



## Synopsis Of The Law

The Department of Small and Local Business Development (“DSLBD”) has experienced significant change over the last three years, beginning with the passage of the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. Official Code § 2-218.01 *et seq.* (hereinafter the “Act”). This Act made significant changes to the laws affecting the Certified Business Enterprise (“CBE”) program and mandated the conversion of the Office of Local Business Development into a full-fledged Department with new programmatic areas. Since the Act became effective in October 2005, there have been a number of clarifying and substantive amendments to the statute. The following summarizes some of the major aspects of the current statute and highlights recent changes:

### **Structure of DSLBD**

DSLBD has four primary divisions:

- Certification, Compliance and Enforcement Division
- Business Opportunities and Access to Capital Division
- Training and Education Division
- Commercial Revitalization Division

### **New Terminology** NEW

Traditionally, certified companies have been referred to as “Local, Small and Disadvantaged business enterprises” or “LSDBEs” for short. This terminology originated when the legislation was first introduced and there were only three categories of certification: “Local, Small, and Disadvantaged.” Now there are six categories of certification (see below). To make the nomenclature more clear, a new term, “Certified Business Enterprise” or “CBE” has been added to the statute, and references to “local, small and disadvantaged business enterprises” have been replaced with “Certified Business Enterprise” where appropriate.

## ***Certified Business Enterprises***

### Local Business Enterprise (LBE)

- Must have its principal office located physically in the District of Columbia;
- Must require 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;
- Must meet **1** of the 4 following criteria:
  - More than 50% of the assets of the business enterprise, excluding bank accounts, are located in the District
  - More than 50% of the employees of the business enterprise are residents in the District;
  - The owners of more than 50% of the business enterprise are residents of the District; or
  - More than 50% of the total sales or other revenue are derived from transactions of the business enterprise in the District;
- Must also be
  - licensed pursuant to Chapter 28 of Title 47 of the District of Columbia Official Code;
  - subject to the tax levied under Chapter 18 of Title 47 of the District of Columbia Official Code; or
  - 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

### Small Business Enterprise (SBE)

- Must be a Local Business Enterprise;
- Must be independently owned, operated, and controlled; and
- Must be certified by the United States Small Business Administration as a small business concern under the Small Business Act (15 U.S.C. § 631 *et seq.*); or have annualized gross receipts for the 3 years preceding certification not exceeding certain limits<sup>1</sup>

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<sup>1</sup> The limits are as follows:

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.

- Other requirements apply for business enterprises affiliated with other business enterprises through common ownership, management or control

#### Disadvantaged Business Enterprise (DBE)

- Must be owned, operated, and controlled by economically disadvantaged individuals; and
- Must be a Local Business Enterprise
- Other requirements apply for business enterprises affiliated with other business enterprises through common ownership, management or control

#### Resident-Owned Business (ROB)

- Must be 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

#### Longtime Resident Business (LRB)

- Must be a business which has been continuously eligible for certification as a local business enterprise for 20 consecutive years, or as a small business enterprise for 15 consecutive years

#### Local Business Enterprise With Principal Offices Located In An Enterprise Zone (DZE)

- Business enterprise must be located in an economic development zone designated by the Mayor and approved by the Council pursuant to sections 2 through 5 of the Economic Development Zone Amendment Act of 1988 (D.C. Official Code § 6-1501 *et seq.*)

#### Qualified Metropolitan Area Business Enterprises

- This provision has been REPEALED. To participate in the CBE program, the business enterprise must be located in the District of Columbia.

#### ***District Agency Contracting Goals***

- Each agency, including an agency that contracts or procures through the Office of Contracting and Procurement (OCP), must 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.

- The dollar volume is based on the expendable budget of the Agency. Expendable budget means the total budget of an agency reduced by such funding sources, object classes, objects, and other items as identified by the Mayor through rulemaking.

***Bid and Proposal Preferences***

In evaluating bids or proposals, agencies shall award preferences as follows:

<b><u>CBE Category</u></b>	<b><u>Points</u></b>	<b><u>% Reduction</u></b>
Small Business Enterprise	3	3
Resident-Owned Business	5	5
Longtime Resident Business	10	10
Local Business Enterprise	2	2
Enterprise Zone	2	2
Disadvantaged Business Enterprise	2	2

No certified business enterprise is entitled to more than 12 points or a reduction in price of more than 12 %.

***Mandatory Small Business Set-Asides***

- Each agency must set aside every contract or procurement of \$100,000 or less for Small Business Enterprises unless the agency determines in writing that there are not at least 2 responsible certified Small Business Enterprises that can provide the services or goods that are the subject of the contract.
- Each agency must set aside every contract of \$100,000 or less for the District of Columbia Supply Schedule (DCSS) for Small Business Enterprises unless 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 that are the subject of the contract.

***Subcontracting Requirements***

- All construction contracts in excess of \$250,000 must include the following requirements:
  - At least **35%** of the dollar volume must be subcontracted to Small Business Enterprises. The costs of materials, good and supplies are not counted towards the 35% subcontracting requirement unless such materials, goods and supplies are purchased from Small Business Enterprises.
  - If there are insufficient qualified Small Business Enterprises to fulfill the 35% subcontracting requirement, then the subcontracting requirement may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises, provided that all reasonable efforts are made to ensure that

qualified Small Business Enterprises are significant participants in the overall subcontracting work.

- All non-construction contracts in which a portion will be subcontracted must include the following requirements:
  - At least **35%** of the dollar volume must be subcontracted to Small Business Enterprises. The costs of materials, good and supplies are not counted towards the 35% subcontracting requirement unless such materials, goods and supplies are purchased from Small Business Enterprises.
  - If there are insufficient qualified Small Business Enterprises to fulfill the 35% subcontracting requirement, then the subcontracting requirement may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises, provided that all reasonable efforts are made to ensure that qualified Small Business Enterprises are significant participants in the overall subcontracting work.
  
- Each construction contract for which a CBE is selected as a prime contractor, and is granted points or a price reduction or is selected through a set-aside program, must 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.
  - If the business enterprise subcontracts, 35% of the subcontracted effort (excluding the cost of materials, goods, and supplies), must be with CBEs.
  - If the total contracting effort (excluding the cost of materials, goods, and supplies) proposed to be performed by CBEs is less than 35%, then the business enterprise shall not be eligible to receive preference points or price reductions for at least 2 years.
  
- Each construction contract for which a joint venture is selected as a prime contractor, and is granted points or a price reduction or is selected through a set-aside program, shall include a requirement that the CBE perform at least **50%** of the contracting effort (excluding the cost of materials, goods, and supplies) with its own organization and resources.
  - If the joint venture subcontracts, 35% of the subcontracted effort must be with CBEs.
  - If the total contracting effort (excluding the cost of materials, goods, and supplies) proposed to be performed by CBEs is less than 50%, then the business enterprise shall not be eligible to receive preference points or price reductions for at least 2 years.
  
- Each construction contract of \$1 million or less for which a CBE is selected as a prime contractor, and is granted points or a price reduction or is selected through a set-aside program, must include a requirement that the business enterprise perform at least **50%** of the on-site work with its own work force.

- Bids or proposals responding to solicitations will be deemed nonresponsive and will be rejected if the solicitation requires submission of a CBE subcontracting plan and the prime contractor fails to submit a subcontracting plan as part of its bid or proposal.
- The subcontracting requirements may be waived by the Director of DSLBD.

***Equity and Development Participation***

- Local, small, and disadvantaged business enterprises must 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.
- The participation requirement includes 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.
- This requirement does not apply if the entity that controls the development project is an entity tax-exempt under section 501(c) of the Internal Revenue Code.