

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

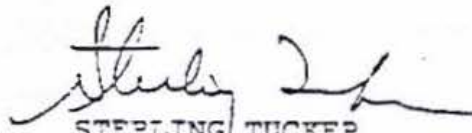
March 31, 1977

D.C LAW 1-95

"Minority Contracting Act of 1976"

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act (PL 93-198), the Act, the Council of the District of Columbia adopted Bill No. 1-323 on first and second readings September 15, 1976, and October 12, 1976, respectively. Following the signature of the Mayor on November 15, 1976, this legislation was assigned Act No. 1-174, published in the November 26, 1976, edition of the D.C. Register, and transmitted to both Houses of Congress for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired and, therefore, cites the following legislation as D. C. Law 1-95, effective March 29, 1977.


STERLING TUCKER
Chairman of the Council

(Ref. 23, DCREG. 3525, November 26, 1976)

D. C. LAW

1-95

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 29, 1977

To ensure fair and equitable business opportunities for minority-owned firms when contracting with the government of the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Minority Contracting Act of 1976".

Sec. 2. The Council finds that--

(a) a persistent pattern of racial discrimination in our society has prevented minority business enterprises from gaining a fair share of contracts and subcontracts for construction, supplies, and materials in both the public and private sector;

(b) the inability of minority business enterprises to prosper and participate fully is particularly unacceptable in the District of Columbia, where there is a great disparity between the number of minority business enterprises operating in the community and the number of such enterprises participating in public contracting;

(c) in addition to other impediments, difficulties in the financing and bonding markets have kept minority

business enterprises from full participation in public contracting in the District of Columbia;

(d) as a result of this discrimination, minority group residents of the District of Columbia have not only been deprived of equal business opportunities, but have also been deprived of numerous employment opportunities;

(e) the District of Columbia government is committed to a policy of equal employment opportunity, and carries out affirmative action programs to fulfill that policy, in the allocation of District of Columbia government contracts; and

(f) the minority contracting programs established according to this act will work to achieve the goal of equal opportunity, to overcome the effects of past discrimination in the allocation of contracts, and the financing and bonding of minority business enterprises.

Sec. 3. For the purposes of this act:

(a) The term "minority" means Blacks, Hispanics, American Indians, Orientals, and Eskimos.

(b) The term "minority business enterprise" means a business enterprise of which more than 50 percent of the voting shares or interest in such business enterprise is held by individuals who are members of a minority, and that more than 50 percent of the net profit or loss attributable to that business enterprise accrues to members of a minority.

-3-

(c) The term "local business enterprise" means a business enterprise licensed under section 9 of the Act of July 1, 1902 (D.C. Code, secs. 47-2301 et seq.), or subject to the tax levied under Title X of the District of Columbia Income and Franchise Tax Act of 1947 (D. C. Code, secs. 47-1580 et seq.).

(d) The term "joint venture" means a combination of contractors performing a specific job in which minority business enterprises participate and share a percentage of the net profit or net loss.

(e) The term "Commission" means the District of Columbia Minority Business Opportunity Commission established by section 4 of this act.

(f) The term "agency" means an agency, department, office, or instrumentality of the District of Columbia government.

(g) The term "sheltered market" means a process whereby contracts or subcontracts are designated, before solicitation of bids, for limited competition from minority business enterprises on either a negotiated or competitive bid process.

Sec. 4. (a) There is hereby established for the District of Columbia a District of Columbia Minority Business Opportunity Commission (hereinafter in this act referred to as the "Commission") to oversee the implementation of minority participation in public

-4-

contracting. The Commission shall exercise the powers set forth in section 10 to foster local minority business opportunities consistent with ensuring that the interests of the District of Columbia government are protected. The Commission shall terminate at the end of the third complete calendar year occurring after the effective date of this act.

(b) The Commission shall consist of seven members appointed by the Mayor within 30 days after the effective date of this act.

(c) Three of the members shall be appointed from the membership of the Washington Area Construction Industry Task Force. Of the remaining four, one member shall be a Minority Construction Contractor, who has acted as a general contractor; and two members shall be minority suppliers of goods, services, and materials other than construction.

(d) Any person appointed to fill a vacancy on the Commission shall be appointed only for the unexpired term of the member whose vacancy he is filling in the same manner, and according to the same criteria, as the member whose term he is appointed to fill.

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

-5-

(f) Each member of the Commission shall, before entering upon the discharge of the duties of his office, take, subscribe and file with the Corporation Counsel of the District of Columbia, a required oath of office.

(g) The members of the Commission shall receive no compensation for time spent in attendance at meetings or in conducting other official business of the Commission.

Sec. 5. (a) The Commission may promulgate, amend, repeal and enforce such regulations, consistent with the provisions of this act, as may be necessary and appropriate to promote the ethical practice of contracting and subcontracting and to carry out the provisions, intents and purposes of this act.

(b) Any Commission member who has 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.

(c) The Commission shall meet at least once each month for the purpose of transacting such business as may properly come before it. Special meetings may be held at such times as a majority of the Commission provides. Notice of each meeting and the time and place thereof shall be given to each member in such manner as the Commission may provide. Four members of the Commission shall constitute a quorum and action of the Commission shall be based on a majority vote of those present.

-6-

(d) At the initial meeting of the Commission upon appointment, and at the October meeting in each year, the members of the Commission shall elect a chairman and a vice-chairman, from among their number, each to serve for a term of one year.

(e) The Mayor shall, by transferring existing contract compliance officials and support staff from executive agencies or departments, make available to the Commission sufficient administrative staff and the necessary support services within 60 days after the effective date of this act. The Mayor shall also appoint a staff director from existing government officials.

(f) A record of the proceedings of the Commission shall be kept and files shall be maintained. The Commission shall 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 refused. The books and register of the Commission shall be prima facie evidence of all matters recorded herein.

Sec. 6. The Commission shall submit a report every six months to the Mayor and to the Council reviewing the performance of agencies in meeting the goals established under this act. The first report shall be submitted not

-7-

later than the end of the sixth complete month occurring after the effective date of this act. Such report shall-

(a) be attested by the affidavits of the chairman, the vice-chairman, and include a copy of the roster of registered contracts and joint ventures;

(b) state the degree to which each agency has met the goals in section 7 of this act, and identify agencies which have failed to comply with the provisions of this act;

(c) recommend amendments to this act which the Commission believes necessary to accomplish its purposes, including higher goals than those set forth in section 7 of this act; and

(d) summarize its general activities during the reporting period.

Sec. 7. (a) Each agency of the District of Columbia, including those agencies which contract a portion of their procurement through the Department of General Services shall, unless otherwise determined by the Commission in section 10;

(1) allocate its construction contracts in order to reach the goal of 25 percent (or such other goal as may be determined by the Commission under the provisions set forth below) of the dollar volume of all construction contracts to be let to local minority business enterprises;

(2) allocate its procurement of goods and services other than construction in order to reach the goal of 25

percent (or such other goal as may be determined by the Commission under the provisions set forth below) of the dollar volume to local minority business enterprises;

(3) provide quarterly reports to the Commission specifying, with respect to the contracts and subcontracts subject to the provisions of this act within 30 days after the end of a quarter-

(A) the means by which it intends to implement the programs provided in section 8 of this act during the next 12 months;

(B) the dollar percentage of all contracts and subcontracts it has let during the quarter which were let to minority contractors and other minority business enterprises;

(C) the dollar volume of contracts and subcontracts let during the quarter to minority business enterprises;

(D) the degree to which the agency has met the goals set forth in subsections (a) and (b) of this section, and an explanation of any failure to meet those goals; and

(E) a description of its past and current activities under section 8 of this act.

(b) Upon receipt of the semi-annual report from the Commission, the Council shall review the goals set forth under this section and consider appropriate amendments to this act.

Sec. 8. To achieve the goals set forth in section 7, a program(s) designed to assist local minority contractors shall be established under guidelines issued by the Commission pursuant to section 10(a) of this act. Such a program shall be implemented by each agency within 60 days after issuance of such guidelines. This program shall include, but not be limited to, a sheltered market approach to contracts. Minority contractors shall not be limited to bidding or negotiating only on contracts within these programs.

Sec. 9. (a) Notwithstanding any other provision of law, no firm or joint venture shall be permitted to participate in the program established under section 8, unless it has been issued a certificate of registration under the provisions of this act. Eligibility criteria for certification, under this act, shall include the following:

- (1) written evidence that the applicant is a bona fide, minority business enterprise;
- (2) written evidence that the applicant is a local entity;
- (3) written evidence of the applicant's financial standing;
- (4) compliance with the regulations set forth in subsection (b) of this section; and
- (5) fulfillment of such other criteria as the Commission may require by regulation.

-10-

(b) Any firm or joint venture desiring to be registered as a bona fide minority business enterprise in the District of Columbia shall make and file with the Commission a written application on such form as may be prescribed by the Commission. The Commission shall require the applicant to furnish evidence of eligibility under this act, ability, character and financial position, which may be the applicant's last financial statement as of a date not more than 90 days prior thereto, on a form prescribed by the Commission which will include an affidavit regarding the correctness of such statement. If at any time the information previously submitted changes wherein a firm or joint venture can no longer satisfy the requirements of this act, the applicant shall immediately report such change to the Commission. The use of information submitted to the Commission shall be governed by the terms set forth in existing law. If the application is satisfactory to the Commission, the Commission shall issue to the applicant a certificate to engage in the sheltered market program established under section 8 of this act.

(c) A certificate of registration shall expire two years from the date of approval. An application for renewal of a certificate must be submitted 90 days prior to the expiration date or as the Commission determines.

-11-

(d) The Commission may revoke the certificate of any firm or joint venture registered hereunder who is found guilty of any of the following conditions:

(1) fraud or deceit in obtaining the registration;

(2) furnishing of substantially inaccurate or incomplete ownership or financial information;

(3) failure to report changes which affect the requirement for certification;

(4) gross negligence, incompetence, financial irresponsibility, or misconduct in the practice of his profession; or

(5) willful violation of any provision of this act, or regulations adopted pursuant thereto.

(e) Any person may prefer charges of a violation of this act against any applicant for registration, or contractor registered hereunder. Such charges shall be in writing and sworn to by the complainant and submitted to the Commission. Such charges, unless dismissed without hearing by the Commission as unfounded or trivial, shall be heard and determined within three months after the date on which they were preferred. A time and place for such hearing shall be fixed by the Commission. A copy of the charges together with the notice of the time and place of hearing shall be served on the accused personally or by certified or registered mail thirty days before the fixed date for the hearing. At the hearing the accused shall have the right to