

COMMITTEE ON ECONOMIC DEVELOPMENT,
REGULATIONS, AND AGRICULTURE

06/05/2019-REASSIGNED PURSUANT TO RESOLUTION NO. 1853/BILL NO. 33-0089

BILL NO. 33-0054

Thirty-Third Legislature of the Virgin Islands

April 4, 2019

An Act amending title 11 Virgin Islands Code, chapter 23 pertaining to Small Business Development

PROPOSED BY: Senator Myron D. Jackson

1 **WHEREAS**, the Legislature recognizes the need to remove barriers to minority and
2 women-owned business enterprises' participation in Government contracting;

3 **WHEREAS**, the Legislature declares that according to the 2000 U.S. Census, minority-
4 owned businesses that were defined by the race, ethnicity, and gender of the people owning the
5 majority interest in the business, are growing at more than six times the rate of all firms in the
6 United States in number, and nearly twice the rate of all firms in annual sales;

7 **WHEREAS**, minorities are projected by the Census Bureau to account for approximately
8 90 % of the nation's population growth over the next 50 years—yet minority-owned businesses
9 account for only for less than 20 % of all U.S. businesses;

1 **WHEREAS**, the federal government has established a business development program that
2 has a requirement to provide contracting opportunities to small and historically disadvantaged
3 business enterprises, under the Small Business Administration's 8(a) Business Development
4 Program;

5 **WHEREAS**, federal law relating to the Urban Mass Transportation Administration
6 (UMTA) currently provides that at least 10 % of any federally-funded contract or partially
7 federally-funded contract must be expended with small business concerns that are owned and
8 operated as a minority business enterprise by socially and economically disadvantaged minorities
9 or women;

10 **WHEREAS**, Minority Business Enterprise (MBE), Disadvantaged Business Enterprise
11 (DBE), and Women's Business Enterprise (WBE) are currently defined in federal law as those
12 business enterprises with at least 51 % ownership and control by one or more socially
13 disadvantaged persons, i.e., minorities or women;

14 **WHEREAS**, at present, the Virgin Islands has policies reflecting the reality of the Virgin
15 Islands' underrepresented and underutilized local, small and historically disadvantaged business
16 community, for the purposes of the awarding of government contracts;

17 **WHEREAS**, the Legislature further declares that is the public policy of this Territory to
18 promote and encourage the economic development of business by small, local historically
19 disadvantaged business enterprises;

20 **WHEREAS**, a goal of at least 35 % of expenditures on Territory contracts being expended
21 upon small, local and historically disadvantaged businesses is a reasonable and attainable one;
22 and

23 **WHEREAS**, it is of significant public importance that the Virgin Islands provide
24 comprehensive legislation to remove the barriers that have impaired access by minority and

1 women-owned business enterprises to Virgin Islands government contracting opportunities and
2 assure the attainment of aforementioned 35 % contract expenditure goal; Now, Therefore,

3 ***Be it enacted by the Legislature of the Virgin Islands:***

4 **SECTION 1.** This Act may be cited as “The Virgin Islands Small and Local
5 Disadvantaged Business Enterprise Act”.

6 **SECTION 2.** Title 11 Virgin Islands Code, chapter 23 is amended in the following
7 instances:

8 (a) Section 1251 is amended by striking the first paragraph in its entirety and inserting
9 three new paragraphs that read as follows:

10 “Despite demographic composition of the Virgin Islands’ registered and licensed business
11 community, there exists a significant disparity between the number of minority and female
12 businesses in the Territory available and qualified for contracting opportunities, and the number
13 of government contracts awarded to those businesses.

14 To support the growth and development of our local, small and historically disadvantaged
15 business community, the Virgin Islands must promote equal opportunity in contracting for all
16 persons, without discrimination for minority group members and women and business
17 enterprises owned by them and must eradicate the barriers that have impaired access by minority
18 and women-owned business enterprises to territory contracting opportunities. The Legislature
19 realizes that it is crucial that the Territory take active measures to ensure that these businesses
20 receive an opportunity to grow and develop, thereby increasing the Territory’s tax receipts while
21 creating necessary and sustainable local job opportunities; and

22 It is the intent of this chapter to provide for increasing the participation of minority and
23 women-owned businesses in the Territory’s contracting and providing equal opportunities in
24 employment, without discrimination.”; and

1 (b) Section 1258a is amended by designating the existing language as subsection (a) and
2 by adding subsections (b) and (c) to read as follows:

3 “(b) The Fund also consists of fines assessed under section 1270d (o) (3) of subchapter
4 IA, appropriations made by the Legislature from time to time, devises, bequests or contributions
5 from all sources.

6 (c) Monies in the Fund must be used to implement programs established under
7 subchapter IA of this chapter.”

8 **SECTION 3.** Title 11 Virgin Islands Code, chapter 23 is amended by adding subchapter
9 IA to read as follows:

10 ***“SUBCHAPTER IA VIRGIN ISLANDS SMALL AND LOCAL DISADVANTAGED***
11 ***BUSINESS ENTERPRISES PROGRAM***

12 **§1270.** For the purposes of this subchapter, the term:

13 (1) ‘Agency’ when written in lower case, means an agency, department, office, board,
14 commission, or instrumentality of the executive branch of the Government of the Virgin Islands.

15 (2) ‘Business enterprise’ means a business entity organized for profit.

16 (3) ‘Certified business enterprise’ means a business enterprise or joint venture certified
17 pursuant to section 1270c of this subchapter.

18 (4) ‘Department’ means the Department of Property and Procurement established in title
19 3 of this Code.

20 (5) ‘Director’ means the director of the Small Business Development Agency established
21 in subchapter me of this chapter.

22 (6) ‘Disadvantaged business enterprise’ means a business enterprise as described in
23 section 1270c, subsection (c).

1 (7) ‘Economically disadvantaged individual’ means an individual whose ability to
2 compete in the free enterprise system is impaired because of diminished opportunities to obtain
3 capital and credit as compared to others in the same line of business where such impairment is
4 related to the individual's status as socially disadvantaged. An individual is socially
5 disadvantaged if the individual has reason to believe that the prejudice or bias to which the
6 individual has been subjected is because of the individual’s identity as a member of a group
7 without regard to the individual’s qualities as an individual.

8 (8) ‘Expendable budget’ means the total budget of an agency, reduced by such funding
9 sources, object classes, objects, and other items as identified by the Commissioner through
10 rulemaking.

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

13 (10) ‘Local business enterprise’ means a business enterprise as described in section
14 1270c (a).

15 (11) ‘Longtime-resident business’ means a business that has been continuously eligible
16 for certification as a local business enterprise, as defined in section 1270c (a) for at least 10
17 consecutive years.

18 (12) ‘Resident-owned business’ means a local business enterprise owned by an individual
19 who is, or a majority number of individuals who meet the definition of ‘a “resident”, as defined
20 in 29 V.I.C. §1003 (9) and subject to personal income tax in the Virgin Islands.

21 (13) ‘Small business enterprise’ means a business enterprise as described in section 1270c
22 (b).

23 **§1270a.** (a) The Small, Local, and Disadvantaged Business Enterprise Program is
24 established within the Virgin Islands Small Business Development Agency.

1 (b) The Small Business Development Agency shall administer the Virgin Islands Small,
2 Local and Disadvantaged Business Enterprise Program with the objective to stimulate and foster
3 the economic growth and development of businesses based in and serving the Virgin Islands
4 particularly certified business enterprises, with the intended goals of and responsibility for:

5 (1) Stimulating and expanding the local tax base of the Territory;

6 (2) Increasing the number of viable employment opportunities for Virgin Islands
7 residents;

8 (3) Extending economic prosperity to local business owners, their employees, and
9 the communities they serve;

10 (4) Providing information and assistance to business enterprises regarding the
11 certification and application process;

12 (5) Determining a business enterprise's or joint venture's initial eligibility for
13 certification under this subchapter and reviewing and determining the continued eligibility
14 of business enterprises and joint ventures certified under this subchapter;

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

17 (7) Monitoring agency contracting and procurement activities to the extent those
18 activities are related to the achievement of the goals set forth in this subchapter; and

19 (8) Monitoring third-party contracting and procurement activities to the extent
20 those activities are related to achievement of goals related to contracting with and
21 procuring from certified business enterprises.

22 (c) Through advocacy, business development programs, and technical assistance
23 offerings, the Director shall seek to maximize opportunities for certified business enterprises to
24 participate in:

- 1 (1) The Government's contracting and procurement process;
- 2 (2) The Government's economic development activities; and
- 3 (3) Government and private-sector, business opportunities that occur in the Virgin
- 4 Islands.

5 (d) The Director shall:

- 6 (1) Maintain, grow, and advocate on behalf of certified business enterprises in the
- 7 following areas:

- 8 (A) Certified business enterprises with less than \$10,000,000 in annual
- 9 revenue;

- 10 (B) Under separate criteria, certified business enterprises with over
- 11 \$10,000,000 in annual revenue; and

- 12 (C) All certified business enterprises that desire to participate in contracting
- 13 opportunities with any government corporation.

- 14 (2) Maintain and provide public access to a list of all current government
- 15 contracting and procurement bids and solicitations;

- 16 (3) Maintain and provide public access to a list of other current government
- 17 contracting and procurement bids and solicitations, including those of the federal
- 18 government;

- 19 (4) Monitor and prepare recommendations to the Commissioner of Property and
- 20 Procurement to ensure agency achievement of the goals set forth in this subchapter;

- 21 (5) Educate the public, including residents and businesses, about the Territory's
- 22 programs for certified business enterprises;

- 23 (6) Stimulate and foster greater opportunities for certified business enterprises to
- 24 participate in the Government's contracting and procurement process and provide

1 recommendations to the Commissioner of Property and Procurement and the Governor on
2 ways to increase the participation;

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

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

8 (9) Review the annual reports of agencies and make appropriate recommendations
9 pursuant to the goals and objectives of this subchapter;

10 (10) Make recommendations to the Commissioner of Property and Procurement and
11 coordinate program activities with the contracting activities of the Department; and

12 (11) Take such other actions as are necessary or appropriate to carry out the
13 purposes of the subchapter.

14 (e) To achieve the goals set forth in this subchapter, the Director shall establish by
15 regulations issued pursuant to 3 V.I.C., chapter 35 programs for certified business enterprises.

16 The Director shall include among these programs:

17 (1) A Small and Local Disadvantaged Business Enterprises Eligibility Certification
18 Program;

19 (2) A bid preference mechanism for local and disadvantaged business enterprises,
20 resident-owned businesses, resident businesses, and local business enterprises with
21 principal offices located in an enterprise zone; and

22 (3) A set-aside program for small business enterprises.

23 **§1270b.** (a) A business enterprise may not participate in a program established under this
24 subchapter unless the business enterprise has demonstrated its capability to perform and has been

1 issued a certificate of registration under the provisions of this subchapter or has been issued a
2 provisional certification under regulations issued pursuant to this subchapter.

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

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

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

10 (B) Written evidence that the applicant is:

11 (i) A bona fide local business enterprise;

12 (ii) A bona fide disadvantaged business enterprise;

13 (iii) A bona fide small business enterprise;

14 (iv) A bona fide local business enterprise located in an enterprise zone;

15 (v) bona fide resident-owned business; or

16 (vi) A bona fide longtime resident business;

17 (C) Evidence of ability and character;

18 (D) Evidence of financial position, which may be the applicant's most recent
19 financial statement. For the purposes of this subparagraph, the term "recent" means
20 produced from data no more than 90 days before the application date;

21 (E) Any other information the Director may require; and

22 (F) Federal income taxes, both corporate and personal.

23 (c) The Director shall issue to the applicant a certificate of registration if:

1 (1) The information provided in the application or additional filings is satisfactory
2 to the Director;

3 (2) The business enterprise meets the standards of this subchapter; and

4 (3) The applicant fulfills other requirements as may be established by the Director.

5 (d) A certificate of registration expires 2 years from the date of approval of the
6 application. A business enterprise that is registered with the Small Business Development
7 Agency may voluntarily relinquish its registration as a certified business enterprise at any time
8 before the expiration of the 2-year term.

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

12 **§1270c.** The Director shall provide for the certification of the following business
13 enterprises:

14 (a) Local business enterprises--A business enterprise is eligible for certification as a
15 local business enterprise if the business enterprise:

16 (1) Has its principal office located physically in the Virgin Islands;

17 (2) Requires that its chief executive officer and the highest-level managerial
18 employees of the business enterprise maintain their offices and perform their managerial
19 functions in the Virgin Islands;

20 (3) Meets 1 of the 4 following standards:

21 (A) More than 50 % of the assets of the business enterprise, excluding bank
22 accounts, are located in the Virgin Islands;

23 (B) More than 50 % of the employees of the business enterprise are residents
24 of the Virgin Islands;

1 (C) The owners of more than 50 % of the business enterprise are residents of
 2 the Virgin Islands; or

3 (D) More than 50 % of the total sales or other revenues is derived from
 4 transactions of the business enterprise in the Virgin Islands and

5 (4) Is licensed pursuant to chapter 9 of title 27; or

6 (5) Is subject to the income taxes levied in the Virgin Islands.

7 (b) Small business enterprises---A business enterprise is eligible for certification as a
 8 small business enterprise if the business enterprise:

9 (1) Is a local business enterprise;

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

11 (3) (A) Is certified by the United States Small Business Administration as a small
 12 business concern under the Small Business Act, 15 U.S.C. §631 et seq.; or

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

15	(i) Construction, Heavy (Street and Highways, Bridges &	
16	similar activities)	\$23,000,000
17	(ii) Construction, Building (General Construction)	\$21,000,000
18	(iii) Construction, Specialty Trades	\$13,000,000
19	(iv) Goods and Equipment	\$20,000,000
20	(v) General Services	\$19,000,000
21	(vi) Professional Services, Personal Services	
22	(Hotel, Beauty, Laundry and similar services.)	\$5,000,000
23	(vii) Professional Services, Business Service	\$10,000,000
24	(viii) Professional Services, Health and Legal Services	\$10,000,000

1	(ix) Professional Services, Health Facilities	
2	Management	\$19,000,000
3	(x) Manufacturing Services	\$10,000,000
4	(xi) Transportation and Hauling Services	\$13,000,000
5	(xii) Financial Institutions	\$3,000,000

6 (4) A business enterprise that is affiliated with another business enterprise through
7 common ownership, management, or control is eligible for certification as a small business
8 enterprise if:

9 (A) The business enterprise seeking certification as a small business
10 enterprise is a local business enterprise;

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

14 (C) In the case of a parent-subsidiary affiliation, the parent company qualifies
15 for certification as a small business enterprise; and

16 (5) If a business enterprise seeking certification as a small business enterprise is
17 affiliated only with one or more business enterprises that are in a different line of business,
18 paragraph (4) of this subsection does not apply, and the business enterprise is eligible for
19 certification as a small business enterprise if it meets the requirements paragraph (1) of this
20 subsection.

21 (c) Disadvantaged business enterprises:

22 (1) A business enterprise is eligible for certification as a disadvantaged business
23 enterprise if the business enterprise is owned, operated, and controlled by economically
24 disadvantaged individuals; and a local business enterprise;

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

4 (A) The business enterprise seeking certification as a disadvantaged business
5 enterprise is a local business enterprise;

6 (B) If a parent-subsidary affiliation, both enterprises meet the requirements
7 of paragraph (1) of this subsection; and

8 (C) The business enterprise has an average annualized gross receipt totaling \$
9 75,000,000 or less.

10 (d) Resident-owned business -- A business enterprise is eligible for certification as a
11 resident-owned business if it meets the definition of resident-owned business under section 1270
12 (12).

13 (e) Longtime resident businesses -- A business enterprise is eligible for certification as a
14 longtime resident business if it meets the definition of longtime resident business under section
15 1270 (11).

16 (f) Veteran-owned business enterprises -- A business enterprise is eligible for
17 certification as a veteran-owned business enterprise if the business enterprise:

18 (1) Meets the definition of a small business enterprise as described in subsection
19 (b) of this section;

20 (2) Is not less than 51 % owned and operated by one or more veterans, as defined
21 in 38 U.S.C. § 101 (2);

22 (3) In the case of any publicly owned business, not less than 51 % of the stock of
23 which is owned by one or more veterans; and

24 (4) One or more veterans control the management and daily operations.

1 (g) Local manufacturing business enterprises -- A business enterprise is eligible for
2 certification as a local manufacturing business enterprise if the business enterprise:

3 (1) Meets the definition of a local business enterprise as described in subsection (a)
4 of this section;

5 (2) Makes a product through a process involving raw materials, components, or
6 assemblies, usually on a large scale, with different operations divided among different
7 workers;

8 (3) Has an annual revenue of \$2,000,000 in the manufactured product; and

9 (4) Has its principal location of manufacturing in the Virgin Islands.

10 (h) Joint venture business enterprises-

11 (1) A business enterprise is eligible for certification as a joint venture business
12 enterprise if the joint venture has a member that owns a majority interest or minority
13 interest in the joint venture business enterprise. The Director shall consider the defined
14 contributions and defined benefits provided by each member of the joint venture, which
15 must demonstrate by the following information:

16 (A) Organizational documents of the joint venture, including the joint venture
17 agreement, the operating agreement, and any other agreement between or among the
18 members;

19 (B) Documentation of the financial contribution of each member, including
20 access to bank records and organizational resolutions and agreements; and

21 (C) Documentation that decisions concerning the affairs of the business
22 require the consent of those members, with voting rights, holding at least a majority
23 interest in the business;

24 (2) For purposes of this subsection--

1 (A) "Majority interest" means:

2 (i) More than 50 % of the total combined voting power of all classes
3 of stock of the joint venture business enterprise, or more than 50 % of the total
4 value of all the joint venture business enterprise;

5 (ii) A financial contribution to the enterprise of more than 50 %; and

6 (iii) More than 50 % of the total interest in the capital, profits, and loss,
7 or beneficial interest in the joint venture business enterprise.

8 (B) "Minority interest" means:

9 (i) Less than 50 % of the total combined voting power of all classes of
10 stock of the joint venture business enterprise, or less than 50 % of the total
11 value of all of the joint venture business enterprise;

12 (ii) A financial contribution to the enterprise of less than 50 %; and

13 (iii) Less than 50 % of the total interest in the capital, profits, and loss,
14 or beneficial interest in the joint venture business enterprise.

15 **§1270d.** (a) Each department, agency, and authority including an agency that contracts
16 or procures in whole or in part through the Department of Property and Procurement, shall
17 exercise its contracting and procurement authority so as to meet, on an annual basis, the goal of
18 procuring and contracting 35 % of the dollar volume of its goods and services, including
19 construction goods and services, to small business and disadvantaged business enterprises.

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

22 (c) [**Bid and proposal preferences**] In evaluating bids or proposals, the Department and
23 all other agencies shall award preferences as follows:

24 (1) In the case of proposals, points must be granted as follows:

- 1 (A) Three points for a small business enterprise;
- 2 (B) Five points for a resident-owned business enterprise;
- 3 (C) Five points for a longtime resident business enterprise;
- 4 (D) Two points for a local business enterprise;
- 5 (E) Two points for a local business enterprise, with its principal office
- 6 located in an enterprise zone established pursuant to title 29 Virgin Islands Code,
- 7 chapter 19;
- 8 (F) Two points for a disadvantaged business enterprise;
- 9 (G) Two points for a veteran-owned business enterprise; and
- 10 (H) Two points for a local manufacturing business enterprise.
- 11 (2) With respect to bids, a percentage reduction in price must be granted as
- 12 follows:
- 13 (A) Three % for a small business enterprise;
- 14 (B) Five % for a resident-owned business;
- 15 (C) Ten % for a longtime resident business;
- 16 (D) Two % for a local business enterprise;
- 17 (E) Two % for a local business enterprise with its principal office located in
- 18 an enterprise zone established pursuant to 29 V.I.C. §1011; and
- 19 (F) Two % for a disadvantaged business enterprise.
- 20 (d) A certified business enterprise is entitled to all of the preferences provided in this
- 21 section but may not be granted a preference of more than 12 points or a reduction in price of
- 22 more than 12 %.
- 23 (e) **[Mandatory set-asides of small contracts for small business enterprises]** Except
- 24 as provided in subsection (f), each agency shall set aside every contract or procurement of \$

1 100,000 or less for small business enterprises; but an agency is not required to set aside a
2 contract or procurement if the agency determines in writing that there are not at least 2
3 responsible certified business enterprises that can provide the services or goods that are the
4 subject of the contract.

5 (f) An agency may refuse to award a contract or procurement set aside under this
6 subsection, and may thereafter issue the contract or procurement in the pursuant to applicable
7 provisions of 31 V.I.C., chapter 23, if the agency determines in writing that the bids for the
8 contract or procurement set aside for a small business enterprise are believed to be 15 % or more
9 above the likely price on the open market.

10 (g) **[Performance and subcontracting requirements for construction and non-**
11 **construction contracts; subcontracting plans]**. All construction contracts in excess of
12 \$250,000 must include the following requirements:

13 (1) At least 35 % of the dollar volume must be subcontracted to small business
14 enterprises; but the costs of materials, goods, and supplies may not be counted towards the
15 35 % subcontracting requirement, unless the materials, goods, and supplies are purchased
16 from small business enterprises; or

17 (2) If there are insufficient qualified small business enterprises to fulfill completely
18 the requirement of paragraph (1) of this subsection, then the subcontracting requirement
19 may be satisfied by subcontracting 35 % of the dollar volume to any certified business
20 enterprises, but all reasonable efforts must be made to ensure that qualified small business
21 enterprises are significant participants in the overall subcontracting work.

22 (3) All non-construction contracts in excess of \$ 250,000, unless a waiver has been
23 approved by the Commissioner of the Department of Property and Procurement must
24 include the following requirements:

1 (A) At least 35 % of the dollar volume must be subcontracted to small
2 business enterprises; but the costs of materials, goods, and supplies may not be
3 counted towards the 35 % subcontracting requirement unless the materials, goods,
4 and supplies are purchased from small businesses or small business enterprises; or

5 (B) If there are insufficient qualified small business enterprises to fulfill
6 completely the requirement of subparagraph (A) of this paragraph, then the
7 subcontracting requirement may be satisfied by subcontracting 20 % of the dollar
8 volume to any certified business enterprises; if all reasonable efforts are made to
9 ensure that qualified small business enterprises are significant participants in the
10 overall subcontracting work.

11 (4) For the purposes of this section, a business enterprise certified as a small
12 business enterprise, local business enterprise, or disadvantaged business enterprise is not
13 required to comply with the limitations set forth in paragraph (1) of this subsection.

14 (h) (1) (A) Each construction contract for which a small business or a certified business
15 enterprise is selected as a prime contractor and is granted points or a price reduction under this
16 section or is selected through a set-aside program under this subchapter must include a
17 requirement that the business perform at least 20 % of the contracting effort, excluding the cost
18 of materials, goods, and supplies, with its own organization and resources and, if it subcontracts,
19 20 % of the subcontracted effort, excluding the cost of materials, goods, and supplies, is with
20 certified business enterprises.

21 (B) If the total of the contracting effort, excluding the cost of materials, good,
22 and supplies, proposed to be performed by small business or certified business
23 enterprises is less than the amount required by subparagraph (A), then the business

1 enterprise shall not be eligible to receive preference points or price reductions for a
2 period of not less than two years

3 (2) Each construction contract for which a joint venture is selected as a prime
4 contractor and is granted points or a price reduction pursuant to subsection (e) of this
5 section or is selected through a set-aside program under this subchapter must include a
6 requirement that the certified business enterprise perform at least 50 % of the contracting
7 effort, excluding the cost of materials, goods, and supplies, with its own organization and
8 resources and, if the joint venture subcontracts, 35 % of the subcontracted effort, excluding
9 the cost of materials, goods, and supplies, must be with certified business enterprises.

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

14 (i) Each construction contract of \$ 1,000,000 or less for which a certified business
15 enterprise is selected as a prime contractor and is granted points or a price reduction or is
16 selected through a set-aside program under this subchapter, must include a requirement that the
17 business enterprise perform at least 50 % of the on-site work with its own work force.

18 (j) Bids or proposals responding to a solicitation, including an open market solicitation,
19 must be considered nonresponsive and must be rejected if the law requires subcontracting and
20 the prime contractor fails to submit a subcontracting plan as part of its bid or proposal. A
21 certified business enterprise subcontracting plan must specify the following:

22 (1) The name and address of the subcontractor;

23 (2) Whether the subcontractor is currently certified as a certified business
24 enterprise;

1 (3) The scope of work to be performed by the subcontractor; and

2 (4) The price to be paid by the contractor to the subcontractor.

3 (k) A prime contractor may not amend the subcontracting plan filed as part of its bid or
4 proposal except with the consent of the Commissioner of Property and Procurement. Any
5 reduction in the dollar volume of the subcontracted portion resulting from such an amendment of
6 the plan inures to the benefit of the Government.

7 (l) Multiyear contracts or extended contracts in which the options or extensions exceed
8 \$1,000,000 in value which are not in compliance with this subchapter at the time of the
9 contemplated exercise of the option or extension may not be renewed or extended, and any such
10 option or extension is void.

11 (m) The Commissioner of Property and Procurement may waive the subcontracting
12 requirements of this section for good cause shown.

13 (n) A prime contractor shall submit to the Commissioner of Property and Procurement
14 copies of the executed contracts with the subcontracts identified in the subcontracting plan.
15 Failure to submit copies of the executed contracts renders the underlying contract voidable by the
16 Government.

17 (1) There is a rebuttable presumption that a contractor willfully breached a
18 subcontracting plan for utilization of certified business enterprises in the performance of a
19 contract, if the contractor:

20 (A) Fails to submit any required subcontracting plan monitoring or
21 compliance report;

22 (B) Submits a monitoring or compliance report containing a false statement;

23 or

24 (C) Fails to disclose required information.

1 (2) The presumption that a contractor willfully breached a subcontracting plan for
2 utilization of certified business enterprises may be rebutted with a showing, by clear and
3 convincing evidence, of full compliance with the requirements set forth in the
4 subcontracting plan for utilization of certified business enterprises.

5 (o) A contractor that is found to have willfully breached a subcontracting plan for
6 utilization of certified business enterprises is subject to the imposition of civil penalties,
7 including revocation of certification and monetary fines of \$ 15,000 or 5 % of the total amount of
8 the work that the contractor was to subcontract to certified business enterprises, whichever is
9 greater, for each breach. After notice and opportunity for hearing, as provided by regulations
10 promulgated pursuant to 3 V.I.C., chapter 35, the Director may assess the penalty established in
11 this paragraph. Fines assessed under this paragraph must be covered into the SBDA Managerial
12 and Technical Assistance Fund established in section 1258a of subchapter I.

13 **§1270e.** (a) Each agency shall submit a quarterly report to the Director and to the
14 Commissioner of the Department of Property and Procurement no later than 30 days after the
15 end of each quarter, except for the fourth quarter report. The fourth quarter and annual report
16 must be submitted together. When submitting a quarterly report, each agency shall list each
17 expenditure as it appears in the general ledger from the expendable budget of the agency during
18 the quarter, which must include:

19 (1) The name of the vendor from which the goods or services were purchased;

20 (2) The vendor identification number as it appears in the general ledger;

21 (3) A description of the goods or services;

22 (4) Whether the vendor was a certified small business enterprise;

23 (5) The funding source for the expenditure;

24 (6) The date of the expenditure;

1 (7) The dollar amount of the expenditure; and

2 (8) In the case of a vendor that is a certified business enterprise, the percentage of
3 the amount from paragraph (7) of this subsection that is of the agency's total expenditure
4 on all certified business enterprises.

5 (b) Each agency shall submit to the Director and the Commissioner of the Department of
6 Property and Procurement, no later than 30 days after the issuance of the Comprehensive Annual
7 Financial Report, an annual report listing each expenditure as it appears in the general ledger
8 from the expendable budget of the agency during the fiscal year which must include:

9 (1) The information required to be included in the quarterly reports, with
10 calculations for the fiscal year;

11 (2) A description of the activities the agency engaged in, including the programs
12 required subchapter to achieve the goals set forth in this subchapter; and

13 (3) A description of any changes the agency intends to make during the succeeding
14 fiscal year to the activities it engages in to achieve the goals set forth in this subchapter.

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

17 (d) The Director shall review the annual report of each agency to determine whether the
18 planned activities of the agency for the succeeding fiscal year are likely to enable the agency to
19 achieve the goals set forth in this subchapter. The Director shall make recommendations on
20 activities the agency must engage in to meet or exceed the goals set forth in this subchapter. The
21 Director shall submit the recommendations to the agency, and the Department of Property and
22 Procurement no later than 90 days after the agency's annual report submission.

23

24

1 **§1270f. [Services to certified business enterprises]**

2 (a) The Small Business Development Agency shall provide the following services to
3 certified business enterprises:

4 (1) Specialized programs to assist certified business enterprises in securing capital
5 and repairing damaged credit;

6 (2) Informational seminars on securing credit and loans; and

7 (3) Access to non-traditional financing sources, as well as traditional lending
8 sources.

9 (b) The Small Business Development Agency shall:

10 (1) Develop a catalog of on-line survival and growth tools and resources that
11 certified business enterprises may access through the Internet or other organizations;

12 (2) Enter into a memorandum of understanding with a third-party vendor to
13 provide expert consulting and education to assist certified businesses enterprises at risk of
14 failure, including certified business enterprises that are considering filing for bankruptcy;

15 (3) Develop a formal listing of financing options for business enterprises;

16 (4) Deliver services that assist workers who become unemployed due to economic
17 fluctuations to begin new businesses;

18 (5) Enter into a memorandum of understanding with a third-party vendor to
19 provide one-on-one counseling with potential borrowers to improve financial presentations
20 to lenders;

21 (6) Identify contracts that are suitable for certified business enterprises;

22 (7) Assist certified business enterprises in identifying and preparing for business
23 opportunities made available under federal and territorial grant and other financial

1 assistance programs through informational presentations and the dissemination of
2 information; and

3 (8) Provide technical assistance regarding the territorial and federal procurement
4 processes, including assisting certified business enterprises to comply with territorial and
5 federal regulations and bonding requirements.

6 (c) The Department of Property & Procurement shall:

7 (1) provide access to include rental and sale and manage the distribution of excess
8 surplus, and expired property owned by the Virgin Islands Government to businesses once
9 they have been certified under the provisions of section 1270c.

10 (2) no items that are classified as historic according to the Virgin Islands Historic
11 Preservation Officer shall be provided.

12 (3) the Commissioner of the Department of Property & Procurement has authority
13 on pricing of rental and sale of Virgin Islands Government property.

14 **SECTION 4.** Title 31 Virgin Islands Code, chapter 23, is amended in the following
15 instances:

16 (a) Section 236 is amended by adding subsection (i) to read as follows:

17 “(i) Notwithstanding any provision of this chapter to the contrary, the Commissioner
18 shall comply with the Small, Local and Disadvantaged Business Enterprise Program established
19 under title 11, chapter 23, subchapter IA and shall, in consultation with the Director of the Small
20 Business Development Agency, coordinate the bid preference and set aside program for small
21 business enterprises pursuant to 11 V.I.C. 1270a”; and

22 (b) Section 236a, is amended is in the following instances:

1 (1) Subsection (a) is amended at the end of item (2) after the phrase, born in the
2 Virgin Islands” by inserting the following: “or is a firm, partnership or corporation that is a
3 certified small business enterprise as defined in 11 V.I.C. §1270 et seq.”; and

4 (2) Subsection (b) is amended at the beginning of the subsection by inserting the
5 phrase, “Subject to 11V.I.C., chapter 23, subchapter IA.”

6 **Bill Summary**

7 This bill amends title 11, chapter 23 of the Small Business Development code and title
8 31, chapter 23 of the Property and Procurement code to establish The Virgin Islands Small and
9 Local Disadvantaged Business Enterprise Program. This bill is patterned around the District of
10 Columbia’s "Small, Local, and Disadvantaged Business Enterprise Development and Assistance
11 Act of 2005”, codified at D.C. Code 2-288.01 et seq.

12
13 The first section of the bill sets forth the short title. The enacted bill will be named and
14 cited as “The Virgin Islands Small and Local Disadvantaged Business Enterprise Act.”

15
16 The second section amends sections 1251 and 1258a of title 11 of the Virgin Islands
17 Code. Section 1251 sets forth the Legislature’s declaration of policy. Item (a) of the second
18 section broadens the policy to incorporate support for the growth and development of local,
19 small and historically disadvantaged business community, in the Virgin Islands.

20
21 The second section also amends section 1258a relating to the SBDA Managerial and
22 Technical Assistance Fund. Item (b) of the second section adds the fines collected under
23 subchapter IA, grants and gifts to the funding source of that Fund and authorizes their use for
24 implementation of the subchapter IA programs for small business enterprises.

25
26 The third section of the bill adds subchapter IA to title 11, chapter 23 of the Virgin
27 Islands Code. The new subchapter is titled “Virgin Islands Small, Local and Disadvantaged
28 Business Enterprises Program”.

29
30 Internal section 1270 sets forth numerous definitions concerning the various small
31 business enterprises. Section 1270a establishes the Small, Local, and Disadvantaged Business
32 Enterprise Program within the Virgin Islands Small Business Development Agency. That
33 section also confers responsibility on the Director of the Agency to implement, administer and
34 enforce the Program. The objective of the Program is to stimulate and foster the economic
35 growth and development of businesses based in and serving the Virgin Islands particularly
36 certified business enterprises.

37
38 Internal section 1270b prohibits business enterprises from participating in a program
39 established under subchapter IA, unless the business enterprise has demonstrated its capability to
40 perform and been issued a certificate or a provisional certificate of registration under the

1 provisions of the subchapter; (b) (1). The section establishes application requirements for
2 certificates of registration.

3
4 Section 1270c provides for certification of the various small business enterprises. The
5 section establishes criteria for establishes the several categories and describes their
6 characteristics. The several categories of small business enterprises include local business
7 enterprise, small business enterprises, disadvantaged business enterprises, resident-owned
8 business enterprises, longtime resident business enterprises, veteran business enterprises and
9 joint venture business enterprises.

10
11 Section 1270d establishes a mandatory set-aside contracting program. Under this
12 program the Government and its agencies must set aside at least 35 % of the dollar volume of its
13 goods and services, including construction, goods and services, to small business and
14 disadvantaged business enterprises. That section also provides for a mandatory set aside for
15 subcontracting with small business and disadvantaged business enterprises. An elaborate bid
16 preference, point-based schedule is also established in evaluating bids or proposals for the
17 Government's purchase of goods and services.

18
19 Section 1270e requires each government agency to submit a quarterly report to the
20 Director of the SBDA and to the Commissioner of the Department of Property and Procurement
21 within 30 days after the end of each quarter. The report must list each expenditure as it appears
22 in the general ledger from the expendable budget of the agency during the quarter, include the
23 name of the vendor from which the goods or services were purchased; the vendor identification
24 number as it appears in the general ledger; a description of the goods or services; whether the
25 vendor was a certified small business enterprise; the funding source for the expenditure, the date
26 of the expenditure; the dollar amount of the expenditure.

27
28 Internal section 1270f requires the Small Business Development Agency to: provide
29 specialized programs to assist certified business enterprises in securing capital and repairing
30 damaged credit; provide informational seminars on securing credit and loans; provide expert
31 consulting and education to assist certified businesses enterprises at risk of failure, including
32 certified business enterprises that are considering filing for bankruptcy; deliver services that
33 assist workers who become unemployed due to economic fluctuations to begin new businesses
34 provide one-on-one counseling with potential borrowers to improve financial presentations to
35 lenders; provide technical assistance regarding the territorial and federal procurement processes,
36 including assisting certified business enterprises to comply with territorial and federal
37 regulations and bonding requirements; and provide other related services.

38
39 The fourth section amends title 31, chapter 23 of the Virgin Islands Code, the property
40 and procurement code. The fourth section amends sections 236 and 236a to incorporate the
41 Small, Local and Disadvantaged Business Enterprise Program into the procurement process of
42 the Department of Property and Procurement.

43
44 **BR19-0040/January 17, 2019/YLT**