

AN ACT

Bill 20-222

**Emergency
Declaration
Res. 20-98
20 DCStat 1484**

**Codification
District of
Columbia
Official Code
2001 Edition**

To require, on an emergency basis, the Director of the Department of Small and Local Business Development send notices to the developers that failed to submit Certified Business Enterprise ("CBE") subcontracting monitoring and compliance reports or failed to meet their CBE expenditure goals as of September 30, 2012, to give the developer 30 days upon receipt of the notice to show the developer has met its CBE expenditure goal or to submit a new plan to the Director, to require the Director to refer the developer to the Office of Attorney General and the Office of Contracting and Procurement for willfully breaching a subcontracting plan if the developer fails to reply to the notice, to require the Director to send a notice thanking all developers who have met their CBE expenditure goals; and to require the District government to refer any false statements of CBE utilizations on bids or proposals to the United States Attorney's Office of the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Certified Business Enterprise Compliance Emergency Act of 2013".

**Certified
Business
Enterprise
Compliance
Emergency
Act of 2013**

Sec. 2. Definitions.

For the purposes of this act, the term:

**Note,
§ 2-218.31**

(1) "Auditor" means the Office of the District of Columbia Auditor.

(2) "Audit report" means the "Letter Report on Certified Business Enterprise Expenditures of Public-Private Development Construction Projects for Fiscal Year 2012," issued by the auditor on January 17, 2013.

(3) "CBE" means Certified Business Enterprise.

(4) "Department" means the Department of Small and Local Business Development.

(5) "Developer" means any entity that is required to meet the 35% CBE subcontracting requirement as outlined in the audit report.

(6) "Director" means the Director of the Department of Small and Local Business Development.

Sec. 3. Findings.

The Council of the District of Columbia finds that:

(1) According to the auditor, there are 247 public-private development construction projects which have a 35% CBE subcontracting requirement.

(2) Only 25 projects have met or exceeded their CBE expenditure goal.

(3)(A) 54 developers have submitted CBE subcontracting expenditure plans, but have not met their CBE subcontracting goal as of September 30, 2012.

(B) The 54 public-private development construction projects have a total CBE expenditure goal of \$1,391,581,471.50; only \$262,837,361.90 has been allocated to CBEs as of September 30, 2012.

(C) The developers at the 54 projects have only met 19% of their CBE expenditure goal or they have a CBE goal deficit of \$1,128,744,109.60.

(4) 168 developers, which account for 68% of the public-private development construction projects in the District, have not submitted a CBE expenditure goal.

Sec. 4. Director's notice to developers.

(a)(1) Within 15 days of the effective date of this act, the Director shall send notices by certified mail to the 168 developers that failed to submit CBE expenditure reports as detailed by the Auditor in the audit report.

(2) The notice shall contain the following information:

(A) The developer is in violation of section 2348 of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.48), which requires the developer to submit a subcontracting plan monitoring or compliance report to the Department.

(B)(i) The developer has 30 days upon receipt of the notice to reply to the Director showing that the developer has met its CBE utilization goal.

(ii) If the developer has not met its CBE utilization goal, the developer must submit a new plan to the Department detailing how and when it intends to meet its goal.

(iii) The new plan must be approved by the Director.

(3) If the developer fails to reply within 30 days upon receipt of the notice, the developer shall be referred to the Office of Attorney General and Office of Contracting and Procurement for further action.

(b)(1) Within 15 days of the effective date of this act, the Director shall send notices by certified mail to the 54 developers that submitted CBE expenditure reports but have not met their CBE expenditure goal as of September 30, 2012 as detailed by the Auditor in the audit report.

(2) The notice shall contain the following information:

(A) The developer has 30 days upon receipt of the notice to reply to the Director showing that the developer has met its CBE utilization goal.

(B) If the developer has not met its CBE utilization goal, the developer must submit a new plan to the Department detailing how and when it intends to meet its goal.

(C) The new plan must be approved by the Director.

(3) If the developer fails to reply within 30 days upon receipt of the notice, the developer shall be referred to the Office of Attorney General and Office of Contracting and Procurement for further action.

(c) Within 15 days of the effective date of this act, the Director shall send notices by certified mail to the 25 developers that have met their CBE expenditure goals as detailed by the

Auditor in the audit report thanking them for being in compliance with the law and for helping with the growth and development of District-based businesses.

Sec. 5. Referral to the Office of Attorney General and Office of Contracting and Procurement.

(a) Any developer who fails to meet the requirements of section 3(a) and (b) shall be referred to the Office of Attorney General and the Office of Contracting and Procurement.

(b) The Director shall request that the Office of Attorney General pursue civil penalties against the developer for being in willful breach of the subcontracting plan as required by section 2348 of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.48).

(c) The Director shall request that the Office of Contracting and Procurement, pursuant to section 907 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-359.07), begin with debarment and suspension proceedings against the developer for a willful violation of the contracting provisions that provide 35% of the work must be subcontracted to a CBE.

Sec. 6. Referral to United States Attorney's Office for the District of Columbia.

If, during any proceedings conducted by the Department, the Office of Attorney General, or the Office of Contracting and Procurement, it is discovered that the developer breached the requirements of section 2364 of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.64), the developer shall be referred to the United States Attorney's Office for the District of Columbia and a request shall be made to pursue criminal penalties against the developer.

Sec. 7. Fiscal impact statement.

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

Sec. 8. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).