

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-108, effective June 10, 2014
(Delayed Applicability)

20 DCSTAT 3225

AN ACT

Bill 20-181
Act 20-307
effective
April 8, 2014

Codification
District of
Columbia
Official Code
2001 Edition

To amend the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 to clarify the definitions of a small business enterprise ("SBE") and a certified business enterprise ("CBE"), clarify the functions of the Department of Small and Local Business Development ("DSLBD"), to classify contractors and developers as beneficiaries, to define what constitutes a government-assisted project that is subject to the requirements of the CBE program, to provide DSLBD the additional authority to prohibit a business from operating as a pass-through, 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 meet the definition of a small business concern under the act or to have average annualized gross receipts that do not exceed the limits pursuant to DSLBD regulations, to grant DSLBD 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 or the equity and development participation requirements in accordance with section 2349a, to provide that only those joint ventures that can demonstrate that the CBE joint venture partner has at least a 51% controlling interest in the joint venture may receive all the preference points attributable to the CBE, to add additional criteria for determining 51% control in construction joint ventures, to provide DSLBD the authority to provide preference points to joint ventures with less than 50% certified business enterprise participation, to establish preference points for a certified joint venture that reflect the CBE's actual participation, to require contracts or procurements \$250,000 or less to be set aside for a SBE or CBE, to require contracts \$250,000 or less on the District of Columbia Supply Schedule to be awarded to a SBE or CBE, 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 void all options or extension of multiyear or extended contracts which are not in compliance with this act, to institute new reporting requirements for utilization of subcontractors on government-assisted projects in accordance with sections 2346, to divide requirements for equity participation and participation in development services into separate sections, to create a new definition of certified equity participant to reflect market reality that special purpose entities rather than traditional businesses invest in development projects, to create an obligation for a development sponsor to demonstrate its intent and ability to meet 20% equity requirement as a condition of land transfer, to create the ability for a certified equity participant to develop 100% of a component of a larger project as part of the overall project's 20% requirement, to mandate that only the Director of DSLBD may waive or modify the subcontracting requirements pursuant to sections 2346, to authorize DSLBD to analyze waivers against the ability to achieve CBE goals on a project basis rather than a particular subcontracting market, to require the Director of DSLBD on a semiannual basis to report to the Council committee that has purview over the department on the status of the CBE program, to repeal the department's authority to grant provisional certifications, to clarify that CBEs, beneficiaries, and certified joint ventures that violate the provisions of this act shall be subject to fines, penalties, suspension, and debarment, to require the Office of Administrative

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-108, effective June 10, 2014
(Delayed Applicability)

20 DCSTAT 3226

Hearings to handle all appeals of final determinations by the Director of DSLBD concerning a business enterprise's certification status, fines, and penalties, to clarify that if a CBE, beneficiary, or certified joint venture provides false information in response to a bid or proposal or makes false statements as to its certification status, it shall be subject to fines and criminal penalties, and to require the Mayor to issue rules to implement the provisions of this act.

**Small and
Certified
Business
Enterprise
Development
and
Assistance
Amendment
Act of 2014**

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Small and Certified Business Enterprise Development and Assistance Amendment Act of 2014".

Sec. 2. 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 § 2-218.01 *et seq.*), is amended as follows:

**Amend
§ 2-218.01**

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

**Amend
§ 2-218.02**

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

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

"(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."

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

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

"(1A) "Agency contracting officer" means the contracting officer of an agency or government corporation.

"(1B) "Beneficiary" means a business enterprise that is the prime contractor or developer on a government-assisted project."

(4) The newly designated paragraph (1D) is amended to read as follows:

"(1D) Certified business enterprise" means a local business enterprise certified pursuant to part D of this subtitle.

(5) New paragraphs (1E), (1F), and (1G) are added to read as follows:

"(1E) "Certified joint venture" means a joint venture certified pursuant to section 2339a.

"(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 or disadvantaged investors.

"(1G) "Commercially useful function" means work performed by a certified business enterprise in a particular transaction that, consistent with industry practices and other relevant considerations, has a necessary and useful role in the transaction. The certified business enterprise shall be responsible for the execution of the work of the contract and carry out its

responsibility by actually performing, managing, and supervising the work involved. The certified business enterprise shall be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials and installing (where applicable) and paying for the material itself."

(6) New paragraphs (5A) and (5B) are added to read as follows:

"(5A) "Disadvantaged investor" means:

"(A) A disadvantaged business enterprise pursuant to section 2333; or

"(B) A District-domiciled economically disadvantaged individual as determined by regulations promulgated by the Department.

"(5B) "District gross receipts" means all income derived from any activity whatsoever from sources within the District, other than income a local business enterprise derives from an ownership or beneficial interest in other local business enterprises, whether compensated in the District or not, before the deduction of any expense whatsoever connected with the production of the income; provided, that the calculation of the income shall not include:

"(A) The collection of federal or local taxes on motor vehicle fuel; or

"(B) Fees retained by a retail establishment under section 4(b)(1) of the Anacostia River Clean Up and Protection Act of 2009, effective September 23, 2009 (D.C. Law 18-55; D.C. Official Code § 8-102.03(b)(1))."

(7) Paragraph (9) is amended to read as follows:

"(9) "Expendable budget" means the total appropriated budget of an agency, reduced by such funding sources, object classes, objects, and other items, including any contract, the value of which does not lend itself to performance by a small or certified business enterprise, as shall be identified by the Department through rulemaking."

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

"(9A) "Government-assisted project means:

"(A) A contract executed by an agency on behalf of the District or pursuant to statutory authority that involves District funds or, to the extent not prohibited by federal law, funds that the District administers in accordance with a federal grant or otherwise;

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

"(C) A project that receives a loan or grant from a District agency;

"(D) A project that receives bonds or notes or the proceeds thereof issued by a District agency, including tax increment financing or payment in lieu of tax bonds and notes, or industrial revenue bonds;

"(E) A project that receives District tax exemptions or abatements that are specific to the project and not to the nature of the entity undertaking the project, such as a religious institution or nonprofit corporation; or

"(F) A development project conducted pursuant to a disposition under section 1 of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801)."

(9) Paragraph (10) is repealed.

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-108, effective June 10, 2014
(Delayed Applicability)

20 DCSTAT 3228

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

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

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

"(13A) "Qualified" means a business enterprise deemed by the Department to have the capability to perform the work that has been issued a certificate of registration issued pursuant to this subtitle."

(13) A new paragraph (16A) is added to read as follows:

"(16A) "Small investor" means:

"(A) A small business enterprise pursuant to section 2332; or

"(B) A District-domiciled individual with a net worth that does not exceed the limit set by the Department for investors."

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

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

**Amend
§ 2-218.12**

(1) Subsection (c) is amended by striking all text after the phrase “this subtitle”.

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

(3) Subsection (g) is amended to read as follows:

“(g) The Director shall have the authority to enforce the provisions of this subtitle and may impose fines, fees, penalties, and other remedial actions for violations of section 2363 or the regulations promulgated pursuant to this subtitle.”.

(4) New subsections (h) and (i) are added to read as follows:

“(h) The Director shall establish within the Department, oversee, and administer such divisions, offices, or other units as may be necessary or appropriate to perform the functions and duties of the Department.

“(i) The Director may take such other actions as are necessary or appropriate to carry out the provisions of this subtitle.”.

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

**Amend
§ 2-218.13**

(1) The section heading is amended by striking the phrase “Organization and functions” and inserting the word “Functions” in its place.

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

(A) Paragraph (1) is amended by striking the phrase "based in and serving the" and inserting the phrase "based in the" in its place.

(B) Paragraph (2)(C) is amended by striking the phrase “that occur in the District of Columbia”.

(3) Subsection (c) is repealed.

(4) Subsection (c-1) is amended by striking the word “issues” and inserting the word “issue” in its place.

(5) Subsection (d) is repealed.

(6) A new subsection (e) is added to read as follows:

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-108, effective June 10, 2014
(Delayed Applicability)

20 DCSTAT 3229

“(e) The Department, in coordination with the agency contracting officer, shall have the authority, in reviewing participation by certified business enterprises, to disregard participation by a certified business enterprise when that certified business enterprise serves no commercially useful function in the performance of a contract.”.

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

Repeal
§ 2-218.21
§ 2-218.22

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

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

Amend
§ 2-218.24

(1) Subsection (a) is repealed.

(2) Subsection (b) is amended by striking the phrase "and the Commission may".

(3) Subsection (c) is repealed.

(h) Section 2325 (D.C. Official Code § 2-218.25) is repealed.

Repeal
§ 2-218.25

(i) Section 2331 (D.C. Official Code § 2-218.31) is amended as follows:

Amend
§ 2-218.31

(1) Paragraph (2) is amended by striking the phrase "maintain their offices and perform their managerial functions in the District" and inserting the phrase "perform their managerial functions in their principal office located in the District" in its place.

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

“(2A) Can demonstrate one of the following:

“(A) More than 50% of the employees of the business enterprise are residents of the District;

“(B) The owners of more than 50% of the business enterprise are residents of the District; or

“(C)(i) More than 50% of the assets of the business enterprise, excluding bank accounts, are located in the District; and

“(ii) More than 50% of the business enterprise’s gross receipts are District gross receipts; and”.

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

“(3) Can demonstrate one of the following:

“(A) The business enterprise is licensed pursuant to Chapter 28 of Title 47 of the District of Columbia Official Code;

“(B) The business enterprise is subject to the tax levied under Chapter 18 of Title 47 of the District of Columbia Official Code; or

“(C) The business enterprise is a business enterprise identified in D.C. Official Code § 47-1808.01(1) through (5) and more than 50% of the business is owned by residents of the District.”.

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

Amend
§ 2-218.32

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

(2) Paragraph (3) is amended as follows:

(A) Subparagraph (A) is amended by striking the phrase “as a small business concern” and inserting the phrase “as a small business concern or meets the definition of a small business concern” in its place.

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

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-108, effective June 10, 2014
(Delayed Applicability)

20 DCSTAT 3230

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

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

Amend
§ 2-218.33

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

Amend
§ 2-218.35

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

Amend
§ 2-218.36

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

Amend
§ 2-218.37

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

Amend
§ 2-218.38

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

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

Amend
§ 2-218.39

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

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

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

(3) Paragraph (3) is repealed.

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

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

Amend
§ 2-218.39a

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

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

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

“(a) A joint venture shall be eligible for certification as a certified joint venture if the joint venture intends to submit a response to solicitation in which the joint venture will provide goods or perform services, and has a member that owns a majority or minority interest in the joint venture and meets the definition of a certified business enterprise pursuant to section 2302(1D). A joint venture shall be certified for a specific solicitation. The Department shall promulgate regulations that provide for a simplified procedure for the certification of a joint venture if the joint venture, having the same participants and structure, has been certified by the Department on a previous government-assisted project.”.

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

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

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

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

“(c) In determining whether a joint venture is eligible to be certified as a certified joint venture, the Department shall consider the totality of the circumstances, including

the defined contributions and defined benefits provided by each member of the joint venture, which shall be demonstrated by the following information:".

(B) Paragraph (1) is amended by striking the phrase "members; and" and inserting the phrase "members of the joint venture; and" in its place.

(C) Paragraph (2) is amended by striking the phrase "each member" and inserting the phrase "each joint venture member" in its place.

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

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

"(f) Unless a joint venture's certification is relinquished pursuant to subsection (e) of this section, a certified joint venture shall retain its certification for the duration of the contract awarded through the solicitation for which it was certified, including any extension of the contract.

"(g) A joint venture shall not be certified:

"(1) To meet the small and certified business enterprise subcontracting requirements set forth in section 2346; or

"(2) To meet the small and certified business equity and development participation requirements set forth in section 2349a.

"(h) A certified joint venture shall receive preference points or price reductions in accordance with section 2343 as follows:

"(1) If the Department determines that a certified business enterprise owns a majority interest in the joint venture, the joint venture shall receive the preference points or price reductions that the certified business enterprise would receive in accordance with section 2343; provided, that if the certified joint venture is formed to serve as a general contractor on a project, the joint venture shall be required also to establish to the reasonable satisfaction of the Department that:

"(A) Any bond for the project shall be provided by the certified business enterprise, and the certified business enterprise participant shall be solely and individually liable as the principal to the surety for at least 51% of each claim asserted under the bond;

"(B) The individual primarily responsible for project decisions, such as the project executive, shall be provided by the certified business enterprise; and

"(C) At least 50% of the staff that the joint venture will devote to the project will be provided by the certified business enterprise.

"(2) If the Department determines that a certified business enterprise owns a minority interest in the joint venture, the Department's certification of the joint venture shall indicate such and specify the preference points or price reductions that the joint venture shall receive, but in no event shall the preference points or price reductions exceed 50% of the preference points or price reductions that would otherwise be applicable to the certified business joint venture partner.

"(3) Similar to the requirements set forth in paragraph (1)(A), (B), and (C) of this subsection, the Department may adopt regulations that establish additional industry-specific

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-108, effective June 10, 2014
(Delayed Applicability)

20 DCSTAT 3232

requirements for the certification of a joint venture that has a majority interest held by a certified business enterprise.”.

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

**Amend
§ 2-218.41**

(1) The section heading is amended by striking the phrase “with small business enterprises”.

(2) Subsection (a) is amended by striking the phrase “goods and services, including construction goods and services, to” and inserting the phrase “expendable budget to qualified” in its place.

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

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

(4) Subsection (b) is repealed.

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

“(c) The provisions of this subtitle relating to contracting and subcontracting goals and requirements shall be applicable to every government-assisted project unless the Department, by regulation, establishes a specific exemption for a particular type or class of government-assisted project.”.

(s) Section 2342(1) (D.C. Official Code § 2-218.42(1)) is amended by striking the phrase “with principal offices located in an enterprise zone”.

**Amend
§ 2-218.42**

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

**Amend
§ 2-218.43**

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

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

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

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

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

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

**Amend
§ 2-218.44**

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

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

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

“(a) Except as provided in subsections (a-1) and (b) of this section or section 2345, each agency shall set aside contracts or procurements of \$250,000 or less for qualified small business enterprises.”.

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

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

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

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-108, effective June 10, 2014
(Delayed Applicability)

20 DCSTAT 3233

(A) Strike the word "refuse" and insert the word "decline" in its place.

(B) Strike the phrase "market if" and insert the phrase "market, if" in its place.

(C) Strike the phrase "small business enterprise" and insert the phrase "small or certified business enterprise" in its place.

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

"(c) Each written determination pursuant to subsections (a-1) or (b) of this section shall be submitted to the Director, who shall post a copy of the determination so that it can reasonably be accessed by the public via the Department's website or such other locations as the Department may establish."

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

**Amend
§ 2-218.45**

"Sec. 2345. Mandatory set-asides of contracts in the District of Columbia Supply Schedule for small business enterprises or certified business enterprises.

"(a) Except as provided in subsections (b) and (c) of this section, each agency shall award contracts of \$250,000 or less to a qualified small business enterprise included on the District of Columbia Supply Schedule.

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

"(c) An agency may decline to award a contract or procurement set aside under this section, and may thereafter issue the contract or procurement in the open market, if the agency determines in writing that the bids for the contract or procurement set aside for a small or certified business enterprise are believed to be 12% or more above the likely price on the open market.

"(d) Each written determination pursuant to subsections (b) or (c) of this section shall be submitted to the Director, who shall post a copy of the determination so that it can reasonably be accessed by the public via the Department's website or such other locations as the Department may establish."

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

**New
§ 2-218.45a**

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

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

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

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

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

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-108, effective June 10, 2014
(Delayed Applicability)

20 DCSTAT 3234

Amend
§ 2-218.46

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

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

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

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

(I) Strike the phrase “contracts in” and insert the phrase “contracts for government-assisted projects in” in its place.

(II) Strike the phrase “requirements:” and insert the phrase “requirements unless a waiver has been approved in accordance with section 2351:” in its place.

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

(I) Strike the phrase “dollar volume shall” and insert the phrase “dollar volume of the contract shall” in its place.

(II) Strike the phrase “provided, that the costs of materials, goods, and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods, and supplies are purchased from small business enterprises;”.

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

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

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

(I) Strike the phrase “contracts in” and insert the phrase “contracts for government-assisted projects in” in its place.

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

(III) Strike the phrase “requirements:” and insert the phrase “requirements unless a waiver has been approved in accordance with section 2351:” in its place.

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

(I) Strike the phrase “dollar volume shall” and insert the phrase “dollar volume of the contract shall” in its place.

(II) Strike the phrase “provided, that the costs of materials, goods, and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods, and supplies are purchased from small business enterprises;”.

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

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

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

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

"(A) Each government-assisted construction and non-construction contract for which a certified business enterprise is selected as a beneficiary and is granted points or a price reduction pursuant to section 2343 or is selected through a set-aside program under this subpart shall include a requirement that the certified business enterprise perform at least 35% of

the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracted effort shall be with certified business enterprises."

(ii) Subparagraph (B) is amended to read as follows:

"(B) If the total contracting effort performed by the certified business enterprise is less than the amount required by subparagraph (A) of this paragraph, then the business enterprise shall be subject to enforcement pursuant to section 2363."

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

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

"(A) Each government-assisted construction and non-construction contract for which a certified joint venture is selected as a beneficiary and is granted points or a price reduction pursuant to section 2343 or is selected through a set-aside program under this subpart shall include a requirement that the certified business enterprise perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracted effort shall be with certified business enterprises."

(ii) Subparagraph (B) is amended to read as follows:

"(B) If the total contracting effort performed by the certified business enterprise is less than the amount required by subparagraph (A) of this paragraph, then the business enterprise shall be subject to enforcement pursuant to section 2363."

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

"(b-1) Each government-assisted construction and non-construction project for which a certified business enterprise is utilized to meet the subcontracting requirements pursuant to subsections (a) and (b) of this subsection shall include a requirement that the certified business enterprise perform at least 35% of the contracting effort with its own organization and resources."

(4) Subsection (c) is amended to read as follows:

"(c) Each government-assisted construction and non-construction project of \$1 million or less for which a certified business enterprise is selected as a beneficiary and is granted points or a price reduction pursuant to section 2343 or is selected through a set-aside program under this subpart shall include a requirement that the certified business enterprise perform at least 50% of the on-site work with its own workforce."

(5) Subsection (d) is amended to read as follows:

"(d)(1) Bids or proposals responding to a solicitation, including an open market solicitation, shall be deemed nonresponsive and shall be rejected if a subcontracting plan is required by law and the beneficiary fails to submit a plan that meets the criteria set forth in paragraph (2) of this subsection.

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

"(A) The name and address of each subcontractor;

"(B) A current certification number of the small or certified business enterprise;

"(C) The scope of work to be performed by each subcontractor; and

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

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

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

“(d-1) Notwithstanding subsection (d) of this section, a design-build project shall not be required to identify specific subcontractors as a condition precedent to performing preconstruction services; provided, that a detailed subcontracting plan that meets the requirements of subsection (d) of this section shall be submitted before entering into a guaranteed maximum price or such other contractual action authorizing the contractor to commence construction.”.

(7) Subsection (e) is amended as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-108, effective June 10, 2014
(Delayed Applicability)

20 DCSTAT 3237

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

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

“(m) A beneficiary, certified business enterprise, or member of a certified joint venture that fails to meet the requirements of this section shall be subject to the penalties set forth in section 2363.

“(n) With regard to government-assisted projects, the obligations under this section shall expire upon completion of the development or other activity that serves as the basis for such activity qualifying as a government-assisted project; provided, that the Mayor shall have the authority to negotiate any extensions under this section in the transaction documents that qualify an activity as a government-assisted project.”.

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

**Amend
§ 2-218.48**

(1) The section heading is amended by striking the word "willful".

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

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

"(a) For any subcontracting plan required by law, the beneficiary shall be deemed to have breached the subcontracting plan for utilization of small or certified business enterprises in the performance of a contract if the beneficiary:".

(B) Paragraph (1) is amended as follows:

(i) Strike the phrase "any required".

(ii) Strike the word "report" and insert the phrase "reports or other required subcontracting information in a reasonably timely manner" in its place.

(C) Paragraph (2) is amended by striking the phrase "report containing a false statement" and inserting the phrase "report or other required subcontracting information containing a materially false statement" in its place.

(D) Paragraph (3) is amended by striking the phrase "disclose required information" and inserting the phrase "meet the subcontracting requirements pursuant to section 2346" in its place.

(3) Subsection (b) is repealed.

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

(A) Strike the word "willfully".

(B) Strike the phrase "fines of \$15,000 or 5% of the total amount of the work that the contractor was to subcontract to certified business enterprises, whichever is greater, for each breach" and insert the phrase "fines, pursuant to section 2363" in its place.

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

**Amend
§ 2-218.49**

(1) Strike the phrase "agency shall" and insert the phrase "agency may" in its place.

(2) Strike the period at the end and insert the phrase "; provided, that an agency shall not be permitted to advance more than 10% of the total value of any contract.".

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-108, effective June 10, 2014
(Delayed Applicability)

20 DCSTAT 3238

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

**Amend
§ 2-218.49a**

“Sec. 2349a. Equity and development participation.

“(a)(1) In all development projects conducted pursuant to a disposition under section 1 of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801), small investors, disadvantaged investors, or certified equity participants 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.

“(2) Demonstration by a project sponsor of its intent and ability to meet the 20% equity requirement pursuant to paragraph (1) of this subsection shall be a condition precedent to the transfer of any District-owned property for a covered project.

“(3) In meeting the equity investment requirement in paragraph (1) of this subsection, a certified equity participant may be a 100% sponsor of a component of a covered project; provided, that the certified equity participant participation totals 20% of the total equity of the covered project.

“(b) For each government-assisted project involving development, in addition to complying with the general subcontracting provisions in section 2346, at least 20% of the dollar volume of non-construction development goods and services shall be subcontracted to small business enterprises, and if there are insufficient qualified small business enterprises to completely fulfill this requirement, then the requirement may be satisfied by contracting 20% of that dollar volume to any qualified certified business enterprises; provided, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall development goods and services work.

“(c)(1) No more than 25% of the total 20% equity participation requirement (equal to 5%) set forth in subsection (a) of this section may be met by a certified business enterprise 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”).

“(2) The developer and the certified business enterprise shall sign a service agreement describing the following:

“(A) A detailed description of the scope of work that the certified business enterprise will perform;

“(B) The dollar amount that the certified business enterprise will be compensated for its services and the amount the certified business enterprise is forgoing as an investment in a project;

“(C) The date or time period when the certified business enterprise will receive compensation;

“(D) The return, if any, the certified business enterprise will receive on its sweat equity contribution; and

“(E) An explanation of when the certified business enterprise will receive its return as compared to other team members or investors.

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-108, effective June 10, 2014
(Delayed Applicability)

20 DCSTAT 3239

“(d) This section shall not apply if the entity that controls the development project is an entity tax-exempt under section 501(c) of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)), or other not-for-profit entity.

“(e) This section shall not apply to any development project for which a contract for purchase of one or more parcels of real property has been executed prior to the effective date of this act.”.

(bb) Section 2350 (D.C. Official Code § 2-218.50) is repealed.

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

“Sec. 2351. Waiver of subcontracting requirements.

Repeal
§ 2-218.50
Amend
§2-218.51

“(a) The subcontracting requirements of section 2346 may be waived only if there is insufficient market capacity for the goods or services that comprise the project and such lack of capacity leaves the contractor commercially incapable of achieving the subcontracting requirements at a project level. The subcontracting requirements of section 2346 may only be waived in writing by the Director. An agency seeking waiver of the subcontracting requirements of section 2346 shall submit to the Director a request for waiver, which shall include the following:

“(1) The number of certified business enterprises, if any, qualified to perform the elements of work that comprise the project;

“(2) A summary of the market research or outreach conducted to analyze the relevant market; and

“(3) The consideration given to alternate methods for acquiring the work to be subcontracted in order to make the work more amenable to being performed by certified business enterprises.

“(b) If the Director approves an agency’s request for waiver of the subcontracting requirements of section 2346 and grants such a waiver, the Director’s determination shall set forth the information outlined in subsection (a) of this section. A copy of the Director’s determination shall be posted to the Department’s website or such other locations as the Department may establish for 5 days such that the public shall have reasonable access to the determination before the Director grants any waiver.”.

(dd) Section 2352 (D.C. Official Code § 2-218.52) is amended as follows:

Amend
§ 2-218.52

(1) Designate the existing text as subsection (a).

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

“(b) The performance plan for each agency shall include a metric for compliance with the provisions of this subtitle and the performance evaluation for each agency director shall reflect the agency’s success in meeting compliance goals.”.

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

Amend
§ 2-218.53

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

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

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

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

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

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

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

(E) Paragraph (8) is amended to read as follows:

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

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

“(a-1) In addition to the report of prime contracting activity required by subsection (a) of this section, each agency shall also submit to the Department and the Office of the District of Columbia Auditor within 30 days of the end of each quarter, a report on a contract basis of payments made by beneficiaries to subcontractors that are certified business enterprises and such payments shall be reported against the amounts included in the approved detailed certified business enterprise subcontracting plan.”.

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

Amend
§ 2-218.54

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

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

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

(2) Subsection (b) is amended by striking the phrase “of its” and inserting the phrase “after its” in its place.

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

“(c) On a semiannual basis, the Department shall report the following to the chairman of the Council committee that has purview over the Department:

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

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

“(3) A list of projects in the District that require a 35% minimum subcontracting requirement in accordance with section 2346;

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

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

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-108, effective June 10, 2014
(Delayed Applicability)

20 DCSTAT 3241

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

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

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

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

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

Amend
§ 2-218.61

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

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

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

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

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

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

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

(I) Sub-subparagraph (v) is amended by striking the word “or” at the end.

(II) Sub-subparagraph (vi) is amended by striking the period and inserting a semicolon in its place.

(III) New sub-subparagraphs (vii) and (viii) are added to read as follows:

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

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

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

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

(4) Subsection (e) is repealed.

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

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

“Sec. 2363. Revocation of registration; challenges to registration; penalties.

Repeal
§ 2-218.62
Amend
§ 2-218.63

“(a) It shall be a violation of this subtitle and penalties shall be assessed if the Department determines that:

“(1) A beneficiary, certified business enterprise, or certified joint venture fails to comply with the requirements set forth in sections 2346, 2348, or 2349a;

“(2) A certified business enterprise:

“(A) Acted with gross negligence, financial irresponsibility, or misconduct in the practice of a trade or profession;

“(B) No longer qualifies as a local business enterprise; or

“(C) Misrepresents its capability to the Department; or

“(3) A beneficiary, certified business enterprise, or certified joint venture has:

“(A) Fraudulently obtained or held certification;

“(B) Willfully obstructed or impeded, or attempted to obstruct or impede, a city official or employee investigating the qualifications of a business enterprise that has requested certification;

“(C) In any certified business enterprise matter administered under this subtitle:

“(i) Fraudulently obtained, attempted to obtain, or aided another person in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this subsection;

“(ii) Willfully falsified, concealed, or covered up a material fact by any scheme or device;

“(iii) Made a materially false statement or representation;

“(iv) Used a false writing or document that the person knows to contain a false statement or entry;

“(D) Aided another person in performing an act prohibited under subparagraphs (A), (B) or (C) of this paragraph;

“(E) Furnished substantially inaccurate or incomplete ownership or financial information;

“(F) Failed to report changes that affect its eligibility for certification, including relocation of its principal office or change in ownership or control;

“(G) Willfully violated any provision of this subtitle or rules adopted pursuant to this subtitle;

“(H) Substantially failed to operate and manage a certified joint venture in accordance with section 2339a; There shall be a rebuttable presumption that the failure to operate and manage the joint venture in accordance with the joint venture application was the parties’ intent. If the joint venture demonstrates that the failure to operate and manage the joint venture in accordance with the joint venture application was necessary due to unforeseen business or operational issues, the failure shall not be a violation of this subtitle.

“(I) Knowingly and willfully submits a monitoring or compliance report or other required subcontracting information containing a materially false statement or knowingly and willfully violates the terms of a subcontracting plan; or

“(J) Committed any other cause the Department determines to be sufficiently serious and compelling to affect responsibility as a District government contractor, including revocation, suspension, or debarment by another governmental enterprise for any cause listed in rules and regulations.

“(b) It shall be a violation of this subtitle and penalties may be assessed if the Department determines that an individual or business enterprise has willfully failed to cooperate in an audit or investigation conducted by:

“(1) The District of Columbia Auditor pursuant to section 455 of the District of Columbia Home Rule Act, approved December 24, 1974 (87 Stat. 803; D.C. Official Code § 1-204.55); or

“(2) The Chairman of the Council or the chairperson of the committee of the Council that conducts an investigation pursuant to section 413 of the District of Columbia Home Rule Act, approved December 24, 1974 (87 Stat. 803; D.C. Official Code § 1-204.13).

“(c) If the Department determines, in accordance with the procedure set forth in subsection (e) of this section, that an individual or business enterprise:

“(1) Has committed a violation of subsection (a)(1) of this section, the Department shall:

“(A) Assess a civil penalty of not more than \$5,000 for the first offense;

“(B) Assess a civil penalty of not more than \$15,000 for the second offense; and

“(C)(i) For each offense thereafter, the Director shall refer the matter to the Attorney General for the District of Columbia, who may bring a civil action under paragraph (3)(A) of this subsection; provided, that if the Attorney General for the District of Columbia does not bring an action under paragraph (3)(A) of this subsection, the Department shall assess a civil penalty of not more than \$25,000 against the beneficiary, certified business enterprise, or certified joint venture; and

“(ii) The Department shall refer the matter to the Office of Contracting and Procurement, including matters involving agencies not subject to the Office of Contracting and Procurement authority pursuant to section 201(b) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.01(b)), for investigation. If the Office of Contracting and Procurement determines that more than 2 violations of subsection (a)(1) of this section have occurred, the beneficiary, certified business enterprise, or certified joint venture shall be:

“(I) Debarred from consideration of award of contracts or subcontracts with the District government for a period of no more than 5 years; and

“(I) Deemed ineligible from consideration for government-assisted projects with the District government for a period of no more than 5 years;

“(2) Has committed a violation of subsection (a)(2) or (a)(3) of this section, the Department shall suspend or revoke the certification of the beneficiary, certified business enterprise, or certified joint venture;

“(3) Has committed a violation of subsection (a)(3), in addition to the penalties set forth in paragraph (2) of this subsection:

“(A) The Attorney General for the District of Columbia may bring a civil action in the Superior Court of the District of Columbia against the beneficiary, certified business enterprise, or certified joint venture and its directors, officers, or principals. An individual, beneficiary, certified business enterprise, or certified joint venture found to be in violation under subsection (a)(3) of this section shall be subject to a civil penalty of the greater of \$100,000 or triple the profit earned by the individual, beneficiary, certified business enterprise, or certified joint venture on all contracts awarded; and

“(B) The Department shall refer the matter to the Office of Contracting and Procurement, including matters involving agencies not subject to the Office of Contracting and Procurement authority pursuant to section 201(b) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.01(b)), for investigation. If the Office of Contracting and Procurement determines there has been a violation of subsection (a)(3) of this section, the beneficiary, certified business enterprise, or certified joint venture shall be:

“(i) Debarred from consideration of award of contracts or subcontracts with the District government for a period of no more than 5 years; and

“(ii) Deemed ineligible from consideration for government-assisted projects with the District government for a period of no more than 5 years;

“(4) Has failed to use commercially reasonable best efforts to meet the subcontracting requirements established in section 2346, the Department, notwithstanding the penalties in paragraph (1) of this subsection, shall assess a civil penalty equal to 10% of the dollar volume of the contract that the beneficiary or certified joint venture was required but failed to subcontract. For the purposes of this paragraph, the term “commercially reasonable best efforts” shall require that the beneficiary or certified joint venture take all actions that a similarly situated beneficiary or certified joint venture would take to accomplish the goal; provided, that the beneficiary or certified joint venture shall not be required to expend amounts that are disproportionate to the benefit being obtained; and

“(5) Has committed a violation of subsection (b) of this section, the Department shall assess a civil penalty of not more than \$5,000.

“(d) The penalties provided for in subsection (c) of this section shall be in addition to any other causes of action or remedies, legal or equitable, that may be available.

“(e)(1)(A) Any person may file with the Department a complaint alleging a violation of this subtitle against an applicant for registration as a certified business enterprise or certified joint venture registered pursuant to this subtitle. The complaint shall be in writing, sworn to by the complainant, and notarized.

“(B) The Department shall establish a fraud hotline for reporting violations of this section.

“(2) The Department, without a hearing, may dismiss a complaint which it determines to be frivolous or otherwise without merit. If the Department dismisses a complaint, the Department shall prepare a report documenting the following:

“(A) A statement detailing the complaint, including the name, address, and telephone number of the person filing the complaint;

“(B) The name of the applicant for registration, the certified business enterprise, or the certified joint venture alleged to be in violation of this section;

“(C) The facts and legal history considered in rendering the determination;
and

“(D) Any other information considered in rendering the determination.

“(3) The Department shall maintain a record listing all complaints, which shall contain the following information:

“(A) The name of the applicant, certified business enterprise, or certified joint venture alleged to be in violation of this subtitle;

“(B) The date the complaint was made to the Department; and

“(C) A description of the complaint.

“(4)(A)(i) If the Department does not determine that a complaint is frivolous or without merit in accordance with paragraph (2) of this subsection, it shall hold a hearing on the complaint within 3 months of the filing of the complaint. The Department shall determine the time and place of the hearing.

“(ii) The Department shall cause to be issued and served on the person, the certified business enterprise, or certified joint venture alleged to have committed the violation, hereafter called the “respondent”, a written notice of the hearing together with a copy of the complaint at least 30 days before the scheduled hearing. Notice shall be served by registered or certified mail, return receipt requested, or by personal service.

“(iii) At the hearing, the respondent shall have the right to appear personally or by a representative and to cross-examine witnesses and to present evidence and witnesses.

“(B) If, after the conclusion of the hearing, the Department determines that the respondent has violated the provisions of this subtitle or regulations issued pursuant to this subtitle, the Department shall issue, and cause to be served on the respondent, a decision and order, accompanied by findings of fact and conclusion of law, and any penalty permitted by subsection (c) of this section.

“(C) The Department may at any time reissue a certificate of registration to any business enterprise or joint venture whose certificate has been revoked. The Department may consider whether the business enterprise or joint venture should be required to submit satisfactory proof that conditions within the company that led to the violation have been corrected.

“(D) The Department shall have the authority to issue subpoenas requiring the attendance of witnesses and to compel the production of records, papers, and other documents.

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-108, effective June 10, 2014
(Delayed Applicability)

20 DCSTAT 3246

“(f) The Department may downgrade the certification of registration of a certified business enterprise that ceases to meet the requirements of a particular category of certification; provided that this subsection shall not apply where a certified business enterprise ceases to qualify as a local business enterprise.

“(g)(1) A certified business enterprise or certified joint venture may appeal to the Office of Administrative Hearings:

“(A) The denial by the Department of an application for certification;

“(B) The revocation or change to a previously issued certification; or

“(C) An enforcement action taken pursuant to this section.

“(2) The Office of Administrative Hearings shall consider the appeal pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.01 *et seq.*), and the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*), and to rules promulgated pursuant to those acts.

“(3) The Office of Administrative Hearings shall conduct such hearing based on the record developed by the Department. The decision of the Office of Administrative Hearings shall be the final administrative decision.”.

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

**Amend
§ 2-218.64**

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

"(a)(1) Excepted as otherwise provided by law, a beneficiary, certified business enterprise, certified joint venture, or an individual may not:

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

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

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

"(iii) Uses the small or certified business enterprise in the performance of the contract; or

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

"(2) A violation of any provision of this subsection is a felony and is subject to a fine not to exceed \$15,000, imprisonment not to exceed 5 years, or both.

"(b)(1) A beneficiary, certified business enterprise, certified joint venture, or an individual shall not make false statements about whether a business is certified by the Department as a certified business enterprise or a certified joint venture.

"(2) A violation of this subsection is a misdemeanor and is subject to a fine not to exceed \$5,000, imprisonment not to exceed one year, or both.”.

(kk) Section 2371 (D.C. Official Code § 2-218.71) is amended as follows:

**Amend
§ 2-218.71**

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-108, effective June 10, 2014
(Delayed Applicability)

20 DCSTAT 3247

(1) Subsection (a) is amended by striking the phrase “Council, the Mayor, and the Commission the” and inserting the phrase “Council and the Mayor the” in its place.

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

(A) Strike the phrase “Department and the Commission shall” and insert the phrase “Department shall” in its place.

(B) Strike the phrase “shall, and the Commission may, transmit” and insert the phrase “shall transmit” in its place.

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

Amend
§ 2-218.72

(1) Designate the existing language as subsection (a).

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

“(b) Within 120 days after the effective date of the Small and Certified Business Enterprise Development and Assistance Amendment Act of 2014, passed on 2nd reading on March 4, 2014 (Enrolled version of Bill 20-181), the Mayor shall issue rules to implement the amended provisions of this act.”.

Sec. 3. Conforming amendments

(a) Section 2(f)(44) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(f)(44)), is repealed.

Amend
§ 1-523.01

(b) Section 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03), is amended by adding a new subsection (b-8) to read as follows:

Amend
§ 2-218.03

“(b-8) In addition to those adjudicated cases listed in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5), (b-6), and (b-7) of this section, this act shall apply to appeals pursuant to section 2363(g) 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 § 2-218.63(g)).”.

Sec. 4. Applicability.

(a) Applications pending as of the effective date of this act shall not be subject to the provisions of this act.

Note,
§ 2-218.63

(b) Except as provided in section 2346(f), contracts existing or pending as of the effective date of this act shall not be affected by the provisions of this act.

Note, all
sections

(c) This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Delayed
applicability

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report 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)).

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 20-108, effective June 10, 2014
(Delayed Applicability)

20 DCSTAT 3248

Sec. 6. 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), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.