

**SMALL, LOCAL, AND DISADVANTAGED BUSINESS ENTERPRISE
DEVELOPMENT AND ASSISTANCE ACT**

TABLE OF CONTENTS

Part A. Short Title and Definitions.

- Sec. 2301. Short title.
- Sec. 2302. Definitions.

Part B. Department of Small and Local Business Development.

- Sec. 2311. Establishment of the Department of Small and Local Business Development.
- Sec. 2312. Director of the Department of Small and Local Business Development.
- Sec. 2313. Organization and functions of the Department.
- Sec. 2314. Reorganization of the Department.

Part C. Small and Local Business Opportunity Commission.

- Sec. 2321. Small and Local Business Opportunity Commission Establishment; composition; appointment; term of office; qualifications; vacancies; removal; compensation.
- Sec. 2322. Functions of the Commission.
- Sec. 2323. Additional functions of the Commission.
- Sec. 2324. Record keeping.
- Sec. 2325. By-laws and internal rules.

Part D. Programs for Certified Business Enterprises.

Subpart 1. Certified Business Enterprises.

- Sec. 2331. Local business enterprises.
- Sec. 2332. Small business enterprises.
- Sec. 2333. Disadvantaged business enterprises.
- Sec. 2334. Qualified metropolitan area business enterprises. [Repealed]
- Sec. 2335. Resident-owned businesses.
- Sec. 2336. Longtime resident businesses.
- Sec. 2337. Local business enterprises with principal offices located in an enterprise zone.

Subpart 2. Requirements for Programs.

- Sec. 2341. Goals for District agencies with respect to contracting and procurement with small business enterprises.
- Sec. 2342. Required programs, procedures, and policies to achieve contracting and procurement goals.
- Sec. 2343. Bid and proposal preferences.
- Sec. 2344. Mandatory set-asides of small contracts for small business enterprises.
- Sec. 2345. Mandatory set-asides of contracts in the District of Columbia Supply Schedule for small business enterprises.

- Sec. 2346. Performance and subcontracting requirements for construction and non-construction contracts; subcontracting plans.
- Sec. 2347. Unbundling requirement.
- Sec. 2348. Penalties.
- Sec. 2349. Other procedures and programs.
- Sec. 2350. Special requirements for government corporations.
- Sec. 2351. Waiver of subcontracting requirements.
- Sec. 2352. Enforcement mechanism against an agency.
- Sec. 2353. Agency reporting requirements.
- Sec. 2354. Department reporting requirements.
- Sec. 2355. Regional governmental entities.

Subpart 3. Certification.

- Sec. 2361. Certificate of registration.
- Sec. 2362. Provisional certification; self-certification prohibited.
- Sec. 2363. Revocation of registration; challenges to registration; penalties.

Subpart 4. Triennial Review and Rulemaking.

- Sec. 2371. Triennial review of program and subtitle.
- Sec. 2372. Rulemaking authority.

Subpart 5. Financial Assistance.

- Sec. 2375. Small Business Micro Loan Fund.

Part E. Conforming Amendments.

- Sec. 2381. Amendments.
- Sec. 2382. Repealers.

Part F. Fiscal Impact.

- Sec. 2391. Fiscal impact statement.

Part A. Short Title and Definitions.

Sec. 2301. Short title.

This subtitle may be cited to as the "Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005".

Sec. 2302. Definitions.

For the purposes of this subtitle, the term:

- (1) "Agency" means an agency, department, office, board, commission, or instrumentality of the District of Columbia government.
- (1A) "Business enterprise" means a business entity organized for profit.
- (1B) "Certified business enterprise" means a business enterprise or joint venture certified pursuant to part D.
- (2) "Commission" means the District of Columbia Small and Local Business Opportunity Commission, established by section 2321.
- (3) "Department" means the Department of Small and Local Business Development, established by section 2311.
- (4) "Director" means the Director of the Department of Small and Local Business Development.
- (5) "Disadvantaged business enterprise" means a business enterprise as described in section 2333.
- (6) "District of Columbia Supply Schedule" or "DCSS" means the District of Columbia's multiple award schedule procurement program for providing commercial products or services to District government agencies.
- (7) "Economically disadvantaged individual" means an individual whose ability to compete in the free enterprise system is impaired because of diminished opportunities to obtain capital and credit as compared to others in the same line of business where such impairment is related to the individual's status as socially disadvantaged. An individual is socially disadvantaged if the individual has reason to believe that the individual has been subjected to prejudice or bias because of his or her identity as a member of a group without regard to his or her qualities as an individual.
- (8) "Enterprise zone" means:

(A) 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; 26U.S.C. § 1400); or

(B) An economic development zone designated by the Mayor and approved by the Council pursuant to sections 2 through 5 of the Economic Development Zone Incentives Amendment Act of 1988, effective October 20, 1988 (B.C. Law 7-177; D.C. Official Code § 6-1501 et seq.).

(9) "Expendable budget" means the total budget of an agency, reduced by such funding sources, object classes, objects, and other items as shall be identified by the Mayor through rulemaking.

(10) "Government corporation" means an entity established as a corporate body or independent authority or instrumentality of the District government created to effectuate certain public purposes, with or without a legal existence separate from that of the District government.

(11) "Joint venture" means a combination of property, capital, efforts, skills, or knowledge of 2 or more persons or businesses to carry out a single project.

(12) "Local business enterprise" means a business enterprise as described in section 2331.

(13) "Longtime resident business" means a business which has been continuously eligible for certification as a local business enterprise, as defined in section 2331, for 20 consecutive years, or a small business enterprise, as defined in section 2332, for 15 consecutive years.

(14) "Regional governmental entity" means an organization that represents the District and surrounding local or state governments.

(15) "Resident-owned business" means 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.

(16) "Small business enterprise" means a business enterprise as described in section 2332.)

Part B. Department of Small and Local Business Development.

Sec. 2311. Establishment of the Department of Small and Local Business Development.

(a) Pursuant to section 404(b) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 787; D.C. Official Code § 1-204.04(b)), there is established, as a subordinate agency, in the Executive Branch of the government of the District of Columbia, the Department of Small and Local Business Development.

Sec. 2312. Director of the Department of Small and Local Business Development.

(a)(1) The Department shall be under the supervision of a Director who shall carry out the functions and authorities assigned to the Department.

(2) The Mayor shall appoint the Director with the advice and consent of the Council.

(b) The Director shall have full authority over the Department and all functions and personnel assigned to the Department, including the power to re-delegate to other employees and officials of the Department such powers and authority as in the judgment of the Director are warranted in the interests of efficiency and sound administration.

(c) The Director shall monitor the accomplishment of the requirements of this subtitle in contracting and procurement performed by any government corporation involved in the development of a commercial ballpark or soccer stadium and in all projects exceeding \$10 million in value.

(d) The Director shall have authority to make a recommendation to the Chief Procurement Officer of the Office of Contracting and Procurement or a government corporation to reject proposed award of contract awards and procurements that the Director finds fail to comply with agency or project requirements for certified business enterprise contracting and procurement.

(e) The Director shall have authority to make a recommendation to the Chief Procurement Officer of the Office of Contracting and Procurement or a government corporation to require the payment of fines pursuant to section 2348 by prime contractors who fail to comply with the requirements of this subtitle.

(f) The Director shall have the authority to make a recommendation to the Chief Procurement Officer of the Office of Contracting and Procurement or a government corporation to withhold payment on contracts shown to be substantially noncompliant as to their approved certified business enterprise subcontracting plans, if a subcontracting plan is required pursuant to section 2346.

Sec. 2313. Organization and functions of the Department.

(a)(1) It shall be the goal and responsibility of the Department to stimulate and foster the economic growth and development of businesses based in and serving the District of Columbia particularly certified business enterprises, with the intended goals of:

- (A) Stimulating and expanding the local tax base of the District of Columbia;
- (B) Increasing the number of viable employment opportunities for District residents; and
- (C) Extending economic prosperity to local business owners, their employees, and the communities they serve.

(2) Through advocacy, business development programs, and technical assistance offerings, the Department shall seek to maximize opportunities for certified business enterprises to participate in:

- (A) The District's contracting and procurement process;
- (B) The District's economic development activities; and
- (C) Federal and private sector business opportunities that occur in the District of Columbia.

(b) The Department shall administer part D of this subtitle except for those responsibilities assigned to another agency by this subtitle or through an order of the Mayor. The Director shall establish procedures and guidelines for the implementation of the programs established pursuant to part D of this subtitle. The Mayor shall not reassign a responsibility specifically assigned to the Department by this subtitle.

(c) The Department shall include, and the Director shall establish, oversee, and administer, the following divisions which shall have the stated responsibilities:

(1) The Office of Certification, Compliance, and Enforcement, which shall be responsible for:

- (A) Reviewing applications for certification as a:
 - (i) Local business enterprise;
 - (ii) Small business enterprise;
 - (iii) Disadvantaged business enterprise;
 - (iv) Resident-owned business;
 - (v) Longtime resident business; or
 - (vi) Local business enterprise with its principal office located in an enterprise zone;

(B) Providing information and assistance to business enterprises regarding the certification and application process;

(C) Determining a business enterprise's or joint venture's initial eligibility for certification under Part D and reviewing and determining the continued eligibility of business enterprises and joint ventures certified under Part D;

(D) Determining the percentage or the dollar amount of a project performed by a joint venture that may be attributed toward an agency's percentage goal;

(E) Providing information and assistance to the Commission in performance of its appeals and audit functions under section 2322;

(F) Monitoring agency contracting and procurement activities to the extent those activities are related to the achievement of the goals set forth in section 2341;

(G) Monitoring third-party contracting and procurement activities to the extent those activities are related to the achievement of goals related to contracting with, and procuring from, certified business enterprises ;

(H) Preparing the quarterly and annual reports of the Department required by section 2354;

(H) Reviewing the quarterly and annual reports of agencies required by section 2353; and

(I) Reviewing any reports as may be required of third parties;

(2) The Office of Business Opportunities and Access to Capital, which shall be responsible for:

(A) Maintaining, growing, and advocating on behalf of certified business enterprises in the following areas:

(i) Certified business enterprises with less than \$10 million in annual revenue;

(ii) Under separate criteria, certified business enterprises with over \$10 million in annual revenue; and

(iii) All certified business enterprises that desire to participate in contracting opportunities with any government corporation;

(B) Maintaining and providing public access to a list of all current District government contracting and procurement bids and solicitations;

(C) Maintaining and providing public access to a list of other current government contracting and procurement bids and solicitations, including those of the federal government and nearby local jurisdictions;

(D) Monitoring agency contracting and procurement activities to the extent those activities are related to the achievement of the goals set forth in section 2341;

(E) Monitoring third-party contracting and procurement activities to the extent those activities are related to the achievement of goals related to contracting with, and procuring from, certified business enterprises;

(F) Monitoring and preparing recommendations to ensure agency achievement of the goals set forth in section 2341;

(G) Monitoring agency implementation of the programs required by part D of this subtitle;

(H) Maintaining a list of current private contracting and procurement bids and solicitations;

(I) Organizing and publicizing certified business enterprise opportunities and events where contracting, procurement, or networking opportunities will be available;

(J) Organizing or attending meetings with business groups and other organizations to provide information on the District's certified business enterprise programs, the certification process, and the services and activities of the Department;

(K) Making known to the public and the business community information on the District's certified business enterprise programs and the certification process; and

(L) Making known to the public and the business community information on the services and activities of the Department; and

(3) The Office of Training and Education, which shall be responsible for the following:

(A) Coordinating the District's offerings, curricula, and locations of educational and training classes, sessions, and seminars to assist small businesses in the following areas:

(i) Basic and intermediate business skills, such as bookkeeping, accounting, and marketing;

(ii) Locating and obtaining contracting and procurement opportunities; and

(iii) Locating and obtaining financing and capital;

(B) Maintaining a current list of educational and training classes, sessions, and seminars in the Washington Metropolitan Region in the subject areas set forth in subparagraph (A) of this paragraph offered by persons or organizations outside the District government;

(C) To the extent feasible, coordinating the offerings, curricula, and locations of educational and training classes, sessions, and seminars in the Washington Metropolitan Region in the subject areas set forth in subparagraph (A) of this paragraph offered by persons or organizations outside the District government;

(D) To the extent necessary, providing educational and training classes, sessions, and seminars in the subject areas set forth in subparagraph (A) of this paragraph which are not otherwise conveniently or comprehensively provided by the District government or persons or organizations outside the District government; and

(E) Training agency contracting officers on the requirements and procedures of this subtitle.

(c-1) The Department shall have the authority to issue grants to local businesses (whether or not certified pursuant to this subtitle), community and neighborhood groups or other non-profit organizations as necessary to effectuate the mission of the Department and the purposes of this subtitle

(d) The Director may establish such other offices and the Department may take such other actions as are necessary or appropriate to carry out the provisions of this subtitle.

Part C. District of Columbia Small and Local Business Opportunity Commission.

Sec. 2321. District of Columbia Small and Local Business Opportunity Commission Establishment; composition; appointment; term of office; qualifications; vacancies; removal; compensation.

(a) Pursuant to section 404(b) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 787; D.C. Official Code § 1-204.04(b)), there is established the District of Columbia Small and Local Business Opportunity Commission. The Commission is the successor in interest to the Local Business Opportunity Commission, established by section 4(a) of the Minority Contracting Act of 1976, effective March 29, 1977 (D.C. Law 1-95; D.C. Official Code § 2-215.03(a)).

(b)(1) The Commission shall consist of 9 members. The Mayor shall appoint one member from each ward of the District and one at-large member to staggered, 2-year terms with the advice and consent of the Council, in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01).

(2) All members of the Commission shall be residents of the District of Columbia.

(3) Commissioners shall be eligible for reappointment.

(4) All commissioners shall have knowledge of the small, local, or disadvantaged business community as it relates to employment and economic development.

(5) Notwithstanding the provisions of this section, current members of the Local Business Opportunity Commission, as established by section 4(a) of the Minority Contracting Act of 1976, effective March 29, 1977 (D.C. Law 1-95; D.C. Official Code § 2-215.03(a)), shall be considered qualified and may continue to serve as members of the Commission until new members are appointed.

(c)(1) The Mayor shall appoint the chairperson of the Commission from among its members with the advice and consent of the Council. The nomination of the chairperson shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the nomination within the 45-day period of review, the nomination shall be deemed approved.

(2) The chairperson shall serve as the chairperson at the pleasure of the Mayor.

(d) Any person appointed to fill a vacancy on the Commission shall be appointed only for the unexpired term of the member whose vacancy is being filled.

(e) The Mayor may remove any member of the Commission for misconduct, incapacity, or neglect of duty in accordance with procedures that the Mayor shall establish and that shall include procedures for notification and an opportunity for hearing.

(f)(1) The Commission shall meet at least once each month for the purpose of transacting any business as may properly come before it.

(2) The Commission shall meet with the Chairman of the Council Committee on Economic Development at least once per year.

(3) Special meetings may be held at such times as the chairperson may provide. Notice of each meeting and the time and place thereof shall be given to each member in such manner as the Commission may provide.

(4) The Commission may permit members to participate in meetings by means of a conference telephone, interactive conference video, or other similar communications equipment when it is otherwise difficult or infeasible for the members to attend the meeting in person; provided, that each member participating by such device can be identified when speaking, all participants are able to hear each other at the same time, and members of the public attending the meeting are able to hear any member of the Commission who speaks during the meeting.

(g) A majority of the members appointed to the Commission at any given time shall constitute a quorum for the transaction of official business. Official actions of the Commission shall be based on a majority vote of the members participating at the meeting.

(h) A Commission member who has a direct financial or personal interest in any measure pending before the Commission shall disclose this fact to the Commission and shall not vote upon such measure.

(i) Members of the Commission shall serve without compensation for their service on the Commission.

Sec. 2322. Functions of the Commission.

The Commission shall:

(1) Hear all requested appeals by business enterprises upon the denial of an application for initial certification, reinstatement or renewal by the Department;

(2) Perform regular and routine audits of the Department's certification process through a random review of 5 applications per month; and

(3) Repeal and suspend the certification of a business enterprise pursuant to section 2363.

Sec. 2323. Additional functions of the Commission.

The Commission shall:

(1) Educate the public, including District residents and businesses, about the District's programs for certified business enterprises;

(2) Stimulate and foster greater opportunities for certified business enterprises to participate in the District's contracting and procurement process and provide recommendations to the Council and the Mayor on ways to increase the participation;

(3) Maintain contacts with the business community, including financial institutions and bonding companies, and elicit cooperation for economic opportunities for certified business enterprises;

(4) Make recommendations related to agency and third-party contracting and procurement activities to increase participation by certified business enterprises;

(5) Review the annual reports of agencies and make appropriate recommendations as set forth in section 2352;

(6) Review the triennial reports required by section 2371 and the goals, intents, and purposes of this subtitle, and make appropriate recommendations as set forth in section 2371; and

(7) Take such other actions as are necessary or appropriate to carry out the responsibilities of the Commission under this subtitle.

Sec. 2324. Record keeping.

(a) A record of the proceedings of the Commission shall be kept and files shall be maintained.

(b) The Department shall and the Commission may maintain a register of all applicants for registration showing for each applicant the date of the application, name, qualifications, place of business, place of applicant's residence, and whether the certificate was granted or denied.

(c) The books and register of the Commission shall be prima facie evidence of all matters recorded therein.

Sec. 2325. By-laws and internal rules.

(1) The Commission may promulgate, amend, repeal, and enforce any by-laws and internal rules of operation, consistent with the provisions of this subtitle, as may be necessary or appropriate to carry out its responsibilities under this subtitle.

(2) The Department may promulgate, amend, repeal, and enforce any bylaws and internal rules of operation, consistent with the provisions of this subtitle, as may be necessary or appropriate to carry out its responsibilities under this subtitle.

Part D. Programs for Certified Business Enterprises.

Subpart 1. Certified business enterprises.

Sec. 2331. Local business enterprises.

A business enterprise shall be eligible for certification as a local business enterprise if the business enterprise:

- (1) Has its principal office located physically in the District of Columbia;
- (2) Requires that its chief executive officer and the highest level managerial employees of the business enterprise maintain their offices and perform their managerial functions in the District;
 - (2A) Meets 1 of the 4 following standards:
 - (A) More than 50% of the assets of the business enterprise, excluding bank accounts, are located in the District;
 - (B) More than 50% of the employees of the business enterprise are residents of the District;
 - (C) The owners of more than 50% of the business enterprise are residents of the District; or
 - (D) More than 50% of the total sales or other revenues are derived from transactions of the business enterprise in the District; and
- (3)(A) Is licensed pursuant to Chapter 28 of Title 47 of the District of Columbia Official Code;
- (B) Is subject to the tax levied under Chapter 18 of Title 47 of the District of Columbia Official Code; or
- (C) Is a business enterprise identified in § 47-1808.01 (1) through (5) of the District of Columbia Official Code and more than 50% of the business is owned by residents of the District.

Sec. 2332. Small business enterprises.

(a) A business enterprise shall be eligible for certification as a small business enterprise if the business enterprise:

(1)(A) Is a local business enterprise;

(2) Is independently owned, operated, and controlled; and

(3)(A) Is certified by the United States Small Business Administration as a small business concern under the Small Business Act, approved July 18, 1958 (72 Stat. 863; 15 U.S.C. § 631 et seq.); or

(B) Has had average annualized gross receipts for the 3 years preceding certification not exceeding the following limits:

Construction, Heavy (Street and Highways, Bridges, etc.)	\$23 million
Construction, Building (General Construction, etc.)	\$21 million
Construction, Specialty Trades	\$13 million
Goods and Equipment	\$20 million
General Services	\$19 million
Professional Services, Personal Services (Hotel, Beauty, Laundry, etc.)	\$5 million
Professional Services, Business Services	\$10 million
Professional Services, Health and Legal Services	\$10 million
Professional Services, Health Facilities Management	\$19 million
Manufacturing Services	\$10 million
Transportation and Hauling Services	\$13 million
Financial Institutions	\$300 million.

(b) A business enterprise that is affiliated with another business enterprise through common ownership, management, or control shall be eligible for certification as a small business enterprise if:

(1) The business enterprise seeking certification as a small business enterprise is a local business enterprise;

(2) The consolidated financial statements of the affiliated business enterprises do not exceed the average annualized gross receipt limits established by subsection (a)(3)(B) of this section;

(3) In the event of a parent-subsidary affiliation, the parent company qualifies for certification as a small business enterprise.

(c) If a business enterprise seeking certification as a small business enterprise is affiliated only with one or more business enterprises that are in a different line of business, subsection (b) of this section shall not apply, and the business enterprise shall be eligible for certification as a small business enterprise if it meets the requirements of subsection (a) of this section.

Sec. 2333. Disadvantaged business enterprises.

(a) A business enterprise shall be eligible for certification as a disadvantaged business enterprise if the business enterprise is:

(1) Owned, operated, and controlled by economically disadvantaged individuals; and

(2)(A) Is a local business enterprise;

(b) A business enterprise that is affiliated with another business enterprise through common ownership, management, or control shall be eligible for certification as a disadvantaged business enterprise if:

(1) The business enterprise seeking certification as a disadvantaged business enterprise is a local business enterprise; and

(2) In the event of a parent-subsidary affiliation, both enterprises meet the requirements of subsection (a) of this section.

Sec. 2334. Qualified metropolitan area business enterprises. [Repealed]

Sec. 2335. Resident-owned businesses.

A business enterprise shall be eligible for certification as a resident-owned business if it meets the definition of resident-owned business pursuant to section 2302.

Sec. 2336. Longtime resident businesses.

A business enterprise shall be eligible for certification as a longtime resident business if it meets the definition of longtime resident business pursuant to section 2302.

Sec. 2337. Local business enterprises with principal offices located in an enterprise zone.

A local business enterprise shall be eligible for certification as a local business enterprise with principal offices located in an enterprise zone if its principal offices are located in an enterprise zone as defined by section 2302.

Subpart 2. Requirements of programs.

Sec. 2341. Goals for District agencies with respect to contracting and procurement with small business enterprises.

(a) Each agency, including an agency that contracts or procures in whole or in part through the Office of Contracting and Procurement, shall exercise its contracting and procurement authority so as to meet, on an annual basis, the goal of procuring and contracting 50% of the dollar volume of its goods and services, including construction goods and services, to small business enterprises.

(b) The dollar volume referenced in subsection (a) of this section shall be based on the expendable budget of the agency.

Sec. 2342. Required programs, procedures, and policies to achieve contracting and procurement goals.

To achieve the goals set forth in this subtitle, the Department shall establish by rules issued pursuant to section 2372, programs for local, small, and disadvantaged business enterprises, resident-owned businesses, resident businesses, and local business enterprises with principal offices located in an enterprise zone. The Department shall include among these programs:

- (1) A bid preference mechanism for certified business enterprises;
- (2) A set-aside program for small business enterprises; and
- (3) A set-aside program for certified business enterprises for the District of Columbia Supply Schedule.

Sec. 2343. Bid and proposal preferences.

- (a) In evaluating bids or proposals, agencies shall award preferences as follows:
 - (1) In the case of proposals, points shall be granted as follows:
 - (A) Three points for a small business enterprise;
 - (B) Five points for a resident-owned business;
 - (C) Ten points for a longtime resident business;
 - (D) Two points for a local business enterprise;
 - (E) Two points for a local business enterprise with its principal office located in an enterprise zone; and
 - (F) Two points for a disadvantaged business enterprise.
 - (2) In the case of bids, a percentage reduction in price shall be granted as follows:
 - (A) Three percent for a small business enterprise;
 - (B) Five percent for a resident-owned business;
 - (C) Ten percent for a longtime resident business;
 - (D) Two percent for a local business enterprise;

(E) Two percent for a local business enterprise with its principal office located in an enterprise zone; and

(F) Two percent for a disadvantaged business enterprise.

(b) A certified business enterprise shall be entitled to any or all of the preferences provided in this section, but in no case shall a certified business enterprise be entitled to a preference of more than 12 points or a reduction in price of more than 12 percent.

Sec. 2344. Mandatory set-asides of small contracts for small business enterprises.

(a) Except as provided in section 2345, each agency shall set aside every contract or procurement of \$100,000 or less for small business enterprises; provided, that the agency shall not be required to set aside a contract or procurement if the agency determines in writing that there are not at least 2 responsible certified small business enterprises that can provide the services or goods which are the subject of the contract.

(b) An agency may refuse 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 business enterprise are believed to be 12% or more above the likely price on the open market.

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

Each agency shall set aside every contract of \$100,000 or less for the District of Columbia Supply Schedule for small business enterprises; provided, that the agency shall not be required to set aside a contract if the agency determines in writing that there are not at least 2 responsible certified small business enterprises on the DCSS that can provide the services or goods which are the subject of the contract.

Sec. 2346. Performance and subcontracting requirements for construction and non-construction contracts; subcontracting plans.

(a)(1) All construction contracts in excess of \$250,000 shall include the following requirements:

(A) At least 35% of the dollar volume shall be subcontracted to small business enterprises; 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; or

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

(2) All non-construction contracts in which a portion of the work is subcontracted shall include the following requirements:

(A) At least 35% of the dollar volume shall be subcontracted to small business enterprises; 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; or

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

(b)(1)(A) Each construction contract for which a certified business enterprise is selected as a prime contractor 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 business enterprise perform at least 35% of the contracting effort, excluding the cost of materials, goods, and supplies, with its own organization and resources and, if it subcontracts, 35% of the subcontracted effort, excluding the cost of materials, goods, and supplies, shall be with certified business enterprises.

(B) If the total of the contracting effort, excluding the cost of materials, good, and supplies, proposed to be performed by certified business enterprises is less than the amount required by subparagraph (A) of this paragraph, then the business enterprise shall not be eligible to receive preference points or price reductions for a period of not less than 2 years.

(2)(A) Each construction contract for which a joint venture is selected as a prime contractor 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, excluding the cost of materials, goods, and supplies, with its own organization and resources and, if the joint venture subcontracts, 35% of the subcontracted effort, excluding the cost of materials, goods, and supplies, shall be with certified business enterprises.

(B) If the total of the contracting effort, excluding the cost of materials, good, and supplies, proposed to be performed by certified business enterprises is less than the amount required by subparagraph (A) of this paragraph, then the business enterprise shall not be eligible to receive preference points or price reductions for a period of not less than 2 years.

(c) Each construction contract of \$1 million or less for which a certified business enterprise is selected as a prime contractor 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 business enterprise perform at least 50% of the on-site work with its own work force.

(d) Bids or proposals responding to a solicitation, including an open market solicitation, shall be deemed nonresponsive and shall be rejected if the solicitation requires

submission of a certified business enterprise subcontracting plan and the prime contractor fails to submit a subcontracting plan as part of its bid or proposal. A certified business enterprise subcontracting plan shall specify the following:

- (1) The name and address of the subcontractor;
- (2) Whether the subcontractor is currently certified as a certified business enterprise;
- (3) The scope of work to be performed by the subcontractor; and
- (4) The price to be paid by the contractor to the subcontractor.

(e) No prime contractor shall be allowed to amend the subcontracting plan filed as part of its bid or proposal except with the consent of the contracting officer and the Director. Any reduction in the dollar volume of the subcontracted portion resulting from such amendment of the plan shall inure to the benefit of the District.

(f) No multiyear contracts or extended contracts in which the options or extensions exceed \$1 million in value, which are not in compliance with this subtitle at the time of the contemplated exercise of the option or extension, shall be renewed or extended, and any such option or extension shall be void.

(g) The subcontracting requirements of this section may be waived pursuant to section 2351.

(h) A prime contractor shall submit to the contracting officer in the District copies of the executed contracts with the subcontractors identified in the subcontracting plan. Failure to submit copies of the executed contracts shall render the underlying contract with avoidable by the District.

Sec. 2347. Unbundling requirement.

The Mayor shall establish procedures to ensure that solicitations are subdivided and unbundled and that smaller contracts are created to the extent feasible and fiscally prudent.

Sec. 2348. Enforcement and penalties for willful breach of subcontracting plan.

The willful breach by a contractor of a subcontracting plan for utilization of certified business enterprises in the performance of a contract, the failure to submit any required subcontracting plan monitoring or compliance report, or the deliberate submission of falsified data may be enforced by the Department through the imposition of penalties, including monetary 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 such breach, failure, or falsified submission.

Sec. 2349. Other procedures and programs.

(a) The Mayor shall establish policies and procedures to maximize the participation of certified business enterprises in the contracting and procurement processes, including:

(1) A procedure whereby an agency may waive bid security requirements on contracts in excess of \$100,000, where the waiver is appropriate to achieve the purposes of this subtitle; and

(2) A policy whereby an agency shall make advance payments to a certified contractor, where the payments are necessary to achieve the purposes of this subtitle.

(b) The Mayor may establish a pilot set-aside program for small business enterprises with gross revenues of \$5 million or less.

Sec. 2349a. Equity and development participation.

(a) Local, small, and disadvantaged business enterprises shall receive 20% in equity and development participation in all development projects supported by District funds and in all development projects that take place on District owned property.

(b) The participation requirement shall include all development projects undertaken by government corporations and all development projects resulting from contractual relationships where District owned real property is transferred to a third party.

(c) The Mayor shall promulgate proposed rules to implement the provisions of this section within 90 days of the effective date of the Fiscal Year 2007 Budget Support Act of 2006, passed on 2nd reading on July 11, 2006 (Enrolled version of Bill 16-679). The Mayor shall submit the proposed rules to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(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 the Fiscal Year 2007 Budget Support Act of 2006, passed on 2nd reading on July 11, 2006 (Enrolled version of Bill 16-679).

Sec. 2350. Special requirements for government corporations.

(a) A government corporation shall comply with all provisions of this subtitle.

(b)(1)(A) A government corporation shall take all measures as shall be reasonably necessary to assure that all contracts entered into by the government corporation, or any agency

or subsidiary of the government corporation, with respect to each major phase of the development and construction of a project undertaken by the government corporation, including contracts for professional services, architectural, engineering, and other construction related services and construction trade work, shall provide that at least 35% of the work on the project shall be awarded to small business enterprises; 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.

(B) In the event that there are insufficient qualified small business enterprises to fulfill the small business enterprise contracting requirement, then the subcontracting requirement may be satisfied by subcontracting 35% of the dollar volume of the project to any certified business enterprise; provided, however, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

(2) Of the work required to be awarded pursuant to paragraph (1) of this subsection, at least 10% of those business enterprises shall be located in the ward in which the work is being performed.

(3) If 35% of the work required to be awarded pursuant to paragraph (1) of this subsection, is unattainable, the government corporation shall report this fact to the Council for reconsideration of this requirement.

(c) The subcontracting requirement of subsection (b) of this section may be waived pursuant to section 2351.

(d)(1) A government corporation shall take all measures as shall be reasonably necessary to assure that all contracts entered into by the government corporation, or any agency or subsidiary of the government corporation, with respect to the development and construction of a project undertaken by the government corporation, comply with the First Source Employment requirements of the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.01 *et seq.*).

(2) Of the jobs required to be filled pursuant to paragraph (1) of this subsection, at least 20% of those jobs shall be designated for residents in the ward in which the work is being performed.

(e)(1) A government corporation shall take all measures as shall be reasonably necessary to assure that all contracts entered into by the government corporation or any agency or subsidiary of the government corporation with respect to the development and construction of a project undertaken by the government corporation shall comply with the requirements of An Act To provide for voluntary apprenticeship in the District of Columbia, approved May 21, 1946 (60 Stat. 204; D.C. Official Code § 32-1401 *et seq.*).

(2)(A) Fifty percent of all apprenticeship hours performed pursuant to any apprenticeship programs related to the construction and operation of a project undertaken by the government corporation shall be performed by District of Columbia residents.

(B) Any prime contractor or subcontractor that fails to make a good faith effort to comply with the requirements of this paragraph shall be subject to a monetary fine in the amount of 5% of the direct or indirect labor costs of the contract. Fines shall be imposed by the Department of Employment Services to be applied to job training programs, subject to appropriations by Congress.

(f) Beginning with the first full quarter after the effective date of this subtitle, each government corporation shall provide a quarterly report to the Department within 30 days after the end of each quarter. The quarterly report shall include the following information:

(1) The dollar volume and percentage of awards to local, small, and disadvantaged business enterprises in construction and development projects;

(2) The dollar volume and percentage of awards to local, small, and disadvantaged business enterprises in development projects as equity partners; and

(3) The dollar volume and percentage of awards to certified business enterprises for contracting and procurement of goods and services.

(g) Beginning with fiscal year 2006, each government corporation shall provide an annual report to the Department within 45 days after the end of each fiscal year. The annual report shall include:

(1) The information required to be included in the quarterly reports (with the dollar percentages and volumes calculated on an annual basis);

(2) The dollar volume and percentage of the contracts and procurements awarded during the fiscal year which were actually paid (including payments through subcontracting) to:

(A) Certified business enterprises;

(B) Local businesses enterprises;

(C) Small business enterprises; and

(D) Disadvantaged business enterprises;

(3) A description of the activities the government corporation engaged in, including the programs required by this part, in order to achieve the requirements set forth in this section; and

(4) A description of any changes the government corporation intends to make during the succeeding fiscal year to the activities it engages in to achieve the requirements set forth in this section.

(h) The Department shall monitor government corporation compliance with the reporting requirements of this section.

(i) The Department shall review the annual report of each government corporation to determine whether the planned activities of the government corporation for the succeeding fiscal year are likely to enable the agency to achieve the requirements set forth in this section. The Department shall make recommendations on activities the government corporation should engage in to meet or exceed the requirements set forth in this section. The Department's recommendations shall be submitted to the government corporation, the Council, and the Commission.

(j) The Commission may review the annual report of a government corporation to determine whether the planned activities of the government corporation for the succeeding fiscal year are likely to enable the government corporation to achieve the goals set forth in this section. The Commission may make recommendations concerning activities in which the government corporation should engage in to meet or exceed the requirements set forth in this section. The Commission's recommendations shall be submitted to the government corporation, the Council, and the Department.

Sec. 2351. Waiver of subcontracting requirements.

(a) The Director may waive the subcontracting requirements of sections 2346 and 2350 pursuant to this section.

(b) A contracting officer may request that the Director waive the subcontracting requirements for a particular contract by submitting to the Director with the request for waiver a statement of the reasons that justify a waiver.

(d)(1) The Director shall approve a waiver of the subcontracting requirements of section 2346 and 2350 requested by a contracting officer if the Director finds that no qualified business enterprises are available to satisfy the subcontracting requirements.

(2) The Director shall waive the subcontracting requirements of sections 2346 and 2350 if the Director finds that a waiver is necessary to achieve the purposes of this title.

(e) In addition to a waiver granted pursuant to subsection (d) of this section, the Director may grant a waiver or modification of a subcontracting plan requested by the contracting officer if the Director finds that the applicant has made a good faith effort to meet the requirements of sections 2346 and 2350. In making a good faith determination, the Director shall consider the following factors:

(1) Whether the applicant conducted any pre-solicitation or pre-bid conferences to inform certified business enterprises of contracting and subcontracting opportunities;

(2) Whether the applicant advertised in general circulation, trade association, and ethnic-focus media concerning the contracting and subcontracting opportunities;

(3) Whether the applicant provided written notice to a reasonable number of specific certified business enterprises, in sufficient time to allow certified business enterprises to participate effectively, that their interest in the contract was being solicited;

- (4) Whether the applicant followed up initial solicitations of interest by conducting negotiations with certified business enterprises;
- (5) Whether rejections by the applicant of certified business enterprises as being unqualified were based on sound reasoning and thorough investigation of their capabilities;
- (6) Whether the applicant made efforts to assist interested certified business enterprises in obtaining bonding, lines of credit, or insurance required by the applicant;
- (7) Whether the applicant effectively used the services of the Commission in recruiting qualified and responsible certified business enterprises;
- (8) Whether bids submitted by certified business enterprises were excessive or noncompetitive based upon a review of prevailing market conditions; and
- (9) Any other factors which may be relevant in a particular case.

(f)(1) The contracting officer shall provide written notice of the waiver of the subcontracting requirements of sections 2346 and 2350 to the applicant prior to the acceptance of bids or proposals and upon approval of the waiver by the Director.

Sec. 2352. Enforcement mechanism against an agency.

If an agency fails to meet any of the goals set forth in section 2341, the Department may require that a portion of the agency's contracts and procurements be made part of a set-aside program for small business enterprises.

Sec. 2353. Agency reporting requirements.

(a) Beginning with the first full quarter after the effective date of this subtitle, each agency shall provide a quarterly report to the Department within 30 days after the end of each quarter. The quarterly report shall include the following information:

- (1) A list of each contract or procurement of the agency during the quarter, and, for each contract or procurement:
 - (A) The dollar amount of the contract or procurement;
 - (B) A description of the goods procured or the services contracted for;
 - (C) The name of the business enterprise from which the goods were procured or services contracted;
 - (D) Whether the business enterprise was a certified business enterprise, and, if it was:
 - (i) The category or categories under which the business enterprise is certified; and

(ii) The identification number of the business enterprise assigned by the Department; and

(E) The source of funding for the contract or procurement (local, federal, other, or capital);

(2) The dollar percentage of the contracts and procurements awarded during the quarter which were awarded to:

- (A) Certified business enterprises;
- (B) Local businesses enterprises;
- (C) Small business enterprises; and
- (D) Disadvantaged business enterprises; and

(3) The dollar volume of the contracts and procurements awarded during the quarter which were awarded to:

- (A) Certified business enterprises;
- (B) Local businesses enterprises;
- (C) Small business enterprises; and
- (D) Disadvantaged business enterprises.

(b) Beginning with fiscal year 2006, each agency shall provide an annual report to the Department within 45 days after the end of each fiscal year. The annual report shall include:

(1) The information required to be included in the quarterly reports (with the dollar percentages and volumes calculated on an annual basis);

(2) The dollar volume and percentage of the contracts and procurements awarded during the fiscal year which were actually paid (including payments through subcontracting) to:

- (A) Certified business enterprises;
- (B) Local businesses enterprises;
- (C) Small business enterprises; and
- (D) Disadvantaged business enterprises;

(3) A description of the activities the agency engaged in, including the programs required by this part, in order to achieve the goals set forth in section 2341; and

(4) A description of any changes the agency intends to make during the succeeding fiscal year to the activities it engages in to achieve the goals set forth in section 2341.

(c) The Department shall monitor agency compliance with the reporting requirements of this section.

(d) The Department shall review the annual report of each agency to determine whether the planned activities of the agency for the succeeding fiscal year are likely to enable the agency to achieve the goals set forth in section 2341. The Department shall make recommendations on activities the agency should engage in to meet or exceed the goals set forth in section 2341. The Department's recommendations shall be submitted to the agency, the Council, and the Commission.

(e) The Commission may review the annual report of an agency to determine whether the planned activities of the agency for the succeeding fiscal year are likely to enable the agency to achieve the goals set forth in section 2341. The Commission may make recommendations on activities the agency should engage in to meet or exceed the goals set forth in section 2341. The Commission's recommendations, if any, shall be submitted to the agency, the Council, and the Department.

Sec. 2354. Department reporting requirements.

(a) Within 45 days of its receipt of the annual reports required by section 2352(b), the Department shall submit to the Council and the Commission a report containing the following documents and information:

(1) A chart containing the following information with respect to each agency for the prior fiscal year:

(A) The expendable budget of the agency;

(B) Each goal of the agency under section 2341 in dollar and percentage terms;

(C) The agency's achievement with respect to each goal established by section 2341, which shall include the following information:

(i) The percentage of the expendable budget, the percentage of the total budget, and the dollar volume that was contracted or procured with the following:

(I) Local business enterprises;

(II) Small business enterprises; and

(III) Disadvantaged business enterprises; and

(ii) The dollar volume and percentage of the contracts and procurements awarded during the quarter which were actually paid (including payments through subcontracting) to:

- (I) Local business enterprises;
- (II) Small business enterprises; and
- (III) Disadvantaged business enterprises; and

(D) A list of each contract or procurement of the agency, including:

- (i) A description of the contract or procurement;
- (ii) The dollar amount of the contract or procurement;
- (iii) The name of the business enterprise from which the goods or services were contracted or procured;
- (iv) Whether the business enterprise was a certified business enterprise, and, if it was:
 - (I) The category or categories under which the business enterprise is certified; and
 - (II) The identification number of the business enterprise assigned by the Department; and
- (v) The source of funding for the contract (local, federal, other, or capital); and

(2) A chart listing the following information with respect to each agency for the current fiscal year:

- (A) The total budget of each agency;
- (B) The expendable budget of each agency;
- (C) A description of each funding source, object class, object, or item that was excluded from the total budget of the agency in the Department's calculation of the expendable budget of the agency;
- (D) Each goal of the agency under section 2341 in percentage and dollar terms; and
- (E) The actual dollar amount expended with each certified business enterprise.

(b) Within 45 days of its receipt of the annual reports required by section 2350(g), the Department shall submit to the Council and the Commission a report containing the following information with respect to each government corporation for the current and prior fiscal years:

- (1) The expendable budget of the government corporation;
- (2) The government corporation's achievement with respect to the requirements of section 2350; and
- (3) A list of each contract or procurement of the government corporation, which shall include the following:
 - (A) A description of the contract or procurement;
 - (B) The dollar amount of the contract or procurement;
 - (C) The name of the business enterprise from which the goods or services were contracted or procured;
 - (D) Whether the business enterprise was a certified business enterprise, and, if it was:
 - (i) The category or categories under which the business enterprise is certified; and
 - (ii) The identification number of the business enterprise assigned by the Department;
 - (E) The source of funding for the contract (local, federal, other, or capital); and
 - (F) The actual dollar amount expended with each business enterprise.

(c)(1) Beginning with the first full quarter after October 25, 2006 the Department shall submit to the Council, within 60 days of the end of the quarter, a copy of the quarterly reports of each agency required by section 2353(a) and a copy of the quarterly reports of each government corporation required by section 2350(f).

(2) Beginning with the first full quarter after October 25, 2006, the Department shall submit to the Council the following:

(A) A summary of the information that each agency is required to submit pursuant to section 2353 and the information that each government corporation is required to submit pursuant to section 2350(f), in a format that shows the cumulative progress of each agency's or government corporation's annual certified business enterprise contracting and procurement goals

to date, and the actual dollar amount expended with each business enterprise for the current fiscal year; and

(B) A list of all agencies or government corporations that have not submitted a report for that quarter and a detailed explanation of what actions were taken by the Department to effectuate compliance with the reporting requirement.

Sec. 2355. Regional governmental entities.

(a) Except as provided in subsection (b) of this section, a regional governmental entity shall be exempt from the requirements of this subtitle to the extent that the requirements of this subtitle impact on the regional governmental entity's operations within the territory of a member government other than the District.

(b) The District of Columbia Water and Sewer Authority shall be exempt from the requirements of this subtitle to the extent that the requirements of this subtitle are contrary to procurement regulations promulgated pursuant to statutes establishing the District of Columbia Water and Sewer Authority.

Subpart 3. Certification.

Sec. 2361. Certificate of registration.

(a) No business enterprise shall be permitted to participate in a program established under this part unless the business enterprise:

(1) Has been issued a certificate of registration under the provisions of this subtitle;

(2) Has been issued a provisional certification under regulations issued pursuant to this subtitle.

(b)(1) An enterprise seeking to be certified as a local, small, or disadvantaged business enterprise, as a resident-owned business, as a longtime resident business, or as a local business enterprise with its principal office located in an enterprise zone shall file with the Department a written application on such form or forms as may be prescribed by the Department.

(2) The application shall include, at a minimum, the following documents and information:

(A) A certification of the correctness of the information provided;

(B) Written evidence that the applicant is:

(i) A bona fide local business enterprise;

(ii) A bona fide disadvantaged business enterprise;

- (iii) A bona fide small business enterprise;
 - (iv) A bona fide local business enterprise located in an enterprise zone;
 - (v) A bona fide resident-owned business; or
 - (vi) A bona fide longtime resident business.
- (C) Evidence of ability and character;
- (D) Evidence of financial position, which may be the applicant's most recent financial statement. For the purposes of this subparagraph, the term "recent" means produced from current data no more than 90 days prior to the application date; and
- (E) Any other information the Commission or Department may require.

(c) The Department shall issue the applicant a certificate of registration if:

- (1) The information provided in the application or additional filings is satisfactory to the Department;
- (2) The business enterprise meets the standards of this subtitle; and
- (3) The applicant fulfills other requirements as may be established by the Commission or the Department.

(d) A certificate of registration shall expire 2 years from the date of approval of the application.

(e) The Department shall give first priority in reviewing applications submitted pursuant to subsection (b) of this section to any business enterprises that has received a provisional certification pursuant to section 2362.

Sec. 2362. Provisional certification; self-certification prohibited.

(a) The Department may authorize a business enterprise to participate in a program established under this part without receiving a certificate of registration under section 2361; provided, that such authorization shall be granted only when:

- (1) A business enterprise is applying for certification in order to bid on a contract or procurement for which responses are due within the next 45 days;
- (2) The business enterprise has submitted a majority of the information required under section 2361; and

(3) The Department reasonably believes that it will certify the business enterprise after the business enterprise has submitted all of the information required under this subtitle or regulations promulgated pursuant to this subtitle.

(b) An authorization granted under this section shall not last for more than 90 days.

(c) The Department shall make authorizations under subsection (a) of this section pursuant to rules promulgated pursuant to this subtitle.

(d) A business enterprise may not self-certify or self-authorize to participate in a program established under sections 2343 through 2349.

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

(a) The Commission may revoke or suspend the certificate of registration of a business enterprise that:

- (1) Engaged in fraud or deceit in obtaining the registration;
- (2) Furnished substantially inaccurate or incomplete ownership or financial information;
- (3) Failed to report changes that affect its eligibility for certification;
- (4) Acted with gross negligence, incompetence, financial irresponsibility, or misconduct in the practice of a trade or profession; or
- (5) Willfully violated any provision of this subtitle or rules adopted pursuant to this subtitle.

(b)(1) Any person may file with the Commission a complaint alleging a violation of this subtitle against an applicant for registration or a business enterprise registered pursuant to this subtitle. The complaint shall be in writing and sworn to by the complainant.

(2) The Commission may request that the Department investigate the facts and merits of the complaint.

(3) The Commission may, without a hearing, dismiss a complaint which it determines to be frivolous or otherwise without merit.

(4) If the Commission does not determine that a complaint is frivolous or otherwise without merit, it shall hold a hearing on the complaint within 3 months of the filing of the complaint. The Commission shall determine the time and place of the hearing. The Commission shall cause to be issued and served on the person or business enterprise 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 prior to the scheduled hearing. Notice shall be served by registered or certified mail, return receipt requested, or by personal service.

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.

(5) If, after the conclusion of the hearing, the Commission determines that the respondent has violated the provisions of this subtitle or regulations issued pursuant to this subtitle, the Commission shall issue, and cause to be served on the respondent, a decision and order, accompanied by findings of fact and conclusions of law, revoking or suspending the respondent's registration, or taking any other action it deems appropriate.

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

(c) In addition to the procedures and penalties provided in subsection (b) of this section, the Attorney General for the District of Columbia may bring a civil action in the Superior Court of the District of Columbia against a business enterprise and the directors, officers, or principals of a business enterprise that is reasonably believed to have obtained certification by fraud or deceit or to have willfully furnished substantially inaccurate or incomplete ownership information to the Department or to the Commission. A business enterprise or individual found guilty under this subsection shall be subject to a civil penalty of not more than \$100,000.

(d) The Commission may at any time reissue a certificate of registration to any firm or joint venture whose certificate has been revoked; provided, that a majority of at least 4 members of the Commission vote in favor of reissuance. The Commission may consider whether the firm or joint venture should be required to submit satisfactory proof that conditions within the company that led to the violation have been corrected.

(e) Any contract awarded to a business enterprise based on the use of a provisional certification issued pursuant the section 2362 shall be voidable by the District if the final disposition of an application for a certificate of registration is denied pursuant to section 2361.

Subpart 4. Triennial review and rulemaking.

Sec. 2371. Triennial review of program and subtitle.

(a) Every 3 years following the effective date of this subtitle, the Department shall submit to the Council, the Mayor, and the Commission the results of an independent evaluation of the certified business enterprise programs. This evaluation shall compare the costs of contracts awarded pursuant to this subtitle to the cost of contracts awarded without use of the set-asides and bid preferences authorized by this subtitle. This evaluation shall also compare economic outcomes such as revenue, tax payments, and employment of District residents for certified business enterprises certified pursuant to Part D to economic outcomes for similar firms that are not certified pursuant to Part D.

(b) The Department and the Commission shall review the findings in the triennial report and the goals, intents, and purposes of this subtitle. The Department shall, and the Commission may, transmit to the Council and the Mayor a report setting forth any recommended amendments to this subtitle.

Sec. 2372. Rulemaking authority.

The Mayor shall, pursuant to title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*) issue proposed rules to implement this subtitle. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

Sec. 2133. Of the funds appropriated in fiscal year 2007 for the Department of Small and Local Business Development, an amount of \$200,000 shall be allocated to the additional rampup costs and the costs associated with implementing the provisions of this subtitle; provided, that not less than \$100,000 of this amount shall be used to complete a disparity study, designed to investigate how the effect of any historic or continuing discriminatory practices impact on the ability of local, small, and disadvantaged business enterprises to participate in procurement and other business opportunities in the District of Columbia; provided further, that not less than \$50,000 of this amount shall be used to monitor the implementation of section 2132(e) of this subtitle; and not less than \$50,000 shall be used to monitor the implementation of section 2132(f) of this subtitle.

Subpart 5. Financial Assistance

Sec. 2375. Small Business Micro Loan Fund.

(a) For the purposes of this section, the term:

(1) “Eligible recipient” means businesses certified as small business enterprises pursuant to section 2332 and disadvantaged business enterprises certified pursuant to section 2333.

(2) “Fund” means the Small Business Micro Loan Fund.

(b) There is established as a nonlapsing fund the Small Business Micro Loan Fund, which shall be used solely to provide financial assistance, including loans and loan guarantees, to eligible recipients.

(c)(1) All funds deposited in the Fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of the fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(2) Any penalties assessed by the Department pursuant to section 2348 and any civil penalties imposed pursuant to section 2363(c) shall be collected by the Department and deposited into the Fund.

(d) Preference for financial assistance shall be given to:

(1) Eligible recipients that are also certified as resident-owned businesses pursuant to section 2335; or

(2) Eligible recipients that serve, or whose principal office is located in:

(A) A DC Main Street corridor;

(B) A Neighborhood Investment Program Target Area; or

(C) Another area identified by the Mayor for economic development or commercial revitalization.

(e) Within 90 days of the effective date of the Fiscal Year 2008 Budget Support Act of 2007, passed on 2nd reading on June 5, 2007 (Enrolled version of Bill 17-148), the Mayor shall issue rules to implement the provisions of this section. The Mayor shall submit the proposed rules to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within the 45-day review period, the proposed rules shall be deemed approved.