, and 2346.

19           “(b)(1) A government corporation shall ensure that all contracts entered into by  
20 the government corporation, or an agency or subsidiary of the government corporation,  
21 with respect to the development and construction of a project in excess of \$250,000 on  
22 land and property owned and controlled by the government corporation, including  
23 contracts for professional services, architectural, engineering, other construction-related

1 services, and construction trade work, shall provide that at least 35% of the total contract  
2 amount or total development costs, including the cost of materials, goods, and supplies,  
3 of the project shall be awarded to a qualified small business enterprise.

4 “(2) If there are insufficient qualified small business enterprises to fulfill  
5 the subcontracting requirement of this section as demonstrated by the government  
6 corporation or beneficiary, the subcontracting requirement may be satisfied by  
7 subcontracting to any qualified certified business enterprise; provided, that the qualified  
8 certified business enterprises shall be identified in the subcontracting plan; provided  
9 further, that all reasonable efforts shall be made by the government corporation to ensure  
10 that qualified small business enterprises are significant participants in the overall  
11 subcontracted work.

12 “(c)(1) A government corporation shall ensure that contracts entered into by the  
13 government corporation, or any agency or subsidiary of the government corporation, with  
14 respect to the development and construction of a project of \$250,000 or less on land and  
15 property owned and controlled by the government corporation, including contracts for  
16 professional services, architectural, engineering, other construction-related services, and  
17 construction trade work, shall be awarded to a qualified small business enterprise.

18 “(2) If there are insufficient qualified mall business enterprises to fulfill  
19 the subcontracting requirement of this section as demonstrated by the government  
20 corporation or beneficiary, the subcontracting requirement may be satisfied by  
21 subcontracting to any qualified certified business enterprise; provided, that the qualified  
22 certified business enterprises shall be identified in the subcontracting plan; provided  
23 further, that all reasonable efforts shall be made by the government corporation to ensure

1 that qualified small business enterprises are significant participants in the overall  
2 subcontracted work.

3 “(d)(1) The subcontracting requirements of this section may be waived or  
4 modified pursuant to section 2351.

5 “(2) No beneficiary shall be allowed to amend the subcontracting plan  
6 filed as part of its bid or proposal except with the consent of the Director pursuant to  
7 section 2351.

8 “(e) A beneficiary shall provide a copy of the executed contract with the  
9 government corporation, which shall include the subcontracting plan, within 10 business  
10 days of execution, to the Department and the District of Columbia Auditor. The  
11 beneficiary shall submit a quarterly report to the Department, project manager, agency  
12 contracting officer, and District of Columbia Auditor. The quarterly report shall include  
13 each subcontractor identified in the subcontracting plan, and for each subcontract:

14 “(1) The price to be paid by the beneficiary to the subcontractor;

15 “(2) A description of the goods procured or the services contracted for;

16 and

17 “(3) The amount paid by the beneficiary to the subcontractor.

18 “(f) Copies of fully executed subcontracts shall be included with each quarterly  
19 report to obtain credit towards the subcontracting requirements of this section.

20 “(g)(1) The beneficiary shall meet on an annual basis with the Department,  
21 project manager, agency contracting officer, and District of Columbia Auditor to provide  
22 an update of the subcontracting plan for utilization of small business enterprises and  
23 certified business enterprises.

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

3                   “(h) A government corporation shall provide a quarterly report, except for the 4th  
4 quarter, to the Department and District of Columbia Auditor within 30 days after the end  
5 of each quarter. The 4th quarter and annual report shall be submitted together. A  
6 quarterly report shall include the following information:

7                   “(1) The dollar amount and percentage of awards to small and certified  
8 business enterprises in construction and development projects;

9                   “(2) The dollar amount and percentage of awards to small and certified  
10 business enterprises in development projects as equity participation and development  
11 participation partners;

12                   “(3) The dollar amount and percentage of awards to small and certified  
13 business enterprises for contracting and procurement of goods and services;

14                   “(4) The dollar amount actually expended with small and certified  
15 business enterprises in construction and development projects;

16                   “(5) The dollar amount actually expended with small and certified  
17 business enterprises in development projects as equity participation and development  
18 participation partners; and

19                   “(6) The dollar amount actually expended with small and certified  
20 business enterprises for contracting and procurement of goods and services.

21                   “(i) A government corporation shall provide an annual report to the Department  
22 and District of Columbia Auditor within 45 days after the end of each fiscal year. The  
23 annual report shall include the information required to be included in the quarterly

1 reports, with the dollar percentages and amounts calculated on an annual basis, including  
2 4th quarter reports.

3 “(j) The District of Columbia Auditor shall monitor government corporation  
4 compliance with the reporting requirements of this section.

5 “(k) The Department shall review the annual report of a government corporation  
6 to determine whether the planned activities of the government corporation for the  
7 succeeding fiscal year are likely to enable the government corporation to achieve the  
8 goals set forth in this section. The Department shall make recommendations concerning  
9 activities in which the government corporation should engage to meet or exceed the  
10 requirements set forth in this section. The Department's recommendations shall be  
11 submitted to the government corporation, the Council, Mayor, and District of Columbia  
12 Auditor within 30 days of the government corporation’s annual report submission.”.

13 (cc) Section 2351 (D.C. Official Code § 2-218.51) is amended to read as follows:

14 “Sec. 2351. Waiver of subcontracting requirements.

15 “(a) The Director may modify or waive, in whole or in part, the subcontracting  
16 requirements of sections 2346 and 2350.

17 “(b) An agency contracting officer or beneficiary may request that the Director  
18 waive or modify the subcontracting requirements for a particular government-assisted  
19 project. The waiver or request for modification shall be submitted to the Director and  
20 shall include a statement of reasons that justify a waiver or the modification, including a  
21 showing that there are an insufficient number of qualified small and certified business  
22 enterprises to satisfy the subcontracting requirements.

1           “(c) If the request for a waiver or request for modification is submitted after  
2 performance of a government-assisted project has begun, the Director shall determine  
3 whether the beneficiary has made a good-faith effort to meet the requirements of sections  
4 2346 and 2350. In making this determination, the Director shall consider the following  
5 factors:

6                   “(1) Whether the beneficiary conducted any conferences to inform small  
7 and certified business enterprises of subcontracting opportunities;

8                   “(2) Whether the beneficiary advertised in general circulation newspapers,  
9 trade association journals, and the media concerning the subcontracting opportunities;

10                   “(3) Whether the beneficiary provided written notice to a reasonable  
11 number of specific small and certified business enterprises soliciting their interest in  
12 subcontracting opportunities, in sufficient time to allow the small and certified business  
13 enterprises to participate effectively;

14                   “(4) Whether the beneficiary followed up initial solicitations of interest by  
15 conducting negotiations with small and certified business enterprises;

16                   “(5) Whether rejections by the beneficiary of small or certified business  
17 enterprises as being unqualified were based on sound reasoning and thorough  
18 investigation of their capabilities;

19                   “(6) Whether the beneficiary made efforts to assist interested small and  
20 certified business enterprises to obtain bonding, lines of credit, or insurance required by  
21 the beneficiary;

1                   “(7) Whether the beneficiary effectively used the services of the  
2 Department in recruiting qualified and responsible small and certified business  
3 enterprises;

4                   “(8) Whether bids submitted to the beneficiary by small and certified  
5 business enterprises were excessive or noncompetitive based upon review of prevailing  
6 market conditions; and

7                   “(9) Any other factors which may be relevant in a particular case.

8                   “(d) Except as provided in subsection (e) of this section, a modification granted  
9 by the Director pursuant to this section is subject to sections 2346(e) and 2350(c), and  
10 any reduction in dollar amount to be subcontracted to a small or certified business  
11 enterprise resulting from an amendment of a the subcontracting plan shall be paid to the  
12 Department and deposited into the Fund.

13                   “(e) If a waiver is granted, in whole or in part, or a modification to a  
14 subcontracting requirement is made based on the fact that a small or certified business  
15 enterprise identified in a subcontracting plan is no longer certified by the Department,  
16 went out of business, or otherwise is unable to perform in accordance with customary and  
17 acceptable standards for the relevant industry, the portion of the waiver or modification  
18 granted because of these factors shall not be subjected to the penalties set forth in  
19 sections 2346 and 2350.”.

20                   (dd) Section 2352 (D.C. Official Code § 2-218.52) is amended by striking the  
21 word “small ” and inserting the phrase “small and certified” in its place.

22                   (ee) Section 2353(a) (D.C. Official Code § 2-218.53(a)) is amended as follows:

23                   (1) The lead-in language is amended as follows:

1 (A) Strike the phrase “report, each agency” and insert the phrase  
2 “report, the agency” in its place.

3 (B) Strike the phrase “during the quarter, which shall include:” and  
4 insert the phrase “during the quarter. For each expenditure, the report shall include:” in  
5 its place.

6 (2) Paragraph (2) is amended by striking the phrase “as it appears in the  
7 general ledger”.

8 (3) Paragraph (3) is amended by striking the word “services” and inserting  
9 the phrase “services provided” in its place.

10 (4) Paragraph (4) is amended by striking the word “certified” and inserting  
11 the phrase “small or certified” in its place.

12 (5) Paragraph (8) is amended to read as follows:

13 “(8) The percentage of the agency’s total dollar amount of expenditures in  
14 the quarter to all small and certified business enterprises.”.

15 (ff) Section 2354 (D.C. Official Code § 2-218.54) is amended as follows:

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

17 (A) The lead-in language is amended by striking the phrase “of its”  
18 and inserting the phrase “after its” in its place.

19 (B) Paragraph (2)(E) is amended by striking the phrase “certified  
20 business enterprise” and inserting the phrase “small and certified business enterprise” in  
21 its place.

22 (2) Subsection (b) is amended as follows:

1 (A) The lead-in language is amended by striking the phrase “of its”  
2 and inserting the phrase “after its” in its place.

3 (3) A new subsection (c) is added to read as follows:

4 “(c) On a semiannual basis, the Department shall report the following to the  
5 Chairman of the Council committee that has purview over the Department of Small and  
6 Local Business Development:

7 “(1) District agencies' compliance with section 2341;

8 “(2) A list of contracting opportunities for small and certified business  
9 enterprises with District agencies;

10 “(3) A list of projects in the District that require a 35% minimum  
11 subcontracting requirement in accordance with sections 2346 and 2350;

12 “(4) A list of beneficiaries, small business enterprises, certified business  
13 enterprises, or certified joint ventures that fail to meet the 35% minimum subcontracting  
14 requirements in accordance with sections 2346 and 2350;

15 “(5) A summary of adverse actions against beneficiaries, small business  
16 enterprises, certified business enterprises, or certified joint ventures that fail to meet the  
17 35% minimum subcontracting requirements in accordance with sections 2346 and 2350;

18 “(6) A list of projects in the District that have a 20% equity and  
19 development participation requirement in accordance with section 2349a;

20 “(7) A list of beneficiaries that fail to meet the 20% equity and  
21 development participation requirements in accordance with section 2349a;

1                   “(8) A summary of adverse actions against beneficiaries that fail to meet  
2 the 20% equity and development participation requirements in accordance with section  
3 2349a;

4                   “(9) A list of District government contracts or procurements and  
5 government-assisted projects that were granted waivers or modifications to the  
6 requirements set forth in sections 2346 and 2350;

7                   “(10) A list of District agencies that fail to meet the requirements set forth  
8 in section 2341; and

9                   “(11) A list of small business enterprises and certified business  
10 enterprises.”.

11                   (gg) Section 2361 (D.C. Official Code § 2-218.61) is amended as follows:

12                   (1) Subsection (a) is amended to read as follows:

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

16                   (2) Subsection (b) is amended as follows:

17                   (A) Paragraph (1) is amended by striking the phrase “An enterprise  
18 seeking to be certified as a local, small, or disadvantaged business enterprise, as a  
19 resident owned business, or as a local business enterprise with its principal office located  
20 in an enterprise zone” and inserting the phrase “A business enterprise seeking to be  
21 certified in a category under this subpart” in its place.

22                   (B) Paragraph (2) is amended as follows:

1 (i) The lead-in language is amended by striking the phrase  
2 “minimum, the following documents and information:” and inserting the phrase  
3 “minimum, documents and information enumerated in rules established pursuant to  
4 section 2372 and any other information the Department may require.”.

5 (ii) Subparagraph (B) is amended as follows:

6 (II) New sub-subparagraphs (vii) and (viii).

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

9 “(viii) A bona fide local manufacturing business  
10 enterprise.”.

11 (iii) Subparagraph (E) is amended by striking the phrase  
12 “Commission or”.

13 (3) Subsection (c)(3) is amended by striking the phrase “the Commission  
14 or”.

15 (4) Subsection (e) is repealed.

16 (hh) Section 2362 (D.C. Official Code § 2-218.62) is repealed.

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

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

19 (A) The lead-in language is amended to read as follows:

20 “(a) After reasonable notice to a person or a business enterprise and opportunity  
21 to be heard, the Director may revoke or suspend the certification of registration of a  
22 certified business enterprise or certified joint venture that:”.

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

1                   “(1A) Willfully obstructed or impeded, or attempted to obstruct or impede,  
2 a city official or employee investigating the qualifications of a business enterprise or joint  
3 venture that has requested or has been granted certification under this act;”.

4                   (C) Paragraph (1B) is repealed.

5                   (D) Redesignate paragraph (1C) as paragraph (1H).

6                   (E) New paragraphs (1C), (1D), (1E), (1F), and (1G) are added to  
7 read as follows:

8                   “(1C) Fraudulently obtained, attempted to obtain, or aided another person  
9 in fraudulently obtaining or attempting to obtain public money to which the person is not  
10 entitled under this subsection;

11                   “(1D) Willfully falsified, concealed, or covered up a material fact by any  
12 scheme or device;

13                   “(1E) Made a false or fraudulent statement or representation;

14                   “(1F) Used a false writing or document that the person knows to contain a  
15 false or fraudulent statement or entry;

16                   “(1G) Submitted a fraudulent notarized statement in accordance with the  
17 requirements set forth in section 2343(a-1);”.

18                   (F) The newly designated paragraph (1H) is amended to read as  
19 follows:

20                   “(1H) Aided another person in performing an act that is prohibited under  
21 this subsection;”.

22                   (G) Paragraph (5) is amended by striking the phrase “Willfully  
23 violated” and inserting the word “Violated” in its place.

1 (H) Paragraph (6) is amended by striking the phrase “and failed to  
2 perform satisfactorily in the performance of a contract”.

3 (I) Paragraph (8) is amended as follows:

4 (i) Strike the word “Commission” and insert the word  
5 “Director” in its place.

6 (ii) Strike the word “rules” and insert the word “statute” in  
7 its place.

8 (2) Subsection (a-1) is amended as follows

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

10 “(a-1)(1) After reasonable notice to a person or business enterprise and  
11 opportunity to be heard, the Director may revoke or suspend the certificate of registration  
12 of a certified business enterprise or certified joint venture that has willfully failed to  
13 cooperate in an audit or investigation by:

14 “(A) The District of Columbia Auditor pursuant to section 455 of  
15 the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803;  
16 D.C. Official Code § 1-204.55); or

17 “(B) The Chairman of the Council committee that has purview  
18 over the Department of Small and Local Business Development pursuant to section 413  
19 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 789;  
20 D.C. Official Code § 1-204.13).”.

21 (B) Paragraph (2) is repealed.

22 (3) New subsections (a-2), (a-3), and (a-4) are added to read as follows:

1           “(a-2) A certified business enterprise or the members of a certified joint venture  
2 who violate the provisions set forth in subsections (a) or (a-1) of this section, shall not be  
3 permitted to submit an application for certification for a period of 2 years, unless the  
4 Director determines within the 2-year period that the affected business has come into full  
5 compliance for re-certification.

6           “(a-3)(1) In exigent circumstances, when the public health, safety, or welfare is at  
7 risk, the Director may refrain from revoking or suspending the certified business  
8 enterprises or certified joint ventures registration.

9           “(2) The Director shall submit a written explanation of the Director's  
10 determination to the Chairman of the Council committee that has purview over the  
11 Department of Small and Local Business Development.

12           “(a-4) Upon a second violation by a certified business enterprise or a certified  
13 joint venture of the provisions set forth in subsection (a) or (a-1) of this section within a  
14 5-year time frame, the Director shall recommend that the Mayor:

15           “(1) Debar a person or entity from consideration for award of contracts or  
16 subcontracts with the District of Columbia for a period of no more than 5 years; and

17           “(2) Deem a person or entity ineligible from consideration for  
18 government-assisted projects with the District for a period of no more than 5 years.”.

19           (4) Subsection (b) is amended as follows:

20                   (A) Paragraph (1) is amended as follows:

21                           (i) Subparagraph (A) is amended to read as follows:

22                                   “(A) A person may file a complaint with the Department alleging a  
23 violation of this act against an applicant for certification or a certified business enterprise

1 or certified joint venture certified pursuant to this act. The complaint shall be in writing,  
2 sworn to by the complainant, and notarized. A complaint filed pursuant to this section  
3 shall be investigated by the Department.”.

4 (ii) Subparagraph (B) is repealed.

5 (B) Paragraph (2) is amended to read as follows:

6 “(2) The Director may dismiss, without a hearing, a complaint that the  
7 Director determines to be frivolous or otherwise without merit. For each complaint that  
8 the Director dismisses, the Director shall issue a report describing the facts and legal  
9 authority considered in dismissing the complaint. The report shall include a copy of the  
10 complaint.”.

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

12 “(3) The Department shall maintain a copy of each complaint filed.”.

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

14 “(4) If the Director does not determine that a complaint is frivolous or  
15 otherwise without merit, the Director shall conduct an investigation within 30 days of the  
16 filing of the complaint.”.

17 (E) Paragraph (5) is amended to read as follows:

18 “(5) If the Director makes a determination of revocation or suspension, the  
19 Director shall issue a report describing the facts and legal authority considered in  
20 rendering the determination. The report shall include a copy of the complaint.”.

21 (F) Paragraph (6) is repealed.

22 (G) A new paragraph (7) is added to read as follows:

1                   “(7) The Director shall include with a determination of revocation or  
2 suspension issued pursuant to this section the right of the person or business enterprise to  
3 file a request for an appeal of the Director’s decision with the Office of Administrative  
4 Hearings.”.

5                   (5) Subsection (c) is amended as follows:

6                   (A) Strike the phrase “subsection (b)” and insert the phrase  
7 “subsections (a) and (b)” in its place.

8                   (B) Strike the phrase “the director, officers,” and insert the phrase  
9 “the owners, directors, officers,” in its place.

10                  (C) Strike the phrase “or to the Commission”.

11                  (D) Add the sentence “Any civil penalty imposed under this  
12 subsection shall be paid to the Fund.” at the end.

13                  (6) Subsection (d) is repealed.

14                  (7) Subsection (e) is repealed.

15                  (8) Subsection (f) is amended to read as follows:

16                  “(f) After reasonable notice to a person or a business enterprise and  
17 opportunity to be heard, the Director may downgrade the certification of registration of a  
18 business enterprise that ceases to meet the requirements of a particular category of  
19 certification.”.

20                  (jj) Section 2364 (D.C. Official Code § 2-218.64) is amended to read as follows:

21                  “Sec. 2364. Identification of certified or small business enterprises in bids or  
22 proposals; false statements on certification; penalties.

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

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

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

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

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

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

14                           “(2) A person or business enterprise who violates any provision of this  
15 subsection is guilty of a felony and, upon conviction, subject to a fine not to exceed  
16 \$15,000, imprisonment not to exceed 5 years, or both.

17                           “(b)(1) A person shall not make false statements about whether a business  
18 enterprise is certified by the Department as a certified business enterprise or a certified  
19 joint venture.

20                           “(2) A person who violates this subsection is guilty of a misdemeanor and,  
21 upon conviction, subject to a fine not to exceed \$5,000, imprisonment not to exceed one  
22 year, or both.

23                           “(c) Fines imposed pursuant to this subsection shall be deposited into the Fund.”.

1 (kk) Section 2366 (D.C. Official Code § 2-218.66) is amended as follows:

2 (1) Subsection (a) is amended by striking the phrase “certified” wherever  
3 it appears and inserting the phrase “small and certified” in its place.

4 (2) Subsection (b) is amended as follows:

5 (A) Paragraph (1) is amended by striking the word “certified” and  
6 inserting the phrase “small and certified” in its place.

7 (B) Paragraph (2) is amended by striking the word “certified” and  
8 inserting the phrase “small and certified” in its place.

9 (C) Paragraph (4) is amended by striking the phrase “business  
10 enterprises” and inserting the phrase “small and certified business enterprises” in its  
11 place.

12 (ll) Section 2367 (D.C. Official Code § 2-218.67) is repealed.

13 (mm) Section 2368 (D.C. Official Code § 2-218.68) is repealed.

14 (nn) Section 2369 (D.C. Official Code § 2-218.69) is repealed.

15 (oo) Section 2371 (D.C. Official Code § 2-218.71) is repealed.

16 (pp) Section 2372 (D.C. Official Code § 2-218.72) is amended as follows:

17 (1) The existing language is designated as subsection (a).

18 (2) A new subsection (b) is added to read as follows:

19 “(b) Within 180 days after the effective date of the Small and Certified Business  
20 Enterprise Development and Assistance Amendment Act of 2012, the Mayor shall  
21 promulgate rules to implement the amended provisions of the Small, Local, and  
22 Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective  
23 October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01).”.

1 (qq) Section 2375 (D.C. Official Code § 2-218.75) is amended as follows:

2 (1) The section heading is amended to read as follows:

3 “Sec. 2375. Small Business Development Fund.”.

4 (2) Subsection (a)(2) is amended by striking the phrase “Small Business  
5 Micro Loan Fund” and inserting the phrase “Small Business Development Fund” in its  
6 place.

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

8 (A) The lead-in language is amended by striking the phrase “Small  
9 Business Micro Loan Fund” and inserting the phrase “Small Business Development  
10 Fund” in its place.

11 (B) Paragraph (1) is amended by striking the phrase “obtain federal  
12 matching funds to establish a procurement technical assistance program in the  
13 Department” and inserting the phrase “obtain matching funds for federal grants awarded  
14 to the Department” in its place.

15 (C) Paragraph (2) is repealed.

16 (D) Paragraph (3) is amended by striking the phrase “loans, and  
17 loan guarantees, to eligible recipients.” and inserting the phrase “loans, loan guarantees,  
18 and any other financial assistance established by rules issued pursuant to section 2372 to  
19 eligible recipients; and” in its place.

20 (E) A new paragraph (4) is added to read as follows:

21 “(4) To fund any other programs established by rules issued pursuant to  
22 section 2372 to effectuate the purposes of this act.”.

23 (4) Subsection (c) is amended as follows:

1 (A) Paragraph (2) is amended to read as follows:

2 “(2) All fines, fees, or penalties collected by the Department pursuant to  
3 this act shall be deposited into the Fund.”.

4 (5) Subsection (d)(1) is amended by striking the phrase “certified as  
5 resident-owned businesses pursuant to section 2335; or” and inserting the phrase  
6 “certified resident-owned businesses; or” in its place.

7 (6) Subsection (e) is repealed.

8 Sec. 3. Fiscal impact statement.

9 The Council adopts the fiscal impact statement in the committee report as the  
10 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home  
11 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-  
12 206.02(c)(3)).

13 Sec. 4. Effective date.

14 This act shall take effect following approval by the Mayor (or in the event of veto  
15 by the Mayor, action by the Council to override the veto), a 30-day period of  
16 Congressional review as provided in section 602(c)(1) of the District of Columbia Home  
17 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-  
18 206.02(c)(1)), and publication in the District of Columbia Register.