

Chapter 8 of Title 27 DCMR

CHAPTER 8 (LOCAL, SMALL AND DISADVANTAGED BUSINESS ENTERPRISES CONTRACTING)

| | |
|-------|--|
| Secs. | |
| 800 | GENERAL PROVISIONS |
| 801 | APPLICATION FOR CERTIFIED BUSINESS ENTERPRISE STATUS |
| 802 | LOCAL BUSINESS ENTERPRISE REQUIREMENTS |
| 803 | DISADVANTAGED BUSINESS ENTERPRISE; ADDITIONAL REQUIREMENTS |
| 804 | RESIDENT-OWNED BUSINESS ENTERPRISE; ADDITIONAL REQUIREMENTS |
| 805 | LONG-TIME RESIDENT BUSINESS ENTERPRISE; ADDITIONAL REQUIREMENTS |
| 806 | DEPARTMENT PROCESS FOR CERTIFIED BUSINESS ENTERPRISE STATUS |
| 807 | DETERMINATION OF ASSET LOCATION |
| 808 | UPGRADE |
| 809 | SCOPE AND TERM OF CERTIFICATE OF REGISTRATION |
| 810 | PROVISIONAL CERTIFICATION |
| 811 | APPLICATION FOR JOINT VENTURES |
| 812 | REPORTING REQUIREMENTS FOR JOINT VENTURES |
| 813 | BID AND PROPOSAL PREFERENCES FOR JOINT VENTURE |
| 814 | CONTINUING ELIGIBILITY AND REPORTING REQUIREMENTS |
| 815 | COMPLIANCE REVIEW |
| 816 | COMPLAINT PROCEDURE |
| 817 | GROUNDINGS FOR REVOCATION |
| 818 | OPPORTUNITY FOR A HEARING: REVOCATION AND DENIAL |
| 819 | ADDITIONAL REQUIREMENTS FOR CERTIFICATION UPON REVOCATION |
| 820 | COMPUTATION OF TIME |
| 821 | SERVICE |
| 822 | INFORMAL DISCOVERY |
| 823 | SUBPOENAS |
| 824 | CONDUCT OF HEARINGS |
| 825 | EVIDENCE AT HEARINGS |
| 826 | DECISIONS |
| 827 | REOPENING AND RECONSIDERATION |
| 828 | JUDICIAL REVIEW |
| 829 | LIST OF CERTIFIED BUSINESS ENTERPRISES |
| 830 | AGENCY EXPENDABLE BUDGETS; CERTIFIED BUSINESS ENTERPRISE EXPENDITURE |
| 831 | AGENCY ALLOCATION LETTER FOR SMALL BUSINESS ENTERPRISES |
| 832 | AGENCY PROCUREMENT PLAN |

| | |
|---------|---|
| 833 | AGENCY PROGRAM REPORTS |
| 834 | AGENCY SET-ASIDE AND PREFERENCE PROGRAM IMPLEMENTATION |
| 835 | AGENCY CERTIFIED BUSINESS ENTERPRISES SUBCONTRACTING |
| 836 | RESERVED |
| 837 | RESERVED |
| 838 | EQUITY AND DEVELOPMENT PARTICIPATION PROGRAM |
| 839 | EQUITY AND DEVELOPMENT PARTICIPATION REQUIREMENTS |
| 840 | EVALUATION OF EQUITY AND DEVELOPMENT PARTICIPATION |
| 841 | RESERVED |
| 842 | CHANGES IN EQUITY AND DEVELOPMENT PARTICIPATION |
| 843 | CLOSING REQUIREMENTS REGARDING EQUITY AND DEVELOPMENT PARTICIPATION |
| 844 | EQUITY AND DEVELOPMENT PARTICIPATION RESTRICTIVE COVENANT |
| 845 | RESERVED |
| 846 | DEPARTMENT ASSISTANCE FOR COVERED PROJECTS |
| 847 | EQUITY OR DEVELOPMENT PARTICIPANT LOSS OF CERTIFICATION |
| 848 | EQUITY AND DEVELOPMENT REPORTS |
| 849-850 | RESERVED |
| 851 | MICROLOAN FUND |
| 852 | NON-IMPAIRMENT OF CONTRACTS AND SOLICITATIONS |
| 899 | DEFINITIONS |

800 GENERAL PROVISIONS

800.1 This chapter is promulgated pursuant to the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 (Act), effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*).

801 APPLICATION FOR CERTIFIED BUSINESS ENTERPRISE STATUS

801.1 An applicant for certification with the Department shall submit a completed application that is signed and sworn to by the applicant, setting forth the basis for certification as a CBE, accompanied by documentation requested by the Department.

801.2 An applicant for certification, along with the application, shall also submit documentation that includes, but is not limited to:

- (a) Business documentation, including articles of incorporation, by-laws, certificates of good standing, stock voting rights, minutes of organizational meetings, partnership agreements, profit sharing agreements, buy-out rights, joint venture agreements, tax returns, and annual reports;

- (b) Stock options or other ownership options which are outstanding, evidence of loans or other debts between owners, evidence of loans or other debts between owners and third parties which are related to the business, and identification of trusts affecting the finances or control of the business;
- (c) Copies of current financial or operating statements, including balance sheets, income statements, statements of retained earnings, and statements of cash flows, being current up to the ninety-day period prior to the application date, along with federal and District of Columbia and/or applicable state tax returns for the past three most recent years;
- (d) Type, quantity, and value of equipment owned;
- (e) Bonding limit, name of bonding company, sources of letters of credit, other sources of capital and other financing, and trade references;
- (f) Experience of firm owners and managers in areas such as supervision; accounting, bookkeeping, and other recordkeeping; use of suppliers; and use of equipment;
- (g) Lease or ownership information for every property at which the applicant maintains an office;
- (h) A list of all employees, including name, home address, and the office to which he or she reports; and
- (i) Any other documentation the Department may require.

801.3 An applicant may also be required to demonstrate compliance with the requirements of the Act, this chapter, and other laws of the District of Columbia. In furtherance of such demonstration, the applicant shall:

- (a) Permit the Department to enter and conduct an on-site inspection of the applicant's business premises;
- (b) Provide the Department, during the on-site inspection, with immediate access to any records or area of the premises that the Department deems necessary to review to determine whether the applicant is in compliance with the Act and these regulations; and
- (c) Provide any other information the Department deems necessary to evidence compliance with the Act and these regulations.

801.4 An applicant currently certified as a CBE seeking an upgrade shall submit to the Department an upgrade application that is signed and sworn to by the applicant and shall provide additional information and/or documentation indicating the

applicant's qualifications for the upgrade, which may include but not be limited to:

- (a) A detailed resume of all individuals that the Department is to consider;
- (b) Transcript from a university or other institution indicating education or training in an area related to the upgrade; and
- (c) Any other information requested by the Department.

802 LOCAL BUSINESS ENTERPRISE REQUIREMENTS

802.1 An applicant for certification as a local business enterprise must demonstrate, *inter alia*, that the principal office of the business enterprise is located in the District of Columbia. To be considered the principal office:

- (a) The applicant must own, or lease for a minimum of 12 months, the office;
- (b) To the extent the applicant owns or leases property located outside of the District of Columbia, the applicant shall have no more employees reporting to or working from any single location outside of the District than employees reporting to or working from the principal office location. The number of employees in each jurisdiction shall be determined by the number of employees for whom the applicant pays unemployment tax in each jurisdiction. If the business enterprise has been in business for less than 4 months, the number of employees in each jurisdiction shall be determined by the number of employees subject to unemployment tax in each jurisdiction; and
- (c) The insignia, signs, printed material, business cards, letterhead, legal documents where the principal office or headquarters is identified, and website, if applicable, must indicate that the office located in the District of Columbia is the principal office or headquarters.

802.2 In determining the principal office for the business enterprise, the Department may also consider:

- (a) The totality of the business activities in which routine and essential business functions occur such as the following:
 - (1) Bookkeeping and other recordkeeping;
 - (2) Payroll maintenance;
 - (3) Receipt of business telephone calls;
 - (4) Receipt of correspondence;

- (5) Storing of books and records; and
- (6) Directing, controlling and coordinating activities and policies by officers, principals and managers; and

(b) The number of vehicles owned by the applicant that are registered in jurisdictions outside of the District of Columbia in comparison to the number of such vehicles registered in the District of Columbia.

802.3 If the business enterprise is owned or operated by an individual or individuals who perform other work functions outside of the business, the Department will consider the time the individual or individuals spend(s) performing duties in the office relative to time spent performing other work functions outside of the business.

803 DISADVANTAGED BUSINESS ENTERPRISE; ADDITIONAL REQUIREMENTS

803.1 An applicant seeking certification as a Disadvantaged Business Enterprise (“DBE”), in addition to satisfying the requirements of a CBE, shall demonstrate to the Department that the individual(s) representing more than fifty percent (50%) of those who own, operate, and control the business enterprise are:

- (a) Socially disadvantaged because the individuals have faced chronic, non-fleeting instances of prejudice or bias without regard to their qualities as individuals over which they have no control due to their identity as members of a group as evidenced by the following:
 - (1) Documentation proving that the individuals seeking socially disadvantaged status as members of a group hold themselves out as members of that group;
 - (2) Documentation proving that the individuals seeking socially disadvantaged status have been isolated from the mainstream of American society in ways not common to business persons generally; and
 - (3) Documentation proving that the individuals seeking socially disadvantaged status have personally suffered social disadvantage through treatment they have experienced; and
- (b) Economically disadvantaged because of diminished opportunities that have precluded these individuals from successfully competing in the open marketplace as evidenced by documentation on the following:
 - (1) The personal financial statement of the individual(s) seeking economically disadvantaged status;

- (2) The financial condition of the business enterprise; and
- (3) The applicant's lack of access to credit and capital as compared to others in the same line of business.

803.2 An applicant seeking DBE certification shall provide the Department with a narrative describing how the owner or owners of more than 50% of the business interests is/are socially and economically disadvantaged as described in this section. The applicant shall also provide the Department with the personal financial statement of the owner or owners claiming to be economically disadvantaged demonstrating that his or her personal net worth, excluding the value of his or her primary residence and the value of his or her ownership interest in the CBE, is less than \$1,000,000.

804 RESIDENT-OWNED BUSINESS ENTERPRISE; ADDITIONAL REQUIREMENTS

804.1 An applicant requesting certification as a resident-owned business enterprise must provide proof of residency, including but not limited to, personal income tax returns, a deed, mortgage, or lease for his or her primary residence, a District of Columbia driver's license or identification card, and utility bills for the residence.

805 LONG-TIME RESIDENT BUSINESS ENTERPRISE

805.1 An applicant requesting certification as a longtime resident business enterprise must provide evidence that the business enterprise has been continuously eligible for certification as a local business enterprise, as defined in section 2331 of the Act, for 20 consecutive years, or a small business enterprise, as defined in section 2332 of the Act, for 15 consecutive years.

805.2 Evidence that the business enterprise has been continuously eligible for certification as a local business enterprise shall include information required by the Department for certification under §§ 801 and 802.

806 DEPARTMENT PROCESS FOR CERTIFIED BUSINESS ENTERPRISE STATUS

806.1 Upon receipt of an application for certification as a CBE, the Director shall conduct a preliminary review of the submission for compliance with the requirements of the Act and this chapter and take one of the following actions:

- (a) If the application is complete, it shall be accepted for review by the Department; or

- (b) If the application is incomplete or lacks the required verification, it shall be returned to the applicant with a notice indicating the need for additional actions or materials in order for the application to be accepted for review.

806.2 The Director, or his/her designee, may conduct site inspections and hold interviews or discussions with an applicant or applicant's representative(s) as part of the review process.

806.3 Upon completion of the Department's review, the Director shall determine the eligibility of the applicant and advise the applicant in writing of the determination regarding its application. The Department shall deny an application if the applicant fails to demonstrate eligibility for certification.

806.4 In addition to the information supplied in the application and documents accompanying the application, the Director may require an applicant to supply or provide access to additional information and documents relevant to the Department's investigation and determination of the applicant's eligibility as a CBE.

806.5 An applicant shall report to the Department any changes that may affect the eligibility for certification of the applicant.

806.6 Upon the denial of an application for certification, the Department shall not accept, review, or evaluate for a period of six (6) months from the date the applicant receives notice of the decision to deny certification:

- (a) Amendments to or new information on the denied application; or
- (b) A new certification application from the applicant, its agent(s), representative(s), or other members of the public on the applicant's behalf.

807 DETERMINATION OF ASSET LOCATION

807.1 In determining whether the applicant has more than fifty percent (50%) of the assets of the business enterprise located in the District, the Department shall consider the location of fixed assets, including property, plant, and equipment, and exclude bank accounts, accounts receivable, and intangible assets, such as goodwill, patents, copyrights, or trademarks.

808 UPGRADE

808.1 An applicant that has been certified by the Department as a CBE in one or more areas may expand the areas in which it is certified by submitting to the Department a completed application for an upgrade. Each application for an upgrade shall comply with the requirements of this chapter and shall be accompanied by documentation indicating the applicant's qualifications,

expertise, and/or resources which justify the upgrade.

- (a) With respect to each category of construction and non-construction services for which an applicant seeks certification, the applicant shall demonstrate that the applicant has the expertise, personnel, facilities, equipment, and experience to perform the services on an on-going basis.
- (b) With respect to SBEs as suppliers of goods and equipment, the applicant shall submit evidence that the applicant is a manufacturer of or regular dealer in such goods.
 - (1) In order to qualify as a manufacturer, an applicant shall own or lease on a regular basis an establishment that produces on the premises the materials, supplies, articles or equipment of the character in which the applicant claims to be a manufacturer; but the term does not include a business which performs only minimal operations on or minimal assembly of the items being produced.
 - (2) In order to qualify as a regular dealer under this section, an applicant shall meet the following minimum eligibility requirements:
 - (A) Maintain an establishment in which materials, supplies, articles, or equipment of the character in which the applicant claims to be a regular dealer are bought, kept in stock, and sold to customers on a recurring basis in the usual course of business; and
 - (B) Demonstrate that its business is an established and on-going entity regularly dealing in the particular materials, supplies, articles, or equipment of the character offered in the District of Columbia.
 - (3) In making the determination whether the applicant is a regular dealer, the Department shall consider the following factors:
 - (A) Whether the applicant has performed the particular services for a client in the course of its business in the one-year period prior to the application date;
 - (B) If the applicant is newly providing this type of service, whether the applicant has made plans and committed resources to performing the particular services for clients; or
 - (C) The customary practice in the industry.

809 SCOPE AND TERM OF CERTIFICATE OF REGISTRATION

- 809.1 A certificate issued to Certified Business Enterprises shall:
- (a) Authorize the CBEs to receive the benefits as outlined in the Act and this chapter on all District government solicitations; and
 - (b) Be effective for a period of two (2) years from the date of issuance, provided that the CBE remains in compliance with the Act and these regulations.
- 809.2 A CBE that was previously certified but the certification has expired shall not be eligible for any benefits provided under the Act or these regulations until such time as the CBE has been recertified.
- 809.3 A CBE shall submit an application for certification at least ninety (90) days prior to the expiration of its registration with the Department. The application shall be signed and sworn to on a form prescribed by the Department and accompanied by documentation and/or other supporting information required by the Department.

810 PROVISIONAL CERTIFICATION

- 810.1 An applicant seeking provisional certification shall submit the following:
- (a) A request in writing to the Department for a provisional certification;
 - (b) A copy of the solicitation or other contract or procurement opportunity indicating the date upon which a response to the solicitation is due; and
 - (c) A completed application, including all supporting documentation.
- 810.2 In considering whether to certify an applicant, the Department shall examine information submitted under § 810.1(b) and (c) and preliminarily verify, based on the documentation and without conducting a site visit, that the applicant complies with the Act and these regulations.
- 810.3 If an applicant that receives a provisional certification is selected for a District of Columbia contract or procurement and the provisional preference points are outcome determinative, the contract or procurement official must immediately inform the Department. The Department shall complete its investigation and site visit to confirm the applicant’s qualifications for certification prior to award. The Department shall inform the District contract or procurement official regarding its final decision before the award.
- 810.4 A provisional certification shall be effective for forty-five (45) business days or until the Department makes a decision regarding the business enterprise under § 810.3, which ever is a shorter period of time.

APPLICATION FOR JOINT VENTURES

811.1

An applicant for certification as a joint venture shall:

- (a) Submit an executed copy of the applicant's joint venture agreement which must:
 - (1) Specify in reasonable detail the purpose of the joint venture, including the specific procurement, solicitation, or project the applicant wishes to be certified to perform;
 - (2) Identify the parties to the joint venture and define their respective obligations, rights, and responsibilities, including the management structure, control of the joint venture, financial contributions, bonding requirements, service and labor contributions, revenue or fees for services or labor, and distribution of profits;
 - (3) Demonstrate that one of the joint venturers is a CBE or an applicant for CBE certification;
 - (4) Provide for the establishment and administration of a separate bank account in the name of the joint venture into which all funds received will be deposited and through which all expenses will be paid, and which requires all withdrawals and deposits to be approved by the CBE member of the joint venture management committee;
 - (5) Contain an itemized description of all major equipment, facilities, and other resources to be furnished by each participant in the joint venture with a detailed schedule of costs;
 - (6) Contain a provision indicating that the CBE's interest in the joint venture shall not be reduced or diluted;
 - (7) Contain a provision indicating that the CBE's financial risk is commensurate with its percentage interest in the joint venture;
 - (8) Contain a provision indicating that the joint venture agreement is the controlling agreement between the parties regarding interest, ownership, control, responsibilities, duties, and functions of the parties and the joint venture agreement shall prevail if there is any conflict between the joint venture agreement and any other agreement between the parties;

- (9) Specify the responsibilities of the parties in at least the areas of negotiations with the owners, subcontract negotiation, contract and subcontract performance; and
 - (10) Indicate that the CBE shall perform services of the joint, receive profits of the joint venture, provide labor hours required of the joint venture, or perform other work for the joint venture as approved by the Department that is at a minimum equal to its percentage of ownership interest in the joint venture.
- (b) Submit additional information that must:
 - (1) Inform the Department of whether the CBE has relinquished its ownership interest in any joint venture within the one-year period prior to the application date; and
 - (2) Demonstrate that each participant in the joint venture has the competence and expertise necessary to perform the type of work in connection with which the applicant wishes to be certified.
 - (c) Submit all other agreements between the parties regarding the operations of the joint venture;
 - (d) Submit the most current audited financial statement for the non-CBE participant;
 - (e) Submit its certified payroll upon request; and
 - (f) Permit the Department to enter and conduct an onsite inspection or re-inspection of the applicant's business premises.

811.2 An application for joint venture certification may be submitted to and reviewed by the Department simultaneously with an application for certification of one or more of the individual venturers as a CBE.

811.3 The Department may deny certification of any joint venture whose joint venture agreement lacks any of the provisions in § 811.1.

811.4 The joint venture shall make its records available to the Department at any time deemed necessary by the Department.

811.5 The Commission may revoke the certification of a joint venture for failure to comply with the Act and these regulations.

811.6 Upon receipt of an application for certification as a joint venture, the Department will follow the process outlined in § 806.

812 REPORTING REQUIREMENTS FOR JOINT VENTURES

- 812.1 A joint venture shall submit to the Department quarterly income statements showing all income or contract receipts and all expenses (including but not limited to, fees for services and labor, salaries of the joint venture principals, and distribution of profits) no later than sixty (60) days after the end of each operating quarter of the calendar year.
- 812.2 A joint venture shall submit to the Department the information contained in § 812.1 and a project-end income statement no later than forty-five (45) days after completion of the contract with a statement of final profit distribution.
- 812.3 Information provided under §§ 812.1 and 812.2 shall be considered commercial or financial information which, if disclosed, could result in substantial harm to the competitive position of the provider of the information and, accordingly, shall be exempt from disclosure under D.C. Official Code § 2-534(a)(1).

813 BID AND PROPOSAL PREFERENCES FOR JOINT VENTURE

- 813.1 Bid and proposal preferences shall be assigned by the Department upon certification of a joint venture as follows:
- (a) For joint ventures in which all venturers are CBEs, the joint venture shall be assigned: the points allotted to the majority CBE; or if there is no majority CBE, then the managing CBE; plus up to four (4) points for any CBE whose percentage of ownership in the joint venture is greater than thirty-five percent (35%) and less than or equal to fifty percent (50%); plus two (2) points for any CBE whose percentage of ownership in the joint venture is greater than twenty percent (20%) and less than or equal to thirty-five percent (35%). The total number of points allotted to the joint venture shall not exceed twelve (12).
 - (b) For joint ventures in which there are non-CBE participant(s), if the percentage of ownership of the CBE(s) in the venture is:
 - (1) More than fifty percent (50%) of the joint venture and the CBE(s) has(have) more than 50% control and collectively receive more than fifty percent (50%) of the profits of the joint venture, the joint venture shall receive the points allotted to the majority CBE;
 - (2) Greater than or equal to thirty-five percent (35%) and less than or equal to fifty percent (50%), the joint venture shall receive up to four (4) points;
 - (3) Greater than or equal to twenty percent (20%) and less than or equal to thirty-five percent (35%), the joint venture shall receive two (2) points; or

(4) Less than twenty percent (20%), the joint venture shall receive zero (0) points.

(c) The percentage of ownership of each venturer shall be determined based on, but not limited to, the defined financial contribution and benefit, the work performed, the allocation of profits and fees, management control, and the labor contribution.

814 CONTINUING ELIGIBILITY AND REPORTING REQUIREMENTS

814.1 During the term of a certificate, a CBE shall report to the Department any change of address, change of ownership, or other change that may affect the continued eligibility of the CBE within thirty (30) days of the date of the change.

814.2 Upon learning of any changes, the Department may request documentation regarding compliance with the Act and these regulations and conduct onsite inspections.

815 COMPLIANCE REVIEW

815.1 The Commission or the Department may conduct periodic compliance reviews of CBEs to assure their continued compliance with the eligibility requirements of the Act and these regulations.

815.2 In conducting a compliance review, the Commission or the Department may perform site visits, review documents, and interview witnesses to determine the continued eligibility of a CBE.

815.3 Where a CBE is found to be non-compliant, a notice shall be issued to the CBE within 30 days which shall specify:

- (a) The nature of the non-compliance;
- (b) The corrective action that must be taken; and
- (c) The date by which the deficiencies must be corrected.

815.4 If the CBE fails to take corrective action within 30 days of the notice, the Department may institute revocation proceedings.

816 COMPLAINT PROCEDURE

816.1 Any person may file a complaint with the Commission, pursuant to 2363(b)(1) of the Act, by submitting a completed notarized complaint form, provided by the Department, to the Department identifying the nature of the complaint and swearing to the truth of the allegations in the complaint.

816.2 The Department will forward the complaint to the Commission for review. The Commission shall take up the complaint at its next scheduled meeting and determine the action to be taken as outlined in the Act.

816.3 If the Commission determines that a complaint is not frivolous or otherwise without merit, it shall instruct the Department to investigate the facts surrounding the allegations, including reviewing the file and all paperwork contained therein, interviewing witnesses, or any other reasonable action necessary given the nature of the allegations in the complaint.

816.4 Within 45 days of the Commission's determination and instruction to the Department to investigate, the Department shall provide the results of the investigation to the Commission.

817 GROUND FOR REVOCATION

817.1 Upon a finding that the CBE is engaged in conduct set forth in section 2363 of the Act, the Commission may revoke the certificate of registration for the CBE under procedures set forth in section 2363 of the Act.

817.2 In considering whether the registration of certification of a CBE should be revoked, in addition to any other consideration, the Commission shall consider whether any member of the CBE has been convicted of a crime that bears directly on the fitness of the CBE to participate in programs established pursuant to the Act and these regulations.

817.3 Upon revocation, the Department shall not accept, review, or evaluate for a period of twelve (12) months from the date the applicant receives notice of the decision to revoke:

- (a) Amendments to or new information on the revoked certification; or
- (b) A new certification application from the applicant, its agent(s), representative(s), or other members of the public on the applicant's behalf.

818 OPPORTUNITY FOR A HEARING: REVOCATION AND DENIAL

818.1 A CBE may request a hearing in response to any action taken by the Commission to revoke its certification.

818.2 The procedures described in §§ 818.2 through 818.6 of these regulations shall apply to a CBE when the certificate of registration is revoked. The Commission shall give the CBE written notice of an opportunity for a hearing prior to the revocation of its registration. The Commission shall serve on the CBE such notice, which shall set forth the following:

- (a) The action;
- (b) The basis for the action in the Act or this chapter;
- (c) A brief summary of the deficiencies or factual allegations in support of the action; and
- (d) A statement which informs the CBE that the Commission's decision will be final unless the CBE:
 - (1) Submits a written request for a hearing in the manner provided in the notice within ten (10) days after service of the notice; and
 - (2) Appears at the hearing.

818.3 A CBE shall request a hearing in writing and serve the request on the Department within ten (10) days of the service of the notice for revocation of registration. A request for a hearing timely received by the Department shall stay the revocation of the certificate of registration until resolution of the matter.

818.4 The Commission shall, within twenty (20) days following receipt of a request for a hearing by a CBE, notify the CBE in writing of the date, time, and place of the hearing as well as the rights of the CBE at the hearing. The notice shall be provided at least thirty (30) days prior to the hearing, unless the Commission, the Department, and the CBE agree to an earlier hearing date.

818.5 A CBE entitled to a hearing has the following rights:

- (a) To be represented by an attorney;
- (b) To present relevant evidence, including the testimony of witnesses and the submission of documents;
- (c) To rebut all opposing evidence, including the cross-examination of all opposing witnesses on any matter relevant to the issues; and
- (d) To have subpoenas issued to compel the attendance of witnesses and the production of relevant documents.

818.6 If a CBE does not timely respond to a notice or appear at the scheduled hearing, the Commission's revocation action shall be final.

818.7 The procedures described in §§ 818.7 through 818.11 of these regulations shall apply to an applicant for certification whose certification application has been denied. The Department shall serve written notice of the denial on the applicant, which shall include the following:

- (a) The basis for the denial in the Act or these regulations;
- (b) A brief summary of the deficiencies or factual allegations in support of the action; and
- (c) A statement which informs the applicant that he or she may appeal the Department's decision by submitting a written request to the Commission for a hearing within twenty (20) days after service of the notice, along with a written response addressing the basis for the denial.

818.8 The Commission shall deny the request for the appeal if the applicant fails to timely respond to the Department's notice or fails to respond with sufficient specificity for the Commission to determine that there is a genuine issue of material fact that is in dispute or an interpretation of law that needs to be addressed by the Commission.

818.9 The Commission shall notify the applicant of his or her rights, as described in § 818.5, and of the date, time, and place of the hearing.

818.10 An applicant is entitled to the rights in § 818.5 for a hearing on the denial of certification by the Department.

818.11 Any decision issued by the Commission will be final for the purposes of judicial review in accordance with section 828.

819 ADDITIONAL REQUIREMENTS FOR CERTIFICATION UPON REVOCATION

819.1 An applicant whose certification was revoked:

- (a) May submit an application and all required supporting documentation as required by this chapter;
- (b) Shall demonstrate compliance with the requirements of the Act and this chapter; and
- (c) Shall satisfy the requirements under § 819.2.

819.2 An applicant for certification after revocation may be required to demonstrate fitness to be issued a certificate by submitting evidence satisfactory to the Department that the applicant has the requisite business integrity, qualifications, financial responsibility and resources, competency, and knowledge of District and federal laws necessary to resume doing business with the District government as a CBE, and that the applicant's contracting with the District government will not be detrimental to the public interest or the integrity of these programs.

819.3 In making determinations for certification after revocation, the Department shall consider, among other factors, the following:

- (a) The nature and circumstances of the violation for which the applicant's certification was revoked;
- (b) The conduct of the applicant and its participants since the revocation, including the steps taken to remedy the prior violation and prevent future violations; and
- (c) The present character of the applicant or its participants.

820 COMPUTATION OF TIME

820.1 In computing any period of time specified in this chapter, the day of the act, event, or default shall not be counted, and the last day of the period shall be counted unless it is not a business day, in which event the time period shall continue until the next business day. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. "Legal holidays" shall include those holidays as defined in section 899 of Title 27.

820.2 Where the Department or a respondent to an action pursuant to this chapter has the right or is required to perform some act within a specified period of time, and that act is completed by mail, three (3) days shall be added to the prescribed period.

821 SERVICE

821.1 Documentation that is required by this chapter to be served on an applicant or a respondent shall be served at the last known address of the applicant or respondent on file with the Department, or any representative thereof.

821.2 A document that is required by this chapter to be served on the Assistant Attorney General of record in the matter shall be served at the address on file with the Department.

821.3 Service under this chapter, unless indicated otherwise, shall be effected by:

- (a) Personal delivery;
- (b) Use of a process server;
- (c) Certified or registered mail, return receipt requested; or
- (d) Electronic mail, provided, that all parties consent in writing to service in this manner.

822 **INFORMAL DISCOVERY**

822.1 The applicant or respondent shall consult with the Department, through the Office of the Attorney General, to seek informal discovery prior to requesting a subpoena. The Commission shall not accept a motion or a request for a subpoena unless the applicant or respondent certifies in writing that he has made a bona fide attempt to secure the requested documents from the Office of the Attorney General on a voluntary basis and that the Office of the Attorney General has refused to provide the documentation.

823 **SUBPOENAS**

823.1 The Commission may upon its own motion, or upon the request of the applicant or respondent, the Department, or the Assistant Attorney General of record, issue a subpoena requiring:

- (a) The attendance and testimony of witnesses;
- (b) The production of evidence, including, but not limited to books, records, correspondence, or documents in the possession or under the control of the person subpoenaed; and
- (c) Access to evidence for the purpose of examination and copying.

823.2 The issuance and manner of service of a subpoena shall be as prescribed by the Civil Rules of the District of Columbia Superior Court.

823.3 The form of a subpoena may be prescribed by the Commission and subscribed by the Chairperson. A subpoena shall state the name and address of its issuer; identify the evidence or person subpoenaed; the person to whom and the place, date, and time at which it is returnable; the nature of the evidence which is to be examined or copied; and the date and time when access is requested. A subpoena shall be returnable to the Chairperson of the Commission.

823.4 Upon failure of any person to comply with a subpoena issued under this section, the Commission may seek enforcement of the subpoena through the District of Columbia Superior Court.

824 **CONDUCT OF HEARINGS**

824.1 Commission hearings shall be open to the public.

824.2 The Commission may exclude or order the removal of any participant in a hearing who becomes disruptive to the hearing process.

824.3 The Commission may bar a participant who has been excluded or removed from a hearing from participation in future hearings.

824.4 The Commission may continue a hearing if an applicant or a respondent, or a representative thereof, has been excluded or removed from the hearing in order to provide the respondent with an opportunity to obtain another representative, unless the applicant or respondent expressly waives a continuance.

824.5 Upon the request of either party, the Commission shall sequester witnesses who may testify at the hearing.

825 EVIDENCE AT HEARINGS

825.1 In a proceeding before the Commission under this chapter, each party shall have the right to:

- (a) Present in person, or by counsel, that party's case or defense, including oral and documentary evidence;
- (b) Submit rebuttal evidence; and
- (c) Cross-examine opposing witnesses.

825.2 For documentary evidence to be admitted at a proceeding before the Commission, it shall be submitted to the Commission at least five (5) days prior to the hearing, unless otherwise allowed by the Commission.

825.3 Testimonial evidence received at Commission hearings shall be under oath or affirmation.

825.4 The Commission shall exclude irrelevant, immaterial, or unduly repetitious evidence.

825.5 The Commission may take official notice of the following:

- (a) The laws of the District of Columbia, the United States, and any state or jurisdiction of the United States; or
- (b) Any fact that is not subject to reasonable dispute because it is generally known within the District of Columbia or is capable of accurate and ready determination by resorting to reliable sources.

825.6 In an appeal of the Department's decision to deny an applicant for certification, the burden of proof is on the applicant to establish that he or she is eligible for certification by a preponderance of the evidence.

825.7 In an action to revoke the respondent's certificate of registration, the burden of proof is on the Department to establish by a preponderance of the evidence the basis for the revocation.

826 DECISIONS

826.1 The Commission shall issue a decision in writing no later than ninety (90) days after a hearing record is closed.

826.2 A decision of the Commission that is adverse to an applicant or respondent shall contain the following:

- (a) Findings of fact;
- (b) Conclusions of law;
- (c) An order; and
- (d) A statement informing the applicant or respondent of the right to have the decision reviewed by the District of Columbia Court of Appeals and the time within which a petition for judicial review is required to be submitted by the rules of that Court.

826.3 The Commission shall serve a copy of the decision on the applicant or respondent and the Assistant Attorney General of record in the matter within ten (10) days of the date the Commission issues the decision.

826.4 If a Commission decision is wholly or partially based on official notice of a material fact that is not on the record, the applicant or respondent and the Assistant Attorney General of record in the matter may oppose the taking of official notice in a motion for reconsideration submitted to the Commission.

826.5 The Commission's decision may modify the period of time which bars a submission of an application or respondent for certification.

826.6 A respondent who has been denied the renewal of a certificate or whose certificate has been revoked shall not be eligible to receive any preferences for being a CBE or be awarded any SBE set-aside contracts.

827 REOPENING AND RECONSIDERATION

827.1 An applicant or respondent may file a motion for reconsideration with the Commission, based on new evidence, misapplication of law, or misstatement of a material fact within ten (10) days after the date on which the applicant or respondent was served with the Commission's decision.

- 827.2 The motion for reconsideration shall be in writing and shall state the following:
- (a) The matters of record alleged to have been erroneously decided;
 - (b) The grounds relied upon; and
 - (c) The relief sought.
- 827.3 If a motion under this section is based wholly or partially on new evidence, the new evidence or arguments shall be set forth in an affidavit which verifies that the petitioner could not with due diligence have become aware of the new evidence prior to the Commission hearing.
- 827.4 The government may file a response to a motion to reconsider and the Commission may decide a motion to reconsider without a hearing.
- 827.5 The Commission may reopen a hearing where an applicant or respondent has failed to appear at a scheduled hearing, provided that the applicant or respondent submits a motion in writing setting forth good cause for the applicant's or respondent's failure to appear. The failure to report a change of address pursuant to this chapter does not constitute good cause.
- 827.6 A motion to reopen a hearing shall be filed within ten (10) days of the date of the hearing.
- 827.7 Neither the submission nor the granting of a motion under this section shall operate as a stay of a decision unless so ordered by the Commission.
- 827.8 The failure of the Commission to issue an order in response to a motion under this section within thirty (30) days of the submission of the motion shall constitute a denial of the motion.

828 JUDICIAL REVIEW

- 828.1 A respondent aggrieved by a final decision of the Commission after a hearing on the matter may seek review of the decision by the District of Columbia Court of Appeals pursuant to section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-510).

829 LIST OF CERTIFIED BUSINESS ENTERPRISES

- 829.1 The Department shall establish and maintain a centralized list of CBEs.
- 829.2 The Department's centralized list of CBEs shall set forth the name of each CBE, contact information for each CBE, the CBE's certification categories, the

procurement categories along with the names of the CBEs certified in each procurement category, and the expiration date of the CBE's registration.

830 AGENCY EXPENDABLE BUDGETS; SMALL BUSINESS ENTERPRISE EXPENDITURE

- 830.1 The expendable budget of each agency, including an agency that contracts or procures in whole or in part through the Office of Contracting and Procurement, as defined in section 2302 of the Act, shall include the total budget of the agency, reduced by funding sources, object classes, objects, and other items identified by the agency and approved by the Director of the Department of Small and Local Business Development.
- 830.2 Sixty (60) days prior to the beginning of each fiscal year, the Department shall provide each agency with a list of the comptroller object codes that shall be excluded from the agency's appropriated budget.
- 830.3 No later than thirty (30) days prior to the beginning of each fiscal year, each agency shall provide the dollar amount in each comptroller object code along with the amount of the total appropriated budget.
- 830.4 No later than thirty (30) days prior to the beginning of each fiscal year, each agency may request special exceptions under other comptroller object codes not included in the list provided by the Department for exclusion from the amount of the total appropriated budget for the agency. If so requested, the agency must provide the comptroller source group, comptroller object code, a specific description of the expenditure, vendor name, and the dollar amount in each other comptroller object code.
- 830.5 If an agency receives unanticipated funding, experiences a reduction in funding, or experiences any other change in circumstances that affects its expendable budget or special exceptions, then the agency shall communicate that change to the Department in writing and the Department shall adjust accordingly the expendable budget or special exceptions of the agency.
- 830.6 The Department shall approve the special exceptions under subsection 830.4 if no Small Business Enterprises can provide the required goods or services, the expenditure cannot be made to Small Business Enterprises because the goods or services are proprietary, the line item is not for goods or services, there are federal or other restrictions on how the funds may be expended, or the goods or services must be provided by an organization not certified by the Department.
- 830.7 Only budget items approved by the Department as special exceptions shall be excluded from the agency's expendable budget.

830.8 The Department shall inform each agency of the agency's projected expendable budget and its projected goal under section 2341 of the Act and provide to Council information on each agency's total budget, exclusion from the agency's total budget by comptroller object code, each agency's expendable budget, and the projected goal for each agency under section 2341 of the Act.

831 AGENCY ALLOCATION LETTER FOR SMALL BUSINESS ENTERPRISES

831.1 The Department shall provide an agency allocation letter to each agency two (2) months prior to the beginning of each fiscal year that details the following:

- (a) The name of the agency;
- (b) The fiscal year for which the agency is submitting the allocation letter;
- (c) The budget of the agency approved by Council for the fiscal year;
- (d) The expendable budget of the agency for the fiscal year; and
- (e) The agency's SBE expected minimum expenditures for the fiscal year.

832 AGENCY PROCUREMENT PLAN

832.1 One month prior to the beginning of each fiscal year, each agency shall submit to the Department the agency's procurement plan as described in section 832.5 for the fiscal year, on a form designated by the Department.

832.2 Failure of an agency to submit, timely or otherwise, a procurement plan for the fiscal year shall:

- (a) Be reported to the City Administrator within 30 days after the start of the fiscal year; and
- (b) Require the agency to request written authorization from the Department to place any solicitation, including but not limited to, Requests for Proposals ("RFPs"), Invitations for Bids ("IFBs"), Requests for Qualifications ("RFQs"), and Calls for Expressions of Interest, on the open market until the plan is filed.

832.3 The report of the failure of an agency to submit a procurement plan for the fiscal year, an increase in the agency's set-aside, or the failure of the Department to provide an agency allocation letter shall not eliminate the requirement for the agency to submit a procurement plan to the Department.

832.4 The Director may consider the quarterly reports submitted by the agency for the previous fiscal year in determining the increased set-aside for the agency.

- 832.5 An agency procurement plan shall specifically set forth the following information for the fiscal year covered by the plan:
- (a) Contracts or procurements that the agency intends to award;
 - (b) Contracts or procurements that the agency has set-aside for SBEs;
 - (c) A description of the contract or procurement;
 - (d) Whether the contract or procurement is a new or existing contract or procurement;
 - (e) The anticipated start and end date for each procurement; and
 - (d) Particular dollar amounts relating to the procurements specified in each of the above paragraphs of this subsection.
- 832.6 If an agency cannot include with its procurement plan all of the information required by this section, it shall submit with its plan a statement and supporting documentation which establishes good cause for the failure, as well as a request for an extension of time for submission of the required information.
- 832.7 If an agency's procurement plan sets forth SBE expenditures pursuant to paragraphs 832.5(f) and (g) that are below the required program goals set forth in section 2341 of the Act, the agency shall submit with its plan a request for an adjustment of program goals and supporting documentation which establishes good cause for the requested adjustment.
- 832.8 The Department shall notify an agency in writing of its approval or rejection of an agency's procurement plan within two months of its receipt of the plan.
- 832.9 The Department shall include in any notification of rejection of an agency's procurement plan the following:
- (a) Deficiencies in the plan and a requirement that the deficiencies be remedied within a stated time period;
 - (b) Information that the failure of the agency to comply with the notice may result in Department enforcement action pursuant to section 2352 of the Act;
 - (c) Requirements that the agency submit supporting documentation relating to the required elements of the plan as appropriate; and
 - (d) Recommendations for correcting the deficiencies in the plan, including attendance at meetings with the Department.

833 AGENCY PROGRAM REPORTS

- 833.1 Quarterly reporting periods are as follows: October 1 through December 31, January 1 through March 31, April 1 through June 30, and July 1 through September 30.
- 833.2 Each agency shall submit quarterly reports on Department forms within thirty (30) days after the end of each quarter.
- 833.3 If an agency cannot include with a quarterly report all the information required by the Act, it shall submit with the report a statement and supporting documentation which establishes good cause for the failure as well as the manner and time in which the agency will submit the required information.
- 833.4 If an agency's quarterly report indicates that the agency is not currently meeting its SBE contracting and procuring requirements under section 2341 of the Act and its procurement plan, the agency shall submit with its report:
 - (a) The explanation for the contracting shortfall; and
 - (b) The specific steps it will take to remedy the shortfall, along with supporting documentation.
- 833.5 The Department shall notify an agency in writing of any deficiencies in the agency's quarterly report within thirty (30) days of its receipt of the report.
- 833.6 If an agency's quarterly report contains deficiencies, the Department's notification under § 833.5:
 - (a) Shall identify the deficiencies in the report and require that the deficiencies be remedied within a stated time period;
 - (b) May require that the agency submit supporting documentation relating to the required elements of the report; and
 - (c) May include recommendations concerning how best to remedy the deficiencies in the report, including attendance at meetings with the Department.

834 AGENCY SET-ASIDE AND PREFERENCE PROGRAM IMPLEMENTATION

- 834.1 When an entire solicitation has been placed in the SBE set-aside program, the solicitation shall:

- (a) State that it is a set-aside for certified small business enterprise offerors under the provisions of the Act; and
- (b) Require that responses include a copy of the SBE's letter of certification.

834.2 Once a solicitation has been placed in the SBE set-aside market as required by sections 2344 and 2345 of the Act, the agency shall not remove it from the set-aside market unless:

- (a) At least one attempt to solicit bids or proposals for the procurement in the SBE set-aside market has failed to produce a responsive bid or proposal;
- (b) There is no SBE that qualifies for the procurement;
- (c) The prices of the bids or proposals are 12% or more above the likely price on the open market; or
- (d) The removal is authorized by law.

834.3 Each agency shall provide to the Department, if requested, the following types of procurement records:

- (a) Small purchase sources;
- (b) Term contracts;
- (c) Blanket purchases orders;
- (d) Repetitive or recurring procurement; and
- (e) GSA Schedule procurement.

834.4 If an agency with independent contracting authority or the Office of Contracting and Procurement ("OCP") intends to place a solicitation on the open market for a contract or procurement of \$100,000 or less, the agency or OCP shall provide a written notice to the Department as soon as practicable that the agency intends to exclude the contract or procurement from its set-aside program. The written notice shall include, at a minimum, a description of:

- (a) The steps taken to identify SBEs that may be able to provide the goods or services; and
- (b) The information contained in the written determination(s) required under section 2344 or 2345 of the Act.

835 AGENCY CERTIFIED BUSINESS ENTERPRISES SUBCONTRACTING

835.1 When determining whether a prime contractor has willfully breached a subcontracting plan under section 2348 of the Act, the Department shall consider:

- (a) Notification of the Department by the prime contractor prior to the breach;
- (b) The prime contractor's efforts at replacing the subcontractor with another subcontractor certified by the Department in the same categories;
- (c) Changes in the business operation or certification of the subcontractor;
- (d) Changes in economic conditions from the time the plan was developed; and
- (e) The extent of the breach.

835.2 Notwithstanding § 835.2, failure to achieve at least ninety percent (90%) of the identified subcontracting expenditure shall create a rebuttable presumption of a willful breach.

835.3 Contracting officers seeking a waiver or modification of the subcontracting requirements of sections 2346 and 2350 of the Act shall submit to the Director a written request detailing the reasons that support waiver or modification, including the efforts of the contracting officer to secure CBE involvement, particularly SBEs. Such a request shall be submitted prior to the acceptance of bids or proposals.

836 RESERVED

837 RESERVED

838 EQUITY AND DEVELOPMENT PARTICIPATION

838.1 Local, Small, and Disadvantaged Business Enterprises ("LSDBEs") shall receive a minimum of 20% Equity Participation and a minimum of 20% Development Participation in any Covered Project.

838.2 For the LSDBE to be a Development Participant, an entity, including a special purpose entity, must be certified by the Department under the Act as an LSDBE.

838.3 For the LSDBE to be an Equity Participant, an entity, including a special purpose entity, must be certified by the Department under the Act as an LSDBE.

838.4 As appropriate, the Director may provide guidance to District agencies, business enterprises, and interested members of the public regarding the equity and development participation requirements.

- 838.5 An Agency considering a solicitation for a Covered Project may contact the Department as needed to coordinate outreach efforts to Equity Participants and Development Participants and provide the Department with the specific details regarding the Covered Project.
- 838.6 With respect to solicitations, including but not limited to Requests for Proposals (“RFPs”), Invitations for Bids (“IFBs”), Requests for Qualifications (“RFQs”), and Calls for Expressions of Interest, issued by District agencies in connection with Covered Projects. The solicitation shall include the following:
- (a) The Equity Participation and Development Participation requirements and an agreement that the party responding to the solicitation agrees to satisfy the Equity Participation and Development Participation requirements;
 - (b) A statement that the District is interested in Component Development by Development Participant(s) where feasible and consistent with the District’s goals with respect to the project for which the solicitation is issued; and
 - (c) A statement that the Equity Participation and Development Participation requirements are only minimum levels, and the District is interested in Covered Projects that exceed these minimum requirements.
- 838.7 The Director, or the Director’s designee, may review responses to solicitations for all Covered Projects to ensure that the responses are consistent with the equity and development participation requirements.
- 838.8 At least three (3) business days prior to the issuance of any request for proposals, request for qualifications, calls for expressions of interest or other similar documents relating to any Covered Project, the District agency involved shall notify the Director of its intent to issue such a document and prior to issuance provide the Director with an electronic copy of the document. The Department may advertise such EDP Program opportunities on its website after the solicitation is issued.
- 839 EQUITY AND DEVELOPMENT PARTICIPATION REQUIREMENTS**
- 839.1 The Equity Participant(s) shall receive a return on investment in a Covered Project that is *pari passu* with all other sources of Sponsor Equity.
- 839.2 The Equity Participation shall be maintained for the duration of the Covered Project. Culmination of the Covered Project shall be measure by the issuance of a certificate of occupancy, or multiple certificates of occupancies, as determined by the Department.

- 839.3 The Equity Participant(s) shall not bear financial or execution requirements that are disproportionate with its equity position in the Covered Project.
- 839.4 The Equity Participant(s) and/or Development Participant(s) shall have management control and approval rights in line with their equity position(s).
- 839.5 The Equity Participant(s) and/or Development Participant(s) shall be consistently included in representing the entity to the public (e.g., through joint naming, advertising, branding, and etc.).

840 EVALUATION OF EQUITY AND DEVELOPMENT PARTICIPATION

- 840.1 When evaluating the percentage of Equity Participation by an Equity Participant in a Covered Project, the Department shall take the following into account:
- (a) The financing plan for the project;
 - (b) The amount and nature of leverage in the form of debt or other sources incurred by the Sponsor Entity;
 - (c) The amount of institutional equity being provided for the benefit of the Sponsor Entity;
 - (d) The amount of mezzanine financing being provided for the benefit of the Sponsor Entity, including the roles and rights of the mezzanine financier;
 - (e) The total amount of equity required from the Sponsor Entity;
 - (f) The percentage of the Sponsor Entity's equity being provided by an Equity Participant and the terms thereof;
 - (g) The percentage of institutional equity being provided by an Equity Participant;
 - (h) Provisions in funding documents related to the sale, dilution, or conversion of equity interests prior to project completion that may result in a change in the amount of the Equity Participant's Equity Participation and ownership;
 - (i) Whether Equity Participants are treated similarly, with respect to the determination of returns, as compared to other entities with similar risk profiles on a Covered Project; and
 - (j) The amount of sweat equity and the categories in which the Equity Participant(s) is(are) certified.

840.2 When evaluating the percentage of Development Participation by a Development Participant in a Covered Project, the Department shall take the following into account:

- (a) The overall project scope and total development cost;
- (b) Whether development fees are shared and if so, what percentage is shared with the Development Participant and how that percentage is calculated; and
- (c) Whether development services have been divided among members of the development team and, if so, what services are being provided by the Development Participant and what percentage of the development work is represented by that division.

841 RESERVED

842 CHANGES IN EQUITY AND DEVELOPMENT PARTICIPATION

842.1 Once the selection of an Equity Participant or a Development Participant to participate in a Covered Project has been approved by the Department, there can be no change in the Equity Participant or Development Participant and no dilution of a participant's Equity Participation or Development Participation without the express written consent of the Director.

842.2 Once the Department has approved the determination of returns for Equity Participants in a Covered Project, the determination of returns for Equity Participants shall not be materially altered or adjusted from that previously presented to the Department without the Director's express written consent.

843 CLOSING REQUIREMENTS REGARDING EQUITY AND DEVELOPMENT PARTICIPATION

843.1 The closing documents executed in connection with any Covered Project shall contain provisions indicating there can be no change of the Equity Participant or Development Participant, no dilution of a participant's Equity Participation or Development Participation, and no material alteration of the determination of returns for the Equity Participant without the Director's express written consent.

843.2 The closing documents shall expressly covenant and agree that the Department shall have third-party beneficiary rights to enforce the provisions, for and in its own right.

843.3 The agreements and covenants in the closing documents shall run in favor of the Department for the entire period during which the agreements and covenants shall be in force and effect, without regard to whether the District was or is an owner of

any land or interest therein or in favor of which the agreements and covenants relate.

843.4 The Department shall have the right, in the event of a breach of the agreement or covenant in the closing documents, to exercise all the rights and remedies, and to maintain any actions or suits, at law or in equity, or other proceedings to enforce the curing of the breach of agreement or covenant to which it may be entitled.

844 EQUITY AND DEVELOPMENT PARTICIPATION RESTRICTIVE COVENANT

844.1 If there is a transfer of title to any District-owned land that will become part of a Covered Project, the Department may require that a restrictive covenant be filed on that land requiring compliance with the Equity Participation and Development Participation requirements of the Act.

844.2 A restrictive covenant requiring compliance with the Equity Participation and Development Participation shall run with the land and otherwise remain in effect until released by the Department following the completion of construction of and the issuance of certificates of occupancy for the Covered Project. A release of the restrictive covenant shall be executed by the Department only after either the Developer and the Equity and Development Participants submit a sworn certification together with documentation demonstrating to the satisfaction of the Department that, or the Department otherwise determines that:

- (a) The Development Participants received at least 20% of the development fees for the Covered Project based on the final development expenditures for such Covered Project; and
- (b) The Equity Participant has maintained at least a 20% ownership interest in the Sponsor Entity in the Covered Project throughout its development.

845 RESERVED

846 DEPARTMENT ASSISTANCE FOR COVERED PROJECTS

846.1 If a District agency receives no response to develop a Covered Project from a Qualified Responder, it may contact the Director for further assistance. The Director may:

- (a) Assist the District agency to restructure the Covered Project to increase the likelihood of finding Qualified Responders (for example, determining whether the Covered Project could be separated into components such that one or more portions could be developed by a Development Participant as a Component Developer);

- (b) Assist the District agency and its respondents who were not Qualified Respondents in identifying qualified Equity Participants and Development Participants; or
- (c) Evaluate a request by the District agency for a modification of some or all of the EDP Program requirements.

847 EQUITY OR DEVELOPMENT PARTICIPANT LOSS OF CERTIFICATION

847.1 If an Equity Participant or Development Participant loses its LSDBE certification during the course of a Covered Project resulting in less than the minimum Equity Participation or Development Participation requirement under Section 2349a of the Act, the Department shall evaluate on a case-by-case basis whether:

- (a) Another Equity Participant or Development Participant can participate in the Covered Project without causing any detriment to the overall project or the Master Developer, so that the 20% Equity Participation and 20% Development Participation requirements are met;
- (b) To modify or waive some or all of the EDP Program requirements for the Covered Project; or
- (c) After assessing the circumstances, some other appropriate action is warranted.

848 EQUITY AND DEVELOPMENT REPORTS

848.1 Developers must submit quarterly reports to the Department regarding the fulfillment of the EDP Program requirements on such forms as determined by the Department. The reports shall include information regarding:

- (a) Changes in ownership interest of the owners/partners;
- (b) Additions or deletions of an owner/partner;
- (c) Changes in the legal status of an existing owner/partner;
- (d) Changes in the percentage of revenue distribution to an owner/partner;
- (e) A description of team member activities; and
- (f) The amount of development fees paid to each team member, participant, partner, or owner.

848.2 Information provided under § 848.1 shall be considered commercial or financial

information which could result in substantial harm if disclosed to the competitive position of the provider of the information and shall be exempt from disclosure under D.C. Official Code § 2-534(a)(1).

849-850 RESERVED

851 MICROLOAN FUND

851.1 The Department shall implement and administer the Microloan Fund (“Microloan Fund”) established pursuant to section 2375(b) of the Act. The Microloan Fund is a financing tool designed to sustain and/or increase the level of business activity, job creation and retention, and provide access to capital for the sustainability and expansion of designated categories of CBEs.

851.2 Funding issued from the Microloan Fund may be structured as a grant, senior or subordinated secured loan, or as a loan guarantee. The Department may, in its discretion, outsource the loan underwriting process to a qualified non-profit organization or financial institution.

851.3 To be eligible for funding from the Microloan Fund a recipient must:

- (a) Be certified pursuant to the Act as an SBE and a DBE;
- (b) Be independently owned, operated, and controlled;
- (c) Be in good standing with the Department of Consumer and Regulatory Affairs; and
- (d) Have a Certificate of Clean Hands from the Office of Tax and Revenue.

851.4 The following are ineligible to receive funding from the Microloan Fund:

- (a) Businesses that have operated for less than two (2) years;
- (b) Street vendors; and
- (c) Regional or national franchise businesses.

851.5 The Department shall give preference for financial assistance to (i) eligible recipients that are certified pursuant to the Act as a Resident Owned Business, and (ii) eligible recipients that serve or whose principal office is located in a DC Main Streets corridor, a Neighborhood Investment Program Target Area, or another area identified by the Mayor for economic development or commercial revitalization. The Department shall maintain and make available a list of such eligible target areas. The preference may be in the form of higher funding amounts, different rates or terms for funding, or such other form as the

Department may determine in its discretion best serves the goals and purposes of the Microloan Fund.

851.6 An eligible recipient may use proceeds from the Microloan Fund for the following purposes:

- (a) Working capital;
- (b) Inventory;
- (c) Acquisition or repair of furniture, fixtures, machinery, or equipment;
- (d) Ecologically-efficient improvements;
- (e) Contract cash flow assistance;
- (f) Purchase or implementation of financial management systems (e.g., point of sale, upgrades to meet prime contractor standards);
- (g) Leasehold improvements; or
- (h) Property renovation.

851.7 The Department shall develop underwriting criteria and rates and terms for funding from the Microloan Fund. Such criteria shall include, at minimum, the maximum funding amount(s), interest rate(s) and any applicable deferral periods, term limits, security or collateral requirements and fees and costs. The Department shall include the underwriting criteria with the application and/or publish the underwriting criteria on its website. The Department may modify the underwriting criteria as necessary to account for changes in budgeted amounts of the Microloan Fund or changing needs of the local business community. The Department may work with a qualified non-profit organization and/or financial institution to develop and/or modify as necessary the underwriting criteria.

851.8 An eligible recipient seeking funding from the Microloan Fund shall submit a written application to the Department on such form or forms as may be prescribed by the Department. The application shall include, at a minimum, submission of the following documents and information:

- (a) Current CBE Certification and evidence that the applicant is certified as an SBE and a DBE;
- (b) Clean Hands Certification from the Office of Tax and Revenue;
- (c) Certificate of Good Standing from the Department of Consumer and Regulatory Affairs;

- (d) Financial status of the applicant including, but not limited to, current and past tax returns, balance sheet(s) and profit and loss statements;
- (e) Amount of funding from the Microloan Fund requested by the applicant;
- (f) Reason for requesting funding from the Microloan Fund; and
- (g) Any other information or documents the Department may require in order to assess the applicant's eligibility and/or credit worthiness.

851.9 The Department, and/or any qualified non-profit organization or financial institution to which the Department has outsourced the underwriting process, shall review and evaluate an application for funding from the Microloan Fund for completeness, underwriting analysis and funding determination. Incomplete applications shall be returned to the applicant.

851.10 Within sixty (60) days of receipt of a complete application, the Department or its non-profit or financial institution partner shall notify the applicant whether the funding request has been approved, denied, or if additional information is needed to make a determination. If an application is denied, the Department or its non-profit/financial institution partner shall provide the applicant an explanation of the underwriting determination.

851.11 The Department may, in its discretion, require the potential borrower or borrower to participate in targeted training, technical assistance, and/or periodic monitoring to help strengthen business operations as a condition of funding from the Microloan Fund or as a pre-condition for future funding.

852 NON-IMPAIRMENT OF CONTRACTS AND SOLICITATIONS

852.1 A failure to comply with a regulation set forth in this chapter shall not affect the validity of a contract entered into by the District, including memorandums of understanding and term sheets, or a solicitation issued by the District.

899 DEFINITIONS

899.1 The definitions set forth in the Act are incorporated by reference into this chapter. As used in this chapter, the following words and phrases shall have the meanings ascribed:

Application date – the date on which an application is received by the Department.

Agency – any agency, department, office, board, commission, or instrumentality of the District of Columbia government, including but not limited to, an entity established as a government corporation, corporate body, or independent authority created to effectuate certain public

purposes, with or without a legal existence separate from that of the District government, and any agency or subsidiary thereof.

Business Enterprise – a business entity organized for profit.

Certificate – a letter issued by the Department indicating that a firm is a business enterprise or joint venture certified pursuant to Part D of the Act.

Certified Business Enterprise (“CBE”) – any entity certified as a local business enterprise, small business enterprise, disadvantaged business enterprise, resident-owned business enterprise, longtime resident business enterprise and/or local business enterprise with principal offices located in an enterprise zone, as such terms are defined in the Act and codified at D.C. Official Code §§ 2-218.31, 2-218.32, 2-218.33, 2-218.35, 2-218.36, and 2-218.37, respectively.

Commission – the District of Columbia Small and Local Business Opportunity Commission, established by section 2321 of the Act.

Component Developer – an entity that solely develops a distinct part or subdivision of a Covered Project (e.g., one building out of a five building project).

Contracting Effort – for subcontracting purposes, may include the typical work performed by a general contractor selected as prime contractor on a project, including but not limited to, management duties and contract administration.

Contractor – means any natural person or business organization, such as a corporation, partnership, joint venture, limited liability company, or similar enterprise that enters into a contract with the District, a public employee, or private developer to provide goods and/or services.

Construction – the building, alteration, repair, or improvement of real property. This term does not include the operation or routine maintenance of real property.

Covered Project – any development project subject to Section 2349a of the Act.

Day – a calendar day.

Department – the Department of Small and Local Business Development, established by section 2311 of the Act.

Development Participant – a CBE that participates in one or more phases of project development in a Covered Project including project design, construction management, real estate finance, legal issues, real estate development, sales and marketing.

Development Participation – participation by a person or entity in one or more phases of project development including project design, construction management, real estate finance, legal issues, real estate development, sales and marketing.

Development Project – a private development or redevelopment of real property improvements on land disposed of by or leased from the District and private development or redevelopment of real property improvements to which the District has contributed through a grant at least 15% of the development costs or \$500,000, whichever is less. Development Projects shall not include improvements on real property where the owner will occupy at least 25% of the real property and the development budget is \$500,000 or less.

Director – the Director of the Department of Small and Local Business Development.

Disadvantaged Business Enterprise – a business enterprise as described in section 2333 of the Act (“DBE”).

Eligible Recipient – a CBE that meets the requirements of subsections 851.3 and 851.4 of this chapter.

Enterprise Zone – the following locations represent the economic development zones for the District:

- (1) The area of the District designated as the District of Columbia Enterprise Zone under section 1400 of the Internal Revenue Code of 1986, approved August 5, 1997 (111 Stat. 863; 26 U.S.C. § 1400); or
- (2) An economic development zone designated by the Mayor and approved by the Council pursuant to sections 1 through 4 of the Economic Development Zone Incentives Amendment Act of 1988, effective October 20, 1988 (D.C. Law 7-177; D.C. Official Code § 6-1501 *et seq.*).

Entity – an organization, including but not limited to, a government agency, corporation, partnership, limited liability company, sole proprietor, or trust.

Equity Participant – a CBE that provides capital or other monetarily valued services in exchange for an ownership interest in a Covered Project.

Equity Participation – an ownership interest acquired by an Equity Participant in any phase of a Covered Project, including the purchase, acquisition, protection, financing, construction, expansion, reconstruction, restoration, rehabilitation, repair, interpretation, furnishing, equipping and operation of a Covered Project.

Expendable Budget – the total budget of an agency, reduced by such funding sources, object classes, objects, and other items as shall be identified by the Department.

Fiscal year – October 1 of each year through September 30 of the following year.

Grant – as used in Chapter 8 of Title 27, grant shall mean a public subsidy for which the District does not anticipate repayment, such as a cash contribution, tax increment financing, payment in lieu of taxes, or similar programs or agreements. A Grant shall not include a public contribution for which the District anticipates repayment, such as a loan.

Joint Venture – a combination of property, capital, efforts, skills, or knowledge of two or more persons or businesses to carry out a single object.

Local Business Enterprise – a business enterprise as described in section 2332 of the Act (“LBE”).

Longtime Resident Business – a business which has been continuously eligible for certification as a local business enterprise, as defined in section 2331 of the Act, for 20 consecutive years, or a small business enterprise, as defined in section 2332 of the Act, for 15 consecutive years.

Qualified Responder – an individual or entity that seeks to develop a Covered Project and demonstrates the Development Participation and Equity Participation by one or more Equity Participants and Development Participants required by the Act.

Resident-Owned Business – a local business enterprise owned by an individual who is, or a majority number of individuals who are, subject to personal income tax in the District of Columbia.

Respondent – an applicant for or holder of a certificate against whom a denial or adverse action is proposed or taken.

Small Business Enterprise – a business enterprise as described in section 2332 of the Act (“SBE”).

Special Purpose Entity – a legal entity consisting of one or more members, at least one of which must be a CBE, formed to participate in the Equity and Development Program.

Sponsor Equity – the equity that is intended to be contributed by the non-institutional investors or by the private developer.

Sponsor Entity – an individual or an entity with the day-to-day responsibilities for a development project (e.g., a Managing Member, or a General Partner).

Supported by District funds – includes, but is not limited to, projects financed by any funds of or controlled by the District or any agency, such as funds from the General Fund, an Enterprise Fund, a trust fund, a special purpose fund, a revenue bond, a refunding bond, a note, loan, or other obligation issued by the District or any agency, a grant, tax increment financing, payments in lieu of tax, or similar financing tools.