

**TESTIMONY
OF
Yolanda Branche
DISTRICT OF COLUMBIA AUDITOR**

**COMMITTEE ON BUSINESS, CONSUMER AND REGULATORY AFFAIRS
COUNCIL OF THE DISTRICT OF COLUMBIA**

**April 25, 2013
10:00 a.m.**

CHAIRMAN ORANGE AND MEMBERS OF THE COMMITTEE ON BUSINESS, CONSUMER AND REGULATORY AFFAIRS: Thank you for the opportunity to present testimony on the proposed Compliance Unit Amendment Act of 2013. I am Yolanda Branche, District of Columbia Auditor. Accompanying me today is Laura Hopman, Assistant Deputy Auditor.

The Compliance Unit Establishment Act of 2008 mandated the Office of the District of Columbia Auditor (ODCA) to establish a Certified Business Compliance Unit (CBCU). The purpose of the Certified Business Compliance Unit is to conduct audits and report on compliance with Certified Business Expenditure (CBE) requirements. One CBE requirement is that District agencies must spend 50% of their expendable budgets with Small Business Enterprises. Another requirement is that developers, who receive District assistance with construction projects, must spend approximately 35% of their adjusted project budgets with CBEs. Under the Compliance Unit Act of 2008, the Certified Business Compliance Unit is required to submit to the Council, within 60 days of the end of each quarter, reports on agency CBE compliance. In addition, at the completion of each construction project and at the end of the fiscal year, the Certified Business Compliance Unit is to provide the Council with a report on developer compliance with CBE requirements.

Since enactment of the Compliance Unit Establishment Act of 2008, ODCA has issued 15 reports regarding compliance and monitoring of expenditure requirements of Certified Business Enterprises (CBEs). While the Department of Small and Local Business Development (DSLBD) is required to issue reports on agency and developer compliance with CBE requirements, since 2009 DSLBD has failed to issue accurate and reliable reports.

In addition to providing annual reports on the number of development projects that met expenditure goals and quarterly reports on the amount agencies spent on goods and services with CBEs, ODCA issued findings regarding DSLBD's monitoring of agency and developer compliance with CBE requirements. Specifically, we found that DSLBD did not have the necessary policies and procedures to accurately calculate the total amount that each agency spent on goods and services with CBEs. DSLBD currently relies on expenditure reports submitted by each agency to determine compliance with CBE goals. However, we found that agency expenditure reports are often flawed and inaccurate.

To determine agency compliance with CBE goals, in addition to reviewing agency expenditure reports, ODCA developed a process that includes a review of agency expenditure data directly from SOAR, the District's financial system. Reviewing agency CBE expenditures in SOAR ensures that the expenditure totals presented in ODCA's reports reflect the actual amount that each agency spent with CBEs.

The proposed Compliance Unit Amendment Act of 2013 would move all CBE compliance and monitoring activities from ODCA to DSLBD. To effectively comply with the requirements of the Compliance Unit Amendment Act of 2013, DSLBD must develop and implement a process to accurately determine agency CBE expenditures. During the time that it will take for DSLBD to establish internal controls to provide accurate reports on agency CBE expenditures, neither the Council nor residents will not receive accurate reports on agency compliance with CBE goals.

The Council and District residents face a similar outcome regarding reports on developer compliance with CBE requirements. It is important to note that since 2009, DSLBD has not issued any reports regarding developer compliance with CBE expenditure goals. As a result, it will take time for DSLBD to establish processes and tools to properly monitor developer compliance with expenditure requirements. The Office of the D.C. Auditor spent several months developing a database that contains all approved quarterly expenditures for each public-private construction project. We used the developer database to obtain accurate and up-to-date expenditure totals for each developer that submitted expenditure reports since 2009. Although DSLBD receives the same quarterly reports that our office receives, DSLBD has not maintained a current database of CBE expenditures for public-private developers. While ODCA developed a database to provide accurate, comprehensive reports on developer compliance generally accepted government auditing rules preclude ODCA from sharing the ODCA developer database with DSLBD.

It is our understanding that to meet the requirements of the Compliance Unit Amendment Act of 2013, DSLBD plans to hire additional staff to conduct audits and issue reports on CBE compliance. As DSLBD works to build the necessary staff and establish policies and procedures to conduct audits of CBE compliance, it may be helpful to establish a transition period between the end of monitoring of CBE expenditures by ODCA and the beginning of monitoring of CBE expenditures by DSLBD.

Our goal in offering this recommendation to establish a transition period is not to retain the CBCU function for the Office of the D.C Auditor. Rather, our goal is to ensure that the Council and residents continue to receive accurate, timely reports on CBE expenditures by agencies and developers during the period that DSLBD works to establish policies and procedures to conduct audits and issue reports regarding CBE compliance.

In light of DSLBD's current policies, procedures and data assessment tools and based on ODCA's experience in establishing the requisite tools to monitor CBE compliance, it is our view that it may take until the end of fiscal year 2014 for DSLBD to establish the necessary policies, procedures and data assessment tools to provide accurate, timely reports on CBE expenditures by

agencies and developers. A transition period would provide DSLBD with sufficient time to establish the necessary internal controls to monitor agency and developer compliance with CBE requirements. During the transition period, ODCA could continue to monitor and report on agency and developer compliance with CBE requirements.

As DSLBD works to establish policies and procedures to meet the requirements of the Compliance Unit Amendment Act of 2013, we strongly urge DSLBD to address findings previously issued by ODCA. Specifically, to effectively monitor CBE compliance DSLBD must address the following issues:

- Dramatic adjustments of agency expenditure goals by DSLBD that occurred late in the fiscal year and sometimes after the fiscal year ended;
- The failure of DSLBD to track the completion dates of public-private development projects. Each public-private development construction project sets the CBE expenditure goal for the life of that project. Compliance with CBE goals can only be fully assessed when the project has been completed. Since a determination of fines and penalties for failure to meet CBE goals is established after the completion of the project, it is imperative that DSLBD tracks the completion date for development projects; and
- DSLBD must establish a process to determine and enforce penalties against developers who did not meet CBE expenditure goals.

Finally, I would also like to note one point of clarification. Currently, the Compliance Unit Amendment Act of 2013, as written, states that only Sections 2 and 4 of the Compliance Unit Establishment Act of 2008 would be amended. Should the Council agree to move the compliance function to DSLBD, Section 1 of the Compliance Unit Establishment Act of 2008 would also need to be amended, specifically subsections (b)(2), (b)(3), (b)(4), and (b)(5).

Chairman Orange and members of the Committee, thank you again for the opportunity to appear before you. We will respond to any questions.

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