

AN ACT

*Codification
District of
Columbia
Code
2001 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on a temporary basis, the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998 to broaden the pool of prospective bidders on the construction of the Washington Convention Center by permitting the District of Columbia Local Business Opportunity Commission to certify small, local, or disadvantaged business enterprises that are not District-based but that are located in the Washington Standard Metropolitan Statistical Area and agree by contract to meet particular supplementary criteria, broaden the pool of prospective bidders on the Office of Contracting and Procurement's Blanket Order Blitz by establishing a local, small, or disadvantaged business enterprise set-aside program at the prime contract level, provide preference points for District of Columbia business owners who are residents of the District, create penalty and enforcement provisions for violation of the act; to require that each agency submit to the Office of Local Business Development an implementation plan for agency compliance with procurement from certified local, small, or disadvantaged business enterprises, to require that the Office of Local Business monitor agency compliance with the act; to amend the Service Improvement and Fiscal Year 2000 Budget Support Act of 1999 to change the name of the commission and office established thereby, and to repeal provisions declared unconstitutional; to amend An Act To require that contracts for the construction, alteration, or repair of any public building or public work of the District of Columbia be accompanied by an additional bond for the protection of persons furnishing material and labor, and for other purposes, the District of Columbia Regional Interstate Banking Act of 1985, the District of Columbia Savings and Loan Acquisition Amendment Act of 1988, and section 47-351.11 of the District of Columbia Code to change the name of the Commission and conform the description of the program that it administers; and to repeal temporary and emergency legislation dealing with the same subject matter as this legislation.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Temporary Amendment Act of 2000".

Sec. 2. The Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998 is amended as follows:

(a) Section 2 is amended as follows:

(1) A new paragraph (1A) is added to read as follows:

"(1A) "Blanket Order Blitz" means a program established by the Office of Contracting and Procurement to award requirement contracts, indefinite quantity contracts, or blanket purchase agreements for the provision of goods or services (including construction services) to more than one agency or to multiple sub-units of the same agency."

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

"(2A) "Director" means the Director of the Office of Local Business Development."

(3) A new paragraph (7A) is added to read as follows:

"(7A) "Office" means the Office of Local Business Development."

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

"(8A) "Resident business ownership" means a local business enterprise owned by an individual, or a majority number of individuals, subject to personal income tax in the District of Columbia."

(b) Section 3 is amended as follows:

(1) Subsection (a) is amended by striking the word "Commission" wherever it appears and inserting the word "Office" in its place.

(2) Subsection (b) is amended by striking the word "Commission" and inserting the word "Office" in its place.

(3) Subsection (c) is amended by striking the phrase "the Commission shall" and inserting the phrase "the Office shall" in its place.

(4) A new subsection (d) is added to read as follows:

"(d) Each agency of the District shall submit to the Office, within 60 days of the effective date of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Amendment Act of 2000, an implementation plan setting forth the manner in which the agency shall comply with the requirements of subsection (a) of this section."

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

"(e) The Office shall monitor agency compliance with the requirements of subsections (a) and (d) of this section and shall review whether the plans required by subsections (a) and (d) of this section have been submitted in a timely manner by the agency and whether the plans acceptably meet the goals of this section."

(c) Section 4 is amended as follows:

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

"(b)(1) The Mayor shall include among these programs:

"(A) A bid preference mechanism for local and disadvantaged business enterprises;

"(B) A two-tier small business set-aside program at the contract level that shall:

"(i) Include a separate set-aside program for small business enterprises with gross revenues of \$1 million or less; and

"(ii) Provide that a business becomes ineligible for participation in this set-aside program when the business has gross revenues in excess of \$1 million for 2 consecutive years;

"(C) Set-aside programs for all small business enterprises, and for local and disadvantaged business enterprises, at the subcontracting level; and

"(D) A set-aside program for local, small, or disadvantaged business enterprises for the Blanket Order Blitz at the contract level.

"(2) In evaluating bids and proposals, agencies shall award preferences:

"(A) In the form of points, in the case of proposals, as follows:

"(i) Three points for resident business ownership;

"(ii) Four points for local business enterprises;

"(iii) Two points for businesses located in enterprise zones; and

"(iv) Three points for disadvantaged business enterprises.

"(B) A percentage reduction in price, in the case of bids, as follows:

"(i) Three percent for resident business ownership;

"(ii) Four percent for local business enterprises;

"(iii) Two percent for businesses located in enterprise zones; and

"(iv) Three percent for disadvantaged business enterprises.

"(3) A bid or proposal from a qualified business enterprise may be entitled to any or all of the preferences provided in paragraph (2) of this subsection."

(2) Subsection (c) is amended by striking the phrase "of the Local Business Development Administration".

(3) Subsection (d) is amended by striking the phrase "of the Local Business Development Administration".

(d) Section 5 is amended as follows:

(1) The first sentence of subsection (a) is amended to read as follows:

"Notwithstanding any other provisions of law, no enterprise shall be permitted to participate in the program established under section 4 unless the enterprise has been issued a certificate of registration under the provisions of this act, has self-certified under regulations issued pursuant to this act, or has submitted a notarized certification application for consideration as a local, small, or disadvantaged business for the purpose of the Blanket Order Blitz."

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

"(b-1) An enterprise seeking to participate in the Blanket Order Blitz shall be deemed certified upon submission of a notarized certification application to the Commission, and the

enterprise shall be eligible to participate in the program until the Commission makes a determination of its eligibility based on the application."

(e) Section 6 is amended as follows:

(1) Paragraphs (3), (4), (8), and (10) are repealed.

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

"(13A)(A) Determine that a business enterprise that does not otherwise meet the criteria of section 2(7) or paragraph (13) of this section, is a local business enterprise for the purposes of the development and construction of the new Washington Convention Center, if the business enterprise has its principal office located in the Washington Standard Metropolitan Statistical Area and agrees by contract with the Washington Convention Center Authority to meet at least 2 of the following 4 criteria:

"(i) Provide substantially greater employment opportunities to District residents than would be required under applicable laws and regulations, including the First Source Employment Agreement Act of 1984, and Mayor's Order No. 85-85, issued June 10, 1985;

"(ii) Provide substantially greater subcontracting opportunities for business enterprises that are certified as local, small, or disadvantaged business enterprises by the Commission than would otherwise be required under applicable law;

"(iii) Enter into a mentoring relationship with one or more business enterprises that are certified as small or disadvantaged enterprises by the Commission; or

"(iv) Joint venture with one or more business enterprises that are certified as local, small, or disadvantaged, and the constituent members of the joint venture so certified realize a substantial portion of the joint venture as economic growth or job opportunities for District residents.

"(B) For a mentoring relationship entered into under subparagraph (A)(iii) of this paragraph, the relationship shall be documented in writing between the certified small or disadvantaged business enterprise and the contractor to be certified for a specific project, and shall be designed to assist the small or disadvantaged business enterprise independently to compete more effectively. The mentoring relationship must include meaningful assistance to the small or disadvantaged business enterprise in obtaining bonding, capital, or future contracting opportunities.

"(C) The Commission may, on its own initiative or in response to a request from an agency or instrumentality of the District of Columbia, decide that a specific project undertaken or supported by such agency or instrumentality be eligible for project-specific determinations. The Commission's decision shall take into account all relevant factors, including:

"(i) The nature of the project;

"(ii) The benefits project-specific determinations would bring to the District and its residents; and

"(iii) The composition of the contracting community with respect to the project.

"(D) The Commission shall establish rules to implement the procedures applicable to this paragraph.

"(E) This paragraph shall expire 2 years after the effective date of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Amendment Act of 2000. If the Commission believes there is a reason for extension of the law, the Commission shall vote on this decision and forward a request to the Council to extend the law."

Sec. 3. Section 203(b) of the District of Columbia Procurement Practices Act of 1985 is amended as follows:

(a) Paragraph (7) is amended by striking the word "and" at the end.

(b) Paragraph (8) is amended by striking the period and inserting the phrase "; and" in its place.

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

"(9) To exercise contracting and procurement authority over certain agencies pursuant to section 3 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998."

Sec. 4. Section 223 of the Service Improvement and Fiscal Year 2000 Budget Support Act of 1999 is amended as follows:

(a) Paragraph (7) is amended by striking the word "and" at the end.

(b) Paragraph (8) is amended by striking the period and inserting a semicolon in its place.

(c) New paragraphs (9) through (14) are added to read as follows:

"(9) Evaluate the local, small, and disadvantaged business enterprise programs under section 3 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998;

"(10) Review the procurement plans of each agency of the District government and determine, if it deems appropriate, which contracts, or parts thereof, shall be reserved for the programs established under section 4 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998. If an agency has failed to meet the goals set forth in section 3 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998, the Office shall reserve portions of the agency's contracts to be performed in accordance with the programs established under section 4 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998 so that agency's failings may be timely remedied;

"(11) Reviewing agency plans and taking appropriate action pursuant to section 3 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998;

"(12) Consider an agency request for adjustment of goals of section 3 of the Equal Opportunity for Local, Small and Disadvantaged Business Enterprises Act of 1998 in particular instances; provided, that the Office report to the Mayor and the Council, on a semi-annual basis, recommendations for changes of the goals under section 3, on an agency basis if appropriate, and accompanied by necessary supporting data;

"(13) Review bids in the small business enterprise set-aside arrangements established under section 4 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998 and may authorize agencies to refuse to award a contract where the Office determines that bids for a particular contract are excessive; and

"(14) Review contracting problems and make further recommendations that increase small, local, and disadvantaged contractor participation with the District government. Recommendations shall include improved schedules that ensure prompt payment to contractors, special geographic radii requirements on certain contracts, innovative contract advertising procedures, the encouragement of joint ventures, and advice for the Mayor on methods to be utilized to ensure participation.".

Sec. 5. Section 1(b) of AN ACT To require that contracts for the construction, alteration, or repair of any public building or public work of the District of Columbia be accompanied by a performance bond protecting the District of Columbia and by an additional bond for the protection of persons furnishing material and labor, and for other purposes is amended by striking the phrase "he, through the District of Columbia Local Business Opportunity Commission, may" and inserting the phrase "the authority of the Mayor to" in its place.

Sec. 6. Section 10b(a) of District of Columbia Regional Interstate Banking Act of 1985 is amended by striking the phrase "Minority Business Opportunity Commission in accordance with the District of Columbia Minority Contracting Act of 1976" and inserting the phrase "District of Columbia Local Business Opportunity Commission in accordance with the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998" in its place.

Sec. 7. Section 17a(a) of the District of Columbia Savings and Loan Acquisition Amendment Act of 1988 is amended by striking the phrase "Minority Business Opportunity Commission in accordance with the District of Columbia Minority Contracting Act of 1976" and inserting the phrase "District of Columbia Local Business Opportunity Commission in accordance with the Equal Opportunity for Local, Small and Disadvantaged Business Enterprises Act of 1998." in its place.

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Sec. 8. Section 47-351.11 of the District of Columbia Code is amended by striking the phrase "Minority Business Opportunity Commission in accordance with § 1-1141 et seq." and inserting the phrase "Local Business Opportunity Commission in accordance with § 1-1153.1 *et seq.*" in its place.

Sec. 9. Repealers.

(a) The Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Act of 2000 is repealed.

(b) The Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Amendment Act of 1999 is repealed.

Sec. 10. Fiscal impact statement.

The Council adopts the fiscal impact statement in the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Amendment Act of 2000, signed by the Mayor on June 26, 2000 (D.C. Act 13-373; 47 DCR 5846), as the fiscal impact statement required by section 602 (c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)). There is potential positive revenue impact because of contractual agreements of vendors to generate economic growth and hire District residents.

Sec. 11. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in

section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

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(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia