



Testimony of the District of Columbia Building Industry Association

Before the

Committee on Business and Economic Development

Councilmember Kenyan McDuffie, Chair

Public Performance Oversight Hearing

on

**The D.C. Department of Small and Local Business Development**

Virtual Hearing

February 10, 2021

9 am

Good morning Chair McDuffie, members of the Committee, and staff. My name is Lisa Mallory, and I am Chief Executive Officer of the District of Columbia Building Industry Association (“DCBIA”). I am also a longtime resident of Ward 4. DCBIA is the leading voice of real estate development in the District of Columbia. Thank you for the opportunity to testify this morning at the Committee’s FY21 performance oversight hearing on the D.C. Department of Small and Local Business Development (“DSLBD”).

I will focus my testimony on recent, and possible future, changes to the Certified Business Enterprise (“CBE”) program administered by DSLBD. DCBIA appreciates the intent of proposals to change CBE requirements to ensure that the program is in keeping with its purpose to provide opportunities for District-based businesses. As the Committee considers permanent legislation, I want to update you on our members’ experience with the temporary changes to the law, and reiterate the importance of permanent legislation that does not have unintended consequences for District projects, District businesses, or the CBE program.

In the last Council period, this Committee held a hearing on two bills affecting the requirements for qualifying as a Local Business Enterprise (“LBE”), the threshold certification for participation in the CBE program. The Local Business Enterprise Clarification Amendment Act, introduced by Councilmember McDuffie, added additional requirements for the ownership, operation, and control

of an LBE. The Mayor also introduced a bill, the Supporting Local Business Enterprises Amendment Act, that would establish new requirements for LBE certification, as well as extensive changes to the entire CBE program.

The Council ultimately adopted Councilmember McDuffie's bill on an emergency and temporary basis ("Temporary Act"). Pursuant to this Temporary Act, DSLBD notified CBEs that were no longer compliant that they would have to reapply for certification by February 2, 2021. The Temporary Act will expire on August 4. Meanwhile, the Mayor reintroduced her bill last month. The Council now must decide how to proceed with permanent legislation.

In my testimony last fall, we encouraged the Committee to think carefully about how it proceeds with any changes that will have a direct impact on which entities are able to participate in District government projects. This includes seeking to get a better understanding of exactly which businesses the changes will affect. We also encouraged the Committee to provide for a transition for these changes. This is necessary more than ever.

Since the Temporary Act went into effect last fall, one particular problem has come to our attention. The Temporary Act expressly permits a non-compliant CBE that "has an existing contract *with the District*" to complete the contract term. However, this sensible transition provision does not clearly extend to projects with CBE *subcontracting* requirements. In these cases, the companies doing business

with the District government have secured financing, insurance, and bonding, among other requirements, including signing CBE usage agreements with DSLBD and hiring CBEs to do subcontracting work, premised on the fact that the particular subcontractors they have engaged meet CBE requirements. Such subcontracting CBEs have no “existing contract with the District.” As a result, development projects that are being undertaken right now that are critical for our economic recovery are in jeopardy of having subcontractors fall out of compliance with CBE requirements, and they cannot be easily replaced. If DSLBD is unable to rectify this unintended consequence through agency action, we urge the Council to adopt legislation making clear that all CBEs that have become incompliant under the new law can complete existing contracts if they contribute to a CBE subcontracting requirement.

We appreciate you and your staff for taking the time to engage with us since the last hearing to understand your priorities and possible ways forward. Through continued collaboration, we can ensure that changes to the CBE program bring their intended benefits while minimizing any disruption or negative consequences to District government projects, businesses, and the CBE program. We look forward to working with you and your staff on changes to the permanent legislation. Thank you for the opportunity to testify. I am happy to answer any questions you may have.