Auditor's Review of Compliance With the
Living Wage Act and First Source Act
Requirements Pursuant to the Compliance Unit
Establishment Act of 2008

May 18, 2010
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EXECUTIVE SUMMARY

PURPOSE

Pursuant to Section 455 of Pub. L. No. 93-198\textsuperscript{1}, and the Compliance Unit Establishment Act of 2008 (the Act), the Office of the District of Columbia Auditor (Auditor) established a Compliance Unit within its office. The unit is responsible for monitoring and reporting on compliance matters relating to real estate development transactions involving real estate development projects previously managed by the former Anacostia Waterfront Corporation (AWC) and the National Capital Revitalization Corporation (NCRC). Management for these projects, under the former stewardship of the AWC and NCRC, was transferred to the Office of the Deputy Mayor for Planning and Economic Development (DMPED) in October 2007. With the passage of the Act, the Council of the District of Columbia (Council) empowered the Auditor to evaluate compliance for the AWC and NCRC development projects transferred to DMPED.

Under the provisions of the Act, there are seven areas of compliance that DMPED must ensure are followed for each real estate development project. The seven areas of compliance are identified in Appendix A. This report deals primarily with the compliance requirement pertaining to the Living Wage Act (LWA) and the First Source Act (FSA).

CONCLUSION

Most, if not all, of the activity on the real estate projects examined for this audit occurred prior to the transfer of oversight responsibilities to DMPED. The Auditor recognizes that DMPED cannot be held accountable for the actions of the AWC and the NCRC, nor for the actions of the relevant District agencies responsible for oversight processes in the past. Nonetheless, it is beneficial to identify past deficient practices to avert similar occurrences in the future.

Thus, the findings in this report, which identify past inadequate processes, are presented in a “Lessons Learned” forum. Recommendations made are intended to forewarn DMPED that corrective action is needed. As owner of District properties which will be developed in the future DMPED will share responsibility with other District agencies to ensure that LWA and FSA requirements are met by the developers chosen.

\textsuperscript{1} See section 455 (b) of the District of Columbia Home Rule Act, approved December 24, 1973 (Pub. L. No. 93-198, 87 Stat. 803); D.C. Code §1-204.55 (b) (2001) which states: “The District of Columbia Auditor shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he [she] may prescribe.” See also, section 455 (c) of the District of Columbia Home Rule Act, as amended, approved December 24, 1973, (87 Stat. 803, D.C. Code §1-204.55 (c) (2001) which states: “The District of Columbia Auditor shall have access to all books, accounts, records, reports, findings and all other papers, things, or property belonging to or in use by any department, agency, or other instrumentality of the District government and necessary to facilitate the audit.”
The Auditor found that DOES did not monitor First Source program activity adequately. DOES did not implement a reliable system of internal control, stating that because of staffing limitations they could not adequately track monthly reports and fulfill monitoring duties and responsibilities at field sites. Consequently, DOES could not determine if FSA goals were reached. As a result, developers may not have employed as many District residents as they could have.

Because DOES did not monitor FSA program goals effectively, most developers did not reach a 51% District employment level for newly-created jobs. Only 4 of the 16 projects we reviewed met or exceeded the goal of hiring 51% of District residents. As a consequence, the District and its residents lost potential job revenue of more than $14 Million.

While the Auditor believes that the current written policies and procedures that DOES has established will prevent a repeat of the deficiencies described above, overall program success cannot occur without DMPED’s active compliance role. The Deputy Mayor for Planning and Economic Development should establish an oversight program that ensures that DOES recordkeeping and monitoring processes are adequate.

Going forward, DMPED needs to ensure that an effective, overall FSA tracking process at DOES is established and is productive on a day-to-day basis. Furthermore, the Deputy Mayor for Planning and Economic Development must ensure that developers associated with the former AWC and NCRC properties meet their FSA obligations as required by D.C. Law, Land Development Agreements (LDAs), and other contractual documents.

The Auditor also found that the District has not implemented the Living Wage Act. The Chief of Budget Execution for the Office of the City Administrator requested that DOES and the Office of Contracting and Procurement (OCP) withhold implementation and/or enforcement of the LWA until a fiscal impact study was completed to determine the cost of implementation. However, that study was completed in July 2009 and results from the study concluded that any fiscal impact of the LWA would be minimal.

Because of the delay in implementing and enforcing the LWA, District residents may not be receiving equitable hourly wages. The Auditor believes that DMPED should be an earnest advocate for District wage-earners and urge the Office of the Mayor to implement the LWA and enact regulations for the LWA.
MAJOR FINDINGS

1. First Source Program Processes and Procedures Were Inadequate.

2. Employment Shortfall Created More than $14 Million of Potential Lost Revenue for District and Residents.

3. District Residents May Not Be Receiving an Equitable Hourly Wage Rate.

MAJOR RECOMMENDATIONS

1. The Deputy Mayor for Planning and Economic Development establish an oversight program that ensures that DOES’ Living Wage Act and First Source Act compliance recordkeeping and monitoring processes are adequate.

2. The Deputy Mayor for Planning and Economic Development ensure that developers associated with the former AWC and NCRC properties meet their FSA obligations as required by D.C. Law, LDAs, and other contractual documents.

3. The Deputy Mayor for Planning and Economic Development urge the Mayor to implement and enforce the Living Wage Act and to enact regulations for the Living Wage Act.
PURPOSE

Pursuant to Section 455 of Pub. L. No. 93-198\(^1\), and the Compliance Unit Establishment Act of 2008 (the Act), the Office of the District of Columbia Auditor (Auditor) established a Compliance Unit within its office. The unit is responsible for monitoring and reporting on compliance matters relating to real estate development transactions involving real estate development projects previously managed by the former Anacostia Waterfront Corporation (AWC) and the National Capital Revitalization Corporation (NCRC). Management for these projects, under the former stewardship of the AWC and NCRC, was transferred to the Office of the Deputy Mayor for Planning and Economic Development (DMPED) in October 2007. With the passage of the Act, the Council of the District of Columbia (Council) empowered the Auditor to evaluate compliance for the AWC and NCRC development projects transferred to DMPED.

OBJECTIVE, SCOPE AND METHODOLOGY

Under the provisions of the Act, there are seven areas of compliance that DMPED must ensure are followed for each real estate development project. The seven areas of compliance are identified in Appendix A. The Act requires the Auditor to monitor and report on compliance issues related to real estate development transactions and agreements which were transferred to DMPED by the AWC and NCRC.

While the Act contained seven compliance requirements, this report deals with the third compliance requirement, the Living Wage Act (LWA):

\[\text{Requirements related to living-wage laws pursuant to the Living Wage Act of 2006, effective June 8, 2006, (DC Law 16-118; DC Code \(\S\) 2-220.01 et seq.).}\]

In addition, since contractual documents associated with the former AWC and NCRC projects required developers to enter into a First Source Act (FSA) employment agreement with the District of Columbia government, this report also addresses FSA compliance requirements:

\[\text{DC Code \(\S\) 2-219.03[Formerly \(\S\) I-1163]\(^2\): The Mayor shall include for every government-assisted project a requirement that the beneficiary enter into an employment agreement with the District of Columbia government which states that:}\]

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\(^1\) See section 455 (b) of the District of Columbia Home Rule Act, approved December 24, 1973 (Pub. L. No. 93-198, 87 Stat. 803); D.C. Code \(\S\)1-204.55 (b) (2001) which states: “The District of Columbia Auditor shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he [she] may prescribe.” See also, section 455 (c) of the District of Columbia Home Rule Act, as amended, approved December 24, 1973, (87 Stat. 803, D.C. Code \(\S\)1-204.55 (c) (2001) which states: “The District of Columbia Auditor shall have access to all books, accounts, records, reports, findings and all other papers, things, or property belonging to or in use by any department, agency, or other instrumentality of the District government and necessary to facilitate the audit.”

\(^2\) Mayor’s Order 83-265, D.C. Law 5-93, and D.C. Law 14-24
(1) The first source for finding employees to fill all jobs created by
the government assisted project will be the First Source
Register; and

(2) The first source for finding employees to fill any vacancy
occurring in all jobs covered by an employment agreement will
be the First Source Register.

Accordingly, based on the above compliance requirements, our objective for this audit
was to determine if adequate processes were in place to ensure that developers honored LWA
and FSA requirements.

The Act was passed in June 2008, but many of the active legacy projects that DMPED
acquired from the AWC and NCRC were either completed by June 2008, or had progressed far
into the construction phase of the project by that date. While the Act stated that audits would
commence after the completion of a project, the Auditor believed that this statement was
inconsistent with the intent of the legislation and several provisions within the Act, which
contemplate ongoing compliance monitoring. Therefore, since the original audit announcement
letter could be construed as limiting the audit scope, the Auditor re-issued the audit
announcement letter on March 4, 2009, an action that subsequently expanded the audit scope
pursuant to the Auditor’s general authority under Section 455 of Pub. L. No. 93-198, as cited
above. With this action, the Auditor would have the authority to review all AWC and NCRC
projects, regardless whether the project start or end dates preceded June 2008.

The Land Disposition and Development Agreement (LDA) is the contractual vehicle that
the AWC and NCRC used to convey the terms and conditions of each real estate development
project. Some of these LDAs date back to the 1990s and beyond. For LDAs closed prior to the
passage of the Act in 2008, our audit scope included the terms and conditions outlined in each
LDA. For this audit, we reviewed the LDAs for 16 projects that were completed prior to 2008.

To address the objectives of this audit, the Auditor worked primarily with agency
officials at the Department of Employment Services (DOES), conducting interviews with staff
personnel who had knowledge of the former AWC and NCRC projects. The Auditor also
requested and evaluated documents and data germane to the review.

The audit was conducted in accordance with generally accepted government auditing
standards. Those standards require that we plan and perform the audit to obtain sufficient,
appropriate evidence to provide a reasonable basis for our findings and conclusions based on our
audit objectives. We believe that the evidence obtained provides a reasonable basis for our
findings and conclusions based on our audit objectives.
Scope Impairment

The audit entrance conference was held with DMPED officials in February 2009. However, the Auditor temporarily ceased activity with DMPED on March 19, 2009. On that date, the Deputy Mayor refused to allow the Auditor unrestricted and complete access to the legacy AWC and NCRC documents that DMPED maintains. Additional attempts to access these documents had been unsuccessful and, through the Office of the Attorney General (OAG), DMPED refused to allow the Auditor unrestricted access to the documents needed to address the objectives of the audit. This position violates the independence standards that all audit organizations must operate under. Those standards, promulgated by the Comptroller General of the United States, are contained in the Government Auditing Standards, and published by the General Accountability Office. By refusing to allow unrestricted and complete access to the legacy AWC and NCRC documents that DMPED maintains, DMPED and the OAG created scope impairment. In the intervening timeframe since March 19, 2009, the Auditor performed work at other District agencies that have been involved with AWC and NCRC projects. Accordingly, the Auditor worked with agency officials at the Department of Small, Local, and Disadvantaged Businesses (DSLDB), Department of Employment Services, the Department of the Environment, and the District Department of Housing and Community Development. The Auditor also conducted interviews with staff of these agencies, and requested and evaluated documents and data germane to the review.

BACKGROUND

DMPED is charged with executing the District’s economic development strategy. Their mission includes encouraging growth and investment across the District, providing and preserving affordable housing, attracting high quality retail to neighborhoods and Center City and revitalizing the District’s waterfronts. DMPED’s goal is for the District to become a world-class, globally competitive city. DMPED brings federal, nonprofit and private partners together to expand the District's tax bases, attract and retain businesses of all sizes, bring good-paying jobs for residents and strengthen business climate.

DMPED manages a portfolio of economic development projects worth more than $13 billion. These projects, spread across every one of the District’s eight wards, vary in size from a $10 billion initiative to reclaim the long-neglected Anacostia Waterfront to small-scale neighborhood retail shops.

The Council established the NCRC in 1998 as an independent corporate instrumentality of the District of Columbia government “to retain and expand businesses located within the District, attract new businesses to the District, and induce economic development and job creation by developing and updating a strategic economic development plan for the District;

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3 Consequently, and as stated, the Auditor conducted the majority of the work for this objective at DOES.
providing incentives and assistance; removing slum and blight; and coordinating the District’s efforts toward these ends.” D.C. Code §§ 2-1219.02 et seq. (repealed). The Council gave the NCRC broad powers including the power to lease, purchase, acquire, hold, manage and improve real property, along with the power to make and perform contracts. D.C. Code § 2-1219.15 (repealed).

Similarly, in 2004, the Council established the AWC as an independent corporate instrumentality of the District of Columbia to develop, redevelop, and revitalize the Anacostia Waterfront, with largely the same broad powers granted to the NCRC. D.C. Code §§ 2-1223.01 et seq. (repealed).

Both the NCRC and AWC operated until October 1, 2007, when their authorizing statutes were repealed through the enactment of the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20 (“Budget Support Act”). The Budget Support Act provided that title to all real property belonging to the NCRC, the AWC, or any of its subsidiaries would vest and be titled in the name of the District. Id. §§ 2171(1) and 2172(1). All “property, records and unexpended balances of appropriations, allocations and other funds available” to the NCRC, AWC or any of its subsidiaries were transferred to the Mayor. Id. §§ 2171(2) and 2172(2).

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RESULTS OF AUDIT

Overview

The findings in this report, which identify past inadequate processes, are presented in a “Lessons Learned” forum. The Auditor has taken this approach primarily because DMPED was not responsible for the management of the former AWC and NCRC properties until late 2007. That is, DMPED acquired the projects formerly managed by the AWC and NCRC. Since most of the activity on the real estate projects occurred prior to the transfer of oversight responsibilities to DMPED in October 2007, the phase of the audit, on which the Auditor is reporting, focused on evaluating both the District’s performance and the developer’s performance prior to the dissolution of the AWC and NCRC. Thus, while the Auditor recognizes that DMPED cannot be held accountable for the actions of the AWC and the NCRC, or for the actions of the cognizant District agencies responsible for oversight processes in the past, it is beneficial to identify past defective practices to avert similar occurrences in the future. Subsequent recommendations forewarn DMPED that corrective action is needed in the future.

For this audit objective, the Auditor performed the majority of audit work at the DOES, working primarily with the Workforce Development Bureau (WDB).
FINDINGS

1) First Source Program Processes and Procedures Were Inadequate

DOES did not monitor First Source program activity adequately. While the First Source Employment Act requires employers to enter into an FSA agreement and submit monthly compliance reports, DOES did not maintain complete records regarding FSA processes and procedures on land formerly owned by AWC and NCRC. For example, DOES did not ensure that employers submitted monthly compliance forms and did not document their monitoring activities at employer sites. DOES did not implement a reliable system of internal control, stating that because of staffing limitations they could not adequately track monthly reports and fulfill monitoring duties and responsibilities at field sites. Consequently, DOES could not determine if FSA goals were reached. As a result, developers may not have employed as many District residents as they could have employed.

While DOES currently has a monitor responsible for employer compliance, prior to late 2007, monitoring activity was sporadic and recordkeeping was uneven. DOES attributes these conditions to staffing shortages, and also stated that when the department relocated to another site in the District, records could have been lost; record retrieval was difficult since responsible personnel on staff at the time the AWC and NCRC projects were active were no longer with the government. Given this environment, many of the Auditor’s requests for records for the 16 AWC/NCRC projects under review could not be satisfied.

For example, DOES stated that they had no records of site visits that agency monitoring personnel performed. DOES also could not provide FSA employment data for three of the 16 projects (see Finding Number Two).

In addition, for the seven projects that the Auditor selected for detailed testing regarding FSA agreements, there was a combined total of 104 employers. Ideally, DOES should have had written FSA agreements for all 104 employers; however, DOES could produce only 56 FSA agreements. Furthermore, while the 104 employers were required to file monthly compliance reports that identified the number of District residents hired as a result of newly-created jobs from the former AWC/NCRC projects, DOES could furnish reports for only 48 employers.

The Auditor found that current DOES written policies regarding FSA employer compliance appear adequate. For example, a designated monitor reviews compliance reports and conducts periodic site visits to verify information submitted in compliance reports, including reviewing payroll records. In addition, the monitor reviews the monthly compliance reports submitted by the contractors to identify contractors who have not complied with First Source legislative intent and requirements. Once an on-site review is completed, the monitor prepares a
written report and issues a non-compliance letter to contractors with deficiencies. The contractor is given 30 days to correct any deficiencies. For continued non-compliance, DOES will issue a letter of notification to the department head of the awarding District agencies for corrective action.

These written processes, implemented between the 2005-2006 timeframe, will be highly effective if they are implemented and practiced on an on-going basis. To evaluate these processes, we requested copies of non-compliance letters and monitoring reports from the Workforce Development Bureau (WDB). However, WDB could not provide us with copies of these documents; WDB staff believed that the documents once existed, but were likely misplaced because of staff turn-over or agency re-location of files. Nevertheless, we could not verify with any certainty if the processes were occurring as required.

The proper execution and timeliness of monitoring and recordkeeping processes and events, along with the corresponding documentation of these processes, are practices that the Government Accountability Office has identified in their publication, “Standards for Internal Control in the Federal Government,” (GAO/AIMD-00-21.3.1). In addition, all are practices that the Auditor endorses.

The Auditor believes that the pre-2008 control environment at DOES and WDB led to the subsequent finding discussed immediately below (Finding Number Two). At the same time, the Auditor also recognizes that, prior to 2008, one monitor assigned to the WDB staff was responsible for over 4,000 First Source Agreements; the 16 projects within the scope of the audit were less than five percent of the individual’s responsibility. Much of the monitor’s work was prioritized and it’s likely that the AWC/NCRC properties were low priorities.

While the Auditor believes that the current written policies and procedures that WDB has established will prevent a repeat of the deficiencies described above, overall program success cannot occur without DMPED’s active compliance role. DMPED’s presence will help ensure that developers are meeting FSA goals as required under the present legislation. Ensuring that periodic monitoring processes and effective recordkeeping practices occur at DOES will minimize the risk that FSA goals remain unfulfilled.

**RECOMMENDATION**

The Deputy Mayor for Planning and Economic Development establish an oversight program that ensures that DOES’ Living Wage Act and First Source Act compliance recordkeeping and monitoring processes are adequate.
2) **Employment Shortfall Created More than $14 Million of Potential Lost Revenue for District and Residents**

Because DOES did not monitor FSA program goals effectively, most developers did not reach a 51% District employment level for newly-created jobs. Only 4 of 16 projects met or exceeded the goal of hiring 51% of District residents. As a consequence, the District and its residents lost potential job revenue of more than $14 million.

The First Source Employment Agreement Program’s primary goal is to ensure that at least 51% of District residents are hired for newly-created jobs that result from District-funded projects, such as the former AWC and NCRC projects. However, only four of 16 projects met this goal; nine projects failed to meet FSA goals, while DOES did not have FSA data for three of the projects. Table I presents the First Source hiring statistics, acquired from DOES, for each of the 16 former AWC/NCRC projects included in our scope, and includes the number of lost job opportunities.

<table>
<thead>
<tr>
<th>Project/Employer</th>
<th>Total New Jobs Created</th>
<th>DC Residents Hired</th>
<th>Percentage of DC Residents Hired</th>
<th>Lost Job Opportunities *</th>
</tr>
</thead>
<tbody>
<tr>
<td>DIW</td>
<td>5</td>
<td>0</td>
<td>0%</td>
<td>3</td>
</tr>
<tr>
<td>DC USA</td>
<td>175</td>
<td>49</td>
<td>28%</td>
<td>41</td>
</tr>
<tr>
<td>Kenyon Square</td>
<td>123</td>
<td>27</td>
<td>21.95%</td>
<td>36</td>
</tr>
<tr>
<td>Highland Park</td>
<td>103</td>
<td>41</td>
<td>39.80%</td>
<td>12</td>
</tr>
<tr>
<td>Portals Hotel Site</td>
<td>1266</td>
<td>412</td>
<td>32.5%</td>
<td>234</td>
</tr>
<tr>
<td>Republic Square</td>
<td>61</td>
<td>42</td>
<td>68.85%</td>
<td>NA**</td>
</tr>
<tr>
<td>Tivoli Partners</td>
<td>36</td>
<td>30</td>
<td>83.33%</td>
<td>NA</td>
</tr>
<tr>
<td>Washington Urban League</td>
<td>16</td>
<td>9</td>
<td>56.25%</td>
<td>NA</td>
</tr>
<tr>
<td>Verona Park</td>
<td>9</td>
<td>1</td>
<td>11.11%</td>
<td>4</td>
</tr>
<tr>
<td>Barcelona</td>
<td>2</td>
<td>2</td>
<td>100%</td>
<td>NA</td>
</tr>
<tr>
<td>Parcel 5</td>
<td>44</td>
<td>14</td>
<td>31.82%</td>
<td>9</td>
</tr>
<tr>
<td>Victory Heights</td>
<td>37</td>
<td>0</td>
<td>0%</td>
<td>19</td>
</tr>
<tr>
<td>Parcel 34</td>
<td>6</td>
<td>0</td>
<td>0%</td>
<td>3</td>
</tr>
<tr>
<td>Ft. Lincoln/</td>
<td>Data</td>
<td>Unavailable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington Gateway</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ft. Lincoln/Dakota Crossing</td>
<td>Data</td>
<td>Unavailable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>City Vista</td>
<td>Data</td>
<td>Unavailable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>361</td>
</tr>
</tbody>
</table>

* To determine the number of lost job opportunities:
  Total new jobs created multiplied by 51% minus DC residents hired = Lost Job Opportunities

** Not applicable because these projects met the 51% hiring goals.
The FSA allows the contracting officer to waive the 51% requirement if a “good faith” effort was demonstrated by the developer, defined by DOES as a “beneficiary who signs a First Source Agreement, lists jobs, accepts referrals, hires a percentage of District residents commensurate with skills needed and the availability of such skills in the District, and files the required reports.” In addition, the FSA also allows a waiver if DOES certifies that there were insufficient numbers of District residents in the labor market possessing the skills required.

In response to the Auditor’s inquiry, DOES stated that they did not issue any certifications regarding insufficient skills among District residents concerning the AWC/NCRC projects. The Auditor also requested from DOES any written correspondence that would have documented the fact that a contracting officer evaluated a developer’s failed effort (less than 51%) and concluded that the developer made a good faith attempt to hire 51% of District residents. DOES stated that no such documentation existed.

Accordingly, the Auditor concluded that the nine AWC/NCRC projects referenced in Table I that did not meet the 51% hiring level of District residents created a potential economic setback for the District and its residents. The Auditor believed that the potential economic loss due to insufficient hiring levels needed to be expressed monetarily to illustrate the effect and impact of job losses in the District.

While the Auditor initially believed that several influencing factors were needed to compute an economic loss, such as direct labor costs for each project and the type of job vacancy that went unfilled, we ultimately determined that the only information needed was lost job opportunities per project (which DOES provided), along with Davis-Bacon\(^5\) hourly wages (which the Department of Labor provided). Our deductive analysis regarding our methodology for computing the District’s economic loss appears in Appendix B.

After determining the number of lost job opportunities per project (from Table I), the Auditor determined the median Davis-Bacon hourly wage rate based on historical Department of Labor data at the time the LDA became effective. To determine an annual salary, we considered a 2,080 hour work year (52 weeks x 40 hours per week). The annual monetary effect was computed by multiplying the number of lost job opportunities by the annual salary. Table II presents the monetary effect of lost job opportunities.

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\(^5\) The former AWC and NCRC LDA’s were all subject to the Davis-Bacon Act.
Table II  
Monetary Effect of Lost Job Opportunities for the District and Its Residents

<table>
<thead>
<tr>
<th>Former AWC/NCRC Project</th>
<th>Median Davis Bacon Hourly Wage: (at LDA effective date)</th>
<th>Annualized Salary</th>
<th>Lost Job Opportunities</th>
<th>Annual Monetary Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>DIW</td>
<td>21.57</td>
<td>$44,866</td>
<td>3</td>
<td>$131,598</td>
</tr>
<tr>
<td>DC USA</td>
<td>21.57</td>
<td>44,866</td>
<td>41</td>
<td>1,839,506</td>
</tr>
<tr>
<td>Kenyon Square</td>
<td>21.57</td>
<td>44,866</td>
<td>36</td>
<td>1,615,176</td>
</tr>
<tr>
<td>Highland Park</td>
<td>21.57</td>
<td>44,866</td>
<td>12</td>
<td>538,392</td>
</tr>
<tr>
<td>Portals</td>
<td>17.66</td>
<td>36,733</td>
<td>234</td>
<td>8,595,522</td>
</tr>
<tr>
<td>Verona Park</td>
<td>21.57</td>
<td>44,866</td>
<td>4</td>
<td>179,464</td>
</tr>
<tr>
<td>Parcel 5</td>
<td>21.57</td>
<td>44,866</td>
<td>9</td>
<td>403,794,1</td>
</tr>
<tr>
<td>Victory Heights</td>
<td>23.09</td>
<td>48027</td>
<td>19</td>
<td>912,609</td>
</tr>
<tr>
<td>Parcel 34</td>
<td>23.09</td>
<td>48,027</td>
<td>3</td>
<td>144,081</td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td>361</td>
<td></td>
<td>$14,363,142</td>
</tr>
</tbody>
</table>

While the Auditor recognizes that the $14.3 million figure is an estimate of potential loss of revenue based on lost job opportunities, it shows the type of economic fortune that could have occurred for the District and its residents had District agency officials and developers been more committed to FSA laws and processes. Based on an average of a seven to nine percent personal income tax rate that was prevalent during the 2002-2007 timeframe, the District lost a corresponding pro-rata share of the $14.3 million in tax revenue; conversely, 361 District residents lost an opportunity to earn wages that collectively exceeded $14.3 million.

In addition, another opportunity to capture revenue to the District, albeit punitive, also never materialized. That is, in those instances when a developer did not submit the necessary monthly compliance reports (see Finding One), the contracting officer could have assessed a penalty equal to five percent of the total amount of direct and indirect labor costs attributed to the LDA (contract), per FSA statutory guidance. However, DOES informed us that, to their knowledge, no developer or employer associated with the former AWC and NCRC projects had been penalized for not submitting monthly compliance reports, even though our review of documents showed that of seven developers tested, none of the seven submitted monthly compliance reports consistently or consecutively. Nevertheless, the imposition of a penalty might have been problematic for the District since the penalty is based on total direct and indirect labor costs; as we indicated in Appendix B, we were unable to acquire that information from.
either DOES or DMPED, as well as from the former Office of Local and Small Business Development.\textsuperscript{6} The general contractors that we contacted also could not provide that information.

Going forward, DMPED needs to ensure that an effective, overall FSA tracking process at DOES is established and is productive on a day-to-day basis. DMPED should provide the type of oversight at DOES that protects the interests of the District government and its residents, especially in those instances when the former AWC and NCRC projects are affected. In this regard, an active monitoring program at developer sites is needed to provide reasonable assurance that employers make a good faith effort to comply with FSA guidelines by: signing an FSA Employment Agreement, accepting referrals provided by DOES and other agencies, advertising job openings, hiring the requisite percentage of District residents, and filing required reports faithfully, such as the monthly compliance reports. In instances where waivers from the mandatory guidelines are needed, DMPED should ensure that written documentation is prepared.

**RECOMMENDATION**

The Deputy Mayor for Planning and Economic Development ensure that developers associated with the former AWC and NCRC properties meet their FSA obligations as required by D.C. Law, LDAs, and other contractual documents.

3) **District Residents May Not Be Receiving an Equitable Hourly Wage Rate**

The District has not implemented the Living Wage Act. The Chief of Budget Execution for the Office of the City Administrator requested that DOES and the Office of Contracting and Procurement (OCP) withhold implementation and/or enforcement of the LWA until a fiscal impact study was completed to determine the cost of implementation. Because of the delay in implementing and enforcing the LWA, District residents may not be receiving equitable hourly wages.

Efforts by DOES and OCP to implement the LWA have not been supported by the Office of the Mayor. While the LWA affects agreements entered into after June 8, 2006, the Office of the Mayor has not moved forward with the LWA, citing language within the law that states that the LWA is subject to annual appropriations. However, this portion of the Act was recently repealed.\textsuperscript{7}

\textsuperscript{6} Now the Department of Small and Local Business Development.

\textsuperscript{7} When the Auditor met with the Office of the City Administrator on June 30, 2009, OCA indicated that the Mayor's Office was no longer claiming the appropriations issue as an impediment since that issue was resolved by law.
In an effort to hasten the implementation of the LWA legislation, DOES’ General Counsel made two requests to the Office of the Attorney General for guidance regarding the levels of responsibility that DOES and OCP undertake since the Office of the Mayor was delaying implementation. The Office of the Attorney General had not responded to the requests at the time of our fieldwork.

When the Auditor met with the Chief of Budget Execution for the Office of the City Administrator, the Auditor was advised that implementation of the LWA was being delayed pending the results of a fiscal impact study. That study was completed in July 2009; results from the study concluded that any fiscal impact of the LWA would be minimal.

In the interim, the Auditor has documented at least three former AWC and NCRC projects that are subject to the following LWA provisions:

*Any recipient of government assistance in the District of Columbia must pay employees a living wage, as prescribed by DC Code sec. 2-220.01 et seq. Living Wage Act of 2006.*

The Act provides the authority for District agencies to impose a mandatory minimum living wage to certain employers benefiting from contracts with the District government. Consequently, employees associated with AWC and NCRC projects may not be receiving an equitable hourly wage as guaranteed under the provisions of the LWA. DMPED is now responsible for the former AWC and NCRC properties, and all activities that occur with those properties. Therefore, the Auditor believes that DMPED should be an earnest advocate for District wage-earners and urge the Office of the Mayor to implement the LWA and enact regulations for the LWA.

**RECOMMENDATION**

The Deputy Mayor for Planning and Economic Development urge the Mayor to implement and enforce the Living Wage Act and to enact regulations for the Living Wage Act.
CONCLUSION

Most, if not all, of the activity on the real estate projects examined for this audit occurred prior to the transfer of oversight responsibilities to DMPED. The Auditor recognizes that DMPED cannot be held accountable for the actions of the AWC and the NCRC, nor for the actions of the relevant District agencies responsible for oversight processes in the past. Nonetheless, it is beneficial to identify past deficient practices to avert similar occurrences in the future.

Thus, the findings in this report, which identify past inadequate processes, are presented in a “Lessons Learned” forum. Recommendations made are intended to forewarn DMPED that corrective action is needed. As owner of District properties which will be developed in the future DMPED will share responsibility with other District agencies to ensure that LWA and FSA requirements are met by the developers chosen.

The Auditor found that DOES did not monitor First Source program activity adequately. DOES did not implement a reliable system of internal control, stating that because of staffing limitations they could not adequately track monthly reports and fulfill monitoring duties and responsibilities at field sites. Consequently, DOES could not determine if FSA goals were reached. As a result, developers may not have employed as many District residents as they could have employed.

Because DOES did not monitor FSA program goals effectively, most developers did not reach a 51% District employment level for newly-created jobs. Only 4 of the 16 projects we reviewed met or exceeded the goal of hiring 51% of District residents. As a consequence, the District and its residents lost potential job revenue of more than $14 Million.

While the Auditor believes that the current written policies and procedures that DOES has established will prevent a repeat of the deficiencies described above, overall program success cannot occur without DMPED’s active compliance role. The Deputy Mayor for Planning and Economic Development should establish an oversight program that ensures that DOES recordkeeping and monitoring processes are adequate.

Going forward, DMPED needs to ensure that an effective, overall FSA tracking process at DOES is established and is productive on a day-to-day basis. Furthermore, the Deputy Mayor for Planning and Economic Development must ensure that developers associated with the former AWC and NCRC properties meet their FSA obligations as required by D.C. Law, Land Development Agreements (LDAs), and other contractual documents.

The Auditor also found that the District has not implemented the Living Wage Act. The Chief of Budget Execution for the Office of the City Administrator requested that DOES and the Office of Contracting and Procurement (OCP) withhold implementation and/or enforcement of
the LWA until a fiscal impact study was completed to determine the cost of implementation. However, that study was completed in July 2009 and results from the study concluded that any fiscal impact of the LWA would be minimal.

Because of the delay in implementing and enforcing the LWA, District residents may not be receiving equitable hourly wages. The Auditor believes that DMPED should be an earnest advocate for District wage-earners and urge the Office of the Mayor to implement the LWA and enact regulations for the LWA.

Respectfully Submitted,

[Signature]

Deborah K. Nichols
District of Columbia Auditor
APPENDICES
SEVEN COMPLIANCE REQUIREMENTS OF THE ACT

1. Requirements related to developer selection and performance guidelines, as defined in the Mayor’s source-selection process.

2. Requirements related to the selection of goods and services, as defined in the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01, et seq.).

3. Requirements related to living-wage laws pursuant to the Living Wage Act of 2006, effective June 8, 2006 (DC Law 16-118; DC Code § 2-220.01 et seq.).


5. Requirements related to equity and development participation by CBEs pursuant to the SLDBE Assistance Act.


7. Requirements related to affordable housing mandates, including the Inclusionary Zoning Implementation Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. official Code § 6-1041.01 et seq.), the Community Development Block Grant, the Housing Production Trust Fund, the Home Investments Partnerships Program, and the Low-Income Housing Tax Credit program, as applicable.
# Factors Considered to Compute Potential Economic Loss to District

<table>
<thead>
<tr>
<th>Subject</th>
<th>Obtainable and Necessary?</th>
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<tbody>
<tr>
<td>1. Number of lost opportunities per project</td>
<td>Yes, for most projects this information was obtainable from DOES. This information was absolutely necessary to determine monetary effect of lost job opportunities.</td>
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<tr>
<td>2. Total direct labor costs</td>
<td>We spoke with a few general contractors (GC) and they informed us that this would be an aggregate figure from all of the subcontractors under their employ, assuming that the records were still available. In addition, some GC had over 50 subcontractors, and some of those subs may no longer be in business, or some would not be able to locate payroll records. DSLBD, DOES, and DMPED all told us that they did not have access to total direct labor costs/construction costs per project. We determined that total costs were not obtainable, and also not necessary.</td>
</tr>
<tr>
<td>3. Type of Job Vacancy</td>
<td>This data was obtainable for the most part from developers’ subcontractors, but some developers and subcontractors may have discarded their records, which they could do once three years had lapsed since project closing. For each job type, there would be a Davis-Bacon hourly wage rate that would give us the monetary benefit (salary) per DC resident. However, we determined that the type of job vacancy was not necessary as long as we computed an hourly wage which did not exceed the Davis-Bacon median hourly wage.</td>
</tr>
<tr>
<td>4. Davis-Bacon Hourly Wages</td>
<td>This information was obtainable and necessary. The audit team could obtain Davis-Bacon wages from the Department of Labor. This information was absolutely necessary to determine monetary effect of lost job opportunities.</td>
</tr>
<tr>
<td>5. Date Job became available for new hire and date job terminated.</td>
<td>We initially believed that this information was necessary because it could tell us the specific amount of wages that was lost per job per District resident. However, the job would remain with the District resident once the project was complete, even if the resident was transferred to a Virginia or Maryland job site. The resident would return to the District after close-of-business each day and, ideally, contribute to the District economy.</td>
</tr>
<tr>
<td>6. Tax revenue available to the District</td>
<td>This information was necessary in order to determine the amount of loss revenue to the District. Tax rates for the years under review were obtainable through dedicated tax-advocacy websites.</td>
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AGENCY COMMENTS
AGENCY COMMENTS

On March 30, 2010, the Office of the District of Columbia Auditor submitted this report in draft for review and comment to the Director of the District Department of Employment Services (DOES) and the Office of the Deputy Mayor for Planning and Economic Development. The Auditor received written comments from the Deputy Mayor for Planning and Economic Development on April 8, 2010. No changes have been made to the report as a result of the comments. The written comments are included, in their entirety, with this report.
April 8, 2010

Deborah K. Nichols
District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, DC 20005


Dear Ms. Nichols:

The purpose of this letter is to respond to your draft report, dated March 30, 2010, regarding the review of First Source Act and Living Wage Act requirements (the “Draft Report”). Below please find DMPED’s comments regarding the Draft Report’s three (3) recommendations:

Recommendation #1: DMPED should establish an oversight program that ensures that DOES recordkeeping and monitoring processes are adequate.

Comment: DMPED and DOES coordinate through DMPED’s regular oversight communications and meetings with agencies within its development cluster pursuant to Mayor’s Order 99-62 (April 9, 1999). DOES is informed of the Draft Report’s recommendation and DMPED shall advise DOES to endeavor to implement more efficient recordkeeping and monitoring processes.

Recommendation #2: DMPED should ensure that developers associated with the former AWC and NCRC properties meet their First Source Agreement obligations as required by D.C. Law, Land Disposition and Development Agreements and other contractual documents.

Comment: DMPED and DOES shall endeavor to implement a more efficient and effective process to track and enforce compliance with the referenced documents.

Recommendation #3: DMPED should urge the Office of the Mayor to implement and enforce the Living Wage Act and to enact regulations of the Living Wage Act.

Comment: DMPED shall inform the Office of the Mayor of the above recommendation.
If you have questions or if you need any additional information please contact me directly at 202-727-6365.

Sincerely,

Valerie Santos
Deputy Mayor for Planning and Economic Development
District of Columbia